

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16.04.2014

Date of Decision: 30.09.2014

+ RC.REV. 379/2013, CM APPL. 16311/2013

RAMJI LAL

..... Petitioner

Through: Mr. KirtiUppal, Senior Adv. with
Mr. Manish Bansal, Adv.

versus

PRITAM KAUR

..... Respondent

Through: Mr. RajatAneja, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. The petitioner (tenant) has challenged the eviction order of the learned Additional Rent Controller dated 4 June 2013 in respect of the tenanted premises being ground floor of property bearing number II/50/7-8 Sadar Bazaar, Delhi Cantonment, New Delhi - 10. The tenanted premises comprised a shop in the front, 2 rooms in the rear, one kitchen, one bathroom and a WC along with open space at the back. The tenant's application for leave to defend was rejected. This revision petition has been preferred under section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act")

2. The tenant submits that the tenancy relates back to the year 1964 however effectively the date to be reckoned is the rent agreement of 21 November 1990, whereby the rent was enhanced from Rs.14 to Rs.150 per month. The respondent (landlady) filed an eviction petition under section 14 (1) (e) read with section 25B of the Act seeking eviction of the tenant from the tenanted premises, for her bona fide need. The ground being that she was about 85 years of age, suffering from osteoporosis and vitamin D deficiency, apart from old age related problems which prevented her free movement; that she had been medically advised to reduce exertion to her knees and had been specifically cautioned against climbing stairs; that it was extremely difficult and painful for her to climb up and down the stairs to her first floor residence in the aforesaid property; that her elder son Mr. Arjinder Singh had been diagnosed with rheumatoid arthritis and he too required the ground floor premises because of his health problems. Additionally, the respondent/landlady claimed bona fide need of the premises on account of the fact that she had a large family which was dependent on her; her two sons namely Arjinder and Parvinder resided in the same building. The former on the first floor with his wife, his son and the son's wife, one unmarried daughter and the petitioner. His other daughter visited him frequently therefore she too required a separate accommodation. The first floor comprised of 2 bedrooms, 2 guestrooms along with a shared kitchen, a bathroom and a WC. On the second floor the petitioner's second son, a widower lived with his two unmarried sons, the elder of whom had set up a stall of gift items in front of the property in order to contribute to the

financial needs of the family. They occupied the bedrooms available on the 2nd floor and shared a kitchen, a bathroom and a WC. The petitioner also claims space for her three married daughters who would often visit her with their respective families. It was also contended that one of her daughters was widowed and lived in Chandigarh in a tenanted accommodation. This daughter was barely able to sustain herself and wanted to permanently shift to Delhi and live with her mother to take care of her in her old age, but do to paucity of space, she was constrained from doing so. The landlady further contended that her elder son who had superannuated from service with the Food Corporation of India, wanted to start his own business from the tenanted premises to augment his finances because his meagre monthly pension of Rs.5000/-, was insufficient to take care of his financial needs. Furthermore the said elder son - Arjinder needed to get his daughter, Ramandeep Kaur married. His son Rajinder, although working with a multinational corporation was unsatisfied with this job and wanted to start his own business and was confident that an institute of foreign languages would be most suited in the front portion of the tenanted premises; that he had done an advanced diploma in Portuguese language from Delhi University, which would serve as an advantage in the running of the proposed institute. The landlady claimed the requirement of the tenanted premises for her own use as a residence in the back portion and for starting commercial activity in the front portion, so that her son and grandsons could start their own business to support the entire family, including her.

3. In the leave to defend application, the tenant had sought to contest the eviction petition essentially on the ground that: i) the eviction-petitioner was not the owner of the tenanted premises, ii) there wasn't any relationship of landlady and tenant between the parties, iii) neither the eviction petitioner nor any of her children suffered from any disease or had a problem in reaching the upper floors or in climbing the stairs, iv) there was sufficient accommodation on the second floor which comprised 12 rooms in addition to latrine and bathroom, v) the eviction-petitioner's married daughters had independent separate family lives outside Delhi and furthermore their children also had been married therefore there was no question of their dependency upon the eviction-petitioner. Additionally, these daughters rarely visited the eviction-petitioner since they did not share cordial relationship with the landlady. The tenant further contended that the daughter in Chandigarh viz. Mrs. Harbans Kaur, owned a house there, hence she had no requirement to stay in Delhi. He also argued that the eviction-petitioner's second son namely Parvinder Singh was earning about Rs.50,000/- per month and his son was not running a stall or doing any business as was suggested. Consequently the tenant argued that there was no bona fide need.

4. The Trial Court adjudicated the matter on all the aforesaid grounds raised by the tenant. It found that the ownership rested with the eviction-petitioner/landlady and that there was a relationship of tenant-landlord between the eviction-petitioner and the tenant. The Trial Court was of the view that the rent agreement between the deceased husband of the landlady

and the predecessor-in-interest of the tenant sufficiently established the relationship of landlord and tenant between them. After the demise of the first landlord, his legal heirs relinquished their rights in favour of their widowed mother, the eviction-petitioner. Additionally, the tenant's legal notice of 31 December 2012 sending the rent for January to June 2013 to the eviction-petitioner admitted her as his landlady. Therefore this issue was found not to be triable.

5. On the issue of bona fide requirement, the Trial Court was of the view that there were nine adult members in the family of the eviction-petitioner including two couples and their children of marriageable age, in addition to three married daughters of the eviction-petitioner, as well as a married granddaughter. For all these persons there were merely four bedrooms. For the sake of argument the Court assumed that even if the landlady had 12 rooms, then too they would fall short of the eviction-petitioner's requirement, because she required at least 3 to 4 rooms for guests and 7-8 rooms for her growing family especially since some of her grandchildren required to be married. The Court further concluded on the basis of documents evidencing the arthritic ailment of the landlady's elder son, that there was a need for the accommodation on the ground floor. The Court was conscious that, both for the eviction-petitioner and her son suffering from arthritis, it would be difficult to climb the stairs. Hence their requirement for the ground floor premises was genuine. The Court was further of the view that the superannuated elder son who was dependent upon his mother-the landlady for accommodation, could and did legitimately want to start his

own business and that the landlady wanted to settle her three dependent grandsons who were not gainfully employed. The Court was of the view that a person's wish to start a business after his retirement cannot be said to be unreasonable nor can he/she be subjected by a tenant to be dependent only upon his income from his pension alone. Hence the need on this ground too was found to be genuine. The Trial Court was of the view that the landlord is the best judge of his requirement and neither the tenant nor the Court can dictate to a landlord as to where and how he should live. It noted that the tenant had not disputed that the eviction-petitioner/landlady had no suitable alternative accommodation. The Court found no triable issue in the application for leave to defend. Accordingly the eviction order was passed.

6. Mr Kirti Uppal, the learned Senior Advocate argued on behalf of the petitioner/tenant that earlier endeavours to evict the tenant had failed; that the landlady's best case is crystallized in her letter of 31st of October 2012 by which she had called upon the tenant to vacate the premises. The learned counsel submits that the letter does not specify a need *in praesenti* which is the requirement in law but alludes to a requirement *in futuro*; the latter would not be deemed to be a bona fide need in the law. He submits that paragraph 26 of the impugned order goes beyond the pleadings and grants the respondent/landlady more than what she had sought in the eviction petition. He further submits that the dependency of the son and the grandsons as well as the other members of the landlady's family has not been established he relies upon ***Khem Chand vs Arjun Jain***, 202 (2013)DLT 613 to contend that although 'the thumb rule is that in every case the landlord is

always the best judge and the court would not scrutinize the reasonableness and suitability of the alternative accommodationstill the court would examine (it) by weighing what is available with the landlord vis-a-vis the plea of the tenant'. However, it is not disputed that in a Special Leave Petition against the judgment the Supreme Court has precluded reliance upon it as a precedent.

7. The learned Senior Advocate then relies upon a judgment of this Court in ***CL Davar v. Amar NathKapur***, LXIV-1962 Punjab L. Rep. 522 for the contention that if the dependence of an allegedly “dependent” son is not determined, the eviction order would be improper.

8. In reply Mr. Rajat Aneja, the learned counsel for the respondent submits that the fourfold bona fide requirement of the premises by the eviction-petitioner has been duly dealt with in paragraph 23 to 27 on facts in the impugned eviction order, whereas paragraphs 28, 29 and 30 are the reasoning for the eviction order. The learned counsel submits that the superannuated ailing elder son required the premises along with the petitioner because of their pressing medical needs. Additionally, the petitioner, her elder son and the grandson, Rajinder Singh required the premises for commercial purposes also. The learned counsel relied upon the detailed affidavit of the petitioner in support of her reply to the application for leave to defend which recorded her medical condition through a certificate which read as follows:

"...it has been found that she is suffering from severe osteoporosis and vitamin D deficiency. She is very old and suffered from other age related health problems as

well. She is almost bedridden and she has been advised frequent and regular health checkups..."

9. The said affidavit further denied that the landlady's widow daughter namely Smt Harbans Kaur owned house number 1533-B, 41B, Chandigarh. It was also deposed that said daughter was living in the rented accommodation at house number 2719, Sector 40 C, Chandigarh.

10. Mr. Aneja submits that it is settled law that the tenant cannot compel a landlord to squeeze himself and his family into the available accommodation only to obviate the tenant's eviction. The latter cannot dictate terms to the landlord as to how he should adjust himself without getting possession of the tenanted premises. He relies upon a judgment of this court in ***Mahesh Chand Gupta vs Shri Shiv Sarup Gupta***, 76 (1998) DLT 165 in support of his contention that the words 'himself' and family" in section 14(1)(e) of the Act would include married sons and daughters and all the more so when the petitioner is of old age and has a natural requirement of her children to take care of her. In the present case the widowed daughter and the elder son were to live with the petitioner, who is over 85 years old.

11. This Court is conscious of the limited jurisdiction it is vested with in rent control revision petitions. The Supreme Court in ***Ram Narain Arora v. Asha Rani*** (1999)1 SCC141 held:

“12. It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered

with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter. In this case, the Rent Controller proceeded to analyse the matter that non-disclosure of a particular information was fatal and, therefore, dismissed the claim made by the landlord. It is in these circumstances that it became necessary for the High Court to re-examine the matter and then decide the entire question.”

12. Having considered the above this Court is of the view that the landlady's letter of 31st October 2012 actually spells out the bona fide need for the tenanted premises by her and her family. A reading of the letter shows that on account of many diseases due to her old age as well as the need for her and her family she sought vacation of the premises within a period of 15 days from the date of receipt of the letter, so that the landlady and her family could accommodate themselves easily and conveniently. It articulates a need *in praesenti* and not *in futuro*. Furthermore, the number of adult members occupying the limited accommodation available with the landlady on the first and the second floor of the premises is woefully insufficient for them, as well as for the visiting married daughters and one married granddaughter of the landlady. Additionally, the widowed daughter living in a rented accommodation in Chandigarh too would need requisite accommodation to be with her mother. The landlady had also been shown that she needed the space on the ground floor because of her and her elder son's medical needs. Furthermore, she required the space for commercial purposes for herself, her son and grandsons. The Trial Court rightly rejected the contentions of the tenant as none of them were triable issues.

Accordingly, there would be no occasion for placing reliance upon the precedents cited by the learned Senior Counsel on behalf of the petitioners. This Court is unpersuaded by his arguments.

13. From the preceding discussion it is evident that the conclusions arrived at in the impugned order is plausible in law. The reasoning for the conclusions are cogent and are rooted in the records. Even a re-appreciation of the material on record does not reveal any jurisdictional or material irregularity in the impugned order. There is no manifest error either of fact or in law warranting the interference of this court with the impugned order. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

SEPTEMBER 30, 2014/acm