

Shanshah Vs. Idrish

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Court : Delhi

Decided On : Jan-28-2015

Judge : Mukta Gupta

Appellant : Shanshah

Respondent : Idrish

Advocate for Def. : Mr. Dinesh Garg

Advocate for Pet/Ap. : Ms. Padmini Gupta

Judgement :

\$~9 * + IN THE HIGH COURT OF DELHI AT NEW DELHI RC.REV. 387/2011
Decided on:

28. h January, 2015 % SHANSHAH Through : Petitioner Ms. Padmini Gupta, Adv. with petitioner in person. versus IDRISH Through : Respondent Mr. Dinesh Garg and Mr.Khalid Jamal, Advs. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Aggrieved by the order dated 12.07.2001 declining to grant leave to defend to the petitioner in the eviction petition filed under Section 14(1) of the Delhi Rent Control Act, 1958 (in short the DRC Act), the petitioner prefers the present petition.

2. Since the present petition was dismissed for non-prosecution twice and thereafter restored in the interregnum, the respondent took possession of the tenanted premises in execution proceedings. Thus, vide order dated 17.07.2012, this Court noted that the petition will be disposed of on merits and till further orders, the respondent was directed not to create any third party interest of any kind in the suit premises.

3. In the eviction petition the respondent pleaded that he was the owner of property No.G-29, Gali No.15, Old Mustafabad, Delhi-94 admeasuring 50 sq. yds., wherein he inducted the petitioner as a tenant in respect of two rooms with latrine bathroom and one shop on a monthly rent of Rs.3,000/exclusive of electricity charges vide rent agreement dated 31st March, 2007. The tenancy commenced on 1st April, 2007 for a period of thirty months. The respondent contended that he had a large family comprising of five sons aged 19 years to 10 years, three daughters aged 17 years to 8 years, his wife and his old aged mother. The respondent with his family has been residing at D-190, Gali No.12, Old Mustafabad, Delhi-94 which house is owned by Munna Khan, his real brother. Munna Khan has served the respondent with a legal notice dated 10.08.2010 thereby calling upon him to hand over the peaceful possession of House No.D-190, Gali No.12, Old Mustafabad, Delhi-94. The respondent has two other properties, i.e. House No.G-1, Gali No.15, Old Mustafabad, Delhi-94 measuring 25 sq.yds. consisting of only one shop which is on rent and the other is House No.G-231, Gali No.16, Old Mustafabad, Delhi-94 built property measuring 100 sq.yds. in which the petitioner runs his two factories in the name and style of New Fashion & I.K.Garments to earn his livelihood for himself and his family members and which is also used by his labourers and their families. Thus, the respondent requires the tenanted premises for his bonafide residential accommodation as he has no other suitable accommodation.

4. In the leave to defend application filed by the petitioner, vague and general pleas were taken. It is stated that the respondent is harassing the petitioner as his family and the respondent filed a suit for permanent injunction against the petitioner herein. However, in the suit and evidence led therein, the respondent nowhere pleaded his bonafide requirement of the suit premises. Since the

respondent got no relief in the civil suit, he filed an eviction petition bearing No.E-224/09 before the learned ARC under Section 14(1)(a) DRC Act. It is stated that the monthly rent has been wrongly mentioned in the eviction petition and the tenanted premises was given on the rent of Rs.600/- per month which the petitioner is depositing in the account of the respondent. In the legal notice sent by Munna Khan to the respondent, it is nowhere stated that the respondent is living as a tenant and the rent is paid by him. Further, the brother of the respondent Munna Khan is having his house and is residing in the other house. It is stated that the respondent is having number of properties and commercial premises, however, the details of none of the properties have been mentioned.

5. On the basis of the pleadings of the parties, the learned ARC came to the conclusion that the petitioner has not been able to show what material facts had been concealed by the respondent and how the eviction petition was malafide. It noted that the desire of a person to live in his own house cannot be termed as a malafide requirement. More so, when he was served with a notice by the owner to vacate the premises in which he is already residing. Further, the contention of the respondent in his earlier petitions not mentioning his bonafide requirements cannot be a ground to non-suit him in the present petition. On the basis of the record, the learned ARC came to the conclusion that the respondent has no other suitable residential accommodation available to him and thus he requires the tenanted premises genuinely and bonafidely. Since no triable issue was raised, hence, leave to defend was declined.

6. Before this Court, learned counsel for the petitioner again urges the same pleas and seeks a decision on the so-called triable issues raised by the petitioner in the leave to defend application noted as under:(i) Whether the legal notice has been given by Munna Khan to the petitioner or not when it does not bear the signature of the landlord Munna Khan on the legal notice. (ii) Whether Munna Khan is the owner of the property bearing No.D-190, Gali No.12, Old Mustafabad, Delhi or not when no such document has been placed on record along with the petition. (iii) Whether the petitioner is the owner of the property bearing No.D-190, Gali No.12, Old Mustafabad, Delhi or not. (iv) Whether the petitioner is the tenant in the premises bearing No.D-190, Gali No.12, Old Mustafabad, Delhi when no rent

receipt has been annexed along with the application and has not stated about the tenancy in the petition earlier filed by the petitioner against the respondent. (v) Whether the petitioner is having the other sufficient accommodation to stay along with the family members. (vi) Whether the petitioner has filed the petition with clean hands because the petitioner has concealed all the true facts. (vii) Whether the petitioner need of bonafide requirement is honest, rare, sincere and natural when the petitioner has bent upon to throw the respondent from the tenanted premises and has filed number of cases against the respondent and has made its prestige to get the premises vacated at any cost.

7. Before advertng to the issues raised, it would be appropriate to note the settled legal position for grant of leave to defend. For a landlord to succeed in an eviction petition under Section 14(1)(e) DRC Act, the landlord has to prove (i) the existence of a jural relationship of landlord/tenant, (ii) that the premises is required by the landlord bonafidely and (iii) that he has no other alternative suitable accommodation available. Not every issue raised by the tenant can be treated as a triable issue. A triable issue under Section 25B(5) of the DRC Act would be the one which the tenant in his affidavit discloses so as to disentitle the landlord from obtaining an order of eviction. The issue raised must have a direct bearing on the three requirements as noted hereinbefore to be proved by the landlord and should have the effect of non-suiting the landlord. Issues which have no relevance to the three ingredients required to be proved by the landlord in the eviction petition cannot be said to be triable issues. The Full Bench of this Court in Mohan Lal Vs. Tirath Ram Chopra & Anr. 1982 (3) DRJ298 held: (23) In the light of the aforesaid, the next question which arises is as to what should be stated in the eviction petition and in the affidavit for leave to contest and how should the same be dealt with by the Controller. While construing section 25B(5) the Supreme Court, in Muttoo's case, had observed that the tenant should disclose such facts as would disentitle the landlord from obtaining an order for recovery of possession. It was specifically observed by the Court that "the tenant may resist the application on the grounds, namely that the premises are not let for residential purposes, that they are not required bona fide etc."

It was further observed in the said case that "leave to contest can only be given if the facts are such as would disentitle the landlord from obtaining an order for recovery of possession on the ground specified in section 14A (in the present case section 14(1)(e)". It would follow from the aforesaid observations that the tenant, in his affidavit, should give as detailed facts as possible which would show that the landlord would not be entitled to get an order of eviction. The endeavor of the has to be place on record facts which would show that the landlord, filing the eviction petition, is either not the landlord or he is not the owner or the premises have not been let for residential purposes alone or that they are not required bona fide for himself or numbers of his family or that the landlord is in his possession of reasonably suitable residential accommodation. The defense has to be clear and not vague, positive and not negative, specific and not a shot in the dark. Merely disputing the averments made by the landlord, in his petition under section 14(1)(e), or merely contending that none of the ingredients as mentioned in section 14(l)(e) exists would not be sufficient to enable the tenant to the grant of leave. Such averments would be regarded as vague or bald allegations and they cannot be regarded as disclosure of "facts as would disentitle the landlord from obtaining an order of recovery of possession". 'The tenant should, wherever possible, try and substantiate the allegations of fact by annexing such documents to his affidavit as may be relevant to the issue. The tenant cannot afford to make vague assertions. It is no doubt true that the time within which the tenant is required to file an affidavit is limited to only 15 days, but the very purpose of limiting the time to 15 days is to try and expedite the disposal of such applications. The paucity of time cannot be a ground for not stating specific facts which would enable the tenant to the grant of leave to contest.

8. It is trite law that the defence put up by the tenant should not be sham, illusory or malicious and only in case triable issues are raised, then leave to defend should be granted. Issue No.1 to 3 & 4 which relate to the vacation of the respondent from the premises D-190, Gali No.12, Old Mustafabad, Delhi-94 and whether it is owned by his brother are not material to the decision of the eviction petition in the present case. Even assuming that Munna Khan has not sought the eviction of the respondent from the premises D-190, Gali No.12, Old Mustafabad, Delhi-94, it is not stated by the petitioner that the premises D-190, Gali No.12, Old Mustafabad,

Delhi⁹⁴, belongs to the respondent. Even if he is staying gratuitous and not paying the rent, it is the requirement of any landlord to shift to his own premises and not to stay either in rented accommodation or gratuitously with someone else. In *Prativa Devi (Smt.) Vs. T.V. Krishnan* (1996) 5 SCC 353 the Court noted that the landlord is the best judge of his residential requirement. He has a complete freedom in the matter. 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.

9. As regards issues No.5 & 7 are concerned as to the bonafide requirement of the respondent and whether he has sufficient suitable accommodation, as noted above, respondent has stated in the eviction petition that his family comprises of his five sons, three daughters, wife, old mother besides himself. There is no denial to the members of the family rather in the leave to defend application, it is stated that one of the sons of the respondent has been married. Further, out of the other two premises owned by the respondent No.1 one is smaller than the tenanted premises and has only one shop which is not suitable for residential purposes and in the second premises, the respondent is running factory to earn his livelihood. Thus, having not disputed either the members in the family of the respondent or the availability of the other suitable accommodations, I am of the considered opinion that the petitioner has not made out a case for grant to leave to defend as the so called issues noted above do not raise any triable issue.

10. The main plank of argument of the petitioner is in relation to issue No.6 that the respondent has not come with the clean hands and has concealed facts that he had filed earlier petitions against the petitioner herein wherein no averment has been made qua bona fide requirement. The other petitions filed by the respondent were Civil Suit for injunction and Eviction Petition under Section 14(1)(A) of the DRC Act. Merely because the respondent resorted to the said remedies and confined his scope of pleadings in the said civil suit and eviction petition to the grounds which could be urged therein, it cannot be said that there is concealment of facts and that triable issue has been raised.

10. Consequently, I find no infirmity in the impugned order. The petition is dismissed. (MUKTA GUPTA) JUDGE JANUARY28 2015 sn

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