



\$~14

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

% ***Date of Decision: 11.11.2024***

+ RC.REV. 194/2017

SHAKUNTALA DEVI

.....Petitioner

Through: Mr. S.N. Gupta, Advocate with
Petitioner in person.

versus

MOHAN DAS

.....Respondent

Through: Mr. Pushkar Sood, Mr. Nikhil Thakur
and Ms. Monika Saini, Advocates
with Respondent in person.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Revision Petition has been filed by the Petitioner/landlady impugning the Order dated 27.02.2017 passed by the learned Pilot Court (Central District), Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"] in respect to H.No. 4604, First Floor, Gali Barna, Basti Mansa Ram, Sadar Bazar, Delhi-110006 [hereinafter referred to as "subject premises"].

2. The Application for Leave to Defend/Contest filed by the Respondent/tenant, was allowed on 11.01.2016 and after a full trial, the Eviction Petition filed before the Trial Court [hereinafter referred to as "Eviction Petition"] under Section 14 (1)(e) of Delhi Rent Control Act, 1958 [hereinafter referred to as the "the Act"] has been dismissed.

3. Briefly the facts are, the Petitioner/landlady instituted, an Eviction Petition against the Respondent/tenant, contending that the father-in-law of



the Petitioner was the actual owner of the subject premises, and after his demise, the subject premises devolved on husband of the Petitioner, and thereafter to the Petitioner, after his demise. It was the case of the Petitioner/landlady, that the father of the Respondent/tenant was the original tenant, and after his demise, the Respondent/tenant inherited the tenancy rights of the subject premises.

4. In the Eviction Petition, the Petitioner/landlady, stated that the subject premises was required by the Petitioner/landlady, for residence purposes for herself, and her family consisting of eight daughters and one son. Additionally, it was averred that the Petitioner/landlady is earning livelihood by doing stitching work, and requires the subject premises to run her stitching business.

5. Subsequently, the Leave to Defend/Contest Application dated 14.11.2014 was filed by the Respondent/tenant disputing the landlord-tenant relationship, and contesting that the Petitioner/landlady has sufficient alternative suitable accommodation available with her, which has been concealed.

6. By Order dated 11.01.2016, the Trial Court, allowed the Leave to Defend/Contest Application filed by the Respondent/tenant, stating that triable issue of availability of suitable alternative accommodation with the Petitioner/landlady required adjudication.

7. The learned Trial Court, after a full-fledged trial, found that although the landlord-tenant relationship stands satisfied, however, the Petitioner/landlady has concealed alternative accommodation, including property situated in Vikaspuri, Delhi. Consequently, Impugned Order was passed holding that Petitioner/landlady has failed to prove her bonafide



requirement for additional space. The Eviction Petition was thus dismissed. This led to the filing of the present Revision Petition.

8. Notice was issued in the present Revision Petition on 24.04.2017. The record reflects that thereafter the Respondent/tenant, has sought several adjournments for one reason or another, is as recorded in Orders dated 21.02.2018, 23.08.2019, 19.02.2020, and 20.05.2024. A Coordinate Bench of this Court, by its Order dated 20.05.2024 observed that in view of the repeated adjournments, costs should be imposed on the Respondent/tenant, which were paid by him belatedly on 29.10.2024 in the Court.

9 Learned Counsel of the Petitioner, foremost, highlights that the roof and walls of subject premises have collapsed, and the Respondent/tenant is not even residing at the subject premises for more than one year. However, he is holding on the property to extract money from the Petitioner/landlady who is a widowed old lady.

9.1 Learned Counsel of the Petitioner, submits that it is on account of two issues that the Eviction Petition has been dismissed. In the first instance, the learned Trial Court has found that since no site plan has been filed for property bearing No. 4054-4055, Gali Barna, Mansa Ram, Sadar Bazar, Delhi, where she is currently residing, thus, it is not possible to ascertain as to whether the accommodation is scarce for Petitioner/landlady's use. The learned Trial Court has also found that the Petitioner/landlady had also failed to file any photographs or documents to show as to what purpose the two rooms of the premises where she currently resides, are being used.

9.2 The second issue on the basis of which the Impugned Order has been passed is that the availability of the flat at Vikaspuri was concealed and the same can be used for residential purposes.



10. Learned Counsel for the Petitioner submits that during the trial evidence was led, and both these issues were clarified both in the evidence-in-chief of the Petitioner as well as her cross-examination. Reliance was also placed upon admissions by the Respondent in his cross-examination.

11. So far as concerns, the issue of the flat at Vikaspuri, it is contended that the same although available was not an alternative accommodation and thus was not mentioned in the Eviction Petition. However, it was referenced in the Written Statement filed by the Respondent/tenant, and it was adequately responded to by the Petitioner in the Replication and also explained in the Affidavit by way of evidence.

11.1 The Petitioner/landlady in her Affidavit with the Replication, has categorically denied that the properties listed by Respondent/tenant are suitable for her needs, and even addressed that the Vikaspuri is not suitable to the Petitioner as part of family of the Petitioner/landlady are residing in part of the subject premises with her.

12. Learned Counsel for the Petitioner further submits that it is admitted that four rooms are available in the premises at 4054/4055 Gali Barna, Basti Mansa Ram, Sadar Bazar, Delhi [hereinafter referred to as "4054/55 property"] of those rooms, two rooms are being used by the Petitioner and two rooms by the brother-in-law (brother of the husband of Petitioner), since the subject premises was jointly owned.

13. He further submits that the family of the Petitioner/landlady comprises of eight daughters and one son, of which seven daughters and the son are married. However, two rooms are not sufficient to accommodate the needs of the family members. It is thus contended that the Impugned Order cannot be sustained.



14. Learned Counsel for the Respondent/tenant on the other hand contends that the subject premises that were sought to be vacated was only “Mark D” as per the site plan which is the ground floor, whereas the Respondent is in occupation of additional premises. It is further contended that the Petitioner has not proved his ownership of the subject premises.

15. The cross-examination of the Respondent (RW-1) dated 20.02.2017 shows that the Respondent has admitted that his father resided in the subject premises as a tenant. Further, there is an admission that after the death of his father, the Respondent, his brother and sisters are also residing in the subject premises without paying any rent. The Respondent has also admitted that the son and daughter of the Petitioner reside in the premises with her. The Respondent also admits that the Petitioner has a large family.

16. The only findings that are given by the learned Trial Court in the Impugned Order are that the Petitioner has failed to show:

- (i) the purpose she is using two rooms on the ground floor in the 4054/55 property; and
- (ii) the accommodation at Vikaspuri has been concealed.

16.1 It is apposite to examine the findings of the learned Trial Court which are given in paragraphs 14 and 15 of the Impugned Order and extracted below:

*“14. Perusal of record shows that the petitioner **has not filed the site plan of property bearing no. 4054-4055**. Gali Barna, Basti Mansa Ram, Sadar Bazar, Delhi, where she is presently residing. It has been vaguely averred by the petitioner that she **has only two rooms in the said property but no site plan has been filed by the petitioner to show the exact accommodation available with her in the said property** or whether the said accommodation is scarce for her use. Further, it has not been denied by the petitioner as per her own site plan that **she has possession of two rooms on the ground floor of the suit property. The petitioner has failed to file any photograph or any other document to show as to for what***



purpose these two rooms are being used by her. Thus, the petitioner has failed to prove the non-availability of adequate space with her in her present residence, i.e. property bearing no. 4054-4055, Gali Barna, Basti Mansa Ram, Sadar Bazar, Delhi as well as on the ground floor of the suit property for her alleged bonafide requirement.

15. Further, the petitioner has also concealed the availability of a flat at Vikaspuri, Delhi with her in her petition, which can also be used for residential purposes and therefore, this also amounts to concealment of material fact on behalf of the petitioner. Thus, the petitioner has failed to prove her bonafide requirement for additional space or non-availability of space with her in property no. 4054-4055, Gali Barna, Basti Mansa Ram, Sadar Bazar, Delhi."

[Emphasis supplied]

17. On the aspect of alternate accommodation at Vikas Puri, the Petitioner/landlady, in her Evidence by way of Affidavit dated 07.05.2016, reiterated that the accommodation available at Vikaspuri, is 25 Km. away from her current place of residence, and as widowed lady, it is not feasible to move to such a distant place and live alone.

17.1 The evidence of the Petitioner/landlady further clarifies that the 4054-55 property was the joint property of her late husband and his brother and thus, the four rooms have been divided equally between them. This has been reiterated by the Petitioner/landlady in her cross-examination dated 20.02.2017. The Respondent/tenant in his cross-examination has admitted that the devar (brother-in-law) of the Petitioner/landlord and his family is residing in 4054-55 property. The relevant extract is below:

"... It is correct that in property bearing No. 4054 and 4055, the Dever of the petitioner with his family is residing there...."

"The son and daughter of Laxmi Narayan reside in the said house. It is wrong to suggest that Smt. Meena Devi is a tenant in property No. 4064, Gali Barna. Two rooms on the ground floor of property No. 4064, Gali Barna are in the possession of wife of Sh. Laxmi Narayan and the rest of the portion on the ground floor is in possession of Smt. Meena Devi in the said property. Shakuntala Devi has eight daughters and one son. It is correct that out of these seven daughters are



married. It is wrong to suggest that the unmarried son aged 22 to 24 years and daughter who is one and half year elder than the son of the petitioner reside along with their mother...."

"The petitioner does sewing work from the property where she is residing, i.e, 4055, Gali Barna. I cannot state the measurement of this property bearing No. 4055 but I know that there are three to four rooms in this property. I cannot admit or deny that the property bearing no. 4055 is ad-measuring 25 to 30 sq. yards...."

18. The provisions of Section 14(1)(e) of the Act have been provided with care by the legislature, not only is the accommodation to be 'alternate', but it is also required to be suitable. The Supreme Court in the ***Shiv Sarup Gupta v. Mahesh Chand Gupta***¹ has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant. It was held that:

*"14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. **Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation,** may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. **Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative***

¹ (1999) 6 SCC 222



accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”

[Emphasis Supplied]

19. This Court is unable to agree with the Impugned Order. The pleadings and evidence before the learned Trial Court show that it is undisputed that the Petitioner and her extended family is residing in the 4054-55 property and is even carrying out some sewing work from there. It is also not disputed that the Petitioner is not the sole owner of the said property and that she only has available for her use two rooms in the 4054-55 property. Thus, it cannot be said that the non-filing of the site plan was fatal to the case of the Petitioner.

20. One of the ingredients of Section 14(1)(e) of the Act is that the landlord himself has no other “reasonable suitable accommodation”. The Petitioner has explained that the premises at Vikaspuri could not be considered as suitable and this was also clarified in paragraph 11 of her affidavit filed by way of evidence dated 07.05.2016. Paragraph 11 of the affidavit reads as follows:

“11. That the deponent states that in addition to the tenanted premises the deponent is having a LIG flat in Vikaspuri which is approximately 25 km far from the residence of the deponent which is not suitable for the deponent. It is submitted that the deponent is residing alongwith her family members which has been built up in only 38 Sq. Yards. It is further submitted that in the said property two families are residing i.e. the family of the deponent and the family of her brother-in-law Sh. Mahender Singh.”

[Emphasis supplied]

20.1 This evidence of the Petitioner has gone unrebutted in her cross-



examination. The responses given by the Respondent in his cross-examination are also mostly evasive. Since, the accommodation referred to was not suitable, it cannot be said to be an alternate accommodation available. Given the law in this regard, it cannot be said that the non-mention of the Vikaspuri premises would tantamount to concealment by the Petitioner. The finding in this regard which has been impugned is thus set aside. In the case of *Meenal Eknath Kshirsagar (Mrs) v. Traders & Agencies*², Supreme Court has held that mere omission to state alternate accommodation in the plaint cannot be regarded as sufficient for disentitling the landlord from claiming a decree of eviction. The relevant extract is reproduced below:

“18...It would have been better if she had referred to those facts but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she is able to prove that she requires reasonably the suit premises for her occupation. We are, therefore, of the opinion that the appellate bench and the High Court clearly went wrong in holding that the said omission was sufficient to disentitle her from getting a decree of eviction and it also disclosed that her claim was mala fide and not bona fide as required by law.”

[Emphasis supplied]

21. The Respondent has raised two additional contentions before this Court which given the nature of these contentions have also been examined by the Court. The first contention is that the Petitioner is only a co-owner of the subject premises and the subject premises is not owned by the Petitioner.

21.1 As stated above, the record shows that initially it was the father of the Respondent who was inducted as a tenant in the subject premises by the father-in-law of the Petitioner approximately 60 years ago and after the demise of the Petitioner's father-in-law, the subject premises were inherited

² (1996) 5 SCC 344



by the husband of the Petitioner, and after the death of her husband, the subject premises devolved upon the Petitioner. The Respondent admits that he is a tenant in the subject premises, however contends that there are other co-owners of the premises and thus, the Petition cannot be maintained by one co-owner.

22. The learned Trial Court, after examining the evidence in the matter, has rejected this contention. The Supreme Court in ***India Umbrella Manufacturing v. Bhagabandei Agarwalla (Dead) by L.R.s***³ has held that a co-owner of a premises acts as an agent of the other co-owners and can file an eviction petition without joining the other co-owners. The consent of all co-owners is assumed unless shown to the contrary.

22.1 In the present case, the Respondent/tenant has claimed ownership of the subject premises rests with legal heirs of the predecessor-in-interest, the father-in-law of the Petitioner/landlady, however the Petitioner/landlady has placed on record the “no objection” of the legal heir of the predecessor-in-interest, in regard to filing the Eviction Petition by the Petitioner/landlady. Given the judgment in the ***Indian Umbrella*** case, the issue raised by the Respondent/tenant is without merit.

23. On the aspect of challenge to the ownership raised by the Respondent, it is a settled law that a landlord has to prove is a better title than the tenant to seek eviction from the tenanted premises under Section 14 (1) (e) of the Act.

23.1. The Supreme Court in the case of ***Swadesh Ranjan Sinha v. Haradeb Banerjee***⁴, in the context of ownership in an eviction petition, has clarified

³ (2004) 3 SCC 178

⁴ (1991) 4 SCC 572



that:

“ 9. All that a plaintiff needs to prove is that he has a better title than the defendant. He has no burden to show that he has the best of all possible titles. His ownership is good against all the world except the true owner. The rights of an owner are seldom absolute, and often are in many respects controlled and regulated by statute. The question, however, is whether he has a superior right or interest vis-a-vis the person challenging it....”

[Emphasis supplied]

23.2 This Court while discussing the issue of ownership in a Petition filed under Section 25-B(8) of the Act in a case titled ***R.S. Chadha v. Thakur Dass***⁵ has held that what a landlord has to prove is a better title than the tenant to seek his eviction for the tenanted premises. The relevant extract reads as follows:

“10.1 It is settled law that what a landlord has to prove is a better title than the tenant to seek his eviction from a tenanted premises under Section 14(1)(e) of the Act. The Supreme Court in the case of Shanti Sharma v. Ved Prabha has held as follows:

*“14. The word “owner” has not been defined in this Act and the word ‘owner’ has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the government or the authorities constituted by the State and in this view of the matter it could not be thought of that the legislature when it used the term “owner” in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. **It could not be doubted that the term “owner” has to be understood in the context of the background of the law and what is***

⁵ 2024 SCC OnLine Del47



contemplated in the scheme of the Act. This Act has been enacted for protection of the tenants. But at the same time it has provided that the landlord under certain circumstances will be entitled to eviction and bona fide requirement is one of such grounds on the basis of which landlords have been permitted to have eviction of a tenant. In this context, the phrase “owner” thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term “owner” is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure....”

[Emphasis supplied]

24. Thus, the Eviction Petition has been filed seeking eviction of the tenant from two rooms kitchen and bathroom on first floor and entire second floor as per site plan attached and not only the ground floor as has been incorrectly alleged by the Respondent.

24.1 The submissions of the Respondent have been examined. The description of the subject premises are set out in the Eviction Petition, more specifically Paragraphs 1 and 17 shows that initially, although one room was let out by the father of the Petitioner, it is stated therein that the Respondent later on constructed kitchen, bathroom on the top of the roof of the subject premises without the consent of the Petitioner and now the Respondent is a tenant in respect of two rooms, kitchen and bathroom on the first floor and entire constructed area on the second floor as per the site plan attached.

24.2 Paragraphs 1 and 17 of the Eviction Petition are reproduced below:

<i>1. Municipal No. of the premises and name if any.</i>	<i>H.No. 4064, First Floor, Gali Barna, Basti Mansa Ram,</i>
--	--



	Sadar Bazar, Delhi-110006
17. Whether any additions or alteration have been made since the rent was fixed as stated under item No. 15 and if so the date on which such additions or alteration were made the cost of such additions or alteration and whether they were carried out with the approved of the then of the Controller.	<u>Initially one room was let out to the father of the respondent by the father-in-law of the respondent</u>, but the father of the respondent claimed that he was tenant of two rooms for which a suit was initiated by the father-in-law of the petitioner but the same was withdrawn as settled. The respondent has inherited the tenancy rights from his father late Sh. Sant Ram and later on he constructed a kitchen and bathroom on the top of the roof of tenanted premises without the consent of the petitioner. <u>However now the respondent is tenant of two rooms kitchen and bathroom on first floor and entire IInd floor which he has constructed without permission of the Landlord as per site plan attached.</u>

[Emphasis supplied]

25. The Eviction Petition thus clearly explains the subject premises. The Respondent has not been able to show any document or averment to the contrary. The Petitioner in her evidence deposed that there was only a tin-shed roof on the first floor, which has not been disputed. Thus, this contention of the Respondent is also without any merit.

26. So far as concerns the bona fide requirement of the Petitioner, the Petitioner has explained in Paragraph 9 of her Affidavit in evidence that there is no suitable accommodation which can accommodate her daughters as well as her son-in-law(s) on any festival or to accommodate her son after his marriage, since he is of a marrigable age. It is further stated by the Respondent/landlady that she is earning her livelihood by sewing and stitching works and would need an additional room as a trial room and to attend her customers. The relevant extract is set out below:



"9. That the deponent state that there is no any separate suitable accommodation in which the petitioner can accommodate her daughters as well as her son-in-law in any occasion or festival instead of that there is no separate accommodation to accommodate her son after his marriage as he is about to marriageable age.

10. That the deponent state that the deponent being the widow lady is earning her livelihood by doing stitching works or otherwise as such one separate room is also required to attend the female customers for their measurements as trial room and etc. etc."

[Emphasis supplied]

27. This Court finds that the Petitioner has sufficiently proved all ingredients as are requisite under Section 14(1)(e) of the Act. In view thereof, this Court is unable to agree with the Impugned Order.

28. In these circumstances, the Impugned Order is set aside and the Eviction order is passed against the Respondent.

29. However, given the provisions of Section 14(7) of Delhi Rent Control Act, 1958, the Respondent is granted six months' time from the date of this order to vacate the subject premises.

30. The Petition stands disposed of.

TARA VITASTA GANJU, J

NOVEMBER 11, 2024/pa/r

[Click here to check corrigendum, if any](#)