
(2014) 10 DEL CK 0112

In the Delhi High Court

Case No : Rc. Rev. No. 203/2012 and C.M. No. 18027/2013 (U/S 151 CPC)

Devender Singh

APPELLANT

Vs

Gian Prakash Saini

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)(e), 25B(8)

Citation : (2014) 10 DEL CK 0112

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : S.K. Duggal, Advocate for the Appellant; S.K. Chawla, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.—This petition under Section 25B(8) of Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") is filed by the petitioner/tenant impugning the judgment of the Rent Controller dated 08.2.2012 by which the Rent Controller has dismissed the application for leave to defend filed by the petitioner/tenant and has decreed the bonafide necessity eviction petition filed under Section 14(1)(e) of the Act with respect to the tenanted/suit premises being one room on the first floor of property no. 4161, Nai Sarak, Delhi as shown in red colour in the site plan attached with the eviction petition.

2. The case as set up by the respondent/landlord in the eviction petition was that he is a chartered accountant and was carrying on his professional work from the premises bearing no. 1626, second floor, Street No. 33, Naiwala, Karol Bagh, New Delhi-5, and in which he is only a licensee and he requires the suit/tenanted premises for carrying on his professional work. Though in the eviction petition, the respondent/landlord did not give details of the owner of the premises no. 1626, it has however now come on record that it is the wife of the respondent/landlord who is the owner of the property no. 1626 in which the respondent/landlord states that he is a licensee. Though the respondent/landlord had pleaded that the licensed premises were to be vacated, however, the basic

emphasis of the respondent/landlord for claiming eviction of the petitioner/tenant was on the ground that the property at 1626, Karol Bagh was at a distance of about 12 kms from his residence at IX/2173, Street No. 8, Kailash Nagar, Delhi " 31 (Trans Yamuna Area) whereas the tenanted/shop premises is at a distance of only about 4 kms from his residence and entailing less travelling time and distance, therefore the same was much more suitable including for the reason that the respondent/landlord suffers from some health problems and has been advised to travel minimum. The respondent/landlord also pleaded that the premises at 1626, Karol Bagh being on the second floor is not suitable to his aged clients and the tenanted/suit premises on the first floor is hence more suitable. Eviction from the tenanted premises is sought not only from the point of view of the location being at a lesser distance from the residence of the respondent/landlord, but also because the main clients of the respondent/landlord are said to be based in and around the Nai Sarak area where the tenanted/suit premises are situated. It is also pleaded that brothers of the respondent/landlord also carry on their business from other portions of the property no. 4161, Nai Sarak, Delhi in which the tenanted premises are located, and therefore the respondent/landlord would not have any difficulty to commute to and fro from the tenanted premises as he would be travelling with his brothers.

3. The petitioner/tenant contested the eviction petition by filing his leave to defend application. The thrust of the petitioner/tenant for grant of leave to defend was that the eviction petition was not bonafidely filed because the respondent/landlord had concealed the details with respect to who was the licensor of the Karol Bagh premises from where the professional work of a chartered accountant was being carried on. The petitioner/tenant also pleaded that the respondent/landlord in the premises where the tenanted premises are situated owns a shop No. E on the first floor besides other portions on the first floor and and second floor, and which shop and portions are alternative suitable accommodations for the respondent/landlord to carry on his professional work as a chartered accountant.

4. As per the respective arguments which have been urged before me by the parties, this Court has to consider whether the respondent/landlord has suitable alternative accommodation being (i) the Karol Bagh premises bearing property no. 1626 from where the professional work of the respondent/landlord is presently being carried out, (ii) a shop No. E on the first floor of the property bearing no. 4161, Nai Sarak, Delhi and where the tenanted/suit premises are located on the first floor, and (iii) portions on the first floor and the second floor on the property bearing no. 4161, Nai Sarak, Delhi.

5. In my opinion, the premises at Karol Bagh is not a suitable alternative accommodation for the reason that surely a landlord can choose a premises which is more conveniently located for carrying on his professional work instead of carrying on his professional work from a premises which is not only situated at a far away distance from his residence but which is on the second floor of the

property as compared to the tenanted premises which are situated on the first floor. Of course, it would have been better if the respondent/landlord had himself stated in the eviction petition that the premises from where he is presently carrying on his professional work of a chartered accountant is owned by his wife, however, in my opinion this aspect not being stated will not make any significant difference with respect to the issue of grant of leave to defend, because, even if we take against the respondent/landlord that he has the Karol Bagh premises but these premises cannot be termed as alternative suitable accommodation because admittedly the premises at Karol Bagh is situated at a place which is located almost at three times more of the distance from the residence of the respondent/landlord than as compared to the suit/tenanted premises. The premises at Karol Bagh are also not alternative suitable accommodation because the said premises are located at the second floor and which floor would not be convenient to the aged clients, which the respondent/professionals/chartered accountants would have. Also, there is no rebuttal of any substance by the petitioner/tenant to the averment made on behalf of the respondent/landlord that most of the clients of the respondent/landlord are situated in and around Nai Sarak area where the tenanted premises are situated. Therefore, in my opinion the Rent Controller below has rightly concluded that the premises at Karol Bagh on the second floor are not suitable alternative accommodation, and I thus uphold this conclusion of the Rent Controller especially in view of the recent judgment of the Supreme Court in the case of Anil Bajaj and Another Vs. Vinod Ahuja, , and which holds that a tenant cannot dictate to the landlord to carry out his business from a less convenient location once the landlord wants to carry on his business/work from a more suitable accommodation.

6 (i) Now the issue which requires examination is whether there are any portions available in property bearing no. 4161, Nai Sarak, Delhi, and which are allegedly available as vacant portions to the respondent/landlord for carrying on his professional work from such portions.

(ii) The case of the petitioner/tenant is that the respondent/landlord has one shop No. E on the first floor and landlord also has other portions on the first floor and second floor of property no. 4161, Nai Sarak, Delhi, and which portions of the first floor and second floor are pleaded to be alternative suitable accommodation.

(iii) The respondent/landlord in his reply filed to the leave to defend application, in para 6 has given detailed particulars with respect to the entire property no. 4161 i.e. the respondent/landlord does not own these portions and as to which of the portions of which floor are owned by which specific person. The details of the ownership of the different portions are duly supported by pointing out these different portions of site plans filed with respect to the property no. 4161 as also the sale deeds with respect to these portions. For the sake of convenience, entire para 6 of the reply filed to the leave to defend application is reproduced as under:-

" 6. The Contents of Para 6 of the affidavit filed by the respondent are wrong, false and denied. The petitioner has got no concern at all whatsoever with the property No. 4151, Nai Sarak, Delhi-110006. It is denied that the shop No. E which is adjoining to the shop of the respondent is lying vacant with the Petitioner. It is denied that one hall room is occupied by the Petitioner on the first floor of the property. It is denied that the entire second and third floor of the suit property is lying vacant with the Petitioner and the Petitioner is having sufficient accommodation at Nai Sarak, Delhi. The Petitioner is not supposed to file any document/site plan etc. of the accommodation/portions of the property No. 4151, Nai Sarak, Delhi as the Petitioner is not connected/concerned in any manner/capacity with the property No. 4151, Nai Sarak, Delhi. It is a strange stand taken by the respondent that non filing of the site plan of the property No. 4151, Nai Sarak, Delhi which is neither the suit property nor owned or occupied by the Petitioner is malafide on the part of the Petitioner. The allegation by the respondent is false, frivolous and wrong as per knowledge of the Respondent himself and has been made with malafide intention deliberately and knowingly only with the aim to somehow seek leave to defend the eviction petition. Again further the respondent has not disclosed the property/premises which is alleged to be in Petitioner's occupation and reasonably suitable to him to establish his office at Nai Sarak Delhi. The respondent has made such averments which are palpably false without any basis or materials provided to support his pleadings. The respondent has falsely alleged that the Petitioner is in occupation of sufficient accommodation which is reasonably suitable to him without placing on record any documents regarding ownership/occupation of such alleged vacant accommodation. The Petitioner owns the suit premises on the first floor and some portion on third floor of the property No. 4161, Nai Sarak, Delhi. The exact position of the space in the property No. 4161, Nai Sarak, Delhi, of which the suit premises are a part is as below:

i) Space owned by the Petitioner:-

The petitioner owns the suit premises (Room of 110 sq. ft.) presently occupied by the Respondent on the first floor and some portion on the third floor. The site plan of the first floor and third floor of the property No. 4161, Nai Sarak, Delhi are attached as Annexure-III and the area owned by the Petitioner is marked as Red in the same.

ii) First floor of property No. 4161, Nai Sarak, Delhi-110006.

Site plan of first floor is enclosed as Annexure-IV and presently owned/occupied by the following persons:

From the above details it is very much clear that the portion of entire first floor (except suit premises shown as D) are owned by the persons other than the Petitioner for the last many years.

iii) Second floor of property of 4161, Nai Sarak, Delhi-110006.

The entire second floor has been owned by Mrs. Kalpana Gairola since 2006 vide Sale Deed attached as per Annexure IX and the Petitioner is not having/owning any area on the second floor of the property no. 4161, Nai Sarak, Delhi-110006.

iv) Third floor of property No. 4161, Nai Sarak, Delhi-110006.

The site plan for the third floor is enclosed as Annexure III.

The part of third floor is owned by Mr. Nikhil Jain since 2006 as per Sale Deed attached as Annexure X and marked as B in the site plan of the third floor. The part of the third floor marked as A in the site plan of the third floor is owned by the Petitioner. The portion owned by the Petitioner is adjoining the toilet block situated on third floor and is not suitable for running an office by a senior professional and otherwise also being on third floor is not suitable for running an office by the Petitioner due to difficulty faced by the Petitioner as well as his clients in climbing the stairs upto third floor.

The above mentioned documents/explanations clearly show that the Petitioner is not having any suitable accommodation for setting his office except the suit premises as the same is having a proper rectangular shape (11x10ft.) and of the size (110 sq. ft.) which is very ideal for making a office chamber/cabin of a professional Chartered Accountant. The area on the third floor will be used for keeping old records/files and old books/journals by the Petitioner."

(iv) The Rent Controller has by reference to these aforesaid paras of the reply to the leave to defend application dealt with this aspect in paragraph 16 of the impugned judgment by referring to the site plans and the sale deeds filed by the respondent/landlord and has accordingly concluded that no other portions of either at the first floor or second floor of the property no. 4161, Nai Sarak, Delhi are available to the respondent/landlord. Para 16 of the impugned judgment reads as under:-

" 16. The next ground as taken by respondent is that the petitioner has sufficient accommodation even at Nai Sarak, Delhi, and the shop no. E, which is adjoining to the shop of the respondent is lying with the petitioner. One hall room is also in fact occupied by the petitioner on the first floor of the property. The entire second and third floor of the suit property is also lying vacant. It is further claimed that respondent also received information from some reliable sources that petitioner and his brothers also occupy some accommodation in the premises bearing no. 1626/332, Naiwala, Karol Bagh, Delhi. It is further stated that petitioner has not given the full detail of accommodation which he is occupying in the property bearing no. IX/2173, Street No. 8, Kailash Nagar, Delhi and how that property is not reasonably suitable to him for his possession. The petitioner in his counter affidavit denied that shop no. -E, which is adjoining to the shop of the respondent, is lying vacant with the petitioner or one hall room on the first floor or second and third floor of the suit property lying vacant with the petitioner. Petitioner has deposed that he owns the property in dispute i.e occupied by the respondent on the first floor and some portion on the third floor

of property no. 4161, Nai Sarak, Delhi and filed the site plan as Annexure III. Petitioner also gave details of ownership of different persons in respect of remaining portion of the property no. 4161, Nai Sarak, Delhi and filed the copies of sale deed as Annexure 5th to Annexure 10. Petitioner has also filed the copy of sale deed in respect of ownership of second floor of property no. 1626/33, Naiwala, Karol Bagh, from where the petitioner is running his office at present as Annexure 1 and these documents clearly shows that the petitioner is not the owner of these properties. In respect of property no. IX/2173, Street No. 8, Kailash Nagar, Delhi-31, the contention of the petitioner as deposed in the counter affidavit is that same is the residence of petitioner alongwith his brothers situated in residential colony/area. Even otherwise, the joint residential premises of the petitioner with his brothers at Kailash Nagar, Delhi, cannot be considered as suitable alternative accommodation. Petitioner has also disclosed the details of all the properties own or occupy by him on page no. 15 of the counter affidavit. It is settled law that any property or accommodation over which landlord has no legal control or legal right to occupy cannot be included in accommodation available with such landlord for ascertaining his requirement. Reliance is placed upon an authority reported as Jitender Kumar Jain and Others Vs. J.K. Horticultural Produce Marketing and Processing Cor. Ltd., Therefore, the plea of the respondent that as per the contents of counter affidavit and photocopies of annexures that most of the area of property no. 4161, Nai Sarak, Delhi is occupied by wives of real brother of petitioner or his near relatives, has no force."

(underlining added)

7. In view of the above, it is clear that the respondent/landlord does not have any other alternative suitable accommodation and the Rent Controller has therefore rightly rejected the leave to defend application filed by the petitioner/tenant.

8. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.