
(2014) 08 DEL CK 0324
In the Delhi High Court
Case No : RC. REV. No. 180/2014

Shiv Ram

APPELLANT

Vs

Yogesh Mittal

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)(e), 2(e), 25B(8)
Evidence Act, 1872 — Section 116

Citation : (2014) 08 DEL CK 0324

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Jaideep Tandan, Advocate for the Appellant

Judgement

Valmiki J Mehta, J.

C.M. No. 9020/2014 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RC. REV. No. 180/2014 and C.M. No. 9019/2014 (stay)

2. This petition filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") impugns the judgment of the Additional Rent Controller dated 29.3.2014 by which the bonafide necessity eviction petition under Section 14(1)(e) of the Act of the respondent/landlord has been decreed after trial.

3. The facts of the case are that the petitioner is a tenant in a shop in property no. 383/11-A, East Azad Nagar, (Krishna Nagar) Delhi-110051 as shown in red colour in the site plan attached with the eviction petition at a monthly rent of Rs. 166.37/-. The suit property was purchased by the respondent/landlord on 28.7.1999. Respondent/landlord states that he is carrying on the business of a chemist/medical store from a shop in the adjoining property which has been

taken on rent and which is insufficient because as per the new guidelines issued by the Drugs Department of the Government of NCT of Delhi at least an area of 108 sq. feet is required for renewal of the drug licence, and accordingly the two shops in the subject premises, of which one is with the petitioner/tenant are required so that the business of the chemist/medical store can be shifted to the two shops.

4. The petitioner/tenant disputed the relationship of landlord and tenant and also pleaded that the respondent/landlord was not carrying on his business from the adjoining tenanted premises and the business was stated to be of one Smt. Ramvati. It is also pleaded that there is no threat of cancelling of drug licence as stated by the respondent/landlord because no notice has been proved of the Drugs Department with respect to cancellation of the drug licence. Ownership of the respondent/landlord was also disputed by the petitioner.

5. So far as the aspect of existence of relationship of landlord and tenant is concerned, trial court has decided this against the petitioner by making the following observations in para 7 of the impugned judgment which reads as under:-

"Question of relationship of landlord/owner and tenant

7. At the outset, the respondent raised an issue that the petitioner is not the owner of the property in question and the document filed by him in support of his case are forged and fabricated. The respondent has not led any evidence to establish that the document of ownerships as filed on record are forged and fabricated. In my opinion, mere bald allegations are not sufficient to prove the allegations of forgery of document. Moreover, the respondent very categorically admitted in his cross examination that prior to depositing the rent in court, the petitioner used to take rent from him. He also admitted that except the petitioner, no one has demanded the rent from him. In his later part of cross examination, he also admitted that no person has filed any case regarding the suit property in court. From the aforesaid categorical admissions of the respondent and in the absence of leading any evidence by the respondent, I hold that the petitioner proved the relationship between the parties as landlord/owner and tenant in terms of Section 14(1)(e) of the Act. Moreover it is the settled proposition of law that the petitioner is not required to prove "absolute ownership" but the status of the petitioner more than the tenant. In this regard, reliance can be placed on the case of Rajender Kumar Sharma and Others Vs. Smt. Leela Wati and Others, ", wherein it was laid down that a landlord is not required to prove absolute ownership as required under Transfer of Property Act and he is required to show only that he is more than a tenant. Further, the High Court of Delhi made important observations in the decision given in the case titled as Ramesh Chand Vs. Uganti Devi, " In following terms:

"it is settled proposition of law that the order to consider the concept of ownership under Delhi Rent Control Act, the Court has to see the title and right

of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be. The imperfectness of the titled of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to rise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly....."

(underlining added)

6. I completely agree with the aforesaid observations of the trial court because if the case of the petitioner is that the respondent is not the owner/landlord, then, a vague negative denial is not enough because petitioner/tenant had to positively state as to who is the owner/landlord of the premises, and which has not been done. Also, the Additional Rent Controller rightly notes that petitioner used to make payment of rent to the respondent/landlord. As per the definition of "landlord" in Section 2(e) of the Act, a person who is entitled to receive the rent is the landlord and since an owner is entitled to receive the rent that person will be the owner/landlord. Since in the present case, the petitioner admits paying rent to the respondent, the respondent hence will be the owner/landlord of the suit premises. Once the petitioner/tenant admitted in his cross-examination that no other person has ever claimed any right in the suit property except the present respondent as no one else has filed any case with respect to the property against the respondent, the court below rightly held that the respondent is the owner of the suit property.

7. On the aspect that whether the respondent requires the suit premises for his bonafide need, the Additional Rent Controller has held that even if there was no threat of cancellation of the licence, every landlord is entitled to carry out his business from the premises owned by him and there is no need for him to continue in a tenanted premises. I completely agree with the observations because there is a catena of judgments passed by this Court as also by the Supreme Court that a landlord cannot be forced to carry on the business in a tenanted premises once he has his own premises.

8. (i) So far as the aspect that the drug licence from where the medical store is being run is in the name of Smt. Ramwati is concerned, it is seen that as per the documents brought on record by the petitioner/tenant himself as Ex.PW1/R4 to PW1/R7, Smt. Ramwati is the mother of the respondent/landlord and respondent is a registered pharmacist of the medical store. It is relevant to note that as per the relevant rules under the Indian Drugs and Pharmaceutical Act, a chemist's

licence will only be given if there exist a registered pharmacist. Respondent/landlord being a registered pharmacist, it is clear that he is carrying on the business with his mother Smt. Ramvati in the tenanted premises and consequently he is entitled to eviction of the petitioner/tenant.

(ii) It may be noted that the fact that there is no threat at present to cancel the drug licence cannot mean that respondent/landlord must wait till his drug licence is cancelled because of the fact that the tenanted shop is less than 108 square feet inasmuch as it is not disputed by the petitioner that the tenanted premises from where the medical store is presently being run is less than 108 sq. feet and the drug rules require for renewal of licence a premises to be at least 108 sq. feet. Therefore, the respondent/landlord is also entitled to evict the petitioner/tenant on account of the fact that when the case of the mother Smt. Ramvati will come up for renewal of the drug licence, there would be inspection and at the stage of inspection once the tenanted premises in which the respondent/landlord is carrying on his business would be found to be less than 108 sq. feet, the drug licence will be cancelled and the business of the medical store will have to be stopped.

9. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.