

Giri Raj Vs. Sheela Devi

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Court : Delhi

Decided On : Feb-25-2014

Judge : Manmohan Singh

Appellant : Giri Raj

Respondent : Sheela Devi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment pronounced on: February 25, 2014 + RC. Rev. No.328/2012 & C.M. No.12383/2012 GIRI RAJ Through Petitioner Mr.Ravi Gupta, Sr. Adv. with Mr.Sumit Tomar, Adv. versus SHEELA DEVI Through Respondent Mr.Sugriva Dubey, Adv. with Mr.V.K. Kalra, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. The petitioner by way of the present petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) has assailed the eviction order dated 7th April 2012 passed by the learned Additional Rent Controller, Central, Delhi.

2. Brief facts of the case are that the respondent filed an eviction petition against the petitioner in respect of a Shop bearing No.1319, Mohalal Sang Trashan, Bagichi Ram Chand, Pahar Ganj, New Delhi (hereinafter referred to as the tenanted shop). It was the case of the respondent that the tenanted shop was let

out to one Sh.Ram Chander son of Sh.Koki Mal who died and his one legal representative only, i.e. the petitioner herein is doing business activities from the tenanted shop. The respondent being the co-owner of the tenanted shop filed the eviction petition, stating that the same was bonafidely required by the respondent for her son, Yogesh Kumar Mittal, who is dependent upon her for his business purpose of Tour and Travels and that they had no other reasonable suitable accommodation for the said business purpose.

3. It was stated in the petition that the family of the respondent consists of her husband, three married sons, their wives and seven grand-children. Further, only one of the sons had a settled business in Pahar Ganj, while the other two sons and the husband of the respondent did not have any place of their own to do the business independently and the respondent had no other alternative place to accommodate the said son where he could establish his own business.

4. In the leave to defend application filed by the petitioner, the ownership of the respondent was disputed. It was stated that the petitioner has been holding the tenanted shop in adverse possession. The fact of Yogesh Kumar Mittal being the son of the respondent and/or dependent upon the respondent was also disputed. It was stated that even otherwise, he was already running his tour and travels business under the name and style of Mittal Tour & Travel at 8563, Ara Kashan Road, Pahar Ganj, New Delhi-110055 which was allegedly concealed by the respondent.

5. It was averred that the respondent concealed the fact that she already has another property bearing No.8158 and 8159 situated at Ara Kashan Road, Pahar Ganj, New Delhi-110055 wherein there are more than 20 rooms and the same is being used as a Hotel under the name and style of Paarth Palace EX. It was also averred that respondent had another property bearing No.5490-5492, Shora Kothi, Pahar Ganj, New Delhi, which is also available to the respondent. The site plan filed by the respondent was also disputed by the petitioner.

6. The contentions raised by the petitioner were denied by the respondent in the counter-affidavit and the stand taken in the petition was reiterated.

7. The learned trial Court while dismissing the leave to defend application of the petitioner vide the impugned eviction order observed that the respondent himself had admitted Lala Ram Chand Shri Ram as his landlord and also annexed rent receipts issued by Lala Shri Ram who had sold the property including the tenanted shop to the respondent and Smt.Uganti Devi vide Sale Deed dated 6th June 1985 and thus the respondent is the co-owner of the total property. Even the petitioner contended that the respondent is not the owner of the tenanted shop as the father of the petitioner Sh.Ram Chander was the tenant of the tenanted shop of Lala Ram Chand and Shri Ram to whom the rent was being paid. The learned trial Court opined that from the contention of petitioner one thing was clear that the petitioner had Lala Ram Chand and Sri Ram to be the owners of the tenanted shop as well as his landlord and that the perusal of the sale deed dated 6th June 1985 showed that the property No.1315 (part), 1316-1322, Mohanlal Sang Trashan, Bagichi Ram Chand, Pahar Ganj, New Delhi was sold to the respondent and one Smt.Uganti Devi, making the respondent the co-owner of the property including the tenanted shop.

8. With regard to the contention of the petitioner that Yogesh Kumar Mittal is not the son of the respondent, the learned trial Court observed that while raising the said contention, the petitioner failed to disclose the parentage of Yogesh Kumar Mittal, while on the other hand, the respondent placed on record a copy of Voter I-card and PAN card of the said son to show that he is the son of the respondent.

9. With regard to the issue of bonafide requirement, while the petitioner had contended that the said son of the respondent was already running his tour and travel business at another property, the respondent contended that the said property was a tenanted property and was let out by the landlord therein to run kerosene oil depot and only due to paucity of accommodation the husband of the respondent had allowed his son to start his Tour and Travel business therefrom. The respondent had filed certain documents in support of her contention thereof, on perusal of which the learned trial Court opined that the said property was a rented property which was let out to the husband of the respondent for the business of selling kerosene oil. Even otherwise, an eviction petition in respect of the said property was pending against the husband of the respondent. In view of

the learned trial Court, all this rather strengthened the case of the respondent showing his bonafide requirement.

10. With regard to the issue of alternate accommodation, though the petitioner contended that the respondent had concealed the fact of the other alternate accommodation being property No.8158-8159 which was being used as a Hotel, the respondent had stated that the said property was not owned by her and the said Hotel was being run by one of her sons and had filed relevant documents in this regard. In the opinion of the learned trial Court, from these documents, it was clear that a Hotel was being run from this property and that the same could not be used to meet the bonafide requirement of the respondent. With regard to the contention that the respondent had concealed about property bearing No.5490-5492, the respondent had stated that the respondent along with his family members was residing in the said property. The learned trial Court opined that the same being a residential property could not be said to be useful for commercial purpose of the son of the respondent.

11. With regard to the contention of the petitioner that all the legal heirs of the original tenant after his death being necessary parties to the petitioner ought to have been made parties, the learned trial Court observed that it was the petitioner who was in the possession of the tenanted shop and even otherwise the respondent was not under an obligation to implead all the legal heirs of the deceased tenant. As regard the contention of the petitioner that the site plan filed by the respondent was vague besides being wrong and incorrect, it was observed that the petitioner had not filed any site plan on record to contradict the site plan filed by the respondent, hence, it was assumed that the site plan filed by the petitioner was correct.

12. Accordingly, in the light of these observations, the learned trial Court opined that the petitioner had failed to reveal any fact which could raise any triable issues and so, the leave to defend application was dismissed vide the impugned order. Aggrieved thereof, the petitioner has filed the present petition.

13. It is settled law that the High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has

been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. The High Court is obliged to test the order of the Rent Controller on the touchstone of whether it is according to law.

14. Proviso (e) to Section 14(1) of the Act is a special provision which has been enacted by the legislature for the class of landlords who require the premises genuinely and their requirement is bonafide and they do not have any suitable accommodation. The essential ingredients for attracting the proviso (e) of the Section 14 (1) of the Act are: a) The said premises are bonafide required by the landlord either for himself or for his family member. b) The landlord or the family member has no other reasonable suitable accommodation. Both the requirements under law are to be satisfied conjunctively in order to attract the provisions of Section 14 (1) (e) of the Act. The absence of even one of the said ingredients makes the said provision inapplicable.

15. It is settled law that while deciding the leave to defend, the controller is not expected to examine the success or failure of the plea raised but has to examine merely a tenable case. The controller is estopped in view of settled law from recording a finding as to disputed questions of fact. All the above stated propositions of law has been laid down in the case of Charan Dass Duggal vs. Brahma Nand, (1983) 1 SCC301 speaking through Honble Desai, J.

observed thus:

5. What should be the approach when leave to defend is sought?. There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is

sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

In the same judgment, in para 7 it is further observed:

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave. Maybe in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant

the leave.

(Emphasis Supplied) 16. In the case of Deena Nath vs. Pooran Lal, (2001) 5 SCC705 the Supreme Court observed thus:

The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire. The 'bonafide requirement' must be in praesenti and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available. The

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of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such

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in appeal/second appeal/revision. Bonafide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment.

(Emphasis Supplied).

17. In view of the above, it is to be examined as to whether as per grounds stated in the leave to contest the eviction petition, whether the petitioner is entitled to leave or not.

18. In the present case, the respondent Smt. Sheela Devi filed the application for eviction of petitioner-tenant under Section 14(1)(e) read with Section 25-B of the Act, from the tenanted shop bearing No.1319, Mohalal Sang Trashan, Bagichi Ram Chand, Pahar Ganj, New Delhi. In the eviction petition, she claimed that her son Yogesh Kumar Mittal is dependent upon her who wants to carry on tours and travels business and for the said purpose, the requirement of the tenanted shop in possession of the petitioner was claimed. After filing of the application for leave to defend, it has come on record that her son Yogesh Kumar Mittal is already running tours and travels business under the name and style of Mittal Tours & Travels at 8563, Ara Kashan Road, Pahar Ganj, New Delhi-110055. The said fact was not disclosed by the respondent and even denied by the respondent subsequently. So the statement made by the respondent is not correct to the extent that her son is dependent upon her.

19. The learned Trial Court has failed to consider that Yogesh Kumar Mittal, the son of the respondent for whom the tenanted premises was required and who is mentioned as idle, but he had been doing business in the other property at 8563, Ara Kashan Road, Pahar Ganj, New Delhi-110055, under the name and style of Mittal Tours and Travels. The petitioner, prima-facie, placed on record the visiting card of Mittal Tours and Travels having the name of Yogesh Kumar Mittal and Brijesh Kumar Mittal. In the eviction petition, it was mentioned that the tenanted

shop is required to accommodate him who is dependent upon the respondent.

20. It is the case of the petitioner that the respondent is also having other accommodations in property No.1315(part), 1316-1322. The adjoining shop No.1318, according to the petitioner, is lying closed for the last many years. There was no specific reply on behalf of the respondent during the course of hearing.

21. The petitioner has pointed out the other properties i.e. properties No.5490-5492, Shora Kothi, Pahar Ganj, New Delhi where she can accommodate her son Yogesh Kumar Mittal in which many shops and other portions were lying vacant for the last more than 15 years. However, the learned trial Court considered that these are not the triable issues in the matter. The learned trial Court has brushed aside the grounds taken by the petitioner who failed to appreciate that in her reply to the leave to defend application, the respondent admitted the existence of all these properties being used by her and her family members being their ownership. With regard to the property No.8563, Ara Kashan Road, Pahar Ganj, New Delhi-110055, it was mentioned that it is under the tenancy of her husband and her son Yogesh Kumar Mittal is doing business of tours and travels. The said fact was admitted by her in the reply, although the same was not mentioned in the application for eviction.

22. With regard to the property No.5490-5492, Shora Kothi, Pahar Ganj, New Delhi, it was merely mentioned that it was being used for residential purposes and about property No.8158-8159 situated at Ara Kashan Road, Pahar Ganj, New Delhi-110055, it was alleged that a Hotel/Guest House having more than 20 rooms is being run from the said property. The petitioner has also filed the sale deed on record to show that the respondent has sold the property bearing No.1315(part), 1316-1322, Mohanlal Sang Trashan, Bagichi Ram Chand, Pahar Ganj, New Delhi. The said sale documents were also not disclosed by the respondent in the eviction petition.

23. I am of the considered view that in the absence of complete and truthful disclosures made in the evidence eviction petition, the petitioner is able to raise certain triable issues. The eviction order thus, cannot be passed straight away when details of all properties in the same area are not disclosed by the

respondent. The learned Controller legally erred in not testing the case of both the parties on the objective standards which is the requirement of the law for examining the reasonableness and suitability of accommodation available with the respondent before filing of the eviction petition.

24. It is thus apparent that the need as defined is not a felt need but is desired. All the facts stated in the application for leave to defend cast doubts on the stand of the respondents bonafide need and the conclusion that there is no availability of the reasonably suitable accommodation which cannot be arrived at least in the summarily manner warranting the leave to defend.

25. Prima facie, it appears to the Court that in the present case, the respondent has in his possession commercial accommodation from where he could operate his business, their need projected would be nothing but his desire to start his business definitely from the tenanted premises. The projected desire is to be examined at the time of trial.

26. This aspect directly goes to the bonafide requirement of the respondent as also to assess the suitability or otherwise of the space was available to him when he filed the first petition for bonafide requirement. The projected requirement of the respondents is required to be tested by the Controller.

27. The petitioner has raised several triable issues, which go to the root of the matter and if the petitioner is allowed to defend the eviction petition, the petitioner would have disentitled the respondent from seeking eviction on any ground, what to say, on the ground of bonafide need. The learned Addl. Rent Controller committed a grave miscarriage of justice by ignoring the well settled principle of law.

28. In view of the above, I am of the view that the learned ARC has erred in appreciating the averments made in the leave to defend application. Thus, it could be seen that the petitioner has been able to raise prima facie, triable issue and cannot be overlooked without adjudication by way of evidence. The impugned order is therefore set aside. The petition is allowed, and the leave to defend is granted to the petitioner. The parties to appear before the concerned ARC on 10th

May, 2014. RCR No.328/2012 granted four weeks time to file the written statement. The learned trial Court is directed to decide the matter expeditiously.

29. Copy of this order be sent to the trial Court forthwith.

30. No costs. (MANMOHAN SINGH) JUDGE FEBRUARY 25 2014

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