

(2016) 05 DEL CK 0024

In the Delhi High Court

Case No : RC. REV. 527 of 2015 and C.M. No. 21854 of 2015

J.D. Tytler Nursery School

APPELLANT

Vs

Amarjeet Kaur

RESPONDENT

Date of Decision : 05-05-2016

Acts Referred:

Citation : (2016) AIRCC 2265 : (2016) 2 RCRRent 443 : (2016) 2 RentLR 265

Hon'ble Judges : Ms. Indermeet Kaur, J.

Bench : Single Bench

Advocate : Mr. Arunabh Chowdhary, Mr. Ashish Jha, Mr. Anupam Siddharth and Mr. Vaibhav Tomar, Advocates, for the Appellant; Mr. J.P. Sengh, Sr. Adv. with Ms. Shalini Kapoor, Mr. Promil Seth, Mr. Rohit Sharma and Ms. Ruhini Dey, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Indermeet Kaur, J. (Oral) - Petitioner is aggrieved by the order dated 25.8.2015 wherein the application filed by the tenant (J.D.Tytler Nursery School) seeking leave to defend in a pending eviction petition filed by the landlady Amarjeet Kaur under Section 14(1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed. The tenant is aggrieved by this finding.

2. Record discloses that an eviction petition had been filed by the landlady on the ground of bona fide necessity. The fact that she is the owner of the suit property is not disputed. She had inherited that property from her father Manmohan Singh along with other her siblings but thereafter they had relinquished their shares in favour of the landlady. She is the owner of the suit property; even presuming that she is a co-owner of the property she can maintain an eviction petition. This position is not disputed. Relationship of landlady and tenant is also not in dispute. This Court thus need not to delve any further into this aspect.

3. The suit property is an area measuring approximately 1100 sq. feet bearing municipal no.875-A, East Park Road, Karol Bagh, New Delhi. The suit property

was let out for the purpose of running a school. The letting out had taken place 20 years ago. In the eviction petition it had been disclosed that the school had stopped running from the afore noted premises i.e. the purpose for which it had been let out and the employees of the tenant are alone using a portion of the same against the consent of the landlady. The rent is Rs.1452/- per month. The bona fide need of the landlady has been described in para 18 of the eviction petition. In this paragraph it has been stated that the landlady has a daughter who had been married to Gagandeep Singh in 2006 but due to matrimonial disputes her marriage came to an end. She got remarried but in spite of having been blessed with a daughter the second matrimonial life of the daughter of the petitioner also did not survive and she had to necessarily separate from her estranged husband. The daughter and the granddaughter of the landlady are presently living with the family of the landlady. The landlady also has a son. He got married in July 2014 and the newly married couple started living in the drawing cum dining room which at present is used as bed room by the petitioner's son and daughter-in-law. The present accommodation with the landlady is insufficient to accommodate the entire family. Attention has been drawn to the site plan where the landlady is presently living. This property is at 18/27, East Patel Nagar, New Delhi. This accommodation has been inherited by the husband of the landlady from his line of inheritance. The landlady and her family are in occupation of the second floor. The ground floor, first floor and the third floor of the property are in the occupation of the other brothers/siblings of husband of the landlady. The second floor accommodation comprises of three rooms of which room at "A" is in the occupation of the daughter and the granddaughter of the landlady. Room "B" is in the occupation of the landlady and her husband. Room "C" which is drawing cum dining room is presently used as bed room by the newly married son of the landlady and his wife. The size of this room is 13.4 x 13 sq.feet and is similar to the size of the room occupied by the daughter and grand-daughter of the landlady. There is no other accommodation available with the landlady. There is one common toilet and a kitchen with a front balcony. Further averments in the eviction petition disclose that because of stubborn nature of the daughter-in-law of the landlady which is not only rude but much beyond that stage and is at all the times passing sarcastic remarks not only against her sister-in-law (who is already estranged from her husband) but against the entire family; there is no hope of any improvement in her conduct; it has in these circumstances become almost impossible for the landlady and her family to get her son and daughter-in-law to be accommodated in the same accommodation. Her daughter-in-law has become insulting in more ways than one. Accordingly, the need of the landlady in the present petition is to separate her son and daughter-in-law from the family and to settle them in the suit property in order that the landlady along with her daughter and grand-daughter can live a peaceful life. This has been detailed in para 18 of the eviction petition. Further averments in this paragraph are to the effect that the accommodation presently available with the landlady (where she is staying) at East Patel Nagar of which the ground floor, first and third floors are in the occupation of the joint

family members of the husband of the petitioner namely Manmohan Singh. The second floor is only in their occupation and the details of the accommodation on the second floor have already been noted supra. It is further pointed out that there is only one shop in the suit property (B) i.e. at East Park Road, Karol Bagh which is the place from where the business of the husband of the petitioner (Manmohan Singh) is carried out. He is carrying on the business of agency of sale-purchase of cars under the name and style of "German Car Company". The husband of the landlady is in fact struggling to establish his business. The other shops which are on the ground floor i.e. the shop nos. A, C and D are also occupied by the tenants.

4. A perusal of the site plan shows that there are four shops in the front side of this property i.e. at 875-A, East Park Road, Karol Bagh and they are all small in size. Shop No.B is the place from where business of the petitioner's husband is being carried out; the other shops i.e. Shop no.A and C and D are tenanted out; this is not disputed.

5. The area which is tenanted out to the present tenant is approximately 1100 sq. feet and is partially behind and partially adjacent to these shops. This area comprises of four rooms along with verandah of which two are covered besides one kitchen and one toilet.

6. In the application seeking leave to defend, the primary contention of the tenant is that there is a reasonably suitable accommodation available with the landlady which is in the first floor of the suit property which has fallen to the share of the landlady. Attention has been drawn to the site plan also as also to the accommodation on the first floor. Submission being that on this first floor there are four rooms, kitchen, four store rooms, toilet and three open verandah and a small portion of the first floor has been occupied by one of the petitioner's family members aged 65 years. There would be sufficient accommodation for the son and the daughter in law of the landlady. This alternate accommodation has necessarily to be examined in the course of trial. Triable issues have arisen on this count.

7. Reply to the afore noted leave to defend application had been filed. Contention of the landlady in this reply was that this first floor portion is in the occupation of the brother of the landlady. Submission being that their father had died leaving behind his widow, four daughters and one son. The son is living a saintly life. He did not get married. He is occupying the first floor and has been doing nothing. The averments made in the application seeking leave to defend have been denied by the landlady in the reply wherein a clear and categorical assertion has been made by the landlady that the first floor of the property at East Park Road (which comprises of only one room (18.3 x 16.5 feet) has also one pooja room, one baithak and kitchen) is in the occupation of her brother and he has no other accommodation and as such it is not possible for the landlady to ask her son and daughter in law to occupy the same. By no stretch of imagination can this accommodation on the first floor of the property at East Park Road, Karol Bagh

be a suitable accommodation to fulfil the need as has been projected in the application seeking leave to defend.

8. Arguments and counter arguments have been noted.

9. Learned counsel for the tenant has also placed on record certain electricity bills showing consumption of electricity for the month of May, 2014 of the afore noted first floor of Rs.230/-. Submission being that this bill has been generated deliberately by the landlady to build up evidence to the effect that this first floor is occupied; actual position is that the first floor is lying vacant. On this submission learned counsel for the landlady submits that the brother of the landlady is residing there on the first floor; submission being that a minimal consumption of electricity does not mean that no person is living there.

10. This Court notes that not only the first floor is in dilapidated condition but it is insufficient to accommodate the son and daughter-in-law of the landlady. The averments made by the learned counsel for tenant have no force. Time and again the Courts have reiterated that it is for the landlord to decide how to best use his property and he is the best judge of his need. Admittedly, the landlady is the owner of the property. The submission of the landlady that her son and daughter in law are creating trouble for her as also for the rest of the household; as such the atmosphere in the family has become unhealthy making it impossible for them to have a peaceful existence is noted. The fact that the daughter of the landlady has had a second marriage is not disputed. The fact that she has a grand daughter is also admitted. The accommodation presently with the landlady at Patel Nagar only comprises of two bed room, one dining cum drawing room. One bed room is required for herself and her husband, the second bed room is required for her daughter and grand daughter. Her newly married son along with his wife is housed by the landlady in the drawing cum dining room is an admitted fact. There is also no dispute to the contention raised by the landlady which is to the effect that her son and daughter in law are creating a problem in the peaceful existence of the landlady and her husband and as such her wish is to separate them from the present residence not only due to paucity of accommodation but also to maintain harmony is a submission which is genuine. The reasonable and suitable alternate accommodation sought to be set up by the tenant is in fact no reasonably suitable accommodation; besides the fact that in the eviction petition the landlady has herself disclosed that the first floor is in occupation of her saintly brother and this position has been reiterated in her reply. The submission of the tenant that even presuming that the brother of the landlady is living on the first floor, the accommodation is still sufficient to accommodate the son and the daughter-in-law of the landlady is an argument noted only to be rejected. The fact that the accommodation is in a dilapidated and needs repair is admitted.

11. The son and the daughter in law of the landlady cannot be expected to forcibly live with their maternal uncle who is a saintly man. The photographs show that the walls of the rooms are largely covered with the pictures of god and

goddesses. This reflects upon his manner and style of life. To expect a newly married couple to live in such an accommodation would not only amount to disturbing the settled life of the brother of the landlady but would also not be an alternate accommodation for the newly married couple. The newly married couple cannot be expected to accommodate themselves and live in a small first floor area which as noted supra has only one bed room measuring 18.3 x 16.6 feet. The pooja room, baithak are also small; it has one kitchen. The son and daughter in law of the landlady cannot be expected to share and live according to the life style of maternal uncle who at the cost of repetition is living the life of a saint. The fact that the daughter-in-law of the landlady is of a canterous nature is also a point to be noted and the apprehension of the landlady that the conduct of her daughter-in-law would hamper the life of her brother is well founded. The electricity consumption bills show that there is a consumption of electricity; the submission all along of the landlady that her brother is living there and being a person leading a simple life would probably be a reason why such low electricity bills are generated. Rajinder Singh is the brother of the landlady; his name is clearly reflected in the bills showing that he is the consumer of this electricity. The first floor is thus clearly not vacant; it is occupied by the brother of the landlady.

12. This Court is of the view that the twin requirements of Section 14(1)(e) of the DRCA have been met. The need of the landlady is genuine. There is also no other reasonably suitable accommodation available with her to fulfil the need as projected in the eviction petition.

13. On no count does the impugned order call for any interference. Petition is without any merit. Dismissed.