

(2015) 03 DEL CK 0283

In the Delhi High Court

Case No : Rc. Rev. 314/2013 and CM Nos. 13042/2013 and 20234/2013, Rc. Rev. 316/2013 and CM Nos. 13070/2013 and 20222/2013 and Rc. Rev. 405/2013 and CM Nos. 17415/2013 and 5127/2014

Anant Ram and Others

APPELLANT

Vs

Ridhima Lamba

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14, 14 (1) (e)

Citation : (2015) 4 AD 341

Hon'ble Judges : Mukta Gupta, J.

Bench : Single Bench

Advocate : S.P. Singh Chaudhary, Y.R. Sharma, Pradeep and Uddhav Pratap, for the Appellant; Amit Mahajan, Shashi Shekhar and Sidharth Das, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The present petitions can be disposed of by a common judgment as the Petitioners are three tenants of the Respondent in three shops situated on the ground floor in the premises bearing No.C-19, Model Town, Part-III, Delhi. The Respondent filed similar eviction petitions against the Petitioners seeking eviction of the three shops one each with the Petitioners under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short "the DRC Act") wherein the leave to defend applications of the Petitioners were dismissed by similar order dated 25th April, 2013.

2. In the eviction petitions, the Respondent stated that she was the owner of three shops on the ground floor of premises No.C-19, Model Town, Part- III, front portion, park facing (in short "the tenanted premises"). The shops were let out for non-residential purposes. The Respondent was married and her family comprises of herself, her husband, daughter and mother-in-law. The Respondent was running a boutique in the name and style of "Blossomz", F-14/18,

Basement, Model Town, Part-II Delhi admeasuring approximately 273 sq.ft. which is owned by the Respondent. The Respondent has a workshop for the purpose of running a boutique at F-7/2, Model Town, behind Ganpati Market, Delhi where stitching of clothes is undertaken. The respondent was paying rent @Rs.20,000/- per month vide Agreement dated 1st June, 2011 and nine employees were working at the workshop. The total area of the workshop was 337 sq.feet. It was further stated that till April, 2011, the husband of the Petitioner was working as a distributor of STAR Den and Zee Turner channels to hotels, pubs, restaurants, farm house and hospitals etc. however, due to disputes his distributorship was terminated on 16th April, 2011 and thus thereafter her husband is also dependant on the Respondent. Due to loss of business of her husband the Respondent was the sole bread earner of the family and the boutique of the Respondent is the only source of income of the family of the Respondent. The mother-in-law of the Respondent suffered a brain stroke in August, 2011 and was admitted in Max Hospital, Saket whereafter she suffered a paralysis on the right side of her body. The mother-in-law of the Respondent is now fully dependant on the Respondent for every daily necessity and in the treatment of the mother-in-law all the savings of the family have been spent rather the Respondent had to take loan from friends. The Respondent has a 13 year old daughter who needs care and attention. Earlier the mother-in-law of the Respondent used to take care of the daughter however, after the mother-in-law suffered a brain stroke, the daughter is also dependant on the Respondent. Taking care of both the household and business it has become tough for the Respondent to pay attention to both the responsibilities and to balance the same. The Respondent thus wants to shift her boutique and workshop to the tenanted shops to save time, which would save her the rent of Rs.20,000/- as well. Further the boutique of the Respondent is in the basement and thus now and then Municipal Corporation of Delhi staff comes to the boutique and threatens to close the boutique as the same was not approved under the Master Plan. Thus the Respondent was under a continuous threat of sealing of her boutique and wants to shift the boutique and her workshop to the tenanted shops on the ground floor of the residential accommodation.

3. In the eviction petition it was further stated that the Petitioners Anant Ram, Sameer Narula, Vikram Narula and Suresh Narula have a shop at A- 64, Kewal Park, Azadpur whereas the Petitioner Adarsh Distributors is having their registered office at 206, Mahavir Bhawan, Karam Pura, New Delhi and warehouse at 203, Mahavir Bhawan, Karampura, New Delhi which is owned by it. The area of the three shops together is approximately 499.50 sq. ft.

4. In the leave to defend application the relationship of landlord tenant, the fact that the mother-in-law suffered a brain stroke and was paralyzed and that the Respondent had a daughter to look after are not disputed. However, it is stated that the Respondent owned basement at F-14/18, Model Town, Part-II admeasuring 273 sq.ft. where she was running business in the name and style of "BLOSSOMZ". Further the upper ground floor of the said property in possession

of the Petitioner and was lying vacant. The property F-14/18, Model Town, Part-II is in proximity and at a very prime location. The fact that the husband was not working is also disputed and it is stated that the husband of the Respondent was working from a property in Old Rajinder Nagar, Delhi. The contention in the eviction petition that a rent of Rs.20,000/- per month was being paid for property F-7/2, Model Town, Part- II, behind Ganpati Market, Delhi was denied and it was stated that the counter foils of the rent receipts were forged and fabricated and the same was an unregistered lease deed. The fact that the Petitioners in Civil Revision No. 314/2014 have another shop bearing A-64, Kewal Park, Azadpur is denied and it is stated that the Petitioner were old tenants in all said shops since its inception and running the business in the name and style of Shiv Shakti Paints and Hardware.

5. In the reply to leave to defend application the Respondent reiterated the facts in the eviction petition and that though she owned the basement of Property No.F-14/18, Model Town, Part-II, but she did not own the ground floor thereof.

6. The Petitioner in R.C. Rev No. 314/2013 and 316/2013 in the course of proceedings before the learned ARC placed on record the Sale Deed of the ground floor of the premises F-14/18, Model Town, Part-II which was in the name of husband of the Respondent and the Sale Deed was witnessed by the Respondent.

7. The learned ARC after hearing the parties came to the conclusion that though there was concealment of the fact that the ground floor of the Premises F-14/18, Model Town, Part-II was owned by the husband of the Respondent however, the same being not an alternative suitable accommodation it did not have any material effect.

8. Learned counsel for the Petitioner assailing the impugned order declining to grant leave to defend urged that the concealment of the alternative accommodation itself was a sufficient ground for the learned ARC to have granted leave to defend to the Petitioners. Reliance is placed on Bal Krishan Khanna Vs. Ravi Kanta Madhok--> : . The fact that the husband of the Respondent was also dependent upon her has been disputed as his income tax returns were filed which showed that he had income.

9. Learned counsel for the Petitioner in R.C. Rev. No. 405/2013 contends that if the accommodations are in close proximity then the same is essentially a case of additional accommodation which casts doubt on the need of the respondent. Thus the eviction order could have been passed after granting leave to defend to the petitioners. Reliance is placed on Khem Chand and others vs. Arun Jain and others, RC Rev.No.442/2012 decided on 13th September, 2013.

10. The Respondent has placed on record rent receipts to show that the Respondent has taken the premises on rent for opening the workshop and the same is vaguely denied by the Petitioners without placing on record any material. Relying on Inderjeet Singh Vs. Harish Chandra Bhutani, learned counsel for the

respondent states that when an owner of a commercial property is forced to pay rent towards a tenanted premises, then his requirement for possession of the property is bonafide and must be recognized. Further the Respondent had to file the eviction petition pursuant to the mother-in-law suffering brain stroke and being paralyzed as the respondent is now required to look after her mother-in-law as well as her daughter, to meet the family requirement and to carry on her business the tenanted shops in her residential place are the most suitable accommodation. In view of these peculiar exigencies the leave to defend was rightly rejected by the learned ARC. The fact that the ground floor of the property No.F- 14/18, Model Town, Part-II belongs to the husband of the Respondent is inconsequential as the same has no bearing on the requirement of the Respondent to run her boutique and workshop from her home to properly look after the business and household affairs.

11. I have heard learned counsel for the parties.

12. In the petitions the relationship of landlord-tenant is not disputed. The issues required to be considered are whether an alternative suitable accommodation is available and whether due to concealment of the fact that the husband of the Respondent owns the ground floor of the premises F- 14/18, Model Town and that he was still earning the leave to defend was required to be granted.

13. In *Sh. Surinder Singh Vs. Sh. Jasbir Singh*, this Court held:

25. The mere fact that, respondent did not disclose the accommodation of basement and first floor available with him in the eviction petition, would not prove fatal to the present case, since the same cannot be said to be an alternative suitable accommodation for the purpose of business. 14. In the leave to defend applications the facts that the mother-in-law of the Respondent suffered brain stroke and paralysis and that the respondent had a daughter aged 13 years at the time of filing of the eviction petition who was to be looked after were not denied. Thus in such situation even if the Respondent has an alternate accommodation being the ground floor of the property No.F-14/18, Model Town in the name of her husband the same cannot be said to be suitable as respondent wishes to work from home and not to run around in the different premises though in proximity.

15. The Petitioners have baldly denied the Respondent taking a premises on rent, that is, F-7/2, Model Town, Part-II, behind Ganpati Market, Delhi where nine employees were working. However the Respondent has placed on record the rent receipts, photographs etc.

16. Thus, in view of the peculiar fact, the concealment of the husband owning the ground floor of the premises No.F-14/18, Model Town does not affect the bona fide requirement of the Respondent and the view taken by the learned ARC on the material available before it cannot be said to be a perverse view.

17. In *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, the Supreme Court

discussed what is the bona fide requirement of the landlord and held:

12. A perusal of Section 14 of the Act shows that the law has imposed restrictions on the recovery of possession of any premises by a landlord from a tenant notwithstanding any law or contract to the contrary. However, an order for recovery of possession is permissible on one or more of the specified grounds. One such ground is the premises let for residential purposes being required bona fide by the landlord for occupation as residence for himself or for any member of his family dependent on him. What is a bona fide requirement is not defined in the Act. The words "need" and "require" both denote a certain degree of want with a thrust within demanding fulfilment. "Need" or "requirement" qualified by the word "bona fide" or "genuine" preceding as an adjective is an expression often used in rent control laws. "Bona fide or genuine need" of the landlord or that the landlord "genuinely requires" or "requires bona fide" an accommodation for occupation by or use for himself is an accepted ground for eviction and such expression is often employed by rent control legislation draftsman. The two expressions are interchangeable in practice and carry the same meaning. This extract is taken from *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*,

13. Chambers 20th Century Dictionary defines bona fide to mean "in good faith: genuine". The word "genuine" means "natural: not spurious: real: pure: sincere". In Law Dictionary, Mozley and Whitley define bona fide to mean "good faith, without fraud or deceit". Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bona fide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself "whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice

shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

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 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.

18. Consequently, the petitions and the applications are dismissed.