

Prem Chand Vs. Rakesh Garg

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Court : Delhi

Decided On : Mar-04-2015

Judge : Mukta Gupta

Appellant : Prem Chand

Respondent : Rakesh Garg

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RC.REV. 230/2014 & CM111162014 (STAY) Reserved on:

18. h February, 2015 Decided on:

4. h March, 2015 % PREM CHAND Through Petitioner Mr. Rajeev Verma with Mr. Naveen Chandra, Advs. versus RAKESH GARG Through Respondent Mr. Ravish Kumar Goyal and Mr. Naresh Kumar, Advs. Coram: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Aggrieved by the order dated 7th February, 2014 whereby the eviction petition filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short the DRC Act) was allowed the petitioner prefers the present petition.

2. In the eviction petition, the respondent stated that he was the owner/landlord of property bearing No.500/3 (in short the suit property) having purchased it from its original owner i.e. Amit Kumar vide registered sale deed dated 13th March, 2002.

The petitioner was a tenant in respect of one shop on the ground floor of the said property (in short the tenanted premises). The tenanted premises were let out for commercial purpose and the petitioner was carrying on his business. The respondent was carrying on his business of selling sweets from shop bearing No.229 Bara Bazar, Shahdara in the name of Sona Confectionary. The respondent had three sons who required the shop in question for starting their own independent business.

3. In the written statement though the petitioner disputed the landlord tenant relationship, however he did not disclose as to whom he was paying the rent after the expiry of his father though he admitted that his father was a tenant in the tenanted premises. Further the respondent in cross-examination stated that petitioner was depositing the rent in the Court in his name. The respondent claimed to be the owner of the property on the basis of the registered sale deed dated 13th March, 2002 which was not challenged by the petitioner. Hence the learned ARC rightly held that the relationship of landlord tenant stands proved. Before this Court the petitioner has not raised a challenge to the finding of the learned ARC on the landlord tenant relationship.

4. The challenge of the petitioner before this Court is to the bona-fide requirement of the respondent and availability of the alternative accommodation. Learned counsel for the petitioner contends that as per the site plan exhibited by the respondent another shop was available. Further though the tenanted shop was of the area 6 ft. x 8 ft., however the other shop/godown available to the respondent was 34 ft. x 8 ft. The respondent was not residing at H.No.8478/3, Thakur Dwara as claimed but at 346, Bhola Nath Nagar. Further Kapil Garg, the son of the respondent for whom the tenanted shop was required was already running a florist business from a shop at premises 478/3, Thakur Dwara and was an income-tax payee. During trial the respondent appeared as PW-1 and his two sons Kapil Garg and Pankaj Garg appeared as PW-2 and PW-3 whereas petitioner examined himself as RW-1.

5. In his evidence by way of affidavit petitioner stated that the respondent was running his business of Halwai from shop bearing No.229 Bara Bazar, Shahdara

under the name and style of Sona Confectioner which is a building owned by him and is built up to two storey and the entire building is in use and occupation of the respondent. Respondent has another alternative spacious building bearing No.498-501/3, Bara Bazar, Shahdara which is also constructed up to two storey besides property bearing No.478/3 Thakur Dwara, Shahdara, Delhi which is also constructed up to three storey. Both the sons of the respondent Kapil and Pankaj were settled in business and the third son Prince was not the son of the respondent. In cross- examination the petitioner stated that the respondent has a go-down in property bearing No.478/3 Thakur Dwara, Shahdara which has two further floors i.e. the first and second floor besides the ground floor. He further admitted that the property bearing No.478/3 is situated in Gali in the Bazar, that he had no personal knowledge that Prince was not the son of the respondent and he was stating the same on the basis of what neighbours told him. According to him Kapil used to sit in shop No.229 and Pankaj used to sit in shop No.5/69 and that the respondent had a vacant premises available adjacent to the tenanted premises which is around 65 sq.yds. He admitted that none of the premises available with the respondent, shops were there on the first floor and the second floor and that in the shop adjacent to the tenanted premises i.e. 501/3 there was an old tenant namely Devender, and that premises No.498/499 to 501/3 Bara Bazar is godown at ground floor. The petitioner further admitted in cross-examination that property bearing No.27/94/8A Jawala Nagar, Tikona Park, Shahdara, Delhi was owned by him after the death of his father and there are three shops on the ground floor of the said property. Thus in the cross-examination the petitioner admitted that no vacant shop was available to the respondent to settle his sons.

6. The respondent stated that the tenanted premises was part of property bearing No.498-501/3 Bara Bazar, Shahdara and exhibited the sale deed vide Ex.PW-1/B. He stated that the said property comprises of two shops and one godown at the ground floor. For another shop No.501/3 Bara Bazar the respondent has filed another eviction petition which is pending adjudication i.e. shop No.500/3 was the subject matter of the present eviction petition and besides two shops there was a go-down on the ground floor in the said suit property which was in occupation of the respondent and was used as a workshop-cum-godown since the date of purchase of property No.498-501/3 Bara Bazar, Shahdara. The respondent further

stated that he was in occupation of one shop bearing No.5/229 or 229 Bara Bazar, Shahdara from where he was carrying on his business of Halwai and his elder son Kapil Garg was sitting on the said shop. The said shop admeasures 20 ft. x 15 ft. The godown at the suit premises i.e. 498-501/3 Bara Bazar, Shahdara was used for preparing alloo- sabji puri, samosa, panner pakora, jalebi, imarti etc., which is then sold at shop No.5/229 or 229 Bara Bazar, Shahdara. Since the consumer wants only hot and fresh snacks he needs the tenanted shop. Further his three sons namely Kapil Garg, Pankaj Garg and Prince Garg aged 33, 28 and 22 years were dependent on him whom he wants to settle in their independent businesses. Kapil Garg was doing business with him at shop No.5/229 Bara Bazar whereas Pankaj Garg had taken a shop bearing No.5/69 Bara Bazar at a rent of `13500/- per month for which the landlady Smt. Rekha Goel was pressurizing to vacate. He also exhibited the rent receipts in relation to shop No.5/69 in which his other son Pankaj Garg was working. The third son Prince Garg was also not doing well in studies and thus he also needed shop to settle him independently. He stated that property No.478/3 Bara Thakur Dwara, Shahdara was situated in a narrow lane and was occupied and used by him for the purposes of residence and storage and there was no shop in property No.478/3 Bara Thakur Dwara, Shahdara, Delhi. He also exhibited the site plan of the said property. In cross-examination the respondent stated that the petitioner was not sitting on the tenanted premises anymore and was doing his work from another property which was not known to the respondent. The petitioner was not able to get anything extracted in the cross-examination to show that the respondent was in possession of any property except 498-501/3 Bara Bazar, Shahdara and 5/229 or 229 Bara Bazar, Shahdara. The respondent denied that he had any shop in property bearing No.478/3 Bara Thakur Dwara, Shahdara. In cross-examination respondent further clarified that the suit property bearing No.498-501/3 Bara Bazar, Shahdara was a building constructed on 80 sq.yds. plot up to the second floor and first and second floor was in possession of servants and employees of the respondent.

7. Kapil Garg and Pankaj Garg the sons of respondent appeared as PW-2 and PW-3 and reiterated the version of PW-1. On the basis of the evidence as noted above the learned ARC came to the conclusion that the requirement of the respondent was bona-fide and he had no other alternative accommodation

available and thus passed the eviction order.

8. The main contention of the learned counsel for the petitioner before this Court is that as per the site plan there is another shop available in the premises. The respondent in his evidence has stated that property bearing No.498-501/3 Bara Bazar, Shahdara which is the suit property wherein property No.500/3 has been given to the petitioner on tenancy admeasures 80 sq.yds. totally. As regards the other shop No.501/3 is concerned, the respondent has already filed another eviction petition in regard to the said property which is pending adjudication because the requirement of the respondent is for his three sons whom he wants to settle independently. Thus there is no merit in the contention of the petitioner that the other shops/godown being 34 ft. x 8 ft. was available to the respondent. It may be noted that even if available, the requirement of the respondent is to settle each of his three sons independently in business.

9. Before this Court the petitioner has taken two further pleas that the respondent was actually residing at 346 Bhola Nath Nagar which was not taken in the written statement and which has no bearing to the eviction petition as the tenanted premises is got vacated for commercial purposes and not residential, and thus even if first and second floor of the premises are available they cannot be used for commercial purposes. It is further urged by the petitioner that Kapil Garg was running a florist business from property bearing No.478/3 Bara Thakur Dwara, Shahdara. Kapil Garg appeared as PW-2 and in cross-examination no suggestion was given to this witness that he was doing the business of a florist from the said property. Thus, the plea now being taken is wholly unsubstantiated. Kapil Garg reiterated that he was doing the business of selling sweets and confectioners with his father from premises No.229 Bara Bazar, Shahdara.

10. From the facts proved above, it would be seen that suit property bearing No.498-501/3 is a 80 sq.yds. plot where there are two shops i.e 500/3 being the tenanted premises in question and 501/3 with another tenant for which also an eviction petition has been filed by the respondent. Besides this the respondent has property No.229 Bara Bazar wherein the respondent has a shop admeasuring 20 ft. x 15 ft. from where he is presently working. The second son of the respondent

Pankaj Garg is running his business from a tenanted shop. There is no material on record to show that Prince Garg is not the son of the respondent and hence learned ARC committed no irregularity/ illegality in allowing the eviction petition as the respondents have been able to prove both bonafide requirement and that they have no other alternative suitable accommodation available to settle the sons in business.

11. The view of the learned ARC does not suffer from any illegality and thus warrants no interference. Petition and application are accordingly dismissed.
(MUKTA GUPTA) JUDGE MARCH04 2015 ga

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