

Mool Chand Vs. Ganda Ram

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Court : Delhi

Decided On : Dec-23-1976

Reported in : 1977RLR240

Judge : B.C. Misra, J.

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

Appeal No. : Civil R. Appeal No. 416 of 1976

Appellant : Mool Chand

Respondent : Ganda Ram

Advocate for Pet/Ap. : S.L. Bhatia,; P.K. Seth,; C.P. Wig and;

Judgement :

B.C. Misra, J.

(1) This revision petition has been filed under sub-section (8) of section 25B of the Delhi Rent Control Act, 59 of 1958, (hereinafter referred to as the Act), and is directed against the order of the 1st Additional Controller, dated 24th May, 1976 by which he has refused the tenant leave to contest the petition for eviction and ordered eviction.

(2) The petition in this case has been filed by the respondent landlord for recovery of possession of the premises in dispute on the ground of bona fide personal necessity mentioned in clause (e) of the proviso to sub-section (1) of section 14 of the Act. In a detailed judgment delivered by me in V. L. Kashyap v. R. P. Puri, Cr 369 of 1976, on 22nd September, 1977 RLR 397,1 have laid down the rule of law as to what defense are legally open to a tenant in an eviction petition for bona fide personal necessity under clause (e) of the relevant proviso (in contradistinction to the petition under section 14A of the Act). I have also indicated in what manner the defenses should be taken and how detailed the affidavit should be and that if an issue has been raised which entitles the tenant to grant of leave, then the petition must be set down for trial and the affidavits and the accompanying documents in the application for leave to contest are no substitute for trial on evidence,

(3) In the instant case, the tenant has reised a number of pleas. One related to the invalidity of the notice which has been repelled by the Additional Controller on the ground that the tenancy created belonged to the period prior to the commencement of the Transfer of Property Act in Delhi and so the notice was valid. The other plea raised was that the premises were let out for commercial-cum-residential purpose. This has been negatived on the basis of the written rent note. Had the matter rested there, this revision petition would not have called for interference.

(4) However, in paragraphs 4 and 5 of the affidavit, I find that the tenant had made a specific and clear plea denying the claim of the landlord that he bona fide required the premises in dispute for residence of himself and the members of his family. The plea has been taken in detail and in consonance with the rule of law laid down by me. The tenant has stated that the number of members of the family of the respondent at the accommodation available with him is more than enough and on this it was submitted by the petitioner tenant that the claim of the landlord was not maintainable.

(5) The respondent landlord on the other hand had alleged that there were other members of his family also needing accommodation including his daughters and guests and he had specifically pleaded that a son of his, who has been employed

in Kanpur has been ordered to be transferred. He also laid stress on his status as an executive officer drawing a handsome salary. These facts have not been admitted by the tenant, the Additional Controller has given credence to them and thereby held that the claim of the respondent landlord for recovery of possession on the ground specified in clause (e) has been established.

(6) In my opinion, it was not open to the Additional Controller to decide this disputed questions of fact only on the basis of affidavits. The case had to be set down for trial. The Additional Controller has, therefore, erred in not granting leave to contest the petition in the instant case and his order is not sustainable

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