

Sanjeev Kumar vs.asim Kumar

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Court : Delhi

Decided On : Jan-25-2019

Appellant : Sanjeev Kumar

Respondent : Asim Kumar

Judgement :

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

18. h January, 2019 Pronounced on:

25. h January, 2019 + RC.REV. 357/2018 CM Appl. Nos. 30209/2018 SANJEEV KUMAR

... Petitioner

Through : Mr.Pushpendu Shukla, Advocate versus ASIM KUMAR Respondent

Through : Mr.P.R.Sharma, Advocate CORAM: HON'BLE MR. JUSTICE YOGESH KHANNA YOGESH KHANNA, J.

1. This revision challenges the impugned order dated 01.12.2017 passed by the learned ACJ-CCJ-ARC(EAST), Karkardooma Courts, Delhi (hereinafter Trial Court) in Eviction Petition No.RC/ARC5252016 in Asim Kumar vs Sanjeev Kumar filed by the landlord/ respondent herein against the tenant/petitioner herein under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (DRC Act).

2. The learned Trial Court vide impugned order had dismissed the leave to defend application of the petitioner and had passed an eviction order in respect of shop No.4, Ground Floor in property bearing No.X/438, Gali No.O, Ram Nagar, Gandhi Nagar, Delhi 110031 (hereinafter tenanted premises). RC.REV. 357/2018 Page 1 of 9 3. Before coming to the impugned order, it would be appropriate to state few facts relevant for disposal of instant petition:-

"a) the petitioner is a tenant in respect of tenanted shop, earlier owned by one Smt.Sushila Devi @ Sheela Rani, mother of the respondent. She died intestate on 11.05.1988 and after her death, the father of the respondent namely Sham Pal Singh and his four sons became the co- owners of property bearing No.X/438, Gali No.O, Ram Nagar, Gandhi Nagar, Delhi 110031 (hereinafter entire property); b) the respondent and his other three brothers released / relinquished their rights, title and interest in respect of the entire property in favour of their father vide registered relinquishment deed dated 19.07.1988. Hence, the father of the respondent became an exclusive and absolute owner of the entire premises; c) in the year 2004 the petitioner was inducted as a tenant in respect of tenanted shop by the father of the respondent on the monthly rental of 750/-, which later on was increased to 990/-. The counter foils of rent receipts till the year 2015 have been placed on record; d) on 09.10.2002, father of the respondent executed a registered Will in favour of the respondent. The father of the respondent expired on 15.03.2006. The property was mutated in the name of the respondent vide mutation letter dated 31.10.2006; e) the respondent family consists of five members i.e. the respondent; his wife; three daughters, out of which the eldest daughter got married in the year 2010. One of the daughters of the respondent namely Ms.Chakita Srivastav has done the professional course of LLB in the year RC.REV. 357/2018 Page 2 of 9 2013 and was enrolled as an advocate. Thereafter, she appeared in All India Bar Examination and got the certificate of practice in the year 2014; f) she need a office for her professional activities. The respondent is in financial difficulty as such is unable to purchase office since has been terminated from the service of Junior Engineer (E) vide order dated 20.08.2007; g) there are five shops on the ground floor of entire premises, out of which two shops were sold in the year 2010 and 2012 and whereas the other shops are in tenancy of either the petitioner or of another tenants; h) the entire

property is a five storey building consisting of ground floor, first floor, second floor, third floor and fourth floor. On the first, second and third floors there are big halls which are given to different tenants and are in their occupation while on the fourth floor there exist three rooms, one kitchen, bath room/toilet and some space open to sky which is given on rent to one Mohan Lal - who is running a business of printing readymade garments; and i) the copy of two sale deeds of two shops and rent agreements / receipts etc. for all the floors have been filed. Hence it is alleged there is no alternative accommodation with the respondent herein for opening professional office for his daughter.

4. The tenant / petitioner herein filed leave to defend application wherein he pleaded a) the respondent herein is not an owner of the tenanted premises; b) incorrect site plan has been filed by the respondent; c) first and second floors of the property are lying vacant which can be used as an office for the daughter of the respondent; d) the respondent has alternative accommodation i.e. house bearing No.A-1, Friends RC.REV. 357/2018 Page 3 of 9 Apartment, Patparganj, Delhi 110092; e) despite his daughter completing professional course in the year 2013, why the respondent sold the two shops one in the year 2010 and another in the year 2012; and f) the respondent intends to harass the petitioner and wants to re-let the tenanted shop on a higher rent after getting it vacated from the petitioner.

5. During the course of arguments, the learned counsel for the petitioner has relied upon *Vijay Kumar Ahluwalia and Others vs Bishan Chand Maheshwari & Another* (2017) SCCR275 which held if the Court finds the grounds raised prima facie disclose a defence which, if accepted, may result in non-suiting landlord from claiming eviction, tenant is entitled to leave to contest the eviction petition on merits. Same proposition was in *Inderjeet Kaur vs. Nirpal Singh* 2001 (1) RCR33 as well as in *Deepak Gupta vs. Sushma Aggarwal* 202 (2013) DLT121. Similarly in *Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta* AIR 1999 SC2507 the Court held there is a difference between need and requirement which is not a mere desire of the landlord.

6.

7. Heard. Prior to giving any opinion, it would be appropriate to see as to how the learned Trial Court has dealt with these arguments. In the impugned order it had noted:-

"4. Respondent has admitted in para No.2 of the application for leave to defend that petitioner is only landlord of the respondent. Hence, the landlord tenant relationship is not disputed.

5. The daughter of the petitioner is a practicing advocate and passed her LL.B examination in 2013. The said fact is not disputed. Need of office is thus necessary corollary of this fact. Hence, the need on which the present petition is based is objectively genuine. Unmarried daughter is dependent in law on her father. RC.REV. 357/2018 Page 4 of 9 6. So far as the use of property of a landlord is concerned, the tenant is not at liberty to dictate the manner in which he should live or he should use his premises.

7. So far as the property referred to by the respondent which is identified as A-1, Friends Apartment, Partparganj, Delhi- 110092 is concerned, the petitioner admits that he is in possession of the said property but denies that he is owner thereof. The said property is being used by the petitioner for his residence. Thus, this property is not at the disposal of the petitioner for the need on which the present petition is based nor is the petitioner owner of this property. 7.1 The first principle, of law governing the bona fide requirement of the landlord found lucid expression. in the decision reported as Krishan Lal v. R.N. Bakshi 2010(169) DLT769 It was held that: It is settled law that it is not for a tenant to dictate the terms to the landlord as to how and in what manner he should adjust himself, without calling upon the tenant to vacate a tenanted premises. While deciding the question of bona fides of requirement of landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted. When the landlord shows a prima facie case, a presumption that the requirement of the landlord is bonafide, is available to be drawn. It is also settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter and it is' no concern of, the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for .him a

residential standard of their own. The tenant cannot compel a landlord to live in a particular fashion and method until and unless the requirement shown is totally mala fide or no genuine. 8. Now, I come to the contentions raised by the learned counsel for petitioner.

9. As regards a) though the ownership of the tenanted shop is disputed, but respondent herein has described as to how he has become an owner of the entire property including the tenanted shop. It is specifically averred by the respondent that initially the entire property was owned by his mother, which then came in the hands of his father, who executed a registered Will in favour of the respondent bequeathing the entire property to him and hence the respondent became an owner of the entire property including the tenanted shop. Qua the relationship of RC.REV. 357/2018 Page 5 of 9 tenant and landlord, the respondent has filed the rent receipts till the year 2015 and hence the petitioner cannot now deny the ownership of the respondent. Even otherwise, it is settled law under Section 14 (1)(e) of the DRC Act, the respondent has not to prove absolute ownership as under the Transfer of the Property Act. He has to prove only his title is better than that of the tenant. Even otherwise, once the petitioner has attorned in favour of the respondent then under Section 116 of the Transfer of the Property Act the petitioner is estopped from challenging the title of the landlord / owner.

10. Regarding contention b) viz.incorrect site plan, the petitioner/tenant had not filed any other site plan. Though, it was argued on behalf of the petitioner/tenant that this premises is shown in Gali No.0 but whereas its located in Gali No.1, hence the site plan filed by respondent is incorrect, but a bare perusal of the site plan shows the property in which the tenanted premises is situated is two side open, one side falls in Gali No.0 and another side falls in Gali No.1 and thus it appears to be an inadvertent mistake in noting down the number of Gali in eviction petition. Even otherwise, the shop premises is well described in the site plan and the petitioner very well know for which premises the eviction petition is filed. Hence even if the number of the gali was wrongly mentioned due to inadvertence, it shall not cause any prejudice to the petitioner, in any manner, whatsoever.

11. As regards c) viz. the vacant first and second floor of the entire property, the landlord / respondent had categorically stated the first floor is in occupation and possession of one Vikram Singh Yadav and second RC.REV. 357/2018 Page 6 of 9 floor is with Brijesh Kumar Jain, who is running a firm under the name and style of Vardhman Garments. Copies of the rent receipts in respect of first, second, third and fourth floors of entire property were annexed with eviction petition as P-10 (Colly).

12. Though the learned counsel for the petitioner has argued if the respondent had required the premises for his daughter then he ought not to have extended the contracts of tenants of different floors but it was submitted by the learned counsel for the respondent the upper floors, even otherwise, were not suitable for starting the legal profession since his daughter, merely a beginner having no such huge work with her, does not require that much space. Even otherwise, shops and business are conducted on the ground floor because customers can reach there easily and Court cannot dictate to the landlord as to which floor he should use for his business, see, Uday Shankar Upadhyar & Ors. vs. Naveen Maheshwari VIII (2009) SLT429 13. Regarding contention d) the premises bearing No.A-I, Friends Apartments, Patparganj, Delhi it is categorically stated by the respondent the said premises is not owned by him, but he is residing there and it being a residential premises, it would not be proper for her daughter to open her office / chamber. The tenanted shop since situated in the market hence would be profitable for her to open the office / chamber in such premises, which in fact is located at ground floor.

14. Qua e) viz. why the respondent had sold the two shops on the ground floor in the year 2010 and 2012; it is averred by the respondent the said shops were sold to incur the expenses on the marriage of his RC.REV. 357/2018 Page 7 of 9 eldest daughter who was married in the year 2010. Admittedly, the respondent was terminated from his job in the year 2007 and was in financial constraints, hence selling the shops to arrange funds for marriage cannot be said to be malafide.

15. Coming to contention f) viz. the tenanted shop may be re-let by the respondent after it is got vacated from the petitioner, can very well be taken care of by having

resort to Section 19 of the DRC Act, in case the premises is re-let within three years from the date of its vacation.

16. Admittedly, the petitioner has not filed any site plan and details of other shops which he says are available to the landlord and whereas on the other hand the respondent has given detail of all the tenants in the property he own. The landlord/respondent had categorically stated he has nothing to do with property 4/1, Sarvariya Market, Shahdara, Delhi and the petitioner has not filed any document showing his connection to such property.

17. Further, admittedly, in one of the petitions filed by the petitioner for his own requirement, the leave to defend was granted to the shopkeeper/tenant but this petition he has filed not for his bonafide need but for the bonafide need of his daughter, who admittedly is a lawyer and needs the premises for her office, hence this contention is also of no use.

18. Lastly, I may say though the appellate jurisdiction is wide enough to afford a re-hearing of the whole case for enabling the appellate forum to arrive at a fresh conclusion but revisional power, on the contrary, is ordinarily a power of supervision keeping subordinate Tribunals within RC.REV. 357/2018 Page 8 of 9 the bounds of law. It is largely meant for satisfying itself as to the regularity, legality or propriety of proceedings or decisions of the subordinate Court. Since there is no illegality in the reasoned order passed by the learned Trial Court hence there is no merit in the petition, and the same is dismissed. The pending application(s), if any, is also dismissed. No order as to costs. JANUARY25 2019 M YOGESH KHANNA, J.

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