

Rais Mian Vs. Abdul Samad

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Court : Delhi

Decided On : Aug-25-2014

Judge : Najmi Waziri

Appellant : Rais Mian

Respondent : Abdul Samad

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

09. 05.2014 Pronounced on:

25. 08.2014 + RC.REV. 186/2011, CM APPL100842011 & 19500/2013 RAIS MIAN Through: Petitioner Mr.Rajesh Baweja and Mr.Ankit Baweja, Advs. versus ABDUL SAMAD Through: Respondent Mr.S.D.Ansari, Adv. CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI % MR. JUSTICE NAJMI WAZIRI) 1. The present revision petition is filed under section 25 B (8) of the Delhi Rent Control Act, 1958 (the Act) assailing the order of the SCJcum-RC whereby the eviction order was passed apropos the tenanted premises and the tenants application seeking leave to defend was rejected.

2. Before discussing the contentions raised by the learned counsel for the petitioner before this Court, appraisal of a few facts would be necessary. The suit property is a tenanted shop identified as No.446, Chitla Gate, Chawri Bazar, Delhi admeasuring 8 x 18-3, on the ground floor let out at a monthly rent of Rs, 323.50/-

used for commercial purposes. The respondents (the landlord) sought the tenanted premises under section 14(1)(e) of the Act for his and his sons own commercial use. The family of the landlord consists of the landlords wife, his divorced daughter, his two sons alongwith their wives, minor grandson, widowed daughter-in-law along with her two children who are also minors. It was stated that children of the deceased son continue to be in the care and shelter of the landlord who is providing all basic necessities for them which also includes paying for their educational expenses. The eviction petition enumerated the family members to show that it was a large family which the landlord had to take care of when the income earned by the landlord was insufficient to make ends meet. It was further explained that the widowed daughter-in-law had filed various suits against the landlord and that by an order of a Court the landlord has to pay her maintenance of Rs. 6,000/- per month. Such being the circumstance the landlord contended, that the rental income and the income received from the shops being operated by the two sons were meagre to meet the expenses of the family. The landlord explained that his two minor grandchildren were attending school and the school expenditure was beyond his means which needed to be augmented. It was further stated that the landlord required the tenanted shop so that he, alongwith the help of his sons, can open a business and supplement his income. There is no dispute about the landlord- tenant relationship or that the tenanted premises is commercial in nature.

3. Before the leaned ARC, the tenant contended that the case of the landlord is a mere desire for additional commercial accommodation and not a case of bonafide requirement for commercial accommodation hence the principle laid down in *Satyawati Sharma & Anr. v. Union of India* 148(2008)DLT705 will not apply. It was argued that landlord didnt have an actual necessity for the property as his sons were already occupied in work elsewhere and had sufficient accommodation for their business and were thereby contributing income which was sufficient to meet the expenditure of the family; that the landlord being 75 years old, did not require the premises to start any business at this stage in his life. It was further argued that in one of the shops, operated by the son of landlord, he was assisted by the landlord himself and that the said shop was spacious enough and the earnings therefrom were sufficient.

4. The counsel argued that the landlord had alternate shops which were lying vacant and could be put to use; that the landlord possessed a factory which was sold about 2 years prior to the eviction petition being filed thereby indicating that the landlord need the tenanted premises; that the eviction petition was a method to only harass the tenant and that there was no genuine need for the tenanted premises; that the intended business of opening a shop for selling bedding and linen was not suitable in the tenanted shop, as the locality of the tenanted shop is better known for selling stationery products. The learned ARC held that in an eviction petition filed under section 14(1)(e), the Rent Controller is required to see if there is a bona fide need for the tenanted premises; that such tenanted premises is owned by the landlord and that he has no other suitable alternate property ; that such property is required for himself or for his dependents. On the contention that the landlord cannot apply for eviction under section 14 (1)(e) as it is a commercial property, the learned ARC held that classification of eviction on the nature of the tenanted premises is a defect that has been cured by the Supreme Court in Satyawati Sharma (supra) and the present eviction petition filed under section 14(1)(e) can be entertained for eviction from commercial tenanted premises.

5. On the contention that there were alternate accommodation lying vacant till date, the learned ARC held that the tenant apart from making such an assertion that there are alternate shops that are lying vacant, the tenant has failed to bring anything on record to substantiate this argument. The learned ARC also took into consideration the submission of the counsel for the landlord that the shops mentioned by the tenant were very small and insufficient to operate any business hence those premises were being used as storage spaces. The site plan filed by the landlord showed the measurements of the shops, which the learned ARC found to be very small apropos the requirement sought/submitted by the landlord. In the absence of any contrary site plan purporting to show the discrepancies in the site plan filed by the landlord, the learned ARC found the tenants contention without merit hence it was rejected. It was argued that the landlord was in possession of two shops each of which were operated by the sons of the landlord. However, the learned ARC held that when the tenant himself had admitted to the two shops not lying vacant but being put to use by the sons of the landlord, it would be an impossibility to expect the landlord to open his shop in either of these

premises. Analyzing the submissions made by the landlord, the learned ARC concluded that the landlord had no suitable alternative accommodation. On the issue of there being a bona fide requirement for the premises by the landlord, the counsel for the tenant argued that when the sons of the landlord are gainfully employed and providing some income, the dire need for the premises extinguishes and also that the sons cannot be termed as dependents per se.

6. The impugned order noted that while the sons of the landlord may be employed and earning income, the landlord had submitted that the income received was insufficient to provide for his family. It was held that while in the present circumstances, even if the sons did not fall within the definition of dependents, the rest of the family did fall within the definition and the landlord had a duty to provide accommodation for them. Besides, the landlord himself required the premises for his own use. This seemed a sufficient cause to be considered as a bona fide requirement of the landlord. The learned ARC saw no merit in the contention that the landlord had no genuine need for the property as he had willingly sold the factory thereby indicating the landlord had sufficient alternate property at his disposal. It was held that even if it were to be shown that the landlord indeed had such factory, it being sold two years prior to filing of the eviction petition. Such being the instance, the learned ARC held that the landlord had no alternate property available with him at the time of filing the eviction petition. The tenant failed to show that the landlord did in fact own the factory, combined with the argument that the landlord sold such factory much prior to filing of the eviction petition, the impugned order noted the tenant failed to raise a triable issue and accordingly passed the eviction order. The petitioner/ tenant has assailed the eviction order in the present revision petition.

7. Counsel for the tenant, Mr. Rajesh Baweja, argued that the need of the landlord was not genuine, as it was only a desire to acquire possession of the tenanted premises. Mr. Baweja argued that the issues raised by the tenant required the matter to be put to trial. Counsel relied on *Inderjeet Kaur v. Nirpal Singh* (2001)1 SCC706 to submit that when the tenant seeks to file the leave to defend, it is enough if he prima facie, makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. Counsel further argued

that a leave to defend should not be refused when the eviction petition is filed on a mere desire. While this Court agrees with the point concerning the instances when a leave to defend may be granted, however it is important to note that the nature of the requirement in the eviction petition, which in the present case the tenant claims to be absent, will determine whether a leave to defend application will be allowed. In the present petition, this Court is of the considered view that the landlords requirement for the tenanted premises was genuine. The leave to defend application may be allowed only under those circumstances when it is felt that the need of the landlord may not be bona fide.

8. The nature of proceedings under section 14(1)(e) of the Act are summary in nature for the purpose of enabling the landlord to acquire possession of the tenanted premises within a reasonable period of time if he is able to show that the need for the tenanted premises is genuine. The landlord is required to show that the tenanted premises is required for him or his family members who are dependent on him. The landlord will not be successful in an eviction petition borne out of a desire to occupy the tenanted premises. In addition, the landlord is required to show that he has no other suitable alternate accommodation which can be occupied by him and that the tenanted premises is best suited for his accommodation. While Courts dont expect the landlord to provide every documentary evidence to prove beyond a shadow of doubt about his intentions to evict the tenant, as this would negate the purpose intended in a summary proceeding, the landlord is required to show prima facie bona fide need. When the Trial Court ascertains that the landlord has a bonafide need of the tenanted premises and the leave to defend discloses no triable issue which would show why the landlord should be constrained from evicting the tenant, the leave to defend application is rejected and the eviction order is accordingly passed. What requires to be determined is whether the eviction petition arises from a genuine need or one that is a mere desire.

9. The law on distinguishing need from desire in such a petition has been clearly set out and it can be fairly stated that the if the requirement of the property is based on facts indicating the lack of availability of alternate accommodation or that such accommodation available is not suitable for the landlords accommodation,

the need is genuine in nature. At this juncture, the tenant, in his leave to defend application, has to show the triable issue which would restrain the landlord from evicting the tenant. This Court does not agree with the contention of the tenant that the question of requirement, in the first place, is one which needs to be put to trial. If that were the practice, then the purpose of summary proceedings will become futile. It is not the intention of the Act to keep the landlord waiting from gaining possession of the tenanted premises when the need is pressing in nature.

10. It is the argument of the tenant that the landlord has alternate accommodations which are available to him and in such circumstances there is no need as claimed by the landlord. Counsel relies on *M.M. Quasim v. Manohar Lal Sharma* AIR 1981 SC1113 to show that while examining a case of personal requirement, if it is pointed out that there are some vacant premises with the landlord which he can occupy, the element of need in his requirement would be absent. In such circumstances it would be important to determine first if the landlord has any alternate accommodation. In the absence of availability of such alternate accommodation, the need would be considered to be genuine. This Court finds that the tenant has not placed on record any documentary evidence to show that the landlord had alternate accommodation which was suitable to the landlord's need but was lying vacant.

11. The Trial Court also noted that the tenant has not shown any details of the alternate accommodation as claimed by him and it held that the eviction petition cannot be rejected on mere assertions of the tenant. This Court does not accept the argument of the tenant that under section 14(1)(e) the landlord has to lead evidence to show that there is bona fide need for the premises as this would negate the very purpose of a summary trial. While it is not expected of the tenant to bring extensive documentary evidence to make out a strong case against the eviction order being passed but that only triable issues be raised. The stage of trial does not automatically follow, when an eviction petition is filed. In *Rajender Kumar Sharma & Others v. Smt. Leela Wati & Ors.* 155 (2008) DLT383 this Court observed that Section 25B was inserted by the legislature in the Act as a special provision for eviction of the tenants in respect of specified category of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide

necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction.

12. Mr. Baweja argued that the provision of eviction petition for bona fide requirement under section 14(1)(e) applies only in cases where the eviction petition is sought in respect of residential premises and does not include commercial premises. This Court does not find any merit in this contention as it is well settled law the provision now includes commercial premises as well. This change was effected by the Supreme Court ruling in *Satyawati Sharma (supra)* which held that the distinction between eviction petition filed for a residential premises from those petitions filed for commercial premises was arbitrary and violative of Art. 14 of the Constitution of India as the need for the premises, while filing the eviction petition, is what acquires importance rather than the nature of the premises. The Trial Court has noted the reasons for rejecting this argument and this Court finds no reason to interfere with the same.

13. The learned counsel for the tenant had argued that the landlord had not given any specific details of the proposed nature of business for which the eviction is being sought; that the lack of such details only indicate the lack of a genuine need of the landlord and for this reason alone the leave to defend application ought to have been granted and the eviction order ought not to have been passed. Counsel further argued that given the advanced age of the landlord and the lack of knowledge in starting such a business, the landlord cannot show that he has a bona fide requirement for the premises; besides, he argued, the sons of the landlord were earning sufficiently well which would suffice to the expenses of the family. However, it is settled law that it is not for the tenant to direct or decide how the landlord could utilize his financial resources so long as the tenant is not asked to be evicted. The landlord may have sons who are earning sufficiently, but it is ultimately for the landlord to decide if such income can meet the expenses of his family. Nor can the tenant determine the adequacy of funds or earnings for a landlord and/or his family. Courts have held that the landlord shall not be constrained from evicting the tenant solely on the ground that he lacks the experience to start a new business. The Supreme Court in *Ram Babu Agarwal v. Jay Kishan Das AIR2010C721* held that 7..... a person can start a new business

even if he has no experience in the new business. That does not mean his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the business, and sometimes they are successful in the new business also.

14. In an eviction petition instituted against him, the tenant can only show the reasons that would disentitle the landlord from evicting the tenant. This does not include the right to suggest the ways in which the landlord could utilize his income. The argument of the tenant that the landlord is at an advanced age and thereby cannot run a business does not impress this Court. This Court has held that old age cannot be disadvantage to the right of a landlord to seek eviction of a tenant on bonafide need of tenanted premises. Hence the landlords proposed business cannot be a constraint in passing an eviction order. The landlord may have no experience in running shop yet he will be entitled to the tenanted accommodation if he requires the premises to provide for his family. It is not for the tenant to decide the quantum of income that would be sufficient for the landlord to meet his expenses. In the present petition, the landlord has shown the requirement for tenanted accommodation and this is sufficient to get an eviction order passed in his favour in view of this Court.

15. In view of the foregoing, this Court is of the view that the impugned order does not suffer from material irregularity to warrant interference. The petition is without merit and is dismissed. NAJMI WAZIRI (JUDGE) AUGUST 25 2014

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