
(2001) 08 DEL CK 0039

In the Delhi High Court

Case No : CR 756 of 2000 and CM 1922 of 2000

Shri Partap Rai Kalra

APPELLANT

Vs

Shri Om Prakash Sharma

RESPONDENT

Date of Decision : 13-08-2001

Acts Referred:

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

Citation : (2001) 93 DLT 858 : (2001) 60 DRJ 315

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. M.A. Hussain, for the Appellant; Mr. Vikram Jaitly, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—This Revision Petition is directed against the impugned judgment of the Additional Rent Controller (ARC) dated 1st March, 2000 passed in respect of a petition filed u/s 14(1)(e) of the Delhi Rent Control Act, i.e., for the bona fide requirement of the landlord/owner for his residence.

2. The premises were let to the tenant by the owner by means of a Rent Agreement dated 1st April, 1989. In terms of that Deed the rent was settled at Rs. 200/- per month, and the letting was for residential purpose only. There is also a recital to the effect that Shri Om Prakash Sharma (landlord) is also the owner of the premises. In view of the Rent Agreement the tenant is estopped and precluded from disputing the title, since Shri Om Prakash Sharma has put him in possession of the demised premises. Contrary to the Lease Deed the tenant has asserted that the rent of the Premises is Rs. 1500/- per month and that the premises had been let to him for composite purpose. On these aspects the Additional Rent Controller has held against the tenant, and in my view rightly so. In any event no jurisdictional error can be seen to have arisen as would justify the interference of this Court in its revisional jurisdiction.

3. In paragraph 2 of the Revision Petition the tenant has stated- "That family of the Respondent consists of himself and his wife alone. That even if the son, his wife and a child are included in the family even then the accommodation available with the Petitioner is more than sufficient." This statement has been shown to be contrary to the averments contained in the application seeking "leave to defend" where the tenant has stated that "the family of the Petitioner consists of only Petitioner himself, his wife, his son, son's wife and school going daughter while the Petitioner is in occupation and possession of four living rooms and drawing-cum-dining room beside w.c., bathroom, store etc." This is not the only occasion when the tenant has chosen to make statement clearly conflicting with and contradictory of each other. After "leave to contest" was granted, a Written Statement had been filed by the tenant. In his examination, the tenant has gone to the extent of deposing that he had not read the averments made in the Written Statement and had thereby tried to resile from the admission and averments made therein. In these circumstances it may have been open to the Additional Rent Controller to discount and refuse to consider the testimony of the tenant since according to the tenant himself the Written Statement ought not to be given any credence or consideration. If a party retracts his pleadings, he forfeits his right to lead evidence for the reason that evidence cannot be lead beyond or dehors pleadings. The Additional Rent Controller, however, has considered the testimony and thereafter returned the favorable findings both on the bona fide need of the owner as well as the non-sufficiency of accommodation available to him. I am satisfied that no error has been committed by the Additional Rent Controller in holding that the family of the landlord comprised of himself, his wife, the son and daughter-in-law and the grand child. I can see no error in the Rent Controller having assessed the need of the landlord to be as follows:

One room for landlord and his wife.

One room for son and daughter-in-law

One room for their grand child

4. At the time when the petition was filed the daughter of the landlord was school going but thereafter it is stated that she has passed her B.Com. and Chartered Accountancy and has got married. The Additional Rent Controller has also found the need for a separate room for the married daughter, a Pooja room and a guest room. He has assessed that the "minimum bare need of the Petitioner comes to eight rooms." The only hesitation that I can harbour is as to the need for the separate rooms for the daughter and for the guests. However, even if these are combined together there is still a requirement for seven rooms.

5. Considerable arguments were addressed on the question of a false Death Certificate of the landlord's father and the fact that the late father and mother did not reside with the landlord. The Additional Rent Controller has not taken the need of the parents into consideration at all. I cannot view the Death Certificate

as exemplifying a forgery/fraud committed by the landlord so as to invite the application of the decision of the Hon''ble Supreme Court in *Indian Bank V. Satyam Fibres (India) Pvt. Ltd.*, (1965) 5 SCC 550. Learned counsel for the tenant has further argued that the mode and manner in which certain documents were proved were contrary to law. The consideration of most of these documents are superfluous in view of the Rent Agreement which has not been challenged. One of the documents falling in this class of documents exhibition of which was challenged and objected to on the grounds of mode of proof was the Salary Certificate of the Petitioner. The consideration of the learned counsel for the tenant was that this document could only have been proved by the witness from the side of the employer. This contention is without substance. He has also stated that the salary Certificate of the Petitioner's wife should also have been proved by her employer and certainly could not have been proved by the landlord/husband. Since it is not the case of the tenant that neither the Petitioner nor his wife are working and earning separate salaries, the status of the family is not discernible only through the Salary Certificate had been forged and/or manufactured/created by the landlord. I see no error in the Additional Rent Controller having arrived at the conclusion that the Petitioner landlord was a man of status and was, Therefore, entitled to a comfortable living in accordance with the life-style pleaded by him in his petition.

6. The next question to be considered is as to the extent of accommodation presently available with the landlord. There is no denial of the fact that the building has been constructed on a plot measuring 165 square yards judicial notice can should be taken that on a plot of this dimension it is not possible to have four bedrooms of comfortably habitable size. Admittedly, the demised premises which are on the first floor consists of three bedrooms only. The stand of the landlord is that the premises available to him on the ground floor are similar and also comprise three bedrooms. There is a statement of the tenant that there is also one small room on the ground floor. The contention on behalf of the landlord is that this is a small store room. This has been believed by the Additional Rent Controller any in my view without any judicial blemish It is significant that in his examination-in-chief the tenant has not stated that there were four bedrooms and in addition thereto one office room available to the Landlord on the ground floor. Essentially, as there are only three bedrooms available on the ground floor these are wholly insufficient for the assessed requirement of the landlord.

7. Learned counsel for the tenant had further submitted that the premises had been let out in 1989 and that prior thereto they had been let out on several occasions to different tenants. Even if this statement is taken to be correct it does not indicate the lack of bona fide need in 1994, when the petition was filed. At the time of the previous letting the landlord's son and daughter were students. If the landlord did not feel the need of the additional accommodation in those circumstances and at that time, it cannot be viewed by the Court as mala fide. A genuine need can subsequently arise when children grow into adolescence

and then full majority. The demised premises were let out to the tenant in 1989 for the period of eleven months and the petition was filed after five years, by which time these children had grown up in age and would require their privacy and own bedrooms. Their need set up does not have a discordant note. Views of the Hon''ble Supreme Court in Amarjit Singh Vs. Smt. Khatoon Quamarain, cannot, Therefore, be extrapolated into the facts of the present case.

8. For all these several reasons I am satisfied that the impugned judgment does not suffer from any jurisdictional error as would warrant the interference of this Court, in its revisional jurisdiction.

9. The petition is without merit and is dismissed.