

(1997) 07 DEL CK 0078

In the Delhi High Court

Case No : Civil Revision Appeal No. 816 of 1996

Rameshwar Goswami

APPELLANT

Vs

Kuldeep Kumar Mathur

RESPONDENT

Date of Decision : 17-07-1997

Acts Referred:

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

Citation : (1997) 6 AD 305 : AIR 1998 Delhi 221 : (1997) 69 DLT 1 : (1997) 43 DRJ 471 : (1998) RLR 135

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Varun Goswami, for the Appellant;

Judgement

Usha Mehra, J.

(1) PETITIONER/LANDLORD required the ground floor of premises No. F-45, Green Park, New Delhi, for himself and members of his family. The members of his family consisted of himself, his wife, son and daughter. For purpose of residence his brother and his family are occupying first floor of this premises. He, Therefore, filed a petition u/s 14(1)(e) under the Delhi Rent Control Act (hereinafter called the Act). He pleaded himself to be the owner/landlord of the premises in question. That the premises was let out for residential purposes on 1st March, 1977. The same was required by him for the residence of his son who is a practicing lawyer at Delhi as well as for the residence of his daughter who wanted to study at Delhi. He being a practicing lawyer often visits Delhi in order to appear in the High Court of Delhi and Supreme Court of India. His normal visits vary but at least thrice a month he comes and stay at Delhi. That the first floor of the premises is not available being in occupation of his brother and his family. His brother had undergone by-pass surgery and needed residence. Petitioner accordingly allowed his brother and his family to occupy the first floor. Hence first floor of the house being in occupation of his brother, he needed the premises in occupation of the respondent for the residence of his son, daughter

and himself. It was in this background that the aforesaid petition was filed.

(2) That petition was contested by the respondent inter alia, on the grounds that brother of the petitioner occupied first floor as a caretaker of the petitioner. The said brother remains out of India for six months at a stretch. He intends to shift abroad with his family. Thus first floor of the premises in question is available to petitioner. The accommodation of the first floor and ground floor being identical and that accommodation being available, Therefore, the need of the petitioner is not bonafide. It has been denied by the respondent that the son of the petitioner is practicing lawyer at Delhi or his daughter intends to shift to Delhi. These assertions of the respondent have been controverted by the petitioner by his affidavit.

(3) The learned Additional Rent Controller (in short the ARC) by the impugned order granted leave to the respondent to contest the case, primarily for the reason that in the eviction petition the petitioner nowhere mentioned that his brother has no alternative accommodation available at Delhi or that the said brother is dependent on the petitioner for the purpose of residence. In the absence of evidence establishing this fact the need of the petitioner cannot be called bonafide.

(4) I have heard Mr. Varun Goswami, Advocate, for the petitioner and the respondent in person. To establish his case u/s 14(1)(e) of the Act, the petitioner was to prove himself to be the owner/landlord of the premises. That the same was let out for residential purpose. That he had no other reasonable alternative accommodation available at Delhi. That the premises was bonafide required by him. So far as the first three essential requirements are concerned, the learned Arc vide the impugned order found in favor of the petitioner. As already observed above he granted the leave because he found the occupation of the first floor by the brother of the petitioner to be a triable issue. We are primarily concerned with the finding on the fourth requirement.

(5) While granting leave the learned Arc observed as under:- "It is nowhere mentioned in the entire petition that Kamal Kishore, the brother of the petitioner does not own or possess any other property in Delhi. It will have to be seen from the evidence as to whether Kamal Kishore can be treated to be dependent on the petitioner for the purpose of residence or not. In case, it is found that Kamal Kishore owns other property in Delhi then the petitioner has sufficient accommodation on the first floor. Thus the petitioner has to establish his bonafide."

(6) Admittedly, in so many words it has not been mentioned in the petition that brother of the petitioner has no accommodation of his own in Delhi. But at the same time in the petition it has been mentioned that the brother of the petitioner is in occupation of first and Barsati floor since long. Petitioner does not want to disturb his possession because his brother is a heart patient and got by-pass surgery done in 1991. In reply affidavit it was explained by the petitioner that his

brother being heart patient rarely goes out of India.

(7) Moreover his brother's family occupies the first floor and Barsati floor. Beside the respondent/tenant could not be preferred as against his brother particularly when tenant has acquired his own property. No where in the leave to defend application the respondent ever pleaded that the brother of the petitioner was having any accommodation of his own in Delhi. On the contrary the defense taken by the respondent as pointed out above was that the brother of the petitioner remains out of India for nearly six months and that he intended to shift abroad. These defenses were vague and specifically refuted by the petitioner. Moreover, respondent admitted that the family of the petitioner's brother is occupying the first floor of the house. That his brother's family remains in the house even when his brother goes out on business. Mere assertion that brother intends to shift abroad can be called vague allegation. Petitioner on the other hand categorically stated that his brother being heart patient having undergone bypass surgery and, Therefore, he does not want to disturb his possession. He, Therefore, needs ground floor. The petitioner was not seeking eviction for the need of his brother, though his brother was dependent on him for the purpose of residence. The Apex Court while interpreting and defining as to who can be included in the definition of "dependent" held that even brother of the landlord/owner can fall under that definition. Once a dependent family member and his family is occupying a portion of the house, and in case the landlord/owner wants additional accommodation the same cannot be denied to him. In the petition in question the petitioner has asked for the vacation of the ground floor in occupation of the respondent as his son Varun Goswami, Advocate, who is practicing at Delhi has to live in it. That son is of marriageable age. Therefore also he requires independent accommodation. Similarly, his daughter after doing B.Sc. IIInd year wants to appear for Medical Examination in Delhi. He, Therefore, wants Ground floor accommodation for his son and daughter. Such a need, prima facie, cannot be called a whimsical or sham. The denial by the respondent that the son of the petitioner is not a lawyer is falsified from the fact that Varun Goswami, Advocate, appeared in this case for his father, the petitioner. It is he who argued the case. Therefore, the denial of this fact by respondent is nothing but denial for the sake of denial. It is a vague denial. To my mind, the Court has to discourage such a frivolous plea. There cannot be any quarrel that affidavit of the tenant has only to be seen at the time of granting leave. If that affidavit raises triable issue then leave must be granted. But the perusal of the affidavit filed by respondent does not leave any manner of the doubt that no triable issue has been raised therein. Rather, the fact that petitioner's son is practicing at Delhi has been established on record. It is also an admitted fact and as apparent from the reading of the impugned judgment that daughter of the petitioner intend to shift to Delhi for higher studies. His son has already shifted which fact has been admitted by the respondent when he alleged that the said son of the petitioner has been residing with his uncle on the first floor. The first floor being in possession of his brother cannot be called an accommodation available to the

petitioner nor his need can be doubted. Reliance by the respondent on the decision of this Court in the case of Wing Comm. R.P.Jaiswal Vs. Hans Raj 1979 Rlr 17 is misplaced. That decision is of no help to him because in that case the landlord was in possession of third floor which accommodation he did not disclosed in his petition. Court took serious view of this concealment of fact. Secondly the Court found that the widow sister-in-law and sister's son were not dependent upon the owner/landlord. But that is not the case in hand. In the present case first floor of the house in question is in possession of his brother. This fact had been pleaded by the petitioner in the petition and admitted by the respondent. Barsati floor consists of only one room. Petitioner alleged that Barsati is also in occupation of his brother. However, according to respondent it is lying locked. Be that as it may, Barsati room without any other facility like toilet, kitchen and bath cannot be called suitable accommodation available to the owner. Whereas his son who is a practicing lawyer needs proper accommodation. His daughter who also wants to do higher studies needs proper accommodation. The petitioner a practicing lawyer who visits Delhi for the purpose of conducting his case in High Court and the Supreme Court at Delhi also requires accommodation. It cannot be said that his need is malafide or not genuine. So far as the question of dependency of the brother is concerned Supreme Court in the case of K.V. Muthu Vs. Angamuthu Ammal, while confirming the judgment of this Court in the case of Govind Dass and Others Vs. Kuldeep Singh, held that the brother may not be financially dependent on the landlord but at the same time the owner/landlord cannot prefer his tenant over his brother. To the same effect are the observations of the Division Bench of this Court in the cases of Abdul Hamid and Another Vs. Nur Mohd, ; Ram Prakash Saroj Vs. Mohinder Singh 1981 (1) Rcr 580; S.K. Arora Vs. S.L. Sarna, , M/s. Jhalani Tools (India) Pvt. Ltd. Vs. B.K. Soni, .

(8) Similar view was expressed by the Kerala and Madras High Courts in the cases of Mohammad J. Vs. Sinnamali, Rcr 1978(1) 356 Ker and K.V.Muttu Vs. Anangamuthu Rcr 1984 (1) 614 respectively, Allahabad High Court in the case of Chander Pal Singh Vs. 5th Adj, 1993 1 Rcr 48, considered the case where the landlord had given residential accommodation to his near and dear who was dependent for residence on the landlord/owner, though financially independent. After analysing the provisions it was opined that if the landlord has to suffer for giving accommodation to his near and dears and if the law asks the landlord to give preference to his tenants over his relations then probably the society will suffer more damage than any benefit. This Court in the case of R.B. Kapoor Vs. Manik N. Dastoor, , observed that even if a relative of the landlord is not dependent at all in any manner on the owner/landlord but is living in a gratuitous capacity then also the landlord cannot be forced to throw his relatives from his house for the sake of tenant. To the same effect are the observation of this Court in the case of A.N. Pareekh Vs. N.H. Naqvi, .

(9) Taking the legal position as pointed out above it can safely be concluded that the learned Arc fell in error in concluding that in order to find out whether

petitioner's brother has alternative accommodation a triable issue has been raised. Having admitted that the brother with his family is living on the first floor of the petitioner's house even if in a gratuitous capacity, the landlord can't be asked to throw his brother for the sake of his tenant. The fact that petitioner's brother is living for a long period in this house has not been denied by the tenant. This property in fact belonged to the father of the petitioner who inducted respondent as the tenant. Petitioner became owner/landlord after the death of his father by virtue of the "Will". Therefore, if the brother of the petitioner had been living in this house on the first floor with his family and petitioner feels that his brother being a sick person his possession may not be disturbed, it cannot be said that first floor is available to the petitioner. Further it being not the case set up by the respondent that brother has his own house in Delhi, the learned Arc could not grant leave on the issue not raised by the tenant in his leave to defend affidavit. As per decision in the case of Precision Steel and Engineering Works and Anr. Vs. Prem Deva Niranjana Deva Tayal reported in 1982 (2) Rcr 544, the learned Arc was only to look tenant's affidavit. In the absence of any such plea having been raised by the tenant in his affidavit the Court of his own could not raise this as an issue nor could take the owner/landlord by surprise. It would be wrong to say that any triable issue has been raised by the respondent. By merely saying that said brother remains out of Delhi for six months, though as per the respondent's own showing his family remains in this house on the first floor even when brother is out, it does not raise any triable issue.

(10) So far as the bonafide requirement of the petitioner is concerned, he has prima facie brought on record that his son a practicing lawyer has already shifted to Delhi. The son is in need of accommodation. Similarly, his daughter needs accommodation for her higher studies. He also visits Delhi in connection with Court cases and stays at Delhi. Thus his need prima facie appears to be genuine and bonafide. It cannot be said that his need is whimsical or malafide.

(11) So far as the question of jurisdiction, this Court has already taken the view that Civil Revision is maintainable. This has been so held in the case bearing C.R.No. 303/96 Lt.Col. Kul Prakash Tej Pal decided on 3rd February, 1997.

(12) For the reasons stated above, the impugned order cannot be sustained. The same is accordingly set aside. Decree of eviction is hereby passed u/s 14(1)(e) of the Act thereby giving six months time to the respondent to vacate the premises.