

(1993) 03 DEL CK 0087

In the Delhi High Court

Case No : Civil Revision (Rent) Appeal No. 406 of 1988

M.L. Khurana

APPELLANT

Vs

H.C. Chopra

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(I)

Citation : (1993) 50 DLT 384 : (1993) RLR 396

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : K.G. Bhagat, P.N. Bhan and B.L. Chawla, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This civil revision is directed against the order dated 12/02/1988, of the Additional Rent Controller, by which he had allowed the eviction petition brought on the ground of bonafide requirement covered by Clause (e) of proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act.

(2) The case set up by the respondent-landlord, in brief, was that the premises in question were let out to the petitioner for residential purposes and the respondent is the owner-landlord thereof and earlier the landlord and his family were living in Delhi but they had shifted to Chandigarh and the landlord, who was in service, retired on 31/07/1984 and before that date he had given notice to the tenant of his intention to settle in Delhi in his own house. After retirement the landlord had shifted to Jabalpur where his sons are having their own business. The five brothers and one sister of the landlord are settled in Delhi. So, the case of the landlord was that he wanted to settle in Delhi in his own house. The petition was contested by the tenant pleading that the premises had been let out for residential-cum-commercial purposes and that the landlord bona fide does not require the demised premises at all and has filed this petition with malafide motive to evict the tenant for some ulterior purposes.

(3) The Additional Rent Controller has given findings after recording evidence that the premises were let out for residential purposes only and the landlord is the owner of the said property and the landlord bona fide requires the demised premises as he wants to settle in his own house in Delhi.

(4) The learned Counsel for the petitioner has raised a very short point in this case. He has urged that it was the landlord who could disclose his state of mind as to whether he would prefer to continue to live in Jabalpur where his sons are settled or he would like to live in his own house in Delhi. But the landlord for the reasons unknown has not appeared in the witness-box at all to disclose this particular state of mind to the Court and thus an adverse inference could have been drawn by the learned Additional Rent Controller that if the landlord had appeared in the witness box, in all probability he might not have given a sworn testimony that he intended to settle in Delhi away from his sons who are very well settled in Jabalpur.

(5) The learned Counsel for the respondent on the other hand, has argued that the landlord and his wife had been coming to the Court of the Additional Rent Controller for giving their statement but on all occasions but for one reason or the other the evidence was not recorded. But later on the landlord had constituted his wife's brother as his Attorney who appeared in the witness box and gave the testimony on his behalf. Normally the state of mind of the landlord that he particularly wishes to shift from one place to another can be disclosed only by the landlord himself appearing in the witness box or by his close relation like son or wife. In the present case it is surprising that only wife's brother was examined as attorney of the landlord to disclose the state of mind of the landlord.

(6) "IN *Nanlal Goverdhandas and Co. and Others Vs. Samratbai Lilachand Shah*, , the Bombay High Court had held that the bona fide requirement is in the first place a state of mind though it may be something more. It must, Therefore, be deposed to by the person who is requiring the premises and if the landlord does not step into the witness-box to bring before the Court legal evidence for proving his requirement, then it cannot be said that he reasonably and bona fide requires the premises. The landlord can delegate the authority to conduct a case but he cannot delegate the duty to depose." In the said case the landlady's son, who was duly constituted attorney, had appeared in the witness box in place of the landlady. Still the Court drew adverse inference against the landlady on account of her inability to testify in Court regarding her bona fide requirement of the premises.

(7) In *Chinta Narayanamma Vs. Kholli Sahu and Others*, , a Division Bench of the said Court drew adverse inference on similar point on failure of the landlady to examine herself as a witness to substantiate her case of bona fide requirement. There is a judgment of this Court given in *Virendra Pal v. Sri Daljit Singh Sandlu*, 1978 (1) Rcj 365, wherein it was also laid down that the best person to prove the bona fide requirement of the landlord was the landlord himself and in case he could not appear in Court he could have got himself examined on Commission. In

the said case the landlord was a resident of Muktsar and wanted the Court to believe that he wanted to shift to Delhi and live in his own house but he did not appear in the witness box and this Court drew an adverse inference against the said landlord. All these judgment came to be analysed by me in Civil Revision No. 955/86 etc., Manohar Lal v. Smt. Pushpawati Jain, decided on 8/02/1993 and it was laid down by this Court that a very broad proposition of law cannot be laid down that in every case where the ground of bona fide requirement is set up by the landlord, the failure to appear in witness box by such landlord should always lead the Court to draw adverse inference. it may be that in peculiar facts of a particular case, all the ingredients of bonafide requirement are brought out on the record through the testimony of convincing witnesses like close relation like husband or wife or son, in such a case, the Court may not draw adverse inference on failure of the landlord to appear in the witness box.

(8) In the present case the factual situation is that the landlord is living in Jabalpur where his sons are residing. It is not the case of the landlord that his sons are also to shift to Delhi. May be only five brother sand one sister of the landlord are residing in Delhi but it could only be known to the mind of the landlord whether he would prefer to continue to live in Jabalpur where his sons are living or whether he would like to shift to Delhi and live in his own house. In this case the omission of the landlord to appear in the witness box leads this Court to draw an adverse inference that if he had appeared in the witness box, he might not have stated on oath that in fact, he wanted to live away from his close relations like sons who are based in Jabalpur. On this short ground alone, I allow the petition and set aside the impugned order. The parties are left to bear their own costs throughout.