

(1983) 02 DEL CK 0010
In the Delhi High Court
Case No : C.R. No. 1219 of 1982

Shri Rama Krishna and Another	Vs	APPELLANT
Mr. Siri Dhar Cargo Section, Sita World Travels		RESPONDENT

Date of Decision : 01-02-1983

Acts Referred:

Citation : AIR 1984 Delhi 164 : (1983) 24 DLT 149 : (1983) 4 DRJ 359

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : B.R. Malik, for the Appellant; Vinod Tyagi, for the Respondent

Final Decision : Allowed

Judgement

Sultan Singh, J.—This revision u/s 25B of the Delhi Rent Control Act, 1958 (for short the Act) challenges the judgment and order dated 25th October, 1982 of the Additional Rent Controller dismissing the application for the eviction of the respondent without deciding whether the respondent-tenant was entitled to leave to contest the eviction application and also without recording any evidence of the parties. The Additional Rent Controller held that the eviction application was not maintainable on the basis of alleged admitted facts.

2. Briefly the facts are that the petitioners filed an application for eviction of the respondent alleging that the respondent was tenant of petitioner No. 1 at Rs. 450/- per month with respect to a portion of the first floor of house No. E-14/4, Vasant Vihar, New Delhi, that petitioner No. 1 is owner of the premises in suit let for residential purposes, that he bona fide required the suit premises for the residence of his family members dependent upon him and that he has no other reasonably suitable accommodation. The family of the petitioner consists of himself, his wife, two sons and one married daughter having children. One of the sons is working in United Kingdom and comes to Delhi at least once in a year, and the other son employed with Sriram Chemicals & Fertilizers Ltd. Jaipur has been transferred to Delhi since 2nd January, 1982. It is alleged that petitioner

No. 1 is aged 74 years, and has lost his eye sight, that his wife (petitioner No. 2) is hard of hearing, that both are handicapped and want somebody else to live with them. The petitioners wanted their son Ravinder Kumar transferred to Delhi to stay with them. The son of the petitioners has got a daughter aged 15 years and son 12 years and another son aged 10 years. The petitioners further alleged that they have only two bed rooms besides dining and drawing room and a store, and that the accommodation for their son and his family is not sufficient with them.

3. The respondent by his application dated 18th February, 1982 sought leave to defend the eviction case. He has alleged that petitioner No. 2 is an unnecessary party, she being neither owner of the property nor landlady of the respondent that, petitioner No. 1 is also not the owner and has not disclosed the entire accommodation with him, that the accommodation with him is sufficient for his requirement, that the son has not been transferred to Delhi. In fact all the allegations contained in the eviction application have been denied. The leave to defend application is supported by an affidavit. Reading the entire application it cannot be said that the respondent-tenant is not entitled to leave to defend the eviction case. Reply to this application was filed on behalf of the petitioners denying all allegations of the tenant and explaining their claim. The Additional Rent Controller did not decide if the tenant was entitled to leave to defend, but by the impugned order dated 25th October, 1982 dismissed the eviction application. He held that the petitioners obtained an order of eviction against another tenant who had undertaken or agreed to vacate the premises up to December, 1984. He has observed that the present eviction application is an abuse of the process of the Court.

4. The summary procedure detailed in Chapter IIIA of the Act, requires the tenant to file an application for leave to defend and if he discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises, he would be entitled to leave to contest the application. Under Sub-section (6) to Section 25B of the Act if the leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable. Sub-section (10) of Section 25B further provides that the procedure for the disposal of an application for eviction on the ground specified in Clause (e) of the proviso to Sub-section (1) of section 14, shall be the same as the procedure for the disposal of application by Controller in other cases except to the extent as provided in Chapter IIIA of the Act. The petitioner No. 1 has claimed eviction of the respondent. Mr Malik says that the wife of petitioner No. 1 is owner of the other portion of the same property and she had obtained an order of eviction against her tenant who has undertaken to vacate the premises by the end of December, 1984. He submits that the petitioner No. 1 is an aged person and he cannot wait up to December, 1984 and Therefore, his son who has since been transferred to Delhi is needed by the petitioners to look after them. The petitioner No. 1 has also claimed eviction of the respondent for the residence of his son who has since been

transferred to Delhi. His son is married having two sons and one daughter.

5. The Additional Rent Controller it appears without grant of leave to the respondent has dismissed the eviction application feeling that the alleged requirement of the petitioners was mala fide or that the present application was an abuse of the process of the Court on the ground that the wife of petitioner had obtained an order of eviction against her tenant who is to vacate by 31st December, 1984. The respondent has raised various pleas in his application for leave to defend and he is entitled to the grant of leave to contest. Further various pleas of the parties cannot be decided without affording an opportunity to substantiate those pleas by means of evidence. The petitioner No. 1 is the owner landlord of the premises. It cannot be said at this stage that he is not entitled to claim eviction of the respondent merely on the ground that his wife has obtained an eviction order executable after 31st December 1984. If the allegations contained in the eviction application are proved after affording opportunity to substantiate respective contentions, the petitioners may be entitled to an order of eviction. There is no procedure to dismiss the eviction application without affording opportunity to produce evidence with respect to disputed pleas. In the present case there are various disputed questions of fact. It appears that the Additional Rent Controller has lost sight of the fact that petitioner No. 1 is owner-landlord of one portion of the property and his wife is owner of the other portion. The eviction application discloses cause of action and it cannot be dismissed merely on the allegations of the respondent. The order passed by the Additional Rent Controller without recording evidence in support of the respective contentions of the parties is not in accordance with law and Therefore, it is liable to be set aside. I accordingly accept this revision and set aside the impugned order dated 25th October, 1982. The respondent is granted leave to defend. The eviction application is remained to the Additional Rent Controller for decision in accordance with law. The parties are directed to appear before the Additional Rent Controller on 28th February, 1983. The petitioner No. 1 is an aged person. His son it is alleged has been transferred to Delhi. Under the facts and circumstances of the present case, it is desirable to expedite the disposal of this case. The Additional Rent Controller is directed to expedite the hearing of this eviction case and may decide within six months" from today. If necessary the evidence be recorded day-to-day. No order as to costs.