

Kanwal Narain Vs. L.F. Tellis

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Court : Delhi

Decided On : Sep-29-1983

Reported in : 1984RLR10

Judge : M.L. Jain, J.

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

Appeal No. : Civil R. Appeal No. 619 of 1980

Appellant : Kanwal Narain

Respondent : L.F. Tellis

Advocate for Pet/Ap. : R.K. Makhija,; Alakh Kumar and; M.R. Chawla, Advs

Judgement :

M.L. Jain, J.

(1) Respondent was inducted as a tenant in the premises comprising 4 rooms, 2 verandah in the 1st floor and open space on the top floor, in a three storeyed house No. 44 Lekh Ram Road, in Darya Ganj, Delhi, some time in 1953. Late Lala Ram Narain terminated the tenancy by a notice of 8.9.1975 served on the respondent in Bombay. He filed an eviction application against the respondent on the ground of bona-fide requirement on 1.10.1975. That application has now been placed on record. He stated in his application that the premises are owned by Huf

of which he was the karta. The Huf consisted of his son Kanwal Narain and his grandsons. In 1972, the respondent shifted to Bombay and promised to vacate the premises but failed to do so. The accommodation available with the applicant was insufficient for the family. He died on 19.10.1975. That application was dismissed on 23.2.1976.

(2) Shri Kanwal Narain an Advocate claiming as the Karta of the Huf again sent a notice to the respondent on 5.3.1976 and filed the present application on 30.4.1976. He alleged that he is in occupation of 2 rooms, one sitting room and a dining room on the ground floor which is not sufficient for his requirement be fitting his status. The premises are required by him for himself and for the members of his Huf for the purpose of their residence. Each one of his 3 sons requires a separate study-cum-bed room. At present, they were huddled into the living room and used to quarrel. The sons have since then also grown up into the ages of 24, 22 and 20 years. He has no accommodation for his guests, who frequently visits his house and stays with him. A separate bed room for one Naurati Devi who was not a member of the family but has been living with them as one, was also required. He also needs room for his servants and the driver. His driver was living in a garage. The D.D.A. is objecting to this user while the driver is threatening to leave service for want of accommodation.

(3) The respondent alleged that the ground floor has 4 living rooms in which the applicant and his family have been residing for long and can do so even now. Besides there are four garages, one of which is being used by the neighbour, the other is used by the driver of the applicant and the other two have been let out. The entire second floor which previously used to be occupied by several tenants is now occupied by the applicant ; out of which one room is being used as office, one room is being used as study-cum-conference room and one room is being used for his guests. The servants including the driver have also been given separate accommodation on the second floor. There is a mezzanine floor over the garages which has been used as a store and for residence of his servants. A part of the first floor had recently fallen vacant, but instead of occupying it for himself, the applicant has let it on increased rent. Since Lala Ram Narain and Naurati Devi have expired the accommodation occupied by them became available to the

applicant. He had one more house, 4 Daryaganj. He had thus accommodation more than his requirements, and his alleged need is not bona fide. The house belonged to Lala Ram Narain. The applicant is not his son. The applicant is neither the owner nor the landlord. There was nothing to show that there was any H.U.F. and that he was the karta of some HUF. He is, therefore, not entitled to maintain the application.

(4) In his replication, the applicant explained that the two rooms on the last floor said to be unoccupied are only barsatis which are being used for storing cots, etc. and for sleeping on the roof. These barsatis are absolutely cut off from the living space occupied by the petitioner on the ground floor. He denied that the rooms on the top floor are being used for the guests, rather, the guests are forced to sleep in the drawing room as and when they visit. The premises in occupation of the respondent were more suitable to the needs of the applicant because its windows open in the courtyard and when the respondent was transferred from Delhi to Bombay he assured that he would take away his family to Bombay and vacate the premises. Since they were on friendly terms, the applicant believed him and acting upon his assurance let out the first floor. He waited for some years, but the respondent did not vacate the premises while the need for more accommodation was growing. He admitted that he has another house No. 4. Daryaganj, but it was in occupation of the tenants and is not otherwise suitable for his residence.

(5) The learned Controller found that the applicant was adopted by the late Lala Ram Narain, vide adoption deed of 17.1.1929. The respondent did not depose that the applicant was not the owner. The learned Controller, therefore, held that the ownership of the applicant was proved.

(6) But he found that the alleged requirement was not bona-fide. He further found that at present his sons were using a room of the size of 14'X24' partitioned by curtains. The other three rooms are of the size of 18'X14', 18'x13' and 16'x13'. There are two separate stores of the size of 8' X 6' and 9'x8', one drawing room of the size of 9'X7' two garages each of 17'X9' Barsatis each of the size of 18'x10'. 12'X14', 10'X15' and 18'X7' respectively. The barsati floor was equipped with Wc, bath latrine and open terrace. The learned Controller also remarked that the

respondent was transferred in 1971 and had not vacated the premises for about three years in spite of his alleged assurance and yet the applicant let out the vacant portion on the first floor to some other tenant in 1975-76 when the family was in need of some extra accommodation and eviction proceedings already stood initiated. The Explanation of the landlord that he did so as he relied upon the assurance of the tenant was rejected by him because no person would be taken in by such an assurance as remained to be carried out for a long time of 3/4 years and because he must have come to know that the respondent had no intention to do so. The Controller further observed that the applicant did not in the first instance disclose the other accommodation available to him, that is, the mezzanine floors, the garages and the barsatis in his application. It was only when the respondent stated about this additional accommodation that the applicant had to acknowledge it. The Controller also found that the accommodation in possession of the applicant is reasonably suitable for the size and status of his family. Simply because the windows of the premises in occupation of the respondent open towards the courtyard, it cannot in any way make the requirement bona-fide. The application was rejected by the Controller on 5.4.1980. Hence, this revision petition.

(7) In this petition, the landlord petitioner has challenged that the findings of the Controller are not in accordance with law as far as bona-fide requirement was concerned. The findings were against the record.

(8) A preliminary objection to this petition is that no revision against the impugned order is maintainable. The learned counsel for the respondent derived support from *Harbhajan Das v. Tilak Raj* 1981 RLR 7. It was held in that case that where the Controller gave the finding on the need of the landlord, it is a pure question of fact and the landlord cannot seek its revision by the High Court. The High Court, can interfere only in exceptional crises when the finding is based on no evidence or is patently perverse. In *Ishwar Das Sawhnev v. S.C. Mahindru* 1980 RLR 662 it was held that such findings can be revised only if it is shown that no such inference could be derived at all or in law from primary facts or suffers from an error which goes to the root of the matter which if not committed, would result in a different decision, or if there is a miscarriage of justice due to mistake of law. The

overall decision must be according to law which it would not be if there is miscarriage of justice due to mistake of law. The High Court cannot interfere with a plain finding of fact arrived at by the court below : Hari Shankar v. Rao Girdharilal Air 1963 Sc 698. It was urged by Shri Chawla on behalf of the respondent that the impugned order is not open to revision because it suffers from no such error as goes to the root of the matter and the findings are such as cannot be said to be arrived at all or were bad in law. As a last resort, it was also suggested that where the appellate court differs from the facts found by the trial court, the proper course is to remand the case : Dwarka Nath v. Ramrati Devi, : AIR 1980 SC192 .

(9) The reply of Shri Makhija is that the Controller has based his judgment on the assumption that a part of the premises were let out during the pendency of litigation or shortly before it commenced. He contends that the finding is against the evidence, because the premises were let out in 1973 more than two years before the filing of the application on the express assurance of the respondent that he will vacate the premises. I think this answers the preliminary objection.

(10) Relying upon Abdul Hamid v. Nur Mohammad, : AIR1976 Delhi328 ; S.R. Dutta v. Chunilal Bhatia 1981 RLR 172, Shri Chawla next urged that the application is liable to dismissal because the petitioner has not pleaded that (1) he is owner or coparcener on account of adoption, and (2) he had no other reasonably suitable accommodation and has not disclosed the accommodation, namely, mezzanine floors, entire second floor and four garages and one another house in Daryaganj. The argument is that the applicant must plead all the ingredients, of S. 14(1)(e) of the Delhi Rent Control Act, 1958 (the Act). If he does not, he must fail because (1) he cannot be allowed to lead evidence to prove what he did not plead and even if he has led evidence, it cannot be looked into and (2) he has not disclosed the entire cause of action.

(11) These submission are founded in the legal maxim seconded allegation of probate, that is a case has to be decided according to pleading and proof. In Siddik Mahomed Shah v. Mt. Swan , the Privy Council approved the rule that no amount of evidence can be looked into upon a plea which was not put forward. In Sheodhari v. Suraj Prasad, : AIR 1954 SC758 the defendant failed to prove his

case. It was held that the court cannot make out a new case for him which is not made in the W/s and which is inconsistent with the title set up by him. In *J.K. Iron & Steel Co. Ltd. v. Iron & Steel Mazdoor Union* : (1956)ILLJ227SC it was said that it is not open to a Tribunal to fly off at a tangent and disregard the pleadings to reach any conclusions that they think just and proper.

(12) As will presently appear, the rule is not absolute and a general application of this rule may result in hardship if not in injustice. As regards non-disclosure of cause of action, I have said in *M.M. Mehra v. J.S. Butalia*, Cr 268/83 1983. R.L.R. 711 that to insist upon the reproduction of what the provisions of the statute are, is to ask the applicant to plead law. Moreover, such an omission can be allowed to be rectified by replication, by better particulars or by an amendment and in any event, an application cannot be thrown out if there is a partial disclosure of cause of action. In *Rameshwar Dass v. Jagan Nath* 1982 (1) R.L.R. 424, failure to plead sufficient particulars did not lead to the dismissal of the eviction application, and a mere reproduction of the clause was considered sufficient. In case of subsequent development, no amendment is called for if the tenant had notice and opportunity to rebut it : *Gurcharan Singh v. R.N. Chaudhry* 1982 (1) R.L.R. 576.

(13) As to pleading and proof, in *Eshanchunder Singh v. Samachum* (1866) 11 Moo IA 7, it was said :

'...DETERMINATION in a cause should be founded upon a case either to be found in the pleadings or involved in or consistent with the case thereby made... It will introduce greatest amount of uncertainty into judicial proceedings if the final determination of causes is to be founded upon inferences at variance with the case that the plaintiff has pleaded, and, by joining issue in the cause, has undertaken to provethe state of facts, and the equities and ground of relief originally alleged and pleaded by the plaintiff, should not be departed from'.

These observations, it will be noticed did not lay emphasis on the pleadings, but on the case made out in the pleadings. Commenting upon these observations Viscount Haldane said in *Haji Umar v. Gustadji* Air 1915 Pc 87 :

'In applying such a principle the whole of the circumstances must be taken into account and carefully scrutinised. The question is in ultimate analysis one of the circumstances and not of law.'

The rule cannot be applied in an abstract way so as to mislead a court in estimating the merits in the controversy and the fundamental question involved. In (Maung) Kyi Oh y. Ma that Pon Air 1926 Pc 29, the Privy Council further cautioned that pleadings should not be construed strictly and in *Sagarmull v. John Carapiet*, they clearly laid down that where, notwithstanding the form of the plaint, the case was fought by parties deliberately upon issues substantially as framed by the trial Judge, it ought upon that footing be determined. In *Firm Srinivas Ram Kumar v. Mahabir Pd.*, : [1951]2SCR277, the Supreme Court explained :

'The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case which the plaintiff could have made was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based upon the defendant's plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances when no injustice can possibly result to the defendant it may not be proper to drive the plaintiff to a separate suit.'

(14) Bose J in *Kedarlal v. Hiralal* : [1952]1SCR179, observed :

'I would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is cause to the other side however clumsily or inartistically the plaint may be worded. In any event, it is always open to a court to give plaintiff such general or other relief as it deems just as if it has been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs.'

In *Gunender Nath v. Satish Chandra* : [1953]4SCR277 , plaintiff succeeded in the absence of a specific pleadings as it did not prejudice the plaintiff. *Bhagwat Prasad v. Chandra Maul* : [1966]2SCR286 , went still further :

'If a plea is not specifically made and yet it is covered by an issue by implication and the parties knew that the said plea was involved in the trial then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The General rule no doubt is that the relief should be awarded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched though indirectly or even obscurely in the issues and evidence has been led about them, then are ground that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case.'

(15) The pleading must be read as a whole to ascertain its true import : *Udhav Singh v. Madhav Rao Scindia* : [1976]2SCR246 . *Gappulal v. Thakurji* : [1969]3SCR989 , was not a case to the contrary as in that case there was neither pleading nor proof of permission to sublet. *Rajendra Singh v. Chandra Sen* Air 1979 882, did not permit evidence in the presence[^] of pleadings but that was a case of corrupt practice in an election. It is tried like a charge in a criminal case. So was *Mrs. Om Prabha Jam v. Abnash Chand* Air 1968 Sc 1983. But even in election cases it was held in *Harish Chandra v. Triloki Singh* : [1957]1SCR370 , that pleadings should not be too strictly construed and regard should be had to the substance of the matter and not of the form. But the test has always been whether the party aggrieved has really been taken by surprise, or is prejudiced by the action of the opposite party : *Ganda Singh v. Ram Narain Singh* . In *Abdul Hamid* (supra) it was, however, held that the statute has laid on the landlord the duty to allege and prove what is laid down in Section 14(1)(e) of the Act and on a question of this importance, it would be neither safe nor desirable to rest any decision on the mere ground of want of surprise to the tenant. Without making such necessary allegations, there will be no jurisdiction for Controller to order eviction. The learned Judge has not given any reason why the element of surprise or prejudice should not be considered in an eviction proceeding. Pleadings after all are matter of

procedure and the implication of the rule of second allege et probate is that they should be construed and whole and in a reasonable manner and is the substance and not the form that is material. Pleas can be considered even where these are indirect or obscure. A plea outside the pleadings and proof thereof may be permitted if the opposite party was not been taken by surprise and no prejudice or injustice has been caused to it. It will be so where the opponent had raised no objection to its omission or has been admitted by him or he knew that such a plea had a bearing on the case and could be raised and decided or it was not inconsistent with the allegations made in the pleadings and is based upon the facts alleged therein or the opponent had a reasonable opportunity to meet it or has in fact led evidence to disprove the same. One may usefully refer for detail to *Sarswati Devi v. Satya Narayan* : AIR1977 Cal99 in this connection.

(16) In this case, by the time replication was filed, the whole case under clause (e) had been known and later on fought on that footing. Replication is a part of pleadings: *Kochukesavan v. Gauri Amma*, 1967 KLT. 257 and *Moti Ram v. Baldev Kishan* 1979 Dlt 90. The respondent cannot complain that he did not know what case he was to answer. therefore I do not see in this case any violation of *secundum allegation et probate* or principles of natural justice or non-disclosure of the cause of action. The submission of Shri Chawla is, therefore, rejected.

(17) Allied with this submission is the argument that since the applicant has concealed, his requirement has to be rejected as mala fide. I think the aforesaid holding that replication discloses the whole of the case and that nothing remained undisclosed should also cover this objection.

(18) Shri Chawla then pointed out that the application is liable to be thrown out because the petitioner has not been able to show how he is the owner of the premises. The premises were given on rent by owner landlord late Lala Ram Narain and unless it is shown that the petitioner is the owner of the premises, he has no right to make the application u/s. 14(1)(e) of the Act. In the application he has called himself as the karta of the Huf which, owned the property. In his replication he did not plead adoption. He disclosed this fact for the first time in his statement on 30.4.1976 and filed a memo of adoption on 20.1.1978. Yet the

Controller has found that the adoption deed produced by the petitioner has proved that the premises are owned by the petitioner and the respondent in his deposition has not challenged that the respondent is the owner-landlord. Upon consideration of the matter, I do not think that the finding of the Controller on this point calls for any interference. It would not be out of place to add that in his application, late Lala Ram Narain had described Shri Kanwal Narain as his son and had stated that he constituted a joint family along with his son and grandsons. Same is the case put forward by Shri Kanwal Narain.

(19) It was further urged by the counsel that the landlord does not in fact at all require the premises. He pointed out that the case of the applicant is that he needs the accommodation for (1) himself, (2) his sons, (3) servants (4) worship (5) guests, (6) professional conferences (7) driver and (8) Naurati Devi. The driver is already living in the same house, probably in one of the garages. The need for accommodation for office and professional conference cannot be taken into account under clause (a). Besides, he has an office establishment in the second floor. Naurati Devi is dead. The plan shows that there is a room which is used for puja. Guests are already being accommodated in the barsati floor. Need of the servants cannot be taken into account : Mrs. R. Budwar v. Maharaj Kumar, 1980 Rajdhani Lr 463. The requirement of casual visitors cannot be taken into consideration. The word 'himself' includes only those persons with whom the landlord is normally accustomed to live whether they be servants or other persons, who may be there to look after him : Shyam Bihar Singh v. Sushila Devi 1982 (1) Rcj 355. Whether the requirement for 'himself' can be extended to include servants and guests, is a question of fact and I would not like to be categorical about it would like to judge every such allegation on its merits case by case. The problem has to be approached from the point of view of a reasonable man and not that of a whimsical landlord, Bulakidas v. Suraj Bhan 1982 (1) Rcr 88. In this case, I am inclined to say that the need to find accommodation for the driver, servant and the guests has rightly been discarded by the Controller. If these requirements are excluded, yet the requirement of the children who have now grown up and do need a separate room has to be taken into consideration vide Narain Das v. Krishna Lal Longani 1980 (2) Rcr 537, Hari Shankar v. Dhan Raj 1979 (1) Rcr 519, and Saria Mittal v. K.C. Jain (1982) 21 Dlt 334. This requirement of the children, it

is urged, if bona fide, can easily be met in two ways, firstly, the accommodation in possession of the applicant was quite large and sufficient and has since then been increased by the accommodation made available on account of the death of Lala Ram Narain and Naurati Devi, secondly the large room on the ground floor can be partitioned as was suggested by the Controller. It was further urged that if their requirements were genuine, the first floor should not have been rented out by the landlord. *Freddy Fernandes v. P.L. Mehra* (1973) 1 Delhi 682 laid down that 'bona fide' does not leave the choice to the subjective discretion of the landlord. Even subjective discretion has to be reasonable. According to *Smt. Kamla Soni v. Rup Lal* 1969 RCR 1017 it is for the court to determine the truth of the claim and also determine whether the claim is bona-fide.

(20) After consideration of this aspect, I notice that the portion vacated on account of the death of Ram Narain and Naurati Devi, will not fully meet the requirements of the landlord. Lala Ram Narain was living in the ground floor with the children. Naurati Devi was living in a small room of 7.6'X 8.9'. It is also not possible to ask the landlord to partition his living room to accommodate his sons. This is perhaps also not allowed by the Municipal Corporation of Delhi. It is admitted that one of the garages was let out after filing of the petition and that business was being run in the said garage, while the use of a garage by the driver was being objected to by the D.D.A. Another garage is already used for business. Here again, it is also not possible to ask the landlord to live in the mezzenines, garages and stores for the simple reason that he has a right to live in comfort and cannot be compelled to live an uncomfortable life : *Amir Chand Arora v. Vimla Sehgal* 1976 Rcr 249.

(21) The serious controversy that survives is with regard to the portion of the first floor that was available yet was rented out either before the application was filed or thereafter. In regard to that portion, the case of the landlord is that the premises in dispute were more suitable than that portion. But it was contended that the requirement of law is to consider whether the vacant premises available to the landlord are more suitable or less suitable. What is to be considered is whether they are reasonably the premises rented out in the suitable. If the premises first floor were reasonably suitable, the bona fides of the landlord were seriously suspect.

(22) The Explanation of the landlord is that he let out the other part of the first floor premises because the tenant had assured that he would vacate the disputed premises. This was stated in the application of late Lala Ram Narain, but was not disclosed in the present application. However, it was stated in the replication and one can examine such an assurance as if it has been pleaded.

(23) The first thing that has to be determined in this connection is when the respondent was transferred to Bombay. In his replication, the applicant stated that it was after the respondent was transferred to Bombay and wanted to take away his family to Bombay and showed his desire to vacate the premises in question, that the first floor was let out. The applicant, therefore, waited for several years on the repeated assurances of the respondent to vacate the premises. No date or year of the transfer of the respondent to Bombay has been mentioned. But certainly, it should be before 8.9.1975 because the notice of determination of tenancy was issued to him on that date by the late Lala Ram Narain. The applicant Shri Kanwal Narain in his deposition has not mentioned when the respondent was transferred to Bombay. On the other hand, the respondent in his deposition has said that he was transferred to Bombay in the year 1971. therefore, one, should believe that the tenant went to Bombay in 1971.

(24) As to the time of the letting of the first floor Shri Kanwal Narain has deposed that he was unable to answer the question as to when the first floor was let out without looking into the record, but probably it was in July/August 1973. However, on the next date of examination, he stated that the first floor was also in his use till July 1973, or July 1974. He again said that the first floor was let out in 1973-74. This is a very vague statement. He, however, said that the portion was let out by him and his father died after letting of the first floor. That should be some time in 1975 before October. The respondent in his deposition has said that the other portion of the first floor was earlier in occupation of a tenant who vacated the same in late 1974 or early 1975, and it was let out again in late 1975 or early 1976. The finding of the learned Controller at one place is that the first floor was let out in 1973-74 and at another place he says 1975-76. In these circumstances, it would be proper to say that the vacant portion of the first floor was let out towards the middle of 1975.

(25) The applicant deposed that his natural parents Along with their family were residing in the same house and when they vacated those portions fell vacant and he leased them because he did not need them. His sister was living in the barsati floor. She vacated that portion and it was occupied by him. It shows, therefore, that before letting the first floor, he had sufficient and reasonably suitable accommodation for a comfortable living. But in *Sain Dass Berry v. Shri Madanlal Puri* 1971 Rcr 877, it was held that mere letting out in the past accommodation which fell vacant may be on increased rent may not always afford a ground for doubting the bona fides of the landlord. That was also the view taken in *S.K. Sen v. Ku. Chandra Kumar Kumar* 1981 R.L.R. 532. But according to *Surjit Singh v. Shri I.J. Chawla* 1979 (1) Rcr 4, the landlord is bound to give satisfactory Explanationn for not occupying any other premises belong to him that have fallen vacant shortly before an application for recovery of possession is filed or whilst it is pending. The Explanationn of the landlord in this case is that he let out those premises because the disputed ones were more suitable and the tenant had assured him to vacate those premises.

(26) The second question that arises, therefore, is whether any assurance was given by the respondent to vacate the premises and was believed by the applicant on account of a very friendly relationship existing between the parties. The respondent has denied that he had given any assurance. The litigation for bona fide requirement started some time in 1975 in the life time of Lala Ram Narain. He had talked of this assurance. But in the notice Ex. PW-1/14 of March 1976 Shri Kanwal Narain says that in spite of his repeated demands and protests, the respondent has not vacated the premises. He does not mention about the assurance. In his replication, he said that after the respondent was transferred to Bombay that he showed his desire to - vacate. Had he not given this assurance, the applicant would not need any more accommodation as the first floor has always been in occupation of the applicant. We have, however, to depend upon his oral testimony that such an assurance was given. I see no reason to doubt him in this regard. He also relies upon *Shri Om Parkash Singhal v. Shri Roshan Lal Khanna* 1969 Rcr 391, to show that bona fide means genuinely or in good faith, and it conveys idea of absence of intent to deceive. He contends that he genuinely believed in the assurance and acted upon it and it was not a case of self induced

paucity of accommodation. Again I see no reason to disbelieve the applicant. The question that in fact seems to me to arise in this regard is whether in order to consider the bona fides of the landlord, the Controller can consider the mala fides on the part of the tenant. I should think, why not If the premises were let for residential purposes but the tenant does not need them any more and retains the premises only because they are on a small rental and thereby deprives some other needy person to get a tenancy or to deprive the landlord of its personal use or higher rent, that will be a misuse of statutory protection. This case is worse because the tenant had assured the landlord that he will vacate the premises and acting upon that assurance, the landlord had let out the other portion which though less suitable at least has always been available to the landlord. The tenant had shifted to Bombay with his family in 1971 and comes here only to spend holidays. He has not explained what is the duration of his holidays. He does not seem to need the premises and though there is no case made out u/s 14(1)(d) of the Act, yet the tenant if he has no intention to come back, he lacks in bona-fides. It was not given to him as a holiday resort. It is true that the main purpose of the tenancy is to get income but not infrequently, the tenants are inducted to have someone around in a big house to be of assistance in time of need and also that the house is maintained and not simply allowed to remain locked and haunted. The purpose of the Act pre-eminently is to protect tenants against harassment and hardship but it does not give them a license to harass the land-owner. As said in *Shri Ram Prakash Saroj v. Shri Mohinder Singh* 1981 (1) Rcj 770, the landlord is entitled to make himself more comfortable in his own property and the tenant cannot dictate the mode and space of living to the landlord. The only requirement of law appears to be that the landlord must not have any oblique motive or unreasonable intention to obtain eviction.

(27) As regards the allegation that the motive of the landlord in fact was to augment the rent, Shri Kanwal Narain contended that the rent was Rs. 110.00 p.m. in 1953 and was increased to Rs. 121.00 in 1959. It remained at that since then. It clearly shows that there was no intention to increase the rent He has demanded no increase. That seems to be correct. Absence of an attempt to have the rent increased during the long course of tenancy shows bona fides of the landlord : *Indo American Electricals Ltd, v. M.L. Sharma* (1982) 26 Dlt 102.

Moreover, this charge does not lie in the mouth of the tenant who is paying Rs. 121.00 p.m. while the employer was paying him about Rs. 900.00 p.m., towards rent. Shri Narain Das v. Shri Kishan Lal 1980 (2) Rcr 537, even holds that where a landlord lets out premises which are not suitable for him, on high rent is no evidence of want of bona-fides. I, therefore, reject the contention that the requirement of the landlord is not bona fide.

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