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Court : Delhi

Decided On : Feb-25-2004

Reported in : 110(2004)DLT193; 2004(73)DRJ465

Judge : J.D. Kapoor, J.

Acts : Delhi Rent Control Act - Sections 14(1)

Appeal No. : CR 257/2002

Appellant : Jitender Kumar Jain and ors.

Respondent : J.K. Horticultural Produce Marketing and Processing Cor. Ltd.

Advocate for Def. : Prag Chawla, Adv.

Advocate for Pet/Ap. : D.K. Mehta, Adv

Disposition : Petition allowed

Judgement :

J.D. Kapoor, J.

1. Feeling aggrieved of the order dated 1st February, 2002 passed by learned Additional Rent Controller whereby petitioner's eviction petition on the ground of

bonfire requirement of the tenanted premises as contemplated by Section 14(1)(e) of the DRC Act, the petitioner has preferred this petition.

2. The case of the petitioners is that their mother Ms. Janak Nandini Jain who was the absolute owner of the suit premises died leaving behind the Will dated 24.8.1974 bequeathing the suit premises which are situated on the ground floor in their favor while the first floor premises was in favor of their sister. Admittedly, the petitioners also own premises in Greater Kailash Part-I, which comprises of one drawing-cum-dining room, three bed rooms. The family of the petitioners consists of petitioner no 1, his wife, married son and unmarried daughter whereas the family of the other brother who has since expired consists of his wife, two married daughter and one married son. Admittedly, the petitioners filed eviction petition against the tenant of the first floor which was owned by his sister during the pendency of the eviction proceedings. It was contended by counsel for the respondent at the conclusion of the eviction proceedings that the petitioner has concealed the factum of the vacation of the supervises and, therefore, has not come with the clean hands. This circumstance was pressed into service by learned ARC for rejecting the claim of the petitioners.

3. It is not understandable as to how the vacation of first floor premises could have been taken vacation of premises owned by the petitioner and made available to them as his sister is the absolute and exclusive owner of the said property. Merely because the petition was filed by the petitioners as attorneys of the sister in respect of the first floor premises did not mean that the said accommodation should be taken into consideration as accommodation available to the petitioners. Apart from this the aim claim of the petitioners as to the bonfire requirement of the suit premises did not find favor with the learned ARC on the ground that the accommodation available with the petitioners was sufficient.

4. The accommodation available with the petitioner at Greater Kailash is one drawing-cum-dining room and three bed rooms. By no stretch of imagination such an accommodation can be treated or deemed as reasonable, suitable or sufficient for the petitioners. Family of petitioner no.1 consists of his wife, married son and unmarried daughter. Similarly the family of the deceased brother consists of his

wife, two married daughters and one married son. To say that three bed room accommodation for the size of such a family is sufficient and reasonable is to negate the concept of requirement of the premises by the landlord who at given point of time wants to live comfortably and not in crowded conditions.

5. It appears from the impugned order that the learned ARC was more swayed and influenced from the allegations that the petitioners have concealed the question of vacation of the first floor premises. The fact remains that the premises on the first floor was not owned by the petitioners. It was bequeathed by their mother in favor of their sister. Any property or accommodation over which the landlord has no legal control or legal right to occupy cannot be included in the accommodation available with such a landlord for the purpose of ascertaining his requirement or need.

6. Foregoing reasons show that the learned ARC has grossly erred on facts as well as on factual position with regard to the accommodation available with the petitioners and their requirements by entering into meticulous exercise of even giving one room to two adult or married persons of the family. In Indian family system, the fact that the married daughters and some times married son living separately come and pay periodical visit to the parents and other members of the family and to squeeze them in inefficient accommodation is neither congenial nor respectable for a landlord. As a consequences of the aforesaid discussion, the petition is allowed, the impugned order is set aside.

7. In the result, petition under Section 14(1)(e) of the Act, stands allowed. The respondent is granted six months time to vacate the premises.