

Sidhu Ram Vs. Rameshwar Dass

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Court : Delhi

Decided On : Jul-29-1983

Reported in : AIR1984Delhi151; 24(1983)DLT279; 1983(5)DRJ257

Judge : M.L. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#)

Appeal No. : Second Appeal No. 178 of 1978

Appellant : Sidhu Ram

Respondent : Rameshwar Dass

Advocate for Pet/Ap. : S.X. Taneja and; Vijay Kishan, Advs

Judgement :

M.L. Jain, J.

(1) Sidhu Ram is a tenant from 1959 in the disputed premises which comprised one room, a kitchen, common bath and latrine on the first floor since 1959. His eviction Was sought by the landlord on the ground of bona fide requirement and non-payment of rent. As regards the non-pavement of rent, he was given the benefit of Section 14(2) of the [Delhi Rent Control Act, 1958](#) (the Act). The Additional Controller by his order dated 31-3-1975 directed eviction on the other ground. His appeal was dismissed by the Rent Control Tribunal on 5-5-1978.

Hence, this second appeal.

(2) Respecting the purpose of letting, the learned Tribunal held that the premises were let for residential purposes only. The appellant with his wife and children is living in the premises and runs his shop in the ground floor. In deciding the requirement of the landlord, one important consideration is the size of his family. The family of the landlord consists of his wife and three married daughters. The learned Tribunal has assumed that he had also got three sons, and since the time premises were let out in the year 1959, his family has grown. Proceeding on that basis, the two room accommodation in possession of the landlord was held to be insufficient for his need. The learned Tribunal disbelieved the allegation that the eviction was sought only to re-let. The learned Tribunal noticed that the landlord had inducted one Davinder as a tenant about 2' years back on the second floor, but that portion was not suitable as the landlord and his family was residing in the first floor, were most convenient for his requirement. The letting of a portion on the second floor 2' years prior to the filing of the eviction petition would not lead to any inference that the respondent has sought eviction in a mala fide manner. These findings are under challenge.

(3) It was urged by Mr. Taneja for the tenant appellant that it was not specifically pleaded or proved by the landlord why the aforesaid premises in the second floor which fell vacant in 1977 were unsuitable and, therefore, had to be re-let. That apart, the accommodation in possession of the landlord is two rooms, one covered verandah and was sufficient and suitable for the old couple and for the occasional visits of his married daughters.

(4) Mr. Vijay Kishan, on the other hand, contended that the appellant lived in the same house and knew all the facts. If any particulars were not given he should have asked for better particulars. He relied upon *Shri Rameshwar Dass v Shri Jagan Nath* 1982 (1) Rlr 424. I think that Mr. Vijay Kishan is right there and the application for eviction cannot be rejected for want of some pleadings. He is also right in his submission that the letting by the landlord 2' years earlier of a portion falling vacant in his second floor was no proof of want of bona fides: *Surjit Singh v. I.J. Chawla* 1979 (1) Rcr 4, and *S.B. Khanna v. Trilok Nath* 1980 Rlr 187.

(5) But he appears to have no valid answer to the challenge that the requirement is not bona fide because the rooms in occupation of the landlord dox reasonably meet his need. The contention of Mr. Vijay Kishan is that the requirement of the landlord is neither whimsical nor fanciful. By now the landlord is of 75 years old and his wife is suffering from knee trouble. Their daughters keep on coming to see them. But in their old age and sickness, they need one of their daughters to be with them. This fact was not challenged in cross-examination. That will require an extra room. Their age and health are such that they cannot live alone and this is a relevant consideration in determining the bona fide requirement : Vas Dev Dhawan v. Trilokinath (1967) 69 Plr 260. A room for store is also required. The landlord is entitled to make himself more comfortable in his own property. Shri Ram Prakash Saroj v. Shri Mohinder Singh 1981 (1) Rcj 770. [He also stressed upon the mala fides of the tenant who led though without success as many as 20 witnesses to prove that the premises in question were commercial and were not residential. It is true that the tenant made a vain and false bid to prove that the premises in question were non-residential. Yet, I consider that the accommodation the first floor is not only sufficient, but the ground of knee trouble of the wife is not a strong one. She does not seem to be incapable of climbing the stairs if need be. The accommodation in possession of the landlord being suitable, the mild sickness of one of the couple, is, thereforee not of much importance, nor do the mala fides of the tenant can have any bearing in the other circumstances of this case.] As a matter of fact, the learned Tribunal fell into an error by taking into consideration the requirement of the sons of the landlord while he had none. The judgment of the learned Tribunal, thereforee, is based upon the facts not on record and deserves to be set aside.

(6) I hold that the requirement of the landlord is/not bona fide. accept this appeal and set aside the impugned orders and dismiss the petition of the landlord. No costs.