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**Court :** Delhi

**Decided On :** Aug-11-1999

**Reported in :** 1999VAD(Delhi)298; 1999(51)DRJ215; ILR1999Delhi241;  
1999RLR488

**Judge :** Vijender Jain, J.

**Acts :** [Delhi Rent Control Act, 1958](#) - Sections 14(1)

**Appeal No. :** Civil Revision No. 168 of 1998

**Appellant :** H.C. Goenka and Another

**Respondent :** Brig. (Retired) S.P. Kochar and Another

**Advocate for Def. :** Mr. B.J. Nayyar, Adv.

**Advocate for Pet/Ap. :** Mr. V.K. Verma,; Mr. Sumeet Verma and; Ms. Poonam Bhatia

**Judgement :**

ORDER

**Vijender Jain, J.**

1.The present petition for eviction under Section 14(1)(e) of the Delhi Rent Control Act was filed in 1998 by the respondent No. 1 who is a retired Brigadier in relation

to premises at C.161, defense Colony, New Delhi. The present petitioner No. 1 H.C. Goenka, petitioner No. 2-M/S Unique Exports and Imports Pvt. Ltd. were respondent No. 2 and 3 by virtue of the amended petition filed on 6th November, 1992 before the Additional Rent Controller.

2. Mr. Verma, learned counsel for the petitioner has contended that from the perusal of AW2/R1 to AW2/R5 which are the rent receipts it was clear that the property was let out for residential purposes. According to the petitioners, as a matter of fact, the aforesaid receipts demonstrated that the premises were used regularly and right from the inception of tenancy for commercial purposes. In support of his contention he has cited Smt. A.N. Kapoor Vs . Smt. Pushpa Talwar : [1992]1SCR472 , Rakesh Kumar Sehgal v. Nem Chand. AIR1987 CJ 571, a Single Bench decision of this Court and in his support has also cited Charan Dass Duggal v. Brahma Nand AIR 1982 CJ 789. Relying upon the aforesaid authorities, Mr. Verma has assailed the finding of the Additional Rent Controller.

3. Much stress was laid by learned counsel for the petitioners that there was concealment of material fact by respondent No. 1 as he has not disclosed in the eviction petition that there were three rooms and a store which were available to the respondent on the first floor of the property in question, which was in possession of respondent No. 1. He has further contended that the respondent No. 1 had also concealed the material fact that respondent No. 1 was having another property at Rs. 700, New Rajinder Nagar. He has contended that the aforesaid concealment of fact by respondent No. 1 dis-entitles the respondent No. 1 from seeking any relief from this Court. In support of his submission, he has cited Sh. Shambhu Nath Vs . Sh. Surinder Kumar Sharma : 44(1991)DLT678 .

4. Yet another contention raised by the learned counsel for the petitioner was that Additional Rent Controller has not returned a specific finding as to who was the tenant in the property in question and, therefore, the impugned order is bad in law. He has also impugned the order of the Additional Rent Controller on the ground that the Court was under an obligation to determine the relationship of landlord and tenant between the parties before passing the eviction order. Another contention was raised by counsel for the petitioner that the garrage and servant

quarters which were in possession and occupation of respondent No. 1 were not mentioned in the eviction petition.

5. Another point which was contended before me by the learned counsel for the petitioners was that there was no surrender of the tenancy, as alleged by the petitioners, and there can not be any implied surrender and in support of his contention has cited *Tejinder Tewari Vs . Subhash Lata Kumar : AIR1986 Delhi44*

6. On the other hand, learned counsel appearing for the respondents has contended that the revisional power of this Court can not be converted into appellate power and the High Court has to examine from the record in order to satisfy itself that the decision of the Additional Rent Controller was according to law and has contended that from the documents and evidence placed before the Additional Rent Controller, the Rent Controller has arrived at a finding which can not be stated to be contrary to evidence or based on no evidence and, therefore, this Court will ordinarily not interfere with the findings arrived at by the Additional Rent Controller until and unless it is shown that the same is wholly perverse and cited in his support *S. Kumar v. Om Kumar Sharma AIR 1980 CJ 36*. Controverting the argument of learned counsel for the petitioners, Mr. Nayyar contended that the Site Plan which was filed by respondent No. 1 before the Additional Rent Controller has correctly stated the accommodation available with the respondent No. 1 and even in his deposition the respondent No. 1 had deposed the correct extent of accommodation available with respondent No. 1. In support of his contention he relied upon *Amrit Lal v. Jagpal Singh 1996 RLR 392*.

7. Mr. Nayyar further contended that premises at R-700, New Rajinder Nagar was a tenanted property and, therefore, not mentioning of that property in the eviction petition was not fatal as the same was not available for accommodation to respondent No. 1. Mr. Nayyar has further contended that respondent No. 1 is 74 years old. He is a retired army Brigadier. He is a heart patient and he has been advised against climbing stairs. therefore, the Additional Rent Controller has rightly passed the eviction order against the petitioners. In support of his contention he has relied upon *Hindustan Lever v. L.R. Kakkar 1994 RLR 17* and

1996 RLR 125 Dev Raj Bajaj v. R.K. Khanna.

8. Mr. Nayyar has further contended that in view of the findings recorded by the Additional Rent Controller in another eviction petition on the ground of sub-letting under Section 14(1)(b) of the Delhi Rent Control Act that petition has been allowed by the Additional Rent Controller and an eviction order has already been passed, no further finding was required to be given by the Additional Rent Controller on the question of relationship of landlord and tenants. On account of the said eviction order being under challenge in appeal before the Rent Control Tribunal. therefore, the Additional Rent Controller, for the purpose of determining the bona fide need of respondent No. 1, has rightly taken into consideration that the petitioners were tenant in view of the judgment of Additional Rent Controller in a petition under Section 14(1)(b) of the Delhi Rent Control Act but had not given a detailed finding in view of the said order being under challenge before the Rent Control Tribunal.

9. I have given my careful consideration to the arguments advanced by learned counsel for both the parties. Let me first deal with the arguments of learned counsel for the petitioners that there is no finding with regard to the relationship of landlord and tenant by the Additional Rent Controller.

10. For the purpose of proving ownership, witness from L&DO; as AW-1 deposed before the Additional Rent Controller that property C-161, defense Colony stood in the name of Lt. Col. S.P. Kochar. Perpetual Lease Deed duly registered was executed in his favor by President of India on 31st December, 1968. That witness was not cross-examined. How else the ownership of the premises can be proved if not by the Lease Deed which is duly registered and executed If respondent No. 1 is proved to be the owner of the suit property, nowhere it is the case of the petitioners that somebody else is the owner of the property. Petitioners have been paying rent to respondent No. 1. Petitioner No. 1-H.C. Goenka and respondent No. 2-P.C. Goenka are brothers who are respondents 2 and 1 respectively before the Additional Rent Controller. In the written statement, the petitioners and respondent No. 2 took the plea that the first floor of the property was in the tenancy of M/S Assam Carbon Products Limited of which P.C. Goenka was the

Managing Director. It was the case set out by the petitioner that in order to maintain cordial relationship, respondent No. 2 agreed to vacate first floor and consequently the possession of that portion was given to respondent No. 1 on 1st May, 1983.

11. It is also a fact that the petitioner No. 1 H.C. Goenka and petitioner No. 2-M/s Unique Exports and Imports Pvt. Ltd. were allowed to be imp leaded as party by virtue of their application under Order 1 Rule 10 of CPC and they contested the eviction petition. It was in that application that H.C. Goenka and petitioner No. 2 themselves claimed to be a tenant in the suit premises. thereforee, there was a clear finding by the Additional Rent Controller that there existed a relationship of owner and tenant between the parties.

12. Let me now deal with the argument of learned counsel for the petitioner that the suit premises were, right from the inception of tenancy, were used for composite purposes. From the pleading of the parties, fact emerges that the first floor of the suit property was let out to M/S Assam Carbon Products Ltd. the Managing Director of which was Mr. P.C. Goenka, real brother of petitioner No. 1. The suit property is situated in a residential area. Exhibits AW2/R1 to AW2/R5 itself bears that it was for 'house rent'. No question was put to respondent No. 1 in the cross examination on the purpose of 'letting'. No material was brought before the Additional Rent Controller as to what office work or job was carried out from the tenanted premises. In the testimony of P.C. Goenka, who was examined as RW-4, he was absolutely silent about the letting purpose of the suit premises except that the premises was taken for the Company's guest house. In the cross examination he admits that he did not know if it was being used for residential purposes. H.C. Goenka, who was examined as RW-3, stated that premises were taken on rent for the purposes of his residence as well as for his personal office. He has further deposed that the first floor of the property was taken on rent by M/S Assam Carbon Products Ltd. for the pur-pose of residence of the guests of the company. Tenancy at first floor was surrendered and only ground floor remained with the petitioner from 1983. Ex.AW2/R6 is a letter written by respondent No. 1 to respondent No. 2 whereby he requested the respondent to shift office from the suit premises as any such activity disturbs the sanctity of the house. thereforee, the

authorities cited by the learned counsel for the petitioner that suit premises were used for commercial purposes right from inception of the tenancy to which respondent No. 1 has impliedly consented is of no help to the petitioner. Here is a case where the owner has objected to the use of the premises for purposes other than residential. The alleged use of the premises for office purposes itself is such that it does not convert the premises into commercial premises. The dominant use of the premises re-mained residential because the petitioners were admittedly residing in the suit property. The nature of accommodation involved is such that it can not be said to be a commercial premises. The property is located in a predomi-nantly residential area. therefore, I am unable to persuade myself that the premises were being used for commercial purposes with the implied consent of respondent No. 1 from the inception of the tenancy.

13. Let me deal with other argument of learned counsel for the petitioner that non-pleading of accommodation at R-700, New Rajinder Nagar, New Delhi was fatal and on this ground alone the respondent No. 1 ought to have been non-suited. Petitioners have not taken this plea in the written statement. Evidenc was completed. The matter was listed before the Additional Rent Controller when an application was filed by the petitioners that respondent No. 1 had another property at R-700, New Rajinder Nagar and he has not disclosed that property even in the eviction petition and so the eviction petition should be dismissed as it amounted to concealment of material fact. Reply was filed and it was brought to the notice of the Court that the accommodation available at Rajinder Nagar property was neither alternate nor suitable accommodation as the same has been occupied by tenants and the property where no residential accommodation is available on the ground of its being occupied by the tenants, non-disclosure of this accommodation is not fatal that the eviction petition is liable to be dismissed. Section 14(1)(e) of the Delhi Rent Control Act reads as under :

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.'

14. As a rule, landlord must plead all the necessary ingredients of Section 14(1)(e) of the Act. The question, however, to be considered in the present case is that can it be said that the respondent No. 1 had other reasonably suitable residential accommodation. Only thereafter the consequence of failure to disclose the property at Rajinder Nagar is to be seen. When the property was occupied by tenants, the non-disclosure thereof can not be said to be fatal and failure to do so can not be said to be mala fide in the facts and circumstances of this case. Somewhat similar view was taken by this court in Rameshwar Sarup Bhatnagar Vs . Ram Narain Arora & Another : 57(1995)DLT617 . Supreme Court in Mrs. Meenal Eknath v. Traders & Agencies 1996 R.L.R. (SC) 426 relying upon Prativa Devi Vs . T.V. Krishnan : (1996)5SCC353 :

'As pointed out by this Court, it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him has a tenant or on any other purpose is either insecure or inconvenient, it is not for the courts to dictate him to continue to occupy such premises.'

15. The Supreme Court in Meenal Eknath (supra) did not agree with the finding of Appellate Court as well as of the High Court that the flat will be sufficient and suitable for the landlord/owner. Therefore I do not find any merit in the contention of learned counsel for the petitioner that not mentioning the garrage and servant quarters, the petitioner has concealed any material facts as neither the garrage nor servant quarters could be considered as reasonably suitable accommodation for respondent No. 1. This was not the relevant information which was required to be stated by respondent No. 1 for the purposes of filing a petition under Section 14(1)(e) of the Rent Control Act.

16. Coming on the requirement of respondent No. 1, eviction order was passed in 1997, the respondent was 70 years old. The wife is also old. Respondent No. 1 deposed that he was suffering from Astro Arthrities and also suffered from heart problem for which he was admitted to Escort Heart Institute. The wife was having breathing problem. She was asthametic. Respondent No. 1 also examined AW-3

who was a doctor. No cross examination of doctor was done. therefore, requirement of the landlord-respondent No. 1 can not be stated to be not bona fide. Even the size of the family has not been taken into consideration. The owner who is suffering from heart problem, astro arthrities can not be compelled to live on the first floor in his old age to facilitate the tenant who is on the ground floor. Moreover, even if the size of the family of the respondent No. 1 is taken into consideration which consists of respondent No. 1, his wife, one married son who is living with respondent No. 1, his son's two children aged 6 and one and a half year old, one married sister, who also visits the respondent the need can not be stated to be unreasonable or mala fide. I do not see any force in the argument of learned counsel for the petitioner so as to interfere in the reasoned order of the Additional Rent Controller.

17. The petition is dismissed.

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