

Rani Vs. Somnath

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Court : Delhi

Decided On : Nov-10-2014

Judge : Valmiki J. Mehta

Appellant : Rani

Respondent : Somnath

Advocate for Def. : Mr. Rahul Thukral

Advocate for Pet/Ap. : Mr. Vinay Gupta

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI RC.REV.No.60/2013 and C.M. Nos.2522/2013 & 16795/2013 10th November, 2014 % RANI Through:Petitioner Mr. Vinay Gupta, Advocate. VERSUS SOMNATH Through: Respondent Mr. Rahul Thukral, proxy counsel. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This rent control revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) by the petitioner/tenant impugning the judgment of the Additional Rent Controller dated 11.1.2013 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner/tenant and has decreed the bonafide necessity eviction petition filed under Section 14(1)(e) of the Act with respect to the tenanted premises comprising of one room admeasuring 8.7 X66 in the

property bearing no.B-21, Vikram Nagar, Kotla Feroz Shah, New Delhi. I may note that statutorily only six months is granted to a tenant to vacate the premises after passing of the eviction order on the ground of bonafide necessity and since the impugned judgment was passed on 11.1.2013, the period for vacating the suit premises expired long back on 11.7.2013. Petitioner however continues to stay in the premises because of an interim order passed by a learned Single Judge of this Court on 3.7.2013.

2. The bonafide necessity eviction petition was filed by the respondent/landlord stating that he is residing alongwith his son Sh. Praveen Kumar Seth in the same property bearing no.B-21. The family of Sh. Praveen Kumar Seth comprises of Sh. Praveen Seth, his wife, one son and two daughters out of which one is married. The son of Sh. Praveen Kumar Seth is said to be of a marriageable age. The other son of the respondent/landlord i.e Sh. Bhisam Seth has retired from the ordinance factory at Murad Nagar on 31.8.2011 and requirement for Sh. Bhisam Seth and his family is pleaded which comprises of Sh. Bhisam Seth, his wife and his widowed daughter-in-law and two children from the widowed daughter-in-law. Therefore, as per the eviction petition, bonafide necessity is pleaded to exist for the respondent, his son Sh. Praveen Kumar Seth with his wife, one son Sh. Aman, one married daughter and one unmarried daughter Ms. Purnima and Ms. Divya respectively, his other son Bhisam Seth with his wife, his widowed daughter-in-law, and two children of the widowed daughter-in-law. Therefore, the family of the respondent comprises of nine adults and two children being the grand children of the respondent/landlord and the children of the deceased son of Sh. Bhisam Seth. The respondent will therefore require one bedroom for himself, one bedroom for Sh. Praveen Kumar Seth and his wife, one bedroom for Sh. Aman (son of Sh. Praveen Kumar Seth) of marriageable age, one bedroom for the unmarried daughter of Sh. Praveen Seth, one bedroom for the married daughter of Sh. Praveen Seth i.e as a guest room, one bedroom for Sh. Bhisam Seth and his wife, one bedroom for the widowed daughter-in-law of Sh. Bhisam Seth and one bedroom for the two children of the widowed daughter-in-law. Therefore, a total of eight rooms are required besides the requirement of living-cum dining room and other amenities of kitchen, bathrooms etc. The petitioner has opposed to his requirement of eight rooms, as even the respondent has a total of four rooms i.e

two rooms in property no.B-21 and two rooms in property no.B-22.

3. Before me, on behalf of the petitioner the following grounds are urged for allowing of the petition and grant of leave to defend:(i) Respondent is not staying in the property no.B-21 and is living with his daughters. (ii) Sh. Aman who is the grandson of the respondent (son of Sh. Praveen Kumar Seth) is living in Gurgaon and working in Gurgaon and therefore there is no requirement for Sh. Aman. (iii) The second son Sh. Bhisam Seth is having his own house at Murad Nagar and does not intend to shift to Delhi. 4 (i) For the sake of argument, let me assume that Sh. Aman, the grandson of the respondent is living separately but that will at best take away requirement of one bedroom i.e instead of eight bedrooms, seven bedrooms will be required. (ii) The issue then arises is whether the respondent requires the accommodation for his son Sh. Bhisam Seth and the family of Sh. Bhisam Seth. (iii) Another issue, of course is also as to whether the respondent/landlord is not residing in property no.B-21 as is argued by the petitioner.

5. So far as the aspect that the respondent/landlord is not living in property no.B-21 but is living with his daughters is concerned, even if I accept this argument as correct, the same cannot mean that the respondent/landlord is not entitled to one bedroom in his own house, because, admittedly the respondent/landlord will have no legal right to stay in an accommodation with the daughters. In law, once there is no right to stay in the premises where the landlord is staying, such a premises cannot said to be an alternative suitable accommodation for being considered by the court at the time of granting leave to defend. This argument of the petitioner is therefore rejected.

6. The only other argument is as to whether Sh. Bhisam Seth with his family members is residing in his own house at Murad Nagar and does not intend to shift to Delhi. In this regard, when we see the pleadings in the leave to defend application, it is found that the petitioner impliedly admits that the house in which Sh. Bhisam Seth is living in Murad Nagar is of the Government i.e of the ordinance factory where Bhisam Seth was working. This becomes clear from a holistic reading of the leave to defend application inasmuch as the residence provided by

the ordinance factory is admitted and no particulars have been given as to which is the alleged house at Murad Nagar which is owned by Sh. Bhisam Seth. Self-serving bald averments cannot create grounds for grant of leave to defend. I therefore reject the argument that the son Sh. Bhisam Seth has his own house in Murad Nagar and he does not intend to shift to Delhi.

7. In view of the aforesaid position which arises out of the pleadings on record, it is clear that at best instead of eight rooms, seven rooms will be required by the respondent/landlord, and even as per the case of the petitioner, the respondent/landlord however only has four rooms i.e three rooms are short for the respondent and his family members which are not available and hence the bonafide necessity eviction petition is justified.

8. No other issue or argument is urged before this Court which will in any manner affect the aforesaid conclusions arrived at by this Court. It may be noted that counsel for the petitioner does not dispute the relationship of landlord and tenant between the parties and that the respondent is the owner of the suit/tenanted premises.

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

MEHTA, J NOVEMBER10 2014 Ne

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