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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th March, 2018

+ RC.REV. 303/2016

TILAK RAJ KAPOOR (since deceased) substituted by Legal
Representatives Petitioner

Through: Mr. S.S. Jain, Advocate with
Mr. Nikesh Jain, Advocate

versus

NEELAM JAIN Respondent

Through: Mr. Rohan Kanhai, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The eviction case (E-164/14/11), in which the impugned order dated 15.02.2016 was passed by the additional rent controller (ARC) which is impugned in the present proceeding, was instituted by Tilak Raj Kapoor. The prayer in the said case was for eviction of the respondent, concededly a tenant in a portion described as shop with dimensions of 9 ft x 9 ft., forming part of property described as bearing No.313/73-F, Anand Nagar, Delhi on the ground of *bona fide* need under Section 14(1)(e) of Delhi Rent Control Act, 1958, the requirement having been described as residential of the petitioner and of members of the family dependent upon him.

2. Having regard to the nature of the prayer made in the eviction case, the ARC applied the special procedure under Section 25-B of the

Delhi Rent Control Act, 1958 and in answer to the summons served on the respondent herein, she moved an application seeking leave to contest. The said prayer was granted by the ARC by order dated 15.02.2016, which to the extent relevant, may be extracted thus:-

“It is contended by the respondent that after the death of her husband, the petitioner has been harassing her and even refused to receive the rent. That the petitioner is not in bona fide requirement of the suit premises because one shop lying with the petitioner and the same is closed for a very long time and that the same is not mentioned in the present petition. That it is falsely stated by the petitioner that his Sh. Ashok Kumar was residing in the premises No.193 and another son Sh. Raj Kumar was residing in premises no.65 but in fact both the sons are the owners of the said flats. That the son of the petitioner namely Sh. Deepak, who is residing with the petitioner, owns a flat at Dawarka and Sh. Gulshan owns a flat in Rohini and the said facts are not disclosed by the petitioner in his petition. That accordingly, the application be allowed.

The petitioner in his reply to the leave to defend application of the respondent has reiterated the contents of the petition and denied the allegations of the respondent.

On careful perusal of the record, I am of the view that the respondent is able to raise the triable issues regarding the availability of the sufficient accommodation with the petitioner and also about the bona fide requirement of the suit premises by him.

In view of above, there are triable issues between the parties and the same cannot be decided without inviting the evidence. Therefore, the leave to defend application of the respondent is allowed and she is directed to file the WS within 30 days from today with advance copy to the petitioner. ...”

3. The revision petition at hand was filed in May, 2016. While it was pending, the said original petitioner Tilak Raj Kapoor died on 13.09.2016. On the applications moved in the wake of such event, his legal heirs were directed to be brought on record by substitution. They are prosecuting the matter further.

4. The perusal of the eviction petition and the documents filed therewith would reveal that the original petitioner Tilak Raj Kapoor was 83 years old at the time of filing of the petition, his wife Nirmala Devi being 77 years old at that point of time. Since she has survived him, she would now herself be 84 years old. Her family comprises of four sons and one daughter, each of whom is married having their own children. It was case of the petitioner that two elder sons Ashok Kumar and Raj Kumar do not depend on the parents for residential needs, they living elsewhere in own accommodation (flats) in Pitampura area of Delhi. Though some contentions were raised with regard to status of the said elder children vis-à-vis the said flats in Pitampura, Delhi the same is of no consequence inasmuch as the petitioner did not even plead their need.

5. The petitioner had filed a site plan with the eviction petition showing the accommodation available to him at the time of filing of the petition. A copy thereof has been filed (at page 61 of the paper book). It was clarified in the pleadings that the property bearing municipal No.313/73-F, Anand Nagar, Delhi was a larger plot comprising area of 163 sq.yds. which had been purchased by the

petitioner by registered sale deed from the erstwhile owner in 1967. After having purchased the said larger plot of land, the petitioner had sold two portions thereof, one 35 sq. yds. to Vimla Sharma and another 63 sq. yds. to Ranjit Sachdeva, the last sale being in 1971. Having regard to the composition of the family at that point of time, no co-relation with the needs pleaded in the eviction petition which was filed in April, 2011 can be drawn for the benefit of the tenant. The fact remains that after sale of said two portions, the area of plot of land left with the petitioner landlord is restricted to 65 sq.yds. only.

6. The built up accommodation in the aforesaid 65 sq. yds. area as shown in the site plan referred to above comprises of only two floors, there being three shops abutting western border of the property, besides one larger drawing–cum-dining room admeasuring 21.3 ft. x 9 ft., one store, a kitchen and open *verandah*, with stairs leading to the upper floor. The accommodation at the first floor comprises of two rectangular size halls, one 21 ft. 3 inch x 9 ft. and the other 24 ft. x 9 ft., besides which there is a kitchen, bath and latrine with open terrace. The tenant-respondent did not file any site plan nor has raised any dispute about the correctness of the site plan of the petitioner-landlord. It is, thus, not disputed that there is no facility in the nature of bathroom or latrine at the ground floor level.

7. One of the three shops, at the north-west corner of the property at the ground floor has been in the tenancy of respondent-tenant. The middle shop, *i.e.*, the shop next to the disputed premises has admittedly been in the tenancy of one Mohd. Salim, described by the

respondent in her leave to contest application as Salim Thekedar. Though it is her case that the petitioner-landlord is also party to the business of Salim Thekedar in the said portion, such pleadings carry the respondent nowhere. The fact remains that there is a tenant in the said portion.

8. The third shop was admittedly in the tenancy of one Radhey Shyam when the petition was filed. The counsel arguing for the petitioner himself fairly disclosed at the hearing that the said shop (earlier in the tenancy of Radhey Shyam) has since fallen vacant as a result of eviction proceedings taken out. His explanation, however, is that the vacation of the said portion also does not satisfy the needs inasmuch as Nirmala Devi, now a widow of the original petitioner-landlord, is in such advanced stage in life that she cannot be expected to go upstairs to use the facility of bath and latrine and, therefore, the petitioners intend to use the portion vacated by Radhey Shyam for such facility on the ground floor.

9. The fact that the two junior sons of the petitioner, namely, Deepak and Gulshan Kumar also live in the same property, they also being married having their children was not disputed in the application for leave to contest. The respondent-tenant only raised a dispute with regard to their dependency on the averments that they own flats in Dwarka and Rohini localities of Delhi. Such pleadings of the respondent are vague, no description of the properties owned by the junior sons having been submitted on record, leave alone any proof to substantiate such averments. In these circumstances, the case of the

petitioner-landlord, pleaded on oath, that neither he, nor his said sons nor his wife own any other property other than the property in question in Delhi or in India cannot be disbelieved.

10. In the above facts and circumstances, the view taken by the additional rent controller in the impugned order cannot be approved. The application moved by the respondent did not give rise to any triable issue on which the case could be treated as one requiring further scrutiny on the basis of evidence.

11. Thus, the petition is allowed. The impugned order is set aside and the application of the respondent for leave to contest is dismissed. In the result, an eviction order against the respondent must follow. Ordered accordingly.

12. It is, thus, held and directed that the respondent shall vacate the tenanted premises, as shown in the colour red in the site plan (page 61 of the paper book) in terms of Section 14(1)(e) of the Delhi Rent Control Act, 1958. Following the statutory prescription, however, the respondent-tenant is granted six months time to vacate the premises in question.

R.K.GAUBA, J

MARCH 15, 2018

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