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

+ **RC.REV. 207/2022**

ANIL KUMAR JAIN & ORS. Petitioner

Through: Mr.Arun Maitri and Ms.Radhika,
Advocates.

versus

SHANTA BERI Respondent

Through: Mr. N.P. Singh, Advocate.

Reserved on: 9th January, 2023

Date of Decision: 31st January, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present revision petition has been filed by the Petitioners ('Tenants'), assailing the order dated 26.07.2022, passed by the Senior Civil Judge acting as the Rent Controller of South East District, Saket Courts, New Delhi ('Trial Court') in RC ARC No. 5084/16, whereby the Petitioners' application seeking leave to defend was dismissed and an eviction order has been passed in favour of the Respondent herein ('Landlady'), in the petition filed by her under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act'), *qua* residential tenanted premises i.e., ground floor, property No. K-52, Jangpura Extension, New Delhi ('tenanted premises').

2. The facts of the case as averred by the Landlady and relevant for deciding the present revision petition are as follows: -

2.1. It is stated that she has a *bona fide* requirement, to settle and reside at the tenanted premises along with her husband.

2.2. It is stated that she purchased the property bearing No. K-52, Jangpura Extension, New Delhi ('Jangpura Property'), wherein the tenanted premises are located on the ground floor, from the erstwhile owner Mr. G.S. Banga on 21.05.1975. The said property was mutated in her favour, in the records of the Municipal Corporation of Delhi ('MCD') on 11.03.2002 and she has since been paying the property tax.

2.3. It is stated that she along with her husband and other family members which includes her son, daughter-in-law and grandson ('family members'), are currently residing at Khasra No. 134, Village Saidulajaib, Tehsil Mehrauli, New Delhi – 68 ('Khasra No. 134 property'), which is owned by her husband.

2.4. It is stated in the petition that her grandson is of a marriageable age and has to be suitably accommodated in the accommodation where she is presently residing. There is thus, paucity of accommodation at the existing accommodation. It is stated that therefore, she and her husband wish to shift to the tenanted premises.

2.5. It is further stated that since Khasra No. 134 property is located in an unauthorized colony, there is lack of basic essential amenities. For instance, there is no municipal water supply, no sewerage system, etc. Further, due to lack of water supply, the residents have to rely upon sub-soil water for consumption. It is further stated that she has been medically advised not to consume sub-soil water.

2.6. It is stated that she and her husband, who are of an advanced age of 80 years and 86 years respectively, (at the time of the filing of the eviction petition) are suffering from chronic diseases and that she has already undergone a knee surgery. It is stated that both she and her husband have been medically advised not to climb stairs or do any physical exercise and therefore requires the tenanted premises i.e., ground floor residence of the Jangpura Property.

2.7. In the aforesaid facts, it was stated that she has a *bona fide* need for the tenanted premises which are located on the ground floor and are suitable for the residence of the Landlady and her husband.

2.8. It was also stated that the tenanted premises are lying unused and in fact the Tenants are residing elsewhere in their self-owned premises.

3. An application seeking leave to defend was filed by the Tenants on 03.03.2015, raising the following defenses: -

3.1. Non-existence of Landlord-Tenant relationship between the parties. It was also contended that the Respondent is not the owner of the tenanted premises.

3.2. The Petitioners stated that their mother was initially inducted as a tenant by the erstwhile owner, Mr. G.S. Banga and she continued to be a tenant till her demise on 04.12.1996.

3.3. The Tenants stated that the Landlady's current residence i.e., Khasra No. 134 property is situated in a posh colony known as Sainik Farms, Delhi and that her husband is residing separately in Alwar/Mussorie. It is stated that therefore, there is no *bona fide* requirement for the tenanted premises.

3.4. It was stated that the Landlady has not disclosed the alternate accommodations available with her in the Bengali Market and Civil Lines, New Delhi, though no details of the address of the alleged properties was placed on record.

3.5. It was also stated that the first floor and the second floor of the Jangpura Property is lying vacant and the Landlady can reside in the said portions of the property. It was stated that in fact prior to 2001, the Landlady was residing on the first floor.

4. In the present revision petition, learned counsel for the Petitioners, Tenants, states that the Trial Court failed to appreciate that the Landlady has no *bona fide* requirement for the tenanted premises since she is currently residing in a posh residential colony in South Delhi. He states that a fictitious need has been alleged for the demised premises.

4.1. He states that the Landlady in the eviction has not disclosed the details of the accommodation available to her at her current residence on the ground floor. He states that in the absence of the specific details of the said accommodation, the Trial Court could not have accepted the contention of the Landlady with respect to the paucity of accommodation.

4.2. He states that the plea of medical ailment set up by the Landlady in the eviction petition was a triable issue, which should have been subject to trial by recording of evidence. No other plea was urged during oral arguments.

5. In reply, learned counsel for the Respondent states that the Landlady is currently residing at Khasra No. 134 property, which is

owned by her husband and is located in an unauthorized colony which lacks the basic amenities like municipal water supply, sewerage system, proper internal roads, etc. He states that there is paucity of space on the ground floor of the existing residence.

5.1. He states that the Landlady and her husband are above 85 years of age and are suffering from old age ailments, which require them to occupy the ground floor. He states that the doctor has advised the Landlady not to consume subsoil water or climb stairs. He states that for these reasons the first floor and the second floor at the Jangpura property cannot be used.

5.2. He states that there is no other suitable alternative accommodation available with the Landlady.

6. This Court has heard learned counsel for the parties and perused the paper book.

6.1 The Trial Court has recorded a finding that there exists a landlord-tenant relationship between the parties. In this regard the Landlady placed before the Trial Court, the letter of attornment dated 18.09.1980 issued by the now deceased mother, Smt. Chanderkala Baid, of the Tenants as well as the copies of the rent receipts issued by her.

6.2 In fact, the heart of the challenge to the eviction petition set up in the leave to defend was to the issue of lack of landlord-tenant relationship as well as a challenge to the ownership of the Respondent. The Trial Court has after perusing the documents placed on record given an exhaustive finding both on ownership as well as the existence of landlord-tenant relationship in favour of the Respondent herein.

6.3 Pertinently, no further challenge was laid to the said finding of the Trial Court during the oral arguments. This Court is also satisfied that in view of the registered documents executed by erstwhile owner in favour of the Respondent herein, the finding of the Trial Court with respect to her ownership is correct. Similarly, in view of the letter of attornment as well the rent receipts executed by the mother of the Petitioners and the Petitioners themselves with the name of the Respondent herein, the finding of the Trial Court that a relationship of landlord-tenant exists is correct.

7. With respect to the *bona fide* need of the Respondent, the Trial Court has returned a comprehensive finding after taking note of the plea of the Landlady and the Tenants, which reads as under:-

“13. Thus, in view of the above well settled position of law, it is not open to the respondents to claim that the petitioner has no bonafide requirement for her own residence and her husband's residence in the demised premises. Lack of space at her present residence has been pointed out in the present petition on account of her extended family members already residing at the present residence of the petitioner. The number of family members residing at the present residence of the petitioner, lack of space at the present residence of the petitioner has not been disputed by the respondents in the present application. The respondents have mainly disputed the bonafide requirement of the petitioner on the ground that the present residence of the petitioner is a posh residential colony in South Delhi and a fictitious need has been created by the petitioner for the demised premises. The reason for shifting of residence as claimed by the petitioner is supported with the medical documents filed regarding the knee surgery of the petitioner and other health ailments. The age of the petitioner and her husband i.e. approximately 80 years old is also not disputed by the respondents. It is also not disputed by the respondents that there is no municipal water supply at the present residence of the petitioner. Merely stating that the present residence is in a posh colony cannot be taken as a denial of the averments of the petitioner qua her bonafide requirement. Nothing has been produced by the respondents to show that there is regular supply of clean municipal water or that the petitioner is not

suffering from old aged ailments and other medical problems as evident by the documents produced by her. Hence, the bonafide requirement of the petitioner for residential space on ground floor of the demised premises is established.

14. The respondents have also claimed that the bonafide requirement on behalf of husband of petitioner is a false claim as the husband of petitioner does not reside with the petitioner, but resides in Alwar or Mussorie. This claim has been explained by the petitioner in her reply that the husband of petitioner is a businessman who travels frequently on account of his business to Alwar and Mussoorie. Travelling to different places for any reason does not establish the claim of the respondents that the husband of the petitioner is not residing with the petitioner. The claim of the respondents is only that, a bald claim without any supporting documents. It has been held in a catena of judgments that in a petition under Section 14(1)(e) DRC Act leave to defend application cannot be allowed merely on bald averments of the tenant, without him producing any cogent and supporting documents to prima facie establish the averments made in the application seeking leave to defend. Reliance is placed upon the judgment of Hon'ble Supreme Court in Baldev Singh Bajwa vs. Monish Saini, (2005) 12 SCC 778.

15. As already noted above, the tenant is not entitled to weigh the bonafide requirement of petitioner against his own need for the demised premises. Although merely bald averments that the petitioner has suitable alternative accommodation has been made in the present application, but no document or any other material has been produced by the respondents to show that any alternative accommodation is actually available. No address of any alternative accommodation at Bengali Market, New Delhi has been provided by the respondents to show that the petitioner's need for residence on ground floor can be fulfilled. Although it is claimed that in the same property where demised premises is located, the first floor and second floor are presently lying vacant, but the respondents have lost sight of the fact that the bonafide need is in respect of residential premises at ground floor, on account of advanced old age of the petitioner and medical condition. Thus, it cannot be said that on account of first and second floor of the said property being vacant, there is also availability of alternative suitable accommodation. In view of the above, no ground has been made out by the respondents to challenge the bonafide requirement of the petitioner as stated in the petition and also to establish existence of any alternative accommodation with the petitioner, and hence, no triable issue qua bonafide requirement or availability of alternative suitable accommodation has been raised in the present application.

16. *The case law relied upon by the respondents are inapplicable to the peculiar facts of this case and thus, distinguishable.*

17. *In view of the above discussion, the present application does not disclose any substantial defence or triable issues to be raised by the respondents. Hence, the present application seeking leave to defend is dismissed.*

18. *By way of the present petition, the petitioner has established her ownership over the demised premises and relationship of landlord-tenant with the respondents as above. Petitioner has claimed that the demised premises is required for her own and her husband's residence as the same is located on ground floor, which is suitable on account of their old age and petitioner's knee surgery. It is further claimed that there is lack of space at the present residence of the petitioner as it is shared by the petitioner with the family of her son, his wife and grandson. It is further claimed that the grandson is of marriageable age and would thus, require more space soon himself. It is further claimed that present residence is no longer suitable due to lack of basic amenities, resulting in health problems for the petitioner and her husband. It is further stated by petitioner that there is no other suitable alternative accommodation available for residence on ground floor except the demised premises. There is nothing to show on record that the demised premises is actually not required by the petitioner for her and her husband's residence, or that any suitable alternative place is available to the petitioner and therefore, the petitioner has made out her case for bonafide requirement of the demised premises, as per the pleadings in the present petition. Accordingly, the present eviction petition is allowed under Section 14(1)(e) of the DRC Act. However, the respondents shall be entitled to statutory time period of six months from date of present order to hand over vacant and peaceful possession of the demised premises to the petitioner."*

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(Emphasis Supplied)

7.1. The Tenants have not disputed that the current residence of the Landlady i.e., Khasra No.134 Property is located in an unauthorized colony, which admittedly does not have supply of municipal water, sewerage system, etc. This Court can take judicial notice of the fact that the Government has declined to regularise the said colony and there are several challenges faced by the residents on account of non-regularisation.

7.2. With respect to the Tenants' plea of lack of information about the existing accommodation at the ground floor at the current residence, the Landlady has disclosed the details of her family members and pleaded that her grandson of a marriageable age. She has stated that with her grandson's marriage, the family members will increase and also she would prefer a separate residence in view of the growing family.

7.3. The Tenants do not dispute that her grandson is of a marriageable age and the accommodation at Sainik Farms is insufficient for accommodating the family members.

7.4. The plea of the Tenants that since Khasra No. 134 property is located in an upscale colony, it is unlikely that the Landlady will shift to the tenanted premises located in the neighborhood of Jangpura is untenable. This Court is unable to accept the said submission of the Tenants, which is speculative in nature and does not give rise to a triable issue. The Tenants in the leave to defend have admitted that prior to 2001, the Landlady resided in the Jangpura property on the first floor. Therefore, it would be reasonable to assume that the Landlady intends to reside on the ground floor, given the fact that that Jangpura is located in Central Delhi and is prime locality.

8. With respect to the plea of the Tenants that the medical ailments pleaded by the Landlady requires proof at trial also does not give rise to any triable issue, inasmuch as, it is trite law that if a petition is filed by the Landlady under Section 14(1)(e) of the DRC Act, the Court shall presume that the petition is genuine and *bona fide*. A heavy burden lies on the Tenants to prove that the requirement of the Landlady is not genuine. The Landlady and her husband are above the age of 85 years

now and therefore, even in ordinary circumstances such a person would be comfortable residing on the ground floor and therefore, this Court finds no error in the order of the Trial Court accepting the plea of the Landlady. In light of the fact that the Landlady is about 85 years of age and therefore, the medical prescription that she should not climb stairs appears reasonable and genuine.

9. To raise a triable issue, tenant is required to give all necessary facts and particulars supported by documentary evidence, if available, to support his/her plea in the leave to defend so that the Rent Controller can adjudicate on the issue of *bona fide* requirement of the landlord. A mere assertion on the part of the tenant is not sufficient to rebut the strong presumption in the landlord's favour that his/her requirement of occupation of the premises is real and genuine, as held by the Supreme Court in ***Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778***. In the facts of the present case, all pleas raised by the Tenant are a mere assertion and do not meet the test laid down by the Supreme Court to give rise to a triable issue.

10. This Court under Section 25(B)(8) of the DRC Act, exercises revisional jurisdiction and not appellate jurisdiction as held by the Supreme Court in ***Abid-ul-Islam v. Inder Sain Dua, (2022) 6 SCC 30*** at Para 23 which reads as follows: -

“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases

where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”

11. Thus, in the overall conspicuous of the fact of this case this Court does not find any merit in the present revision petition and the same is dismissed along with all the pending applications.

MANMEET PRITAM SINGH ARORA, J

JANUARY 31, 2023

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