

(1997) 04 DEL CK 0083

In the Delhi High Court

Case No : Civil Revision Appeal No. 759 of 1994

Shrimani Arora

APPELLANT

Vs

A.K. Garg

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

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

Citation : (1997) 3 AD 970 : (1997) 67 DLT 140 : (1997) 41 DRJ 547

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : I.S. Mathur, R.K. Agarwal, R.L. Kohli and Ashima Gupta, for the Appellant;

Judgement

Usha Mehra, J.

(1) RESPONDENT/LANDLORD filed a petition for eviction against the present petitioner on the ground of his bonafide requirement u/s 14(1)(e) of the Delhi Rent Control Act (in short the Act). It was respondent's case before the Additional Rent Controller that except the property in question he had no other alternative suitable accommodation available to him. He has been forced by the circumstances to live in one room in his mother's house bearing No.D-7, N.D.S.E. Part-1, New Delhi. His family consisted of himself, his wife and one grown up daughter. It was not possible for all of them to sleep in one room. They per force have to sleep in the drawing room on the floor. Thus the accommodation available at D-7, N.D.S.E. Part-1, New Delhi could not be called reasonably suitable alternative accommodation for his residence and for the residence of his family members dependent upon him for the purpose of residence. He had further pleaded that in house No.D-7, N.D.S.E., Part-1, New Delhi there are only two rooms besides drawing room, kitchen, toilet etc. Out of these two rooms, one room is in occupation of the mother and the other with his brother. His need is minimum two rooms one for himself and his wife and one for his grown up daughter. He also needs drawing and dining rooms and additional

accommodation for his servant which is not possible at D-7, N.D.S.E. Part-1, New Delhi. Moreover, his mother who is aged old woman requires a female attendant all the time for whom also a room is required. It was in this background that the respondent sought eviction of this petitioner.

(2) After receipt of Court summons, this petitioner filed leave to contest application within time. Leave was sought primarily on the ground that the respondent concealed the accommodation available to him at D-7, N.D.S.E. Part-1, New Delhi. That the said house at D-7, N.D.S.E. Part-1, New Delhi was a joint property of the respondent and his other family members. The said house was built by his father. After the death of respondent's father property devolved on all the legal heirs including the respondent. Thus the respondent was co-owner of that property. The tenanted property was let out by the respondent to the petitioner in 1987. At that time also the respondent with his family was residing at D-7, N.D.S.E. Part-1, New Delhi. That his circumstances had not changed, therefore, his need of this premises could not be called bonafide. By the impugned order, however, leave to defend was declined by the learned Additional Rent Controller (in short the ARC). Aggrieved by that order present petition has been preferred.

(3) MR.ISHWAR Sahai, Senior Advocate, appearing for the petitioner contended that the learned Arc declined leave on two counts, namely, there is no accommodation available to respondent at D-7, N.D.S.E., Part-1, New Delhi because of two rooms, one was in occupation of Y.K.Garg and other with his mother. But the fact of the matter according to Mr.Sahai is otherwise. The said brother of the respondent Shri Y.K.Garg had not been living at D-7, N.D.S.E. Part-1, New Delhi. He had, in fact shifted to A-770, Sarita Vihar, New Delhi for the last more than three years. He also obtained his ration at the said address at Sarita Vihar. This fact was concealed by the respondent when he filed the eviction petition. While declining the leave, the learned Arc took this factor to be an important consideration. That is why it has been held that the brother of the landlord along with his family has been residing at D-7, N.D.S.E. Part-1, New Delhi whereas the documentary evidence shows otherwise. Petitioner placed some documents on the record of this Court to show that Mr. Y.K.Garg, brother of the respondent herein had shifted to house No. A-770, Sarita Vihar, New Delhi and that is why he got his ration card transferred from N.D.S.E. to Sarita Vihar. These documents have been urged, by the petitioner, to be procured documents. Respondent has placed on record the allotment letter issued by the Dda to show that the house at Sarita Vihar has been allotted in the name of his mother, Smt. Shanti Devi Garg. Respondent also filed affidavit of his brother Mr.Y.K.Garg to establish that his brother has not surrendered the possession of that room which was in his possession at D-7, N.D.S.E. Part-1, New Delhi. That his brother was still residing in the said house with his family. That the flat at Sarita Vihar had in fact been allotted in the name of his mother. He had to use the said house at Sarita Vihar because his wife who had been suffering from hyper tension and blood pressure needed fresh air and separate house because accommodation at

D-7, N.D.S.E., Part-1, New Delhi was not sufficient for his needs. Therefore, as a temporary measure he Along with his wife and children shifted to Sarita Vihar. Mr.Ishwar Sahai, Therefore, contended that the respondent concealed the fact of his brother having already shifted to Sarita Vihar. His brother also got his ration card transferred to Sarita Vihar. Mr.Sahai, Therefore, rightly contended that representation by the landlord that respondent's brother was still residing in house No. D-7, N.D.S.E., Part-1, New Delhi. Mr.Sahai contended that this assertion and production of photocopy of ration card of his brother of D-7, N.D.S.E., Part-1, New Delhi was a misleading and false statement. No reliance ought to have been placed on the photocopy of the ration card of his brother produced before the learned ARC. This statement of the respondent was nothing but misleading made with the intention to conceal the true facts so that no leave could be granted to the respondent.

(4) It is further contended that the daughter of the respondent got married on 21st April,1994, whereas leave was declined in May,1994. The factum of his daughter's marriage was never brought to the notice of the learned ARC. Had this fact been brought to the notice of the Court perhaps leave would have been granted. The fact that daughter living with the respondent weighed very heavily in favor of the respondent and against the petitioner at the time of deciding the leave to defend application. Had this fact been brought to the notice of the learned Arc he would not have declined leave to the petitioner. Finally the factum of respondent being the joint owner of the property at D-7, N.D.S.E. Part-1, New Delhi had not been disputed rather admitted. The only contention raised by the respondent that the mother claimed herself to be the owner of that house after the death of her husband. This fact was refuted by Mr.Ishwar Sahai by saying that had she been the exclusive owner of D-7, N.D.S.E. Part-1, New Delhi she could not have been allotted a house by the Dda in her own name.

(5) Be that as it may, fact remains that the respondent is the joint owner of the property at D-7, N.D.S.E. Part-1, New Delhi. He has been residing in this house Along with his family. It has also been admitted by the respondent that his daughter got married on 21st April,1994. The affidavit of Mr.Y.K.Garg shows that he has temporarily shifted to the flat at Sarita Vihar. Whether he has shifted temporarily or on permanent basis requires determination after recording evidence. If this fact is established that the brother of respondent has shifted to Sarita Vihar and has also got his ration card transferred from D-7, N.D.S.E. Part-1, New Delhi to A-770 Sarita Vihar, New Delhi and the daughter has since been married, then the question would arise for consideration whether the respondent's need for additional accommodation still subsist. In view of these facts, should the petitioner be or should he be not granted leave to defend? In fact the occupation of the petitioner's brother of Sarita Vihar accommodation has not been denied. Whether his brother has surrendered the room in his possession at D-7, N.D.S.E. Part-1, New Delhi or not, to my mind, requires to be proved by evidence. To my mind, these facts raise questions which require adjudication. Whether the accommodation at D-7, N.D.S.E. Part-1, New Delhi is

sufficient or not also requires to be proved. I am not going into the merits of the case at this stage. These facts require to be proved or disproved after evidence is recorded. Mr.R.L. Kohli's contention that the documents showing telephone installed at Sarita Vihar in the name of his brother and ration card cannot be looked into by this Court, in revision. I find no force in this submission. It is settled law that subsequent events can be looked into. Since remedy of appeal has been taken away and only revision is permissible u/s 25(8), Therefore, this Court in revision can look to subsequent events in order to arrive at correct decision.

(6) For the reasons stated above, the impugned order is set aside. Leave is granted to the petitioner to contest the petition in accordance with law. Let the Trial Court expedite the case as early as possible.