

(2004) 11 DEL CK 0143
In the Delhi High Court
Case No : RC. Rev. 80 of 2004

Dr. A.S. Narayanna Rao

APPELLANT

Vs

Kundan Lal Bali

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Delhi Rent Control Act, 1958 — Section 25(B)(8)
Limitation Act, 1963 — Section 5

Citation : (2005) 116 DLT 38 : (2005) 79 DRJ 287

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : A.D.M. Rao, for the Appellant; None, for the Respondent

Judgement

R.S. Sodhi, J.—CM APPL. 15011/2004 (for exemption) Allowed subject to just exceptions. Application disposed of.

2. RC.REV.80/2004 and CM APPL 15010/2004 :

This revision petition is filed u/s 25(B)(8) of the Delhi Rent Control Act, 1958, for setting aside the eviction order dated 15th September, 2004, of the Additional Rent Controller, Delhi (for short "the Controller") in Eviction Petition No. 148/2004, whereby the learned Controller has passed an eviction order against the petitioner herein.

3. The brief facts of the case as has been noted by the learned Controller are as under :

"Petitioner Sh.Kundan Bali seeks eviction of respondent Dr.A.S.Narayana Rao from premises comprising four rooms, kitchen, bathroom, WC and a store on the ground of property No. 16-1/10, WEA, Ajmal Khan Road, Karol Bagh, New Delhi (more particularly shown and delineated in colour red in site plan) (here-in-after referred as the premises) for the reason that it was let out to the respondent in September, 1987 under oral agreement. The petitioner as owner of the premises and it was let out to the respondent for residential purposes and it is being used

for such purposes by the respondent. The petitioner requires the premises for his own residence and for the residence of his family members depending upon him. The petitioner has no other suitable and reasonable accommodation. The petitioner was residing on the first floor of the property till 1998. Due to old age and ill health the petitioner is finding difficulty in climbing the stairs. Petitioner's wife is suffering from Blood Pressure, Gouts in both knees, Osteoarthritis and Osteoporosis of cervical spine and allergic cough. It has become impossible for petitioner's wife to climb the stairs and live on the first floor. The petitioner had requested the respondent to vacate the premises but he showed his inability. the petitioner's son Vivek Bali was residing in Bombay. He took the petitioner and his wife to Bombay. The petitioner's son also remained at Bangkok, Chennai, Singapore during the span of his service and petitioner and his wife also remained with him. However, they remained under treatment at such places and while in Bangkok the petitioner had fallen down on 11.10.2000 and fractured the lower end of left Radius for which he was operated in Bangkok. He has been advised medically to avoid climbing the stairs. The petitioner's wife also remained under treatment and medication at Singapore. Since the petitioner was suffering from aforesaid disease, petitioner and his wife expressed their desire to their son that they wanted to go back to India so that if they died they should die in their motherland. The petitioner approached his son Vipin Bali and requested him either to ask the tenant on ground floor to vacate the premises for them or otherwise he should make some arrangement of some other accommodation on the ground floor and accordingly property no.: G-106 and G-110, Sarita Vihar, New Delhi on a monthly rent of Rs.12,000/- and Rs. 8000/- were arranged in July 2003 through lease deed dated 10.07.2003 for a fixed period of months commencing from 10.07.2003 and ending on 09.07.2005. The petitioner and his wife are residing along with their son at the aforesaid premises. The petitioner is 89 years of age and his wife is 78 years of age and because of disease like Tuberculosis, blood pressure etc. they are unable to climb the stairs, they cannot walk without the help of walking stick or walker. The petitioner is compelled to spend a sum of Rs. 20,000/- per month as rent on the rented accommodation. The accommodation available on the first floor in the property in question is not suitable for the residence of petitioner and his wife, Therefore the petitioner requires the premises in question and he along with his wife will shift in the premises along with their son Vipin Bali. Hence, he present petition.'''

4. It is submitted by counsel for the petitioner that the application u/s 5 of the Limitation Act should have been allowed since sufficient cause was shown for condoning the delay. He further submits that his subsequent application for leave to defend should have been taken as one filed within time even though the same was not in accordance with the procedure established.

5. Heard counsel for the petitioner and have gone through the order under challenge as also the record of this case. It appears to me that the leave to defend application filed in the first instance was a cryptic one which was sought to be substituted.

This aspect of the matter has been elaborately gone into by the learned Controller. Counsel for the petitioner has not been able to show me any infirmity in the order under challenge. However, counsel has reiterated his arguments before me. From the order under challenge, it appears that the learned Controller has gone into the question on merits and has held that the landlord has been able to prove his requirement u/s 14(1)(e) of the Delhi Rent Control Act independently and that the time for filing of objections/leave to defend cannot be extended in view of the judgment of the Supreme Court in Vimla Devi and Another Vs. Surinder Kumar and Others, . Since the learned Controller has relied upon a judgment of the Supreme Court to arrive at its conclusion, which judgment squarely covers the case, I find no grounds to interfere. RC.REV. 80/2004 and CM APPL. 15010/2004 are dismissed.