

(2011) 09 DEL CK 0189

In the Delhi High Court

Case No : CM (M) No"s. 1031 and 16553-54 of 2011

Sh. Iqramullah

APPELLANT

Vs

Sh. Mohd. Subhan and Others

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

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

Citation : (2011) 185 DLT 183

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Himat Akhtar, for the Appellant;

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The order impugned before this Court is the order dated 01.08.2011 which has dismissed the review petition seeking review of the order dated 28.08.2010.

2. Vide order dated 28.08.2010 the application seeking leave to defend filed by the tenant in a petition u/s 14(1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed. The review petition was dismissed vide the impugned order. The only ground taken in the review petition was that the property No. 29-A, Braham Puri in fact comprises of two properties; this has not been correctly appreciated by the ARC; property No. 29-A is in fact located in gali No. 21 as also in gali No. 22. This is an error which is apparent on the face of the record for which a review had been sought for which was dismissed.

3. Record shows that the present eviction petition has been filed by the landlord on the ground of bonafide requirement u/s 14(1)(e) of the DRCA. Application for leave to defend had been filed by the tenant; his contention was that the Petitioners are enjoying two more properties i.e. property No. 29-A which is located in gali No. 21 as also in gali No. 22, Braham Puri, Delhi East; need of the Petitioners cannot be said to be bonafide; it had also been contended that

Petitioners have also inherited other properties (details of which have been given in para 6 of the application for leave to defend). These averments made in para 6 of the application for leave to defend had been vehemently denied; it was contended that the property No. 29-A, Braham Puri, is in fact a single property and is located in gali No. 22; part of it faces the backside of gali No. 21 and the other portion is on the front side which is in gali No. 22; 23 persons are residing in that property; bonafide requirement of the landlord is evident. The other properties are also tenanted out and are the subject matter of separate proceedings. In the grounds for review, it had been contended in sub-para "C" of the review petition that property No. 652, Chandni Mahal, Delhi-110006 which was under possession of the tenant Rias has since been vacated; in the corresponding para of the reply to this review petition it had been submitted by the landlord that this shop which was in possession of Rias has since been decreed on the ground of bonafide requirement in favour of Mohd. Adil and not Petitioner No. 1; Mohd. Adil was the landlord of those premises; bonafide requirement of the Petitioners remained un-effected.

4. In the order dated 28.08.2010 while dismissing the application for leave to defend the Court had noted that the list of properties mentioned in para No. 6(a) (in the application for leave to defend) are the subject matter of other legal proceedings; moreover, they belonged to other legal representative of deceased Bandhu; these shops are not available to the Petitioners; the contention that property No. 29-A is two properties was repelled; the Court had noted that this was a single property; part of it was facing towards gali No. 21 and part of it was facing gali No. 22; moreover there were 23 persons living in that property. No ground for leave to defend had been made out; application was accordingly dismissed on 28.08.2010. Admittedly the remedy of revision against such an order was not availed of by the Petitioners; they had sought review of the order which was dismissed on 01.08.2011.

5. Parameters for review and the guidelines which have to be adhered to while dealing with a review petition are contained in Order 47 of the Code; contention in the review petition was primarily that property No. 29-A comprises of two properties and not a single property; one is located in gali No. 21 and other is located in gali No. 22; this being an error apparent on the face of the record, review had been sought. This review petition seeking review of the said order had been rightly dismissed on the premise that this contention was in fact the foundation of the case of the Petitioner in his application for leave to defend; there was no mistake or error apparent on the face of the record.

6. Learned Counsel for the Petitioner has placed reliance upon a judgment of the Apex Court reported in (2001) 1 SCC 255 Santosh Devi Soni v. Chand Kiran; this is in support of the submission that wherever an additional accommodation was made available to the landlord subsequently, the bonafide need was thrashed and in such a case, leave to defend should not be refused. This judgment has no application to the instant case. Admittedly in the application for leave to defend,

there was no ground taken that the accommodation i.e. property No. 652 has been vacated; moreover the contention of the landlord always was that this property does not fall to his share; even in his reply to the review petition it has been stated that the eviction decree qua the property No. 652 has been decreed in favour of Mohd. Adil and does not fall to the share of the present landlord/respondent. Judgment has no application. Impugned order in no manner suffers from any infirmity.

7. Dismissed.