

**Ndmc Vs. Shiv Kumar and ors.**

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**Court :** Delhi

**Decided On :** Sep-04-2014

**Judge :** Valmiki J. Mehta

**Appellant :** Ndmc

**Respondent :** Shiv Kumar and ors.

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + C.M.(M) No.1134/2012 & C.M.Nos. 17849/2012 (Stay), 15977/2013 (for permission) 04th September, 2014 % NDMC Through: .....Petitioner Mr.Sanjay Poddar, Sr.Advocate with Mr.Govind, Advocate. VERSUS SHIV KUMAR & ORS. Through: ..... Respondents Mr.Varun Sharma, Advocate for R-1. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This petition under Article 227 of the Constitution of India impugns the judgment of the Additional Rent Controller dated 12.1.2012 by which the Additional Rent Controller has dismissed the leave to defend application and has decreed the bonafide necessity eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 with respect to the tenanted premises comprising of three rooms, two temporary sheds, latrine and bathroom on the ground floor of the property bearing no.5289, Hardhian Singh Road, Krishna Nagar, Karol Bagh, New Delhi-05.

2. At the outset, I would like to note that the petitioner is the North Delhi Municipal Corporation and was running an Ayurvedic Dispensary from the tenanted premises, however, petitioner has already been evicted in execution of the impugned judgment and decree i.e the petitioner is no longer in possession of the suit/tenanted premises.

3. For eviction on the ground of bonafide necessity, the landlord has to show three aspects. Firstly, there is a relationship of landlord and tenant. Secondly, the landlord requires the premises for bonafide need of himself and/or his family members, and thirdly, a landlord has no other alternative suitable accommodation.

4. Before me, the learned senior counsel for the petitioner argues only two aspects. Firstly, it is stated that the eviction petition was bound to be dismissed because the respondents/landlords have not pleaded that they do not have an alternative suitable accommodation, and therefore the eviction petition lacks cause of action. The second aspect which is argued is that the respondents/landlords have various alternative suitable accommodations and which are stated in para 12 of the present revision petition, and therefore leave to defend ought to have been granted and that the eviction petition would have to be ultimately dismissed.

5. So far as the first aspect is concerned, on the first blush this argument appeared persuasive, however, in the facts of the present case where the impugned judgment and decree has been executed, I am inclined to take the view that, no doubt, there is no specific averment that the landlords do not have alternative suitable accommodation, however, a reading of paras 7 and 10 of 18(a) of the eviction petition when read holistically, it can be said that it is pleaded that there is no alternative suitable accommodation because in these paras of the eviction petition it is specifically averred that the daughter of petitioner no.1 in the trial court/co-landlord no.1 was requiring the suit/tenanted premises for his daughter namely Priyanka who is a lawyer and who wanted to practice law and also for the son of petitioner no.2 in the trial court namely Rahul who wanted to open an office in Delhi as there was no other place to be used for an office by the son of the petitioner no.2/colandlord no.2. Therefore, in the facts of the present case, in exercise of my revisional jurisdiction, I refuse to interfere with the order of the

Additional Rent Controller decreeing the eviction petition by refusing to grant leave to defend.

6. So far as the second ground of the respondents/landlords having various alternative suitable accommodations as stated in para 12 of this petition is concerned, I may note that it is conceded on behalf of the petitioner/tenant that no such averments were made in the leave to defend application. The Supreme Court in the judgment in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC15 has held that the statutory period of 15 days for filing of the leave to defend application is inflexible and delay of even one day cannot be condoned. Effectively, what the Supreme Court has said that whatever has to be pleaded and filed for granting of leave to defend has to be done within 15 days and nothing can be filed beyond a period of 15 days in the form of filing additional affidavits, documents etc to urge additional facts for seeking leave to defend. It is on this principle that a learned Single Judge of this Court in the case of Madhu Gupta vs. Gardenia Estates (P) Ltd. 184 (2011) DLT103 has held that with respect to events which have already happened prior to the expiry of 15 days period, if not already stated in the leave to defend application, thereafter they cannot be added in the leave to defend application by seeking amendment to the leave to defend application. Therefore, since the so-called alternative suitable accommodations which are pleaded for the first time in this revision petition are not mentioned in the leave to defend application, this Court is precluded from considering the alternative suitable accommodations as these have not been stated in the leave to defend application within 15 days.

7. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs. VALMIKI J.

MEHTA, J SEPTEMBER04 2014 KA

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