

Kirpal Singh Vs. Navdeep Kaur and ors.

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Court : Delhi

Decided On : Apr-29-2014

Judge : Najmi Waziri

Appellant : Kirpal Singh

Respondent : Navdeep Kaur and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + Date of Decision:

29. 04.2014 RC. REV. 400/2013 & CM APPL. 17196/2013 KIRPAL SINGH Through: Petitioner Mr. R.K. Gupta, Adv. with petitioner in person. Versus NAVDEEP KAUR AND ORS. Respondents Through: Mr. S.N. Gupta, Adv. CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI % MR. JUSTICE NAJMI WAZIRI1 This petition impugns an order dated 26.07.2013 directing eviction of the petitioner/tenant from 2nd floor flat in property bearing No.361, Sant Nagar, New Delhi after his leave to defend was denied.

2. The grounds taken by the petitioner in his leave to defend were that (i) the suit for eviction is not accompanied by a site plan of the entire property; (ii) it does not give dimensions of the suit premises; (iii) the respondents-landlords have several residential properties and industrial plots in their names and in the names of their family members, which are in their possession, hence , they do not require premises in question for their bona fide need; (iv) the eviction petitioners do not

have any title in their favour since the documents relied upon by them were unregistered and not sufficiently stamped; and finally (v) that the family members of the eviction petitioner owned property No.421, Sant Nagar, New Delhi, which was an alternative reasonably suitable accommodation.

3. In reply, the ownership of latter properties was denied by the eviction-petitioners. They stated that the said properties were owned by their parents-in-law which were used for their personal purposes and it could not be expected for the in-laws to provide her accommodation.

4. After considering the documents on record, the Trial Court was of the view that there is no concealment of any material fact; that apart from making bald statement about the ownership of other properties by the eviction petitioners, no particulars thereof have been given; and that such arguments cannot be countenanced as triable issues. The Trial Court considered that the petitioner who was residing on the first floor in the premises comprising two living rooms, one drawing, a kitchen and a bath room, found the space insufficient for herself, her husband and their two children aged 12 and 9 years. The eviction petitioner stated that she needed additional space for her visiting relatives as well as for her extended family. In addition, that petitioner No.2 who although resident in Melbourne with her family, needed the tenanted premises i.e. the entire ground floor of the tenanted property for use whenever she visited India along with her husband and two children aged 9 and 4 years. The Trial Court agreed with the ratio in *Urmil Joshi & Ors. Vs. Raj Batra, R.C. Rev. 100/2012*, decided by this Court on 02.03.2012, which held that it was not improper to deny leave to defend in a case where the petitioner and her daughter, ordinarily residents of U.K., visited India at least twice in a year, but had to stay in hotels causing them unnecessary expense and discomfort and that they wanted to settle in India, but, due to unavailability of the suit premises, were unable to do so. The Trial Court reasoned that the requirements of both the petitioners were natural and prima facie bona fide. They claimed need of the suit premises for petitioner No.2 during her visits and stays in India, could not be said to be imbued with mala fide, especially when the said visits have been admitted by the tenant. The Court also found the currently available accommodation with petitioner No.1 as insufficient to

meet her requirements; it found the requirement for room for guests as well as a room for caretaker to be valid. The Court reiterated the settled law that it is not for the tenant to dictate to the landlord as to how the latter should adjust in the available premises so as to avoid the eviction of the tenant(1)(2). (1) Gita Gupta Vs. Kailash Chand Dhingra, (2013) 199 DLT321(2) Surender Gera Vs. Rajesh Ratan Seth, 2012 (191) DLT765In the circumstances, after considering the materials available on record, the Rent Controller found no triable issue to grant leave to defend and relied upon the case of Surender Gera Vs. Rajesh Ratan Seth 2012 (191) DLT765which holds that the Court ought not to grant leave to defend in a mechanical and routine manner. In the said case, after considering the fact that the petitioners had no suitable alternative accommodation and no triable issues were raised by the tenant necessitating evidence to be led by the tenant, the leave to defend was dismissed.

5. Counsel for the respondent relies upon the aforesaid cited ratio in Urmil Joshi & ors. vs. Raj Batra decided by this Court, as well as on the judgment in Sarwan Dass Bange Vs. Ram Prakash 2010 (167) DLT80to contend that where there is no alternative accommodation available to the petitioner, the bona fide requirement is made out and such a case would be a fit one to not grant leave to defend. This Court has further held that when an eviction petitioner who wished to return to India for settling down it is not for the tenant to advise or direct the landlady how she should lead her life; if she bona fide wishes to come to India for which she needs her premises as her residence, the same should not be denied to her.

(M.S. Rehi Vs. Mohinder Kaur, 2014 (113) DLT116. The learned counsel for the petitioner has not raised any issues other than what has been discussed hereinabove. The reason for and the conclusion arrived at in the impugned order are plausible in law. Indeed correct and sound. Im unpersuaded to view otherwise in the revisionary jurisdiction.

6. In view of the aforesaid discussion, I find no infirmity in the impugned order and no cause to interfere with it. The petition is dismissed as being without merit.
NAJMI WAZIRI (JUDGE) APRIL29 2014/acm