Krishan Kumar and Vs. Vimla Saigal

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SooperKanoon Citation : sooperkanoon.com/686019

Court : Delhi

Decided On : Apr-04-1975

Reported in : ILR1976Delhi238

Judge : Avadh Behari Rohatgi, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1)

Appeal No. : Second Appeal No. 86 of 1971

Appellant : Krishan Kumar and ;radha Rani

Respondent : Vimla Saigal

Advocate for Pet/Ap. : T.N. Sethi and; K.L. Sethi, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) This litigation has been in our courts for the last 15 years or so. The landlord is claiming eviction of his tenant on the ground of personal necessity under clause (e) of the proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 (the Act). So far he has had little success. There have been two rounds of litigation between the landlord and the tenant apart from the various civil and criminal cases that have been going on between them almost from the inception of the tenancy.

(2) Krishan Kumar and his wife Radha Rani are the appellants. Krishan Kumar owns house No. G-33, West Nizamuddin, New Delhi. The ground floor of this house was built by him in 1957. He and the members of his family started residing in it. In 1959 he added two more floors to this house. He and the members of his family shifted themselves to the newly built first and second floors of the house. The ground floor they let to the tenant Shrimati Vimla Sehgal, respondent in the appeal, in April, 1959 on a monthly rent of Rs. 260.

(3) It was alleged in the petition that the premises were let by Smt. Radha Rani to Smt. Vimla Saigal. But the Rent Control Authorities found that Krishan Kumar is the owner landlord.

(4) The accommodation in possession of the landlord consists of one drawing-cum-dining room measuring 13.3X19.6 and two living rooms (one measuring 14.7x12 and the other measuring 11X11.11/2') kitchen, bath, lavatory and a loft on the first floor. On the second floor there is a barasati measuring 12-11/2 X 11.11/2' besides lavatory.

(5) The landlord married twice. From his first wife he has a son who is now 37 years of age. The second is a daughter who left this country several years ago and is probably settled in England. From bids second wife he has a son who is now 26 years of age and a daughter 24 years old. His family, thereforee, consists of himself, his second wife, son from the first wife and a son and a daughter from the second wife.

(6) Now begins the chequered history of this litigation.

(7) On December 28, 1961, the landlord filed the first petition of ejectment of the tenant on the ground that he required the premises bona fide for his own use. He also alleged that the tenant has caused substantial damage to the property. The additional controller by order dated May 1, 1963, held that the landlord had failed to prove that the tenant had caused any substantial damage to the premises. On the ground that the premises were required bona fide by the landlord he held that he had no need for the premises. He dismissed his application.

(8) The landlord appealed to the rent control tribunal. His appeal was dismissed on September 13, 1963. The High Court dismissed the second appeal on July 31, 1964. At the stage of the appeal in the High Court the landlord said that he was suffering from heart trouble. The High Court held that this had not been established by the landlord. The landlord, thereforee, did not succeed. This was the first round of litigation.

(9) On November 18, 1964, the landlord filed a second petition for the eviction of the tenant. This time eviction was claimed only on the ground of personal bona fide requirement. It was alleged that the landlord was a heart patient and that he could not climb stairs without danger to his health. He also pleaded that his family consisted of two sons and a daughter and one of his sons was of marriageable age and keeping in view his status and requirement the accommodation in his possession was not sufficient.

(10) The tenant opposed this petition. He denied that the landlord had any heart ailment. As regards personal necessity the tenant said that the petition was mala fide.

(11) The Additional Controller by his order dated December 28, 1965, held that the landlord had failed to prove that he was suffering om any heart disease. As regards personal requirement he held that he was in occupation of reasonably sufficient residential accommodation. With these findings he dismissed the landlord's application.

(12) The landlord appealed to the rent control tribunal. The tribunal dismissed the appeal on December 6, 1966. The landlord went in second appeal to the High Court. Dua Cj accepted the second appeal on January 17, 1969. He quashed the order of the additional controller and the tribunal. He remitted the case to the additional controller with a direction to examine Dr. P. C. Dhanda as a court witness. He allowed the parties to put such questions as they wished to Dr. Dhanda in order to ascertain whether the landlord has any heart trouble. He also allowed the parties to lead such further evidence as they wished. He directed the additional controller to examine the case afresh and come to his independent conclusion on a consideration of all the relevant facts of the case and the evidence

adduced before him.

(13) After remand Dr. P. C. Dhanda was examined as a coins witness on June 10, 1969.

(14) After examining the evidence on record the additional controller by his order dated August 22. 1969. held that the family of the landlord consisted of himself and his three children two sons and a daughter and that they were in occupation of three comfortable rooms besides drawing-cum-dining room and this accommodation he thought was reasonably sufficient for the landlord and members of his family. As regards the landlord's requirement that he needed the ground floor to live he held that the landlord had failed in proving that he had been advised by the doctors not to live on the first floor. Consequently, he dismissed his application.

(15) The landlord again appealed to the tribunal. The tribunal dismissed his appeal on March 22. 1971. The landlord now appeals to this court.

(16) Ground (e) to the proviso to section 14(1) of the Act so far as it is material provides :

'(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.'

(17) Three main points were raised in the tribunal. Firstly, it was said that the accommodation in occupation of the landlord was not sufficient for his needs. Secondly, it was argued that the landlord being an old man required a separate room for pooja (prayers) and this he was not able. to get unless the tenant vacates. The third ground which was taken before the tribunal as also before the controller was that the landlord was suffering from heart disease and was advised to reside on the ground floor of the premises. All these three grounds were decided by the tribunal against the landlord. These grounds have again been

agitated before me.

(18) The principal question in this appeal is whether the landlord is entitled to claim reasonably suitable accommodation. Both the subordinate authorities have decided against him. Admittedly, the landlord is in occupation of a drawing-cum-dining room, two living rooms, loft, varandah, bath. kitchen, latrine on the first floor and a room with bath. latrine and a terrace on the second floor.

(19) Before the controller it was said that the landlord was in occupation of a miani (inter floor) besides the above mentioned accommodation. On this point the tribunal did not agree with the controller. The tribunal held that the landlord was not in occupation of any miani as one evidence it found that the tenant herself never alleged that there was any miani in possession of the landlord.

(20) So far as members of the family of the landlord are concerned at the stage of the trial before the additional rent controller there was no dispute between ihe partics. The tenant Shrimati Vimla Sehgal and her husband both appeared in the witness box. They admitted that the landlord has two sons and a daughter who are staying in the premises. That was also the landlord's case in his evidence.

(21) The eldest son of the landlord who is now 37 years of age was studying in England for his Ph. D. degree. He returned to India in November, 1964 with his studies unfinished as the landlord wanted him to be by his side in his illness. This is what the landlord slated in his evidence. The eldest son is dependent upon the father for all purposes including finance. It will, thereforee, be seen that the eldest son came to India in November, 1964, that is, after the decision of the first eviction case by the High Court in July, 1964. The landlord, thereforee, claimed in his second petition that with the arrival of his oldest son who was in England at the time of the filing of the first eviction petition he was experiencing acute shortage of accommodation. Then he said that there was a change in the circumstances of his family. His younger son and daughter were studying at school at the time of the first eviction case. They were much younger then and were studying in junior classes and, thereforee, it was possible for him to put up with limited accommodation somehow. Now he said that he found it very difficult as his children had reached adolescence.

(22) The landlord was employed as an audit officer in the Northern Railway and was drawing a basic salary of Rs. 900 per month at the time when he made his statement in court on March 29, 1965. Now he has retired from service.

(23) thereforee, what has to be seen is whether there is sufficient accommodation for the landlord, his wife, his two sons and a daughter in the premises in occupation of the landlord. There arc three living rooms, two on the first floor and one on the barsati floor besides the drawing-cum-dining room. The landlord now wants one room for himself and his wife and one room for each of his children. In all the minimal requirement is four rooms, but he has got only three. This means that he cannot provide a separate room to each of his children. The tribunal also thought this. It took the view that for a family of four persons the accommodation was reasonably sufficient but tribunal did not count the members of his family correctly. The tribunal said:

'KRISHANKumar deposed that his family consisted of himself, his wife, two sons (aged 13 years and 15 3/4 years) and a daughter (aged 13 years). It was admitted before me at the time of arguments that their daughter had since gone to England and was residing there. The landlord, thereforee, require residential accommodation for themselves and their two grown up sons.'

(24) The tribunal thought that only two grown up sons were living with their parents. The age of the daughter was incorrectly given as 13 years. She is now 24 years. The daughter, it was said, E was not residing in India. This observation of the tribunal appears to be on the basis of some admission made before it. This is what appears from the judgment.

(25) Thinking that the landlord had to provide separate accomadation only for his two sons, the tribunal said :

'THEYare in occupation of one dining-cum-drawing room, two other rooms on the first floor and one barsati, which is almost a room on the second floor, which accommodation, in my view, is reasonably sufficient for a family of four persons. The landlords can use one room for themselves, can give one room on the first floor to one of their sons and the barsati room to the second son. They have a

separate room for purposes of sitting and dining. In this way I agree with the learned Additional Controller that the landlords were in occupation of reasonably sufficient residential accommodation.'

(26) On behalf of the landlord it has been argued before me that no admissoin was ever made before the tribunal that the landlord's daughter had gone to England and was residing there. It was said that this daughter, namely from the landlord's second wife never went to England. She has always been residing in India. She has studied in India. The tribunal probably was under a misconception. What appears to have been said before the tribunal was that the daughter from the first wife of the landlord had gone to England and had settled there. This is the question which arose when the case was argued before the tribunal. The tribunal, thereforee, thought that only two sons were living with the landlord and for father, mother and their two sons three living rooms were available. This was considered to be suitable in the circumstances of the case.

(27) From the evidence on the record it appears that no one on behalf of the landlord or on behalf of the tenant ever deposed in their evidence that this second daughter had gone to England and was residing there. The landlord and the tenant uniformly said that the family of the landlord consists of two sons and a daughter besides the parents themselves. On behalf of the landlord an affidavit was filed by Mr. N. C. Kochhar, Advocate, who argued the appeal before the tribunal. In this affidavit it is denied that any admission was made such as has been referred to in the judgment of the tribunal. In the memorandum of appeal in this court there is a distinct ground of appeal where this admission has been questioned.

(28) The upshot of the discussion is that there is no basis for the admission recorded in the judgment of the tribunal that the landlord's daughter 'has since gone to England and was residing there'. The tribunal, it appears to me, confused this daughter with the elder daughter admittedly residing in England. This has resulted in miscarriage of justice. The tribunal did not get its facts right. It started with wrong premises. On the basis that the landlord, his wife and two sons only are to be accommodated in the premises, the finding appears to be quite right that there is enough accommodation with the landlord because father and mother can

be accommodated in one room, each of the two sons in two separate rooms. But there is the daughter. She has also to be provided with a separate room. For that admittedly there is no provision.

(29) I think the landlord has made out a case of bona fide requirement. The finding of the tribunal is not conclusive since it did not get the facts right. It fell into an error. It made a sad mistake. It misdirected itself on this question of fact because the foundation of its reasoning is laid on the supposition that the members of the family arc the landlord, his wife and two sons. This is a finding which cannot be said to be based on any evidence.

(30) Before the additional rent controller there was no such dispute about the members of the family. The controller said :

'HIS(landlord's) family consists of only himself, wife and three children, His children are quite grown up. Petitioner and his wife obviously would require one bed room for themselves, the eldest son naturally would also require separate bed room for himself. The other two children of the petitioner are students and they can casily use the third room, as their bed room.'

(31) The suggestion of the controller was that the younger son and younger daughter should be accommodated in one room. I cannot, I am afraid, share the view. The landlord cannot be asked that he must somehow put up with the limited accommodation in his possession. Can the landlord not ask one separate room for each of his children No reasonable man can reach the conclusion arrived at by the controller. Such an approach is not the right one. The tribunal appears to have approached the question correctly but it got the facts wrong. It forgot about the daughter. It overlooked her need.

(32) As regards the accommodation the controller found that the landlord had one miani with him. The tribunal held that there was no miani with the landlord. This also shows that the accommodation with the landlord was not as much as was found by the controller.

(33) The tribunal, it seems to me was greatly influenced by the fact of the previous litigation which went right up to the High Court. The tribunal thought that the claim of the landlord was not bona fide. said:

'THEcircumstance that he sought the eviction of this tenant previously on practically similar grounds shows the want of his bona fide.'

(34) For this assumption, it appears, there is no ground. The needs of the landlord when he filed the first petition in 1961 were limited. His son had not come from England. His children were quite young. All of them arc now grown up. He himself is a man of 64 years of age. He has retired. It would not, thereforee, be right to say that the decision in the first petition operates as a resjudicata. Obviously the circumstances have changed. In changed circumstances a second petition can always be made.

(35) Two other grounds were urged before the tribunal. One was that a separate room for pooja was required by the landlord. The tribunal said that the requirement for a separate room for pooja did not appear to it to be genuine. The other ground was that for reasons of health the landlord has been advised to stay in the ground floor of the premises. The evidence of Dr. Dhanda who was examined by the landlord after the remand of the case by the High Court does not support the landlord. The witness does not say that the cardiogram of the landlord showed that he had any heart trouble. On the other hand the witness stated that the picture shows that the landlord's heart was quite normal. I cannot interfere, sitting as I do in second appeal, with these findings. I cannot reappreciate the evidence of the medical witnesses, doctors and vaid and radiologists who were examined by the landlord to show the court that he was advised to stay on the ground floor. This evidence has been considered both by the controller and the tribunal at length. They were not convinced that the landlord had such an ailment as required him to stay in the ground floor.

(36) On this aspect Dua Cj in the order of remand dated January 17, 1969, said :

'.....THElearned Tribunal as also the learned Additional Rent Controller have considered the case from a legally erroneous point of view on avital matter

affecting the rights of the parties. They seem to think that unless the landlord can affirmatively establish a damaged heart or unless a specialist medical expert proves that he is not able to climb up the stairs, the landlord cannot establish bona fides of his requirements to reside on the ground-floor. It appropriately be pointed out that after a certain age, a person may be advised, by way of precaution or as a preventive measure, not to climb up the stairs in order to protect his heart from possible damage by reason of excessive strain. If such circumstances exist, then also it may satisfy the statutory requirement and actual damage to the heart may not be insisted upon as an essential mandatory condition precedent in order to give to the landlord possession of the ground-floor for residence.'

(37) I would just add this. I am not quite sure whether the Tribunal and the controller kept the above salutary observations in mind while appraising the medical evidence which in this case was not inconsiderable.

(38) Similarly as regards the landlord's need for a separate room for pooja I am not prepared to reappraise the evidence which has been examined by the tribunal.

(39) On the question of the landlord's need I have differed from both the controller and the tribunal. I have come to the conclusion that the landlord's need is genuine. He does require a separate room for himself and his wife and three rooms for his two sons and a daughter. But there is not enough room to go round.

(40) Mr. K. L. Sethi on behalf of the tenant has argued that under section 39(2) of the Act an appeal lies to the High Court only when it involves some substantial question of law. It is said that no question of law is involved in this case and much less a substantial question of law. He has referred me to numerous authorities in support of his contention that the jurisdiction of the High Court is circumscribed by the words 'substantial question of law.'

(41) It is true that this court as well as the Supreme Court have repeatedly laid down that the High Court is entitled to interfere in second appeal only when it involves a substantial question of law: See Vinond Kumar v. Ajit Singh Ahluwalia and others 1969 Rcj 218(1), Bhagwan Dass v. Rajdev Singh, : AIR 1970 SC986 and Krishnawanti v. Hans Raj, : [1974]2SCR524 . It has now been held that the

question of personal requirement is a question of fact and not a mixed question of law and fact: See Mattulal v. Radhe Lal, : [1975]1SCR127 .

(42) It is also true that the findings of fact correctly recorded by the controller and the tribunal are binding on this court in second appeal. In second appeal a pure finding of fact cannot be disturbed. But this is not the case here. The tribunal did not get its facts right. It went wrong. As the tribunal thought that only two sons, the landlord and his wife were to be provided it reached the conclusion that there was sufficient accommodation at the landlord's disposal for all of them including himself.

(43) The needs of the daughter and the expanding family were altogether ignored. If a finding of fact is vitiated it cannot be said that such a finding is binding on the High Court in second appeal. In this case it is not necessary to reappraise or reexamine the evidence. On the admitted facts on the record it seems to me that the conclusion reached by the tribunal is unsustainable.

(44) The rent control tribunal is a tribunal of fact as is the controller. These authorities have to ascertain facts. Facts truly ascertained can be made to give their own evidence.

(45) Facts are as numberless as the sands of the sea. But every fact is not always material. Litigation is directly concerned with material facts. Material facts tilt the scales of litigation. On them depends the right decision of the case. In the matter of facts we have to be scruplously fair.

(46) That the younger daughter of the landlord is living with him is a material fact. The tribunal mistook this fact. It thought that she has not to be cared for as she is away to England. This fact is demonstrably wrong. It is not borne by evidence of either party. Nor does it appear in the order of the additional controller. For the first time it appeared in the judgment of the tribunal. This seems to have crept by mistake. If the facts arc wrong the reasoning cannot be perfect. Who are the members of the landlord's family This is a basic fact. On this primary fact will depend the requirements of the landlord and his family.

(47) The solid fact remains that the younger daughter is in India and is living with the lardlord. She has to be allotted a separate room. This fact proves one thing if nothing else that the need is genuine and the claim honest, certainly now if not before. So cardinal a fact is this that when wrongly found it tipped the scales against the landlord. Rightly found it will tilt the scales in his favor.

(48) Counsel for the tenant contends that it would not be unreasonable to hold that the younger son arid the daughter should accommodate themselves in one room. This is a counsel of despair. This argument convinces me more than ever before that the landlord's need is genuine. No one can say that when he requires one separate room for each member of his family including himself and his wife his requirement is unreasonable. The law does not expect the landlord to sacrifice his comforts and live a crowded life in his own house when he can have better comfort. As Dua Cj said that the Act

'DOESnot impose on the owner-landlord any obligation to sacrifice the genuine requirements of his own comforts merely because he has at one time thought proper or considered it necessary, on account of circumstances, to let out his pre-mises.'

(49) To sum up: In second appeal finding of fact cannot be set aside by the High Court so long as there is 'some evidence to support it' and it cannot be 'branded as arbitrary, unreasonable or perverse' (per Bhagwati J. in Mattu Lal's case (supra).

(50) The finding of the tribunal that the daughter has gone to England is not based on any evidence. The controller's view that the son and the daughter can be huddled together in one room is unreasonable and arbitrary. The tribunal's judgment is founded on a supposition which is groundless. The controller's solution is unrealistic.

(51) In the result the appeal succeeds. T order the eviction of the tenant. Since eviction has been ordered on the ground specified in clause (e) of the proviso to sub-section (1) of section 14 the landlord shall not be entitled to obtain possession before the expiry of period of six months from today (See S. 14(7)). In the circumstances of the case I would leave the parties to bear their own costs.