

\$~48

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment delivered on: 25.09.2019

+ RC.REV. 571/2019

NORTH DELHI MUNICIPAL CORPORATION Petitioner

versus

MOHD RAFI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Mini Pushkarna, Standing Counsel for North DMC
with Ms. Swagata Bhuyan, Mr. Shiva Pandey and Ms.
Khushboo Nahar, Advocates.
Mr. Ashok Sharma, Dy. Director Education, North DMC.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.43112/2019 (exemption)

Exemption is allowed subject to all just exceptions.

CM APPL.43113/2019 (for condonation of delay in re-filing)

1. It is contended by learned counsel for the petitioner that the Revision petition was originally filed within time, however, there

were certain objections raised by the Registry and when the record was taken back for the purposes of removing the objections, there were change of officers in the Department, because of which appropriate instructions could not be obtained in time and accordingly, there was a delay of 93 days in re-filing the petition.

2. For the reasons stated in the application, application is allowed. The delay in re-filing of the petition is condoned.

RC.REV. 571/2019 & CM APPL.43111/2019 (stay)

1. Petitioner Municipal Corporation of Delhi impugns judgment dated 02.02.2019, whereby, the leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Subject eviction petition was filed by the respondents, who are 17 in number, on the ground of bonafide necessity under Section 14(1)(e) of the Delhi Rent Control Act, 1958.

3. Case set up by the respondents was that respondent No.1 was residing in a property bearing No.1799, Katra Shekh Chand, Lal Quan, Delhi as a licensee/tenant of the DDA and was in occupation of only two rooms besides other amenities and the accommodation in his possession was insufficient for his family comprising of himself, his wife, three sons and three daughters, out of which, his two sons were married and the third son was yet to be married. It was contended that his family comprising of 7 members were residing in those two

rooms. He had contended that his 3 daughters were married and 1 son was of marriageable age.

4. Respondent No.2 had contended that he along with his family resided on second floor of property No.3022, Nal Bandhan, Shah Gan, Kucha Pandit, Delhi and his family was comprising of himself, his wife and 3 sons, out of which, one son was married and two sons were of marriageable age and the accommodation was only one room on the second floor.

5. Respondent No.3 had contended that he was living in a self-acquired property and did not want to shift into the tenanted premises.

6. Respondent No.4 is the widow of the brother of the respondent Nos.1 to 3 and she is living on the first floor of property No.1797 Katra Shekh Chand, Lal Quan, Delhi as a licensee/tenant of DDA and her family comprises of herself and two unmarried sons and two of her daughters are married.

7. Respondent No.9 is the widow of another brother of respondent Nos.1 to 3 and she has contended that she is living on the first floor of property No.1799 Katra Shekh Chand, Lal Quan, Delhi along with her three unmarried sons.

8. Respondent Nos.14 to 17 are the sons of yet another brother of respondent Nos.1 to 3, out of which, two of them are married and two are unmarried on account of lack of accommodation and are living in

the property No.3022, Nal Bandhan, Shah Gan, Kucha Pandit, Delhi.

9. It is contended that the property No.3022 Nal Bandhan, Shah Gan, Kucha Pandit, Delhi is occupied by the respondent No.2, who is living on the second floor with his family and respondent Nos.14 to 17 are living on the first floor and on the ground floor there are two shops in occupation of the tenants against whom an eviction petition has already been filed on the ground of bonafide necessity.

10. Subject leave to defend application was filed by the petitioner Corporation contending that the accommodation disclosed by the respondents in their possession was incorrect. It is contended that property No.3022 Nal Bandhan, Shah Gan, Kucha Pandit, Delhi comprises of two rooms on the first floor and one room on the second floor besides basement and shops on the ground floor.

11. Further, it is contended on behalf of the petitioner that in the property No.1799 Katra Shekh Chand, Lal Quan, Delhi though petitioner No.1 has stated that he is residing in the two rooms, the property is comprising of 6 rooms besides a shed and a kitchen.

12. The Rent Controller, by the impugned judgment had declined to grant leave to defend on the ground that the contention of the petitioner that the respondents had not disclosed the complete accommodation in their possession was a bald and vague allegation and did not raise any triable issue.

13. Learned counsel for the petitioner contends that the Rent Controller has erred in holding that the averments raised by the petitioner were bald and vague and were not substantiated.

14. It is contended that the Corporation had filed before the Rent Controller the property tax documents of the said two properties which indicated that in property No.1799, Katra Shekh Chand, Lal Quan, Delhi there were six rooms and in property No.3022, there were three rooms besides basement and ground floor and this has not been disclosed by the respondents.

15. Perusal of the eviction petition shows that the need projected by the respondents, who are 17 in number, is that the family of the respondent No.1 comprises of 7 dependent family members besides three married daughters. Family of respondent No.2 comprises of 6 dependent family members including two sons who are of marriageable age. Family of respondent No.4, who is a widow, comprises of 4 dependent members besides two unmarried sons, respondent Nos.5 and 6 and two married daughters, respondent Nos.7 and 8. Family of respondent No.9, who is also a widow, comprises of four dependant members with three unmarried sons, respondent Nos.10, 11 and 12 and one married daughter, respondent No.13. Out of respondent Nos.14 to 17, two respondents are still unmarried due to lack of accommodation.

16. The dependent members of the respondents for the purpose of

residence, as claimed by the respondents, is 26 besides the allegation that some of the boys are of marriageable age and besides the married daughters.

17. Even if the contentions of the petitioner were to be taken as substantiated, as per the petitioner, the respondents in their occupation have 6 rooms in the property No.1799, Katra Shekh Chand, Lal Quan, Delhi and 3 rooms in the property No.3022, Nal Bandhan, Shah Gan, Kucha Pandit, Delhi which makes it 9 rooms in all.

18. The contention of the petitioner that the respondents have not disclosed the correct accommodation is not borne out from the record and the respondents have very categorically stated that the respondent No.1 is living in the property No.1799 Katra Shekh Chand, Lal Quan, Delhi and even respondent Nos.9 to 12 are residing in the property No.1799, Katra Shekh Chand, Lal Quan, Delhi. Respondent No.2 is residing on the second floor of property No.3022, Nal Bandhan, Shah Gan, Kucha Pandit, Delhi and respondent Nos.14 to 17 are residing on the first floor of property No.3022, Nal Bandhan, Shah Gan, Kucha Pandit, Delhi. Site plans of the respective portions in their occupation has been filed along with the eviction petition.

19. Even if the contention of the petitioner Corporation was taken at its face value, the accommodation, alleged to be available with the respondents, is still insufficient to meet their requirements. The maximum accommodation, as per the petitioner, available with the

respondents is 9 rooms and their family by a conservative assessment comprises of 26 family members besides married daughters.

20. In my view, the affidavit filed in support of the application seeking leave to defend does not disclose a triable issue and does not raise any ground which, if proved, would disentitle the respondent landlord from an order of eviction.

21. It may also be noticed that in execution petition filed by the respondents of the impugned order, respondents have already taken possession of the tenanted premises from the petitioner on 17.09.2019.

22. The Rent Controller has rightly declined to grant leave to defend, in the facts of the present case. I find no merit in the petition. The Petition is, accordingly, dismissed.

SANJEEV SACHDEVA, J

SEPTEMBER 25, 2019
st