

(1997) 05 DEL CK 0074

In the Delhi High Court

Case No : Civil Revision Appeal No. 35 of 1997

Om Prakash

APPELLANT

Vs

Dev Raj Kohli

RESPONDENT

Date of Decision : 26-05-1997

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(10)

Citation : (1997) 67 DLT 721 : (1997) 42 DRJ 573 : (1997) RLR 539

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : G.L. Rawal, Arun Mohan and S.P. Chug, for the Appellant;

Judgement

Usha Mehra, J.

(1) Petitioner has felt aggrieved because of having not been granted leave to defend the petition of eviction filed by the respondent u/s 14(1)(e) read with Section 25-B of the Delhi Rent Control Act (in short the Act).

(2) Shri Dev Raj Kohli, respondent herein had sought the eviction of this petitioner from premises bearing No. 5/19, Punjabi Bagh Extension, New Delhi. The grounds seeking eviction were namely, (i) the family of the landlord consisting of himself, his son, son's wife and son's three daughters in the age group of 21, 19 and 14 years respectively needed better (sic.). The two grand daughters were college going and the youngest school going; (ii) that the respondent-landlord was 73-74 years old at the time of filing the petition. He found climbing stairs difficult. He being quite weak, old and frail found difficult to climb the stairs; (iii) that landlord had been living in a rented accommodation on the first floor of house No. 2046/39, Naiwala, Karol Bagh, New Delhi. That accommodation consisted of three small rooms, one kitchen, bath room and latrine. That accommodation was not sufficient for himself and the members of his family. He required minimum five rooms to accommodate his grown up grand daughters, son and his wife and himself. Beside five living rooms he also needed

a drawing and dinning room and a guest room. House in possession of present petitioner being on the ground floor was more convenient and suitable to the landlord/respondent.

(3) It was in the above background eviction was sought. Present petitioner sought leave to contest on the ground, (i) that the eviction was sought in order to put pressure to increase the rent. The respondent/landlord has been in the habit of getting the tenants evicted and thereafter relenting the premises on higher rent; (ii) premises was let out to the petitioner on 17th April, 1979 u/s 21 of the Act, by misrepresenting the facts and committing fraud on the tenant as well as on the Rent Controller. In the petition u/s 21 of the Act respondent/landlord had represented that his son was away to America. He should be coming back after 3 years. In fact that was misrepresentation of fact. That landlord has only one son who never went to America. Hence the question of his coming back after three years did not arise; (iii) that the agreed rent in April, 1979 was Rs. 1,300.00 per month. After expiry of three years under threat from landlord to increase the rent or vacate the premises, the petitioner increased the rent to Rs. 1,650.00 per month w.e.f. 1st April, 1982. Again rent was raised to Rs. 2,000.00 per month w.e.f. 1st April, 1985. From 1st April, 1988, the petitioner started paying rent at the rate of Rs. 2,300.00 per month and Rs. 2,700.00 per month w.e.f. 1st April, 1991. The petitioner has been paying enhanced rent at the rate of Rs. 2,700.00 till 31st March, 1994 under pressure. Thereafter the respondent/landlord wanted the petitioner to increase the rent to Rs. 5,500.00 per month. This was not agreed to by the petitioner. As a retaliation eviction petition was filed; (iv) as regard bonafide need, house in possession of respondent at Karol Bagh is more convenient because it is situated on the first floor of the premises on the ground floor on which the respondent has been running a chemist shop. The residence of the landlord is just above the shop, where he has been residing with his family for a long time. In the tenanted premises at Karol Bagh respondent with family had been residing much prior to letting the suit premises to the petitioner; (v) landlord being an old man, running a chemist shop in the same premises would be (sic.) every day from Punjabi Bagh to Karol Bagh; Finally (vi) the respondent concealed the material fact about the actual accommodation in his possession at Karol Bagh. He deliberately did not mention the second floor in his occupation at Karol Bagh. Accommodation on top floor consisted of two bed rooms, bath, latrine, kitchen, adding this accommodation with the accommodation available on the first floor, under his occupation consisting of three bed rooms, it is apparent that the respondent has sufficient accommodation with him and he does not require the accommodation bonafide.

(4) The landlord/respondent in his counter affidavit denied the allegation of exerting pressure on the petitioner to increase the rent. He denied that the order u/s 21 of the Act was procured by misrepresentation or by playing fraud. He denied having made any demand on the petitioner to increase the rent, according to him rent was increased by the petitioner of his own. The petitioner has, however, not paid the rent since 1st April, 1994. The respondent also

explained why he did not immediately occupy the house at Punjabi Bagh. According to him since it was newly built property, Therefore, he decided to let out u/s 21 of the Act for a limited period. However, after expiry of the period he requested the petitioner to vacate. On this the petitioner represented that since he has constructed his own house at 5/4, Punjabi Bagh Extension, New Delhi, in the name of his wife Smt. Krishna Pyari, hence in order to enable him to vacate the tenanted premises time for vacation be extended. Petitioner promised to shift to his own house immediately on its completion. On compassionate ground and assurances held out by this petitioner the respondent permitted him to continue in his house. It was when respondent's grand daughters grew up and he became old, weak and frail that he desired to shift to his house built on ground floor. He requested this petitioner to vacate his premises. The petitioner instead of vacating the premises stopped paying rent with effect from 1st April, 1994. Respondent denied that there were three bed rooms, with attached bath rooms, and drawing-cum-dinning room on the first floor at Karol Bagh. The premises, under his tenancy at Karol Bagh consisted of only three living rooms of small sizes on the first floor and a small room on top floor called Barsati which he had been using as Store. That room was not big enough to be used as living room. Site plan of the premises of Karol Bagh was also filed.

(5) The learned Arc by the impugned order dated 10th October, 1996, concluded that the ownership of the suit premises was not in dispute nor the relationship of landlord and tenant. Regarding the requirement of landlord the learned Arc concluded that the need of the respondent-landlord was bonafide. Landlord needed minimum five rooms for himself and members of his family dependent upon him. The accommodation in his possession at Karol Bagh was not sufficient not suitable. The Arc thus declined to grant the leave to the petitioner.

(6) Grievance of the petitioner against the impugned order is that the learned Arc ignored the concealment of second floor accommodation in possession of the landlord at Karol Bagh. On top floor, the landlord has two rooms. In the petition landlord only mentioned the accommodation at first floor. He thus concealed deliberately the two rooms on the second floor in order to emphasise that accommodation with him was not sufficient. Since accommodation at top floor available was not disclosed, Therefore, the petition ought to have been dismissed for concealment of the same.

(7) I have heard learned Counsel for the parties. Regarding the first point raised i.e. concealment of accommodation on second floor, admittedly there exist a Barsati floor at Karol bagh which is under the tenancy of the respondent. It is also a fact that top floor accommodation was not mentioned in the petition. However, when the petitioner sought leave alleging that the landlord has two living rooms on the top floor, it was then that the landlord in his reply affidavit explained that there was only a small room on the top floor which could not be used as living room. Moreover, he had been using the said room as store, since he was using it as a store, Therefore, he did not mention the same in the

petition. In the petition he only mentioned the living rooms accommodation available to him. Site plan was filed of the Karol Bagh house as Annexure-A. It shows that measurement of the room on the top floor to be 9.6" x 10.4". This room has no facility like toilet, bath room or kitchen. Hence he did not take that to be living room nor mentioned the same in the petition because it is not a living room nor used as such. Thus, there was no question of concealment of material fact. I find force in this submission of the respondent. In the petition, the respondent only mentioned about living room accommodation. The room on the top floor being not used as living room nor fit to be a living room, hence non-mentioning of the same specifically, to my mind, did not amount to concealment of any material fact. Moreover, in the reply affidavit this fact was clearly mentioned. The measurement of the room on the top floor being less than 100 sq.ft., it cannot be called a living room. To be called a living room, the area must not be less than 100 sq.ft. as observed by this Court in the case of Brij Mohan Vs. Sripal Jain, . Non mentioning of such an accommodation which is not for living purpose could not have caused any prejudice nor would amount to concealment of facts. This Court in the case of Rameshwar Sarup (D) L.R. v. Ram Narain, 1995 Rlr 189 observed that the tenant cannot be allowed to contend that concealment of fact was fatal, if the tenanted house was otherwise not suitable to the landlord. In that case grievance of the tenant was that the landlord did not make disclosure about the accommodation available to him at Subzi Mandi. The Rent Controller dismissed his petition on this ground holding that non disclosure was a malafide act. The landlord was in possession of an alternative accommodation at Subzi Mandi on the date of filing the petition as well as on the date of filing the replication. he still did not disclose this fact. The question for consideration was whether non-disclosure of that fact in the eviction petition and/or in the replication, the petition was liable to be dismissed. While answering the question this Court held that since the other accommodation was not suitable hence its non-disclosure was not malafide nor amounted to concealment. Mr. Arun Mohan Senior Advocate, appearing for the respondent contended that the facts in the case of Rameshwar Sarup (supra) were worst still the Court did not dismiss the petition. On the contrary in the present case the landlord disclosed all the living accommodation in his possession in the petition. Since the small room on the top floor without any other facility was not a living room nor used as such hence non-mentioning of the same did not amount to concealment of material facts. At the same time in reply affidavit this fact was clarified. This position was clarified at the first available opportunity. Whereas in the case of Rameshwar Sarup (supra) the landlord did not disclose alternative accommodation available with him even in replication, still Court held that it did not amount to concealment of fact. From the facts which have come on record coupled with the fact that the small room on the top floor without any facility being not used as living room and which cannot be called a living room, from the non-disclosure of the same no malafide can be attributed to the respondent. In the case of Dershan Kumar v. Sunder Lal Taneja, 1995 Rlr 95 this Court held that if the landlord while submitting the site plan of the premises in his possession

omitted to furnish the plan of the second floor in his possession because the same was not being used for residence, by non-furnishing of the plan of second floor the landlord did not commit any illegality. In the present case also the site plan Annexure-A disclosed that room on the top floor measuring 9.6 x 10.4" was being used as a store. Non mentioning of the same in the petition would not disentitle the respondent/landlord from an order of eviction when his need is otherwise bonafide. On this score, I find no substance in the argument of Counsel for the petitioner.

(8) Turning to the second objection that the landlord had been getting the rent enhanced after every three years and that the eviction was sought because the petitioner did not yield to the pressure of the respondent nor enhanced the rent at Rs. 5,500.00 per month. This aspect has been duly considered by the learned Arc in the impugned order. To my mind, even if the rent was enhanced after every three years that would not disentitle the respondent nor can be called a triable issue nor increase of rent after every three years would debar the respondent from seeking eviction, if otherwise, his need was bonafide.

(9) Regarding bonafide requirement of the respondent/landlord, the same has already been discussed above. It has come on record that the landlady has only three living rooms on the first floor in the tenanted premises under his occupation at Karol Bagh, whereas his family members consists of himself, his married son, three grown up grand daughters. Hence the accommodation with him at Karol Bagh is not sufficient to meet his needs. The Supreme Court in the case of Prativa Devi Vs. T.V. Krishnan, held that landlord is the best Judge of his residential requirement. Whether an alternative accommodation was actually available would depend upon landlord's right upon such accommodation. In that case the landlord was staying with her family friend. She was 70 years old. The High Court observed that landlady being an old lady having no one to look after her should continue to stay with her friend. Reversing that order the Apex Court observed that the landlady could not be deprived of beneficial enjoyment of her property. In this case also the landlord respondent was 73-74 years old at the time when he filed the petition. He is living in a rented accommodation at Karol Bagh. He cannot be asked to go on staying in a rented accommodation on the first floor of the house in Karol Bagh, particularly when he has grown old and feels weak and difficult to climb the stairs. He wants to occupy his own premises which is on the ground floor at Punjabi Bagh. That accommodation more convenient and suitable to him. He being the best Judge of his residential requirement the Trial Court rightly came to the conclusion that his needs are bonafide. In the case of Mrs. Meenal Eknath Kshirsagar Vs. M/s. Traders and Agencies and another, Supreme Court reiterated that it is for the landlord to decide how and in what manner he should live as he is the best Judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis, is either insecure or inconvenient it is not for the Courts to dictate to him to continue to occupy such premises. In this regard the landlord has also given

undertaking to this Court by way of his affidavit filed in this Court that in case the premises is vacated by the present petitioner he would occupy the same and will not sell, re-let or part with possession of the same in any manner.

(10) That in this case admittedly the respondent/landlord on the date when he filed the petition i.e., in January, 1996 was 73-74 years old. One of the ground for eviction was that being old, weak and frail it was not possible for him to climb the stairs, Therefore, needed to occupy his own premises which is on the ground floor. One cannot loose sight of the fact that old age itself is a disease. A frail old and weak man of 73-74 years, if he says that it is not possible for him to climb the stairs, this cannot be brushed aside nor can be doubted. To climb the first floor for an old man it is difficult. For the beneficial enjoyment of his property, if he seeks eviction of his own house which is more convenient to him. It cannot be called a malafide desire. In the evening of his life, he wants to live in his own house which is more convenient for him, the petitioner cannot dictate him to go on living on the first floor of a tenanted premises. Even otherwise his grand daughters have grown up. They are college and school going. For their studies they require separate rooms. Similarly his married son requires a room for himself. The respondent also requires an independent room. This much accommodation is not available at Karol Bagh. Hence that accommodation cannot be called reasonable suitable alternative accommodation. The Trial Court on the basis of facts available rightly came to the conclusion that the premises at Karol Bagh under the tenancy of the landlord was not reasonably suitable accommodation available with him. That on that account no triable issue was raised by the petitioner.

(11) Finally the contention of the petitioner that the premises was let out for composite purposes and had been used as such for a long period. This argument has no substance. Admittedly, the letting purpose was residential. Mere bald statement of the petitioner that he had been using the same for commercial purposes without giving any details as to what business he was doing and when he started the same. Mere vague statement that he had been using the premises for commercial purpose would not non-suit the respondent. Moreover, the premises, as observed by the Trial Court, is situated in a residential colony. Petitioner/tenant with family is residing there. No particulars have been mentioned in his affidavit as to in what circumstances he has been using the property. In para 4 of the affidavit only vaguely asserted that he had been using the premises for commercial purposes. Mere bald statement in the absence of any particular does not raises any triable issue. In fact that suit premises was let out u/s 21 of the Act. The letting purpose was specifically mentioned in the petition to be residential. Therefore, subsequent alleged use for commercial purposes without furnishing any details will not non-suit the landlord nor amounts to a triable issue.

(12) For the reasons stated above, no interference is called for in the order of the Additional Rent Controller. It is well reasoned order. This Court in its revisional

jurisdiction would not like to interfere with the impugned order which is based on proper appreciation of facts. Moreover, respondent/landlord has placed on the record of this Court his affidavit that he would occupy the premises himself. Petition dismissed.