
(2002) 03 DEL CK 0178
In the Delhi High Court
Case No : C.R. No. 887 of 2000

Shri Kuldip Mahajan

APPELLANT

Vs

Smt. Krishna Uppal and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Citation : (2002) 5 AD 61 : (2002) 97 DLT 619 : (2002) 62 DRJ 521

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : N.K. Bajaj, for the Appellant; Ishwar Sahai and B.J. Nayar, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—This Revision petition has been filed against the order of the Additional Rent Controller (hereinafter referred to as "the ARC") against the proceedings initiated u/s 14(1)(e) of the Delhi Rent Control Act. In the impugned Order the ARC has, in the carefully structured judgment, considered all the necessary aspects in the eviction petition for bonafide requirement. The interference of the High Court in its Revisionary jurisdiction is not called for unless the finding of the ARC are perverse, or contrary to an established principles of law. It should be borne in mind that the Legislature has found wisdom in the removal of rights of Appeal, in the interest of an expeditious disposal of claims in the eviction of tenanted premises on the bonafides need of the owner of the premises.

2. The ARC has concluded that the Petitioner/ Landlady, namely, Respondent No. 1 is the owner of the premises in question and has rejected the tenant's averment that her brother was the owner. This brother has deposed in her favor and has repulsed this assertion of the Tenant; he has categorically stated that the Petitioner is the owner. This fact has not even been controverted in these proceedings. Similarly the ARC has also found that the premises were let for residential purpose only. The converse position has not been canvassed before

me.

3. The main plank of the argument of learned counsel for the Tenant/Revisionist is that since the Landlady had not appeared in the witness box herself, it was not possible for the ARC to have returned a verdict favorable to her in respect of the pivotal question of her bona fide claim. Reliance has been placed by the learned counsel for the Tenant on *Nanalal Goverdhandas and Co. and Others Vs. Samratbai Lilachand Shah*, in which a Learned Single Judge of the Bombay High Court had expressed the view that if the landlord does not step into the witness-box it cannot be said that he reasonable and bona fide requires the premises since this necessity cannot be delegated. In *Shri Virendra Pal v. Sri Daljit Singh Sandhu* , 1978 (1) R.C.J. 365 , a Learned Single Judge of this Court had expressed the same opinion on the grounds that an adverse presumption should be drawn that the landlord was not willing to swear that he required the premises bona fide for his residence. In *Manohar Lal Vs. Pushpawati Jain* , another Learned Single Judge of this Court was of the view that it was incumbent upon the landlady to have appeared in the witness-box so as to make her state of mind clear i.e. that she intended to live away from her married sons and grand children; failure on her part left no alternative but to draw an adverse inference. In this case the earlier two precedents were considered and followed.

4. In opposition to these decisions learned counsel for the Respondent/Landlady has placed reliance on *Trilochan Singh v. Usha Dhir* , 1993 RLR 482, in which another Learned Single Judge of this Court had not found a fatal flaw in the landlady not entering into the witness box. The learned Judge had distinguished the case of *Virendra Pal* (supra) as also the decisions in the case of *Manohar Lal* (supra) on the ground that these owners were not residing in Delhi and that the petition had been filed through an Attorney. In *Trilochan Singh's* case (supra) the Court had also found it of significance that the landlady was residing on the First Floor of the very premises of which eviction was sought in respect of the Ground Floor. This case, Therefore, did not run counter to the other two decisions of this Court.

5. Learned Counsel for the Tenant ought to have disclosed that a Division Bench of the Bombay High Court, in *Nathulal Gangabaks Khandelwal and Others Vs. Nandubai and Others* , has overruled the decision of its Single Judge in *Nanalal Goverdhandas* case (supra). The Hon''ble Division Bench favored the view that the question whether the evidence with regard to the bonafide requirement of the landlord should or should not be accepted in a given case in the absence of the evidence of the landlord, would depend upon the facts and evidence in that particular case; there can be no absolute and inflexible proposition that the bonafides requirement could be established by the evidence of the landlord and none else. Reliance has further been placed on the decision of the Division Bench of this Court in *Sushila Devi Vs. Raghunandan Pershad* , in which it had also been similarly contended that since the landlord had not entered the witness box his bonafide need could not be held to have been proved. After reviewing the

earlier decisions in *Uma Rani v. V.K. Dubey*, 21 (82) DLT 199, *Khurshid Haider and Ors. v. Mst. Zubeda Begum*, 15 (1979) DLT 233, *Vidya Prakash v. Khurshi Ram*, 1991 (2) RCR 106, *Uttam Chand Suri v. Smt. Ram Moorti Gupta*, 1980 (2) RCJ 410 and *Om Parkash v. Vaid Shyam Sunder*, 1992 (1) RCJ 26 the Hon"ble Division Bench of this Court opined that "non-examination of the Petitioner No. 1 is of no consequence as the bonafide requirement of the Petitioner has been considered taking into consideration the facts and circumstances of the case available on record". It will be evident that the plethora of precedents considered by the Division Bench had not been cited before the Single Benches in the cases of *Virendera Pal* and *Manohar Lal* (supra). I am, Therefore, of the opinion that the matter now stand concluded by the decision of a Division Bench of this Court, as also a Division Bench of the Bombay High Court, and the prevailing judicial opinion is that failure to examine the landlord himself, would not inevitably, invariably and inexorably lead to the consequence of the dismissal of the eviction petition. This view has also found favor with the Hon"ble Supreme Court in *Ramkubai (Smt) Deceased by Lrs. and Others Vs. Hajarimal Dhokalchand Chandak and Others*, , albeit on the concession of counsel for the tenant. The Apex Court had reversed the decision of the Appellate Court that the bonafide requirement is in the first place a state of mind and might be something more and which could be established only by the landlady. There seems to be no room now available for assailing the impugned judgment on the ground that the ARC had not dismissed the petition on the short ground that the landlady had preferred not to present herself in examination and cross-examination.

6. It has also been argued by learned counsel for the Tenant that it had not been stated by the landlady's witnesses (her brothers) that she intends to shift to Delhi and that the case made out was in variance to the pleaded case of Arthritis. It has also been belaboured that the medical problems allegedly faced by the landlady has not been meticulously proved. Instead the emphasis was on the husband's ill health. The fact remains that the landlady and her husband are of old age, which has itself been found to be similar to other ailments justifying eviction. It is also argued that the brothers have not categorically stated that they will take care of their sister. Even if there may be a strain or distance in the relationship between siblings, there is a natural tendency for them to specially care for each other in the twilight of their lives. A party need not state the obvious; the obverse ought to have been brought out in cross examination by the Tenant. If the ARC was satisfied of the existence of bona fides, far be it for the High Court to come to a different conclusion in its Revisionary jurisdiction. I am also unable to find mala fides in a wife's intention to shift residence for better medical treatment of her husband. In any event, a person afflicted by arthritis is would not find it convenient to reside on the first floor when the Ground floor is also owned by her. Far too much is sought to be read into the ownership issue of the Petitioner, even if her father's Will is to be discounted, she is competent to seek eviction as one of the co-owners, by succession. The argument that medical records pertaining to the heart-problems of the

Petitioner's husband were not produced loses significance since the Tenant did not challenge her brother's testimony of visiting him in the course of his two hospitalization.

7. The ARC has carefully considered all these aspects before arriving at his conclusion that the landlady required the premises bonafide for her personal use. None of the findings are perverse or contrary to the evidence put forward. As had been emphasised by the Division Bench of this Court in Sushila Devi's case (supra), objections of this nature cannot be allowed since bona fides are essentially a state of mind consisting of subjective considerations. Such considerations are not amenable to interference by the High Court in its revisional powers.

8. I find no error in the impugned judgment. The Revision petition is accordingly dismissed but there shall be no order as to costs.