

(2019) 10 DEL CK 0104

In the Delhi High Court

Case No : RC.Revision No. 14 Of 2017, Civil Miscellaneous Application No. 1593 Of 2017

Dharamveer Yadav @ Dharambir Yadav

APPELLANT

Vs

Nirmal Gupta @ Nirmala Gupta

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

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

Citation : (2019) 10 DEL CK 0104

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Kajal Chandra, S.K.Jain

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. Petitioner impugns order dated 07.11.2016 whereby the leave to defend application of the petitioner has been dismissed and an eviction order passed.
2. Subject eviction petition was filed by the respondent on the ground of bonafide necessity under Section 14(1)(e) of the Delhi Rent Control Act, 1958 seeking eviction of the petitioner from one room in property No.53/12, Gali No.5, Arya Nagar, Harijan Basti, Delhi more particularly as shown in red colour in the site plan annexed to the eviction petition.
3. Subject eviction petition was filed by the respondent contending that respondent and her husband are old aged persons and physically handicapped and they require the tenanted premises bonafidely for their use as a residence as well as for the residential use of their daughter and son-in-law.
4. It is contended in the eviction petition that it was very difficult for them to climb stairs and they are presently residing on the first floor of property No.C-4/110A, DDA Flats, Keshavpuram, New Delhi and are not in a position to

climb stairs and the premises are required for their bonafide residential use being on the ground floor.

5. It is further contended that they do not have any other accommodation on the ground floor for their residence as well as for the residence of their family members comprising of daughter and son-in-law. It is further contended in the eviction petition that other tenants on the ground floor had vacated on the asking of the respondent. The respondent landlord has further stated in the petition that the suit premises require renovation not being in a habitable condition as there is no kitchen. WC and bathroom are common and same is required by the respondents for the purpose of residence of herself, her family members and her daughter and son-in-law.

6. Subject leave to defend application was filed by the petitioner admitting the relationship of landlord and tenant between the families. The only ground raised was that respondent was owner of two properties in Arya Nagar and two properties in Keshavpuram.

7. Besides mentioning that respondent had two properties in Arya Nagar and two properties in Keshavpuram, the petitioner had contended that premises was not required bonafide and that respondent had been threatening the petitioner for vacating the premises. It was further alleged that respondents are seeking eviction so that this property could be let out at a higher rate or sold to a builder for enriching herself and not for any bonafide need.

8. By the impugned order the Rent Controller has dismissed the leave to defend application and held that the only challenge raised by the petitioner was that the respondent landlord had two properties in Arya Nagar and two properties in Keshav Puram and the other ground raised was that the daughter of the respondent was married and residing with her husband separately and works in a big MNC and cannot come and stay in the property in question which is a small house.

9. Rent Controller has noticed that the petitioner has made vague and bald allegations with regard to the ownership of other properties of the respondent at Arya Nagar and Keshavpuram and no details of the said properties had been disclosed.

10. Rent Controller has noticed that respondent and her husband are senior citizens and are physically handicapped and presently residing on the first floor of a property and have stated that they require the tenanted premises as the same is situated on the ground floor. It is difficult for them to climb stairs and they would find it more convenient to reside on the ground floor.

11. Perusal of the leave to defend application shows that that the plea raised by the petitioner that respondent owns other properties is not substantiated by any material. The petitioner has not even disclosed the property/municipal numbers of the premises which are alleged to be owned by the respondent.

12. Apart from the said ground, petitioner has not challenged the bonafide need or the plea of the respondent that she and her husband are aged and handicapped and cannot climb the stairs.

13. Before this Court a plea was raised by the learned counsel for the petitioner that petitioner has subsequently found that respondent is owner of a property bearing No.52/1, Gali No.5, Arya Nagar, Harijan Basti, New Delhi.

14. On a direction by the Court by order dated 22.02.2019 respondent was directed to file an affidavit stating as to whether she has any connection with the said property. Respondent has filed an affidavit, categorically stating that respondent is not the owner of property No.52/1, Gali No.5, Arya Nagar, Harijan Basti, New Delhi.

15. In support of the contention that respondent is owner of 52/1, Gali No.5, Arya Nagar, Harijan Basti, New Delhi, petitioner has not been able to place on record any material. The only material sought to be produced by the petitioner is an electoral list of the said Constituency.

16. Perusal of the electoral list of property No.52/1, Gali No.5, Arya Nagar, Harijan Basti, New Delhi also does not show that respondent or her husband are registered as voters at the said address.

17. It is submitted by learned counsel for the petitioner, that father of the husband of respondent is shown as a voter and because the father has expired several years back, the respondent would have inherited the property.

18. It may be seen that no such plea is taken in the leave to defend application or even in this petition. Further, this petition has been pending for nearly three years and till date petitioner has not been able to find any material or document to show that respondent has any connection with property No.52/1. Besides oral submissions made in Court, there is no material produced.

19. It is also settled position of law that only the grounds taken in the affidavit accompanying the leave to defend application have to be considered and grounds which are not pleaded in the affidavit accompanying the leave to defend application especially pleas which are unsubstantiated by any material cannot be looked into by the Court while considering an application for grant of leave to defend.

20. Petitioner has not placed any material on record of either the Rent Controller or this Court to contradict the contention of the respondent that they do not own any property except the subject property in which the tenanted premises is situated.

21. Petitioner has also not been able to show that the need as projected by the respondent is not bonafide. Perusal of the leave to defend application shows that no triable issue or ground has been raised by the petitioner, which if proved would disentitle the respondent landlord from an order of eviction.

22. Even if the plea of learned counsel for the petitioner were to be accepted that the daughter of the respondent and her husband are working in a multinational company and are not likely to stay in the tenanted premises, it would still not affect the bonafide need as projected by the respondents, for the reason that the respondent has stated that the premises are required primarily for the residence of the respondent and her husband who are old aged and handicapped and cannot climb to the first floor.

23. Petitioner has not been able to show that the respondent or her husband own or possess any property situated on the ground floor apart from the subject premises.

24. With regard to the contention of the respondent made for the first time during arguments before this Court that there is space available on the ground floor, it may be seen that it is mentioned in the Eviction Petition itself that the entire property has to be renovated for the purposes of better use and said plea has not been contradicted by the petitioner either in the leave to defend application or in this petition.

25. Reliance placed by the learned counsel for the petitioner on the judgment of the Supreme Court in Deena Nath vs. Pooran Lal, (2001) 5 SCC 705 to contend that an order of eviction has to be based on bonafide necessity and not on a mere fanciful or whimsical desire is misplaced in as much as the need projected by the respondent is that they do not have any accommodation on the ground floor and because of their old age and health condition are not in a position to climb the stairs to go upto the first floor. In fact, the need expressed by the respondent is not a mere fanciful and whimsical desire but a bonafide necessity expressed by them. Clearly the said judgment is not applicable in the facts of the present case.

26. I find no infirmity in the view taken by the Rent Controller in declining to grant the leave to defend. I find no merit in the petition.

27. The petition is accordingly dismissed.

28. Order dasti under the signature of the Court Master.