

(1993) 05 DEL CK 0084

In the Delhi High Court

Case No : Civil Revision Appeal No. 348 of 1990

Trilochan Singh

APPELLANT

Vs

Usha Dhir

RESPONDENT

Date of Decision : 17-05-1993

Acts Referred:

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

Citation : (1993) 05 DEL CK 0084

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : H.S. Dhir and Kamlesh Kumar, for the Appellant;

Judgement

Usha Mehra, J.

(1) [ED. facts :-Petitioner is tenant of a flat at 2nd floor of a house owned by Respondent. Latter sued him u/S. 14alleging that she was owner, letting was for residential and she bona fide needed suit premises for self, husband, 2 sons, 2 daughters, widow-mother and guests. defense was that landlady was only benami and owner was her husband and latter had another house and letting was for residential-cum-commercial purpose. Landlady did not depose. Her husband appeared for her. Controller decreed claim and tenant filed revision in High Court.] After detailing above facts. Judgment is :-

(2) First and foremost argument of Mr. H.S. Dhir counsel is, that the landlady/ owner did not step into the witness box, Therefore, adverse inference should have been drawn against her. He placed reliance on Shri Virender Pal vs. Shri Daljit Singh 1779(1) R.C.R. 721 and Manohar Lal Vs. Pushpawati Jain, , Admittedly in both these cases the landlord/landlady, as the case may be, were not residing in Delhi. In the case of Virender Pal (supra) he was resident of Muktsar District Ferozepur. He suffered an attack of Paralysis for which purposes he came to Delhi for removal of a clot and remained in a nursing home. He had been off and on coming to Delhi for treatment and ultimately filed a petition on

the ground of bonafide requirement as he desired to reside in Delhi. The said petition was filed by his attorney and not by himself nor he appeared in the witness box. In the petition it was stated that he desired to shift to Delhi, and Therefore, required the premises for himself and for family members But his attorney when he appeared in the witness box did not talk about the requirement for the residence of his family members. He talked for the desire of the landlord to shift to Delhi, and Therefore, required the premises for the landlord only. The Court came to the conclusion that the state of mind of the landlord was not known as to whether he actually wanted to shift to Delhi or was it a mere desire. It was in this background that the eviction petition was rejected and adverse inference was drawn. Similarly in the case of Manohar Lal (supra) the landlady was residing at Chandigarh with her husband. She was old and having a comfortable living with her married sons and grand children. The husband/ attorney of the landlady appeared in the witness box and stated that he had business at Delhi, but for the last few years they shifted to Chandigarh. The husband was carrying on flourishing business at Chandigarh and the sons joined hands in carrying on the business at Chandigarh. It was in this background, the court came to the conclusion that the state of mind of the landlady that she would like to live away from her married sons and grand children was not available as she did not appear in the witness box, and Therefore, adverse inference was drawn. Both the decisions were on its own merits and have no bearing on the facts of this case. In the present case, the landlady is residing in this very premises on the first floor.. She requires this additional accommodation for herself and for the need of her grown up children and husband. It is nobody's case that she is not living in this premises at Delhi. Therefore this case is distinguishable from both the cases referred to by counsel for the petitioner. In both the cases the landlady was out of Delhi and the State of mind to shift to Delhi was not available to the court. Respondent's husband had appeared as A.W. 1 and described that his children have grown up. He has 2 grown up daughters and 2 sons. His mother-in-law who is a widow comes and stays with the family. He has six sister-in- laws who also come and stay with them at times. Other relations from Punjab also visit and stay with them Therefore they need the additional accommodation.

(3) under S. 14 the word used are "that the premises let out for residential purposes are required bonafide by the landlord for occupation as a residence for Himself, or for any member of his family dependent on him." The word himself has necessarily to be interpreted as to include the family of the landlord with whom she is living and is accustomed to live. The requirement of those members of his family would be the requirement of the landlord and would be covered by the word himself. In the present case requirement is the requirement of herself as well as her family members including that of her husband. Therefore when the husband appeared in the witness box and stated that the children have grown up and relations visit and stay with them at times, Therefore the present accommodation is not sufficient, to my mind, he has proved the requirement of

the landlady. Merely because the landlady on account of her sore throat could not appear and instead authorised her husband to appear, I think no adverse inference can be drawn in the facts and circumstances of such a case. The children are of the respondent and of A.W.1, Therefore when A.W.I. testified that additional accommodation is required on account of the grown up children and that the accommodation available with them on the first floor is not sufficient, to my mind, he was the proper person to have stated so. Moreover in the W/S. petitioner had alleged that respondent's husband had purchased this property in the name of the respondent and that he has another house at Janakpuri. In view of these allegations I think A.W.I. was the only person who could have refuted these allegations. Hence the non-appearance of the landlady in this case will not adversely effect her case nor it will be fatal for seeking eviction if otherwise the ingredients of S. 14(l)(e) are proved on record.

(4) The next contention of Mr. Dhir is that-the Poa issued in favor of the husband is not admissible in evidence. It is not authenticated before a notary public. To my mind, this argument has no force because even without the power of attorney he could have appeared as husband of the landlady and proved the letting purpose and the fact that the landlady had no alternative accommodation and also to prove her ownership. Mr. Dhir contended that authentication was necessary. In the absence of the Poa being authenticated, the husband of the respondent could not be said to be duly authorised person. A.W.I, relied on the power of attorney, but that power of attorney has not been properly proved hence the evidence of A.W.I, cannot be looked into. Mr. Dhir to support his arguments placed reliance on : Electric Construction and Equipment Company Ltd. Vs. Jagjit Electric Works, . So far as proposition, of law is concerned there cannot be any quarrel. None of these authorities are of any help to Mr. Dhir. In all these cases the Poa was not validly proved because the suit was filed on behalf of the corporate body and that being a legal entity required to be presented by a duly authorised person. The question was whether the power of attorney was executed by a competent person ? The corporate body as such cannot institute a suit unless authorised to do so by a resolution of the Board, and the person instituting the suit had the power of attorney in his favor. But that is not the case in hand. A.W.I, being a husband had the right to appear and prove the case as well as the essential ingredients of Section 14. [In para 8, it is noted that omission of landlady was due to sore throat In para 9 & 10, it is noticed that defense that husband of land" lady had another house was a Sham defense].

(5) As regards the need of the landlady, her husband appearing as A.W.1, stated that they needed this additional accommodation because three bed rooms with them on the first floor were not sufficient. He has two grown up daughters and two sons of growing age. Besides their relations also visit them and at times stay with them. Even the petitioner appearing as R.W.I, admitted that the daughters of the landlady are grown up. They are in the age group of 18 and 19 years. The boys are in the age group of 10 and 15 years. In view of this admission, the trial court rightly held that three bed rooms were not sufficient for them because one

room would be required by both the daughters, the other room for both the sons, third for the husband and wife and at least one or two rooms would be required for the guests. Since the children are growing they might be requiring separate rooms. From the evidence which has come on record it has been amply proved that the need of the landlady is bonafide and she requires the premises for herself and for the members of her family dependent on her.

(6) As regards the ownership of the house in question the petitioner had admitted that the respondent was the owner of the premises in question. In para 3 of the preliminary objection it has been averred that the house was purchased by the husband of the respondent/landlady in her name as a benami. The factum of her being the owner of the premises has not been disputed. It is well settled principle of law that the Rent Controller is not competent to determine the dispute regarding ownership. It was not within his scope to determine whether the property was purchased benami or not. The fact remains that the petitioner had admitted that the property was purchased in the name of the respondent is sufficient to arrive at a conclusion that the respondent was owner of property as it stood in her name. The petitioner also appearing as R.W. 1 admitted that he filed a suit against the respondent for permanent injunction in the court of Mr. K.S. Khurana, Sub Judge, 1st Class, He also admitted that he deposited a sum of Rs. 8,800.00 in favor of the respondent. Even in his application under order 41 rule 27, CPC ., C.M. 644/91 filed in this court in para 6 he has admitted that the property in question was purchased by the respondent from the previous owner. All these facts put together leads to only one conclusion that the respondent is the owner of the property in question The relationship of the landlord and tenant is not disputed by the petitioner nor the number of members of respondent's family"

(7) Mr. H.S. Dhir vehemently argued that the property in question was let out for residential cum commercial purposes and Therefore the provisions of Section 14 were not attracted. The petitioner uses it as commercial by storing the left over chicken in a portion opposite the room under the staircase of this house. Moreover the previous landlady issued rent receipts which he has now traced to prove that the premises was let out for residential-cum-commercial purpose. I am afraid this argument of Mr. Dhir is without force. By my separate order I have already rejected the petitioner's application C.M. 644/91 under Order 41 rule 27. Therefore no reliance can be placed on these purported rent receipts which are now being tried to be placed on record. Even otherwise, if we go through the pleadings and the evidence which has come on record, this contention of the petitioner cannot be sustained. In para 5 of the eviction petition it has been stated that the petitioner was living along with his family members. In reply to this para in the W/S there is no denial that the petitioner was not living with his family in this house. Coupled with this, in para 8 of the eviction petition detail of the accommodation available has been given which is reproduced as under :

"TWO bed rooms, drawing-cum dining, kitchen, toilet and covered verandah with

open terrace on the second floor."

This clearly shows that except the accommodation described in para 8 and as admitted by the petitioner in the written statement, no other portion of this house is under petitioner's tenancy. There is not a single room shown to be used as storage of chicken or being used for commercial purposes. According to the petitioner he has been using a small portion of the room in front of the stairs for conducting his business. The question is where is that small portion in front of the room under the stairs ? It has not been shown in the plan nor in para 8 of the petition. Therefore, if the petitioner was storing in some small portion of the premises that does not form part of his tenancy then it cannot be said he was using tenanted premises for commercial purpose also. Had it been so, he would not have admitted the contents of para 8 of the petition. The description of the tenancy portion has been given in para 8 and the said small portion is nowhere described. While appearing as R.W. 1 the petitioner admitted that he was running his shop in the adjoining property where he sells chicken. He only keeps some left over chickens in a portion under the stairs which from the reading of para 8 of the petition cannot be stated to be part of his tenancy. The store is not part of his tenancy as is apparent from detail of accommodation mentioned in para 8. Therefore this plea of the petitioner that he was given the tenancy for residential-cum-commercial purposes has not been established nor can be supported by the pleading of the parties or even by the testimony of the petitioner himself. Admittedly, it was for the landlady/owner to prove that the premises was let out for residential purpose. To my mind, she discharged this burden through the testimony of her husband as well as by giving the detail of the accommodation meant for residential purposes. This fact was not denied by the petitioner hence the burden shifted on him to prove that he had been using the premises for commercial purposes also. Therefore this argument of the petitioner falls to the ground. The law is well settled that letting purpose can be inferred from the nature of the premises, its design, the location of the building and dominant use etc. As already stated above, the dominant use has been established to be residence of the petitioner and his family members as mentioned in para 5 of the petition which fact has been admitted by the petitioner in his written statement. This shows the dominant use of the premises was for residence of the petitioner. The nature of the premises is also residential. The portion in front of the stairs according to para 8 of the petition does not form part of the tenancy. Therefore it cannot be said that the petitioner has been using the premises for commercial purposes as the premises in question is designed and located in a residential colony, i.e Kirti Nagar. By omission the Arc mentioned it as Rajouri Garden. But nothing turns on that, Mr. Dhir lastly contended that "Kirti Nagar" is a commercial area. I do not agree with this submission because in Delhi almost every colony has shopping complex but that does not mean that residential houses situated in that colony would become commercial as that colony has commercial complex nor it proves that it was let out for residential cum commercial purposes. This fact further finds support from the cross examination

of R.W,1 He could not deny the suggestion that in his suit for permanent injunction filed against the respondent he did not mention that the premises was used for commercial purposes, rather he had to admit that he was using the premises for residential purpose. His reply to the question was that "I do not remember if I had stated in that petition that I am using the premises in question for residence only". If he had not written in his plaint that he was using the premises for residential purposes, then he would have denied this suggestion rather than giving evasive answer. This answer lends support to the contention of the respondent that the premises was let out only for residential purpose.