

(2008) 02 DEL CK 0281

In the Delhi High Court

Case No : R.C. Rev. No. 12 of 2007 and CMs No's. 2944 and 6933 of 2007

Shri Madan Gopal Singh

APPELLANT

Vs

Shri Swarn Lata Abrol and Others

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2008) 149 DLT 78

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Gagan Chhabra, for the Appellant; Rajive Mehra and Rakesh Gosain, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—This revision petition has been preferred u/s 25B of the Delhi Rent Control Act, 1958 (the Act) to impugn the order passed by the learned Additional Rent Controller, Delhi in E-419/2006 filed by the respondent-landlady u/s 14(D) of the Act, whereby the learned Additional Rent Controller has dismissed the application filed by the petitioner tenant seeking leave to defend the eviction petition and has proceeded to pass an eviction order against the petitioner.

2. The tenanted premises in question is situated on the rear side of the ground floor of property No. M-27-C Market, Greater Kailash, New Delhi. The admitted position is that the upper floors and the rear side of the ground floor of the said property have the sanctioned user as residential, while the front portion on the ground floor has sanctioned user as commercial. The respondent along with her married son and his family are residing on the upper floors. The tenanted premises in question admeasuring 22"x 7" is situated, as aforesaid, on the rear side of the ground floor portion. Adjoining to the said tenanted premises, there is another portion which is about 22"x 5.7". This adjoining portion is admittedly lying vacant and is in possession of the respondent. The tenanted premises in question was let out by the late husband of the respondent to the petitioner for

commercial purposes. Admittedly, the landlord passed away on 8.12.2001 leaving behind his widow, i.e., the respondent one son and two daughters. The respondent filed the aforesaid eviction petition in the year 2005 at the age of 72 years. It is also the admitted position that she is suffering from breast cancer and arthritis in her lower limbs, which makes it difficult for her to climb the upper floors, and her case was that she requires the premises in question to be able to use the ground floor portion for her residence. On issuance of notice the petitioner filed his application seeking leave to defend and, as aforesaid, the same has been dismissed by the impugned order.

3. The order has been assailed before me and it is contended by the petitioner that the leave to defend ought to have been granted, since the petitioner tenant had raised various triable issues. It is firstly contended by the petitioner that there is no kitchen, no toilet or window in the suit premises and it is incapable of being used for residential purpose. This argument has been met by the respondent by submitting that, admittedly, the respondent is in possession of the adjoining portion and in conjunction with the said portion it is possible for the respondent to use the tenanted premises for her residence and provide the toilet, kitchen/pantry and window.

4. Though the respondent has filed on record, along with her reply, a plan to show the existing position of the tenanted premises and the adjoining portion (admeasuring 22" x 5.7"), and the proposed changes that she desires to make to be able to use the said premises for residential use, counsel for the petitioner submits that the said proposed plan was not placed before the Rent Controller. I, Therefore, ignore the same. Even so, admittedly the respondent is in occupation of the adjoining room measuring 22" x 5.7" and in the eviction petition the respondent had stated that the premises in question could be put to residential use, without interference with the commercial user of the adjoining portions of the building. The composite size of the accommodation, if the tenanted premises becomes available to the respondent in conjunction with the adjoining area would be 22" x 12.7", which translates to an area of 279.4 sq.ft. Thus, there would be ample space available for the respondent to create a toilet, and kitchen/pantry even if one is not already in existence. With the total width of 12.7", there would be sufficient space to not only put a door but also provide a window that brings in light and air into the room. I may also note that so far as the requirement of a kitchen is concerned, there may be no need for a separate kitchen on the ground floor since, admittedly, the respondent is being looked after by her son and his family who are having their living and messing on the first and second floors.

5. It is not the requirement of the law that the premises of which the eviction is sought by the widow landlady should be in a completely habitable condition in its existing state. Obviously, if the tenant is using the premises for non-residential user, the same would require some changes/modifications. It may even require renovations before the landlady or her family can put it to use as a residence.

Had it been the intention of the Legislature to limit the applicability of Section 14D of the Act to only those cases, where the tenanted premises are usable in their existing state as a residence, the same would have been so provided. One cannot read into the law any such limitation. The law consciously does not lay down the same limitations in Section 14D, which are to be found in Section 14(1) (e) of the Act, viz., that the purpose of letting is residential. Section 14D only requires that the tenanted premises `are required by her for her own residence." No doubt, for the said demand of the widow landlady to be genuine, the premises should be capable of being used, or should have the potential of being put to use as a residence. For instance, in a given case a factory/industrial shed may not be capable of being used as a residence, on account of the nature and type of construction, dimensions, locations etc, and the widow landlady may not be able to obtain an eviction order in respect of such a premises in an eviction petition u/s 14D. But that would not be the case in respect of a premises, the nature and type of construction whereof, and the location and permitted user whereof is otherwise such that it is capable of being put to residential user albeit with necessary additions, alterations and modifications. Consequently, the argument that while viewing the requirement of the widow-landlady, the existing construction and layout of the tenancy premises is all that should be considered, and the possibility of reasonable modification or alterations to make the same habitable be ignored, does not appear to be reasonable. What has to be examined is, whether the tenanted premises by itself, or in conjunction with the other areas available with the landlady can reasonably be adopted or modified to suit the residential needs and requirements of the landlady. In the present case, the legally permitted user of the rear portion of the said property is, admittedly, residential. Therefore, there is no impediment in the respondent modifying the said premises in conjunction with the adjoining room/premises to convert it into her living area according to her needs and comfort. Merely because the landlady may need to make certain changes/modification in the existing premises to be able to use it for her residence, does not necessarily given rise to a triable issue, nor does it throw doubts on , much less lead to an inference that the requirement of the landlady is not bona fide or genuine. Consequently, the aforesaid submission/defense of the petitioner does not raise a triable issue in the facts of this case.

6. The next submission of the learned Counsel for the petitioner is that the petition was filed in the year 2005, while the respondent had been widowed in the year 2001 and this fact, according to the petitioner, shows that there is no genuine need of the respondent landlady. The petitioner further contends that the eviction petition has been filed only because the respondent was getting a low rent for the said premises whereas she was Realizing much higher rent from the other tenants in the property and no petition has been filed by her against the other tenants.

7. I find no merit even in this submission of the petitioner. The filing of the petition in the year 2005, even though the respondent was widowed in 2001, in

fact, goes to show that the respondent did not exploit the factum of her becoming a widow to evict the petitioner, until it became necessary for her to do so. The fact that she did not file the petition earlier shows that her need for a ground floor premises for her residence has come into being on account of her advancing age and deteriorating medical condition. It is up to the landlady to determine as to which premises is most suitable for her and it is for her to decide as to which tenant she should proceed to evict keeping in mind her needs. Merely because the premises had been let out as a shop is not a ground to defeat the eviction u/s 14(D) of the Act, since the purpose of letting and user is not relevant so far as the ground of eviction contained in Section 14D is concerned. If the premises is capable of being used as a residence, the widowed landlady can certainly prefer the petition u/s 14D, provided she otherwise makes out the case of her genuine need.

8. In this case, the obvious choice for the respondent landlady was to seek the eviction of the petitioner, since he is in occupation of the rear portion on the ground floor, the permitted user whereof is residential. She is suffering from cancer and arthritis is and her precarious medical condition is not in dispute. It is only reasonable for her to say that she desires to occupy the premises on the ground floor, since she finds it difficult to climb up the stairs.

9. Learned Counsel for the petitioner then urged that even according to the respondent the suit premises and the adjoining vacant shops are both unauthorised construction. For this purpose he relies on a communication dated 4.5.2006 of the respondent. Assuming that the said shops are unauthorised, in as much as, they appear to have been built in the rear setback of the property, that is not an issue which concerns the Rent Controller under the Act. It is the outlook of the municipal authorities to take action in case of non-compoundable and unauthorised construction. A tenant cannot resist eviction under the Act if he is otherwise liable to be evicted under the provisions of the Act, by claiming that the tenanted premises is unauthorised. In any event, this submission does not appear to be entirely correct since the depth of the premises is 22", and it is unlikely that the rear set back prescribed by law is as much as 22".

10. The submission of the petitioner, that there are other tenants on the front portion on the ground floor which houses bigger shops and is fetching higher rent, and the respondent has not sought their eviction, also has no merit. Admittedly, the front shops have permitted user as commercial premises as they open out in the main market. Apart from the fact that their use for residential purpose may be illegal, it may not even be desirable that the landlady should use the same for residential purpose. As aforesaid, it is for her to determine her needs with regard to the portion that is best suited for her residential use.

11. Learned Counsel for the petitioner has cited authorities to submit that in a case where triable issues are raised by the tenant, leave to defend the eviction petition ought to be granted by the Controller. There is no quarrel with this proposition. However, whether leave to defend should to be granted in a

particular case would have to be examined in the facts of that particular case and will depend upon the defenses raised by the tenant in his application seeking leave to defend. In *J. Chatterjee Vs. Mohinder Kaur Uppal and Another*, , while dealing with Section 14D of the Act, the Supreme Court has held as follows:

11. From the aforementioned statutory provisions, the legislative intent is clear that if an application for eviction of a tenant is filed by a widow to recover the premises in question for her self occupation, the controller shall pass an order for eviction of the tenant from the premises with utmost expedition. The provision is intended to serve the social need to help a widow in getting possession of the premises required for her personal occupation. To subserve that purpose she has been included in the special class of landlords who are entitled to recover possession of the premises let out by them when they require the same for self-occupation and special provision has been made in Section 25B providing for an enquiry by the controller following a summary procedure to satisfy himself that the plea of self-occupation taken by the widow-landlady as a general and bonafide one and not a mere pretence to get the tenant evicted from the premises. For that reason, heavy burden is placed on the tenant to satisfy the Controller by filing an affidavit stating such facts which, if believed, will sufficiently prove that the plea of need of personal occupation by the petitioner-widow is nothing but a pretence. Whether leave to defend will be granted to the tenant in a case depends on the facts and circumstances of the case as emanating from the averments in the eviction petition filed by the landlord and the affidavit filed by the tenant seeking leave to defend the eviction petition. No hard and fast rule or straight jacket formula can be laid down for judging the question. It is to be kept in mind by the controller and the courts that the petition for eviction filed by a widow u/s 14D should not be frustrated by granting leave to the tenant to raise any plea denying/refuting the case pleaded in the eviction petition. Unless a real and substantial case is made out on the averments made in the affidavit filed by the tenant in support of the petition filed u/s 25B of the Act, the proceeding should not be dragged on unnecessarily and should be disposed of with due expedition. A balance has to be maintained between the general object of the statute which is to provide protection to the tenants against arbitrary action of the landlords for their eviction and the assistance to be referred to the special class of landlords including a widow to recover possession of premises let out by her for self-occupation. We are aware that in some decided cases this Court has leaned in favor of granting leave to the tenant to defend the eviction petition but on a closer look at the decisions it will be clear that the cases were decided considering the facts and circumstances involved therein. At the cost of repetition, we may state that the decision on the question of grant of leave to defend depends on the facts and circumstances of the case.

12. Therefore, the Controller has to examine whether a real and substantial case is made out by the tenant in his affidavit seeking leave to defend and the plea of self occupation put up by the landlady is a general and bona fide one or a mere

pretence and an arbitrary demand.

13. Learned Counsel for the respondent on the other hand, submits that there are various adjoining properties having residential user from the rear side. He has filed certain photographs on record. However, these were not part of the lower court record, and I, Therefore, refuse to look at them. But, in view of the fact that there is no dispute that the permitted user of the rear ground floor portion is residential, there is also no necessity to look into these documents.

14. In the present case, in my view, no triable issue had been raised by the petitioner and the Rent Controller has rightly dismissed the said application. It cannot be said that any of defenses raised by the petitioner is substantial, real or serious or that the demand of the respondent-landlady is not genuine or bona fide. The demand cannot be said to be arbitrary in view of her age, medical condition and all other surrounding circumstances noted hereinabove. Section 14D is a special provision enacted for the benefit of widows, who, normally would be of advanced stage. Therefore, while it is true that leave to defend should be granted where serious triable issues are raised by the tenant, it is not that in every case where an application seeking leave to defend is filed the same should necessarily be granted and proceedings be allowed to drag before the Controller. It appears that the endeavor of the petitioner is simply to delay and defeat the eviction order till as long as it is possible, There is no vested right in the tenant to defend a petition filed u/s 14D, and it is precisely for this reason that the leave of the Controller is to be sought, before the tenant is permitted to defend the petition.

15. Consequently, I see no merit in the petition. The petition and the applications stand dismissed.