

Milvi Devi Vs. Dina Nath

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Court : Delhi

Decided On : Jan-11-1982

Reported in : 21(1982)DLT204

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1) and 39

Appeal No. : Second Appeal No. 188 of 1981

Appellant : Milvi Devi

Respondent : Dina Nath

Advocate for Pet/Ap. : Girdhar Govind and; B.J. Nayyar, Advs

Judgement :

Sultan Singhi, J.

(1) This second Appeal under Section 39 of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the Act') is directed against the judgment and order of the Rent Control Tribunal dated 4th March, 1981 passing an order of eviction against the appellant under Section 14(1)(c) of the Act and giving him benefit under Section 14(2) of the Act. Briefly the facts are that the appellant has been a tenant in one room, one tin-shed, one kitchen, terrace, water tap (common) one Kolki (common), latrine (joint) on the first floor of premises No. 4490 situated at Gali

Bhagat Singh Shaid, Paharganj, New Delhi on a monthly rent of Rs. 8.00 under the respondent. The respondent in 1970 filed a petition for eviction of the appellant on the grounds mentioned in clauses (d) and (e) of the proviso to Section 14(1) of the Act. On 10th January, 1972 the Rent Controller passed an order of eviction under Section 14(1)(e) but rejected the ground of eviction mentioned in Section 14(1)(d). The appellant-tenant filed an appeal before the Tribunal which was accepted and the eviction application was dismissed. The respondent-landlord filed second appeal in this court which was dismissed on 9th April, 1975 by Avadh Behari, J. The respondent had served a notice of demand and eviction upon the appellant demanding arrears of rent since 1st February, 1972 at Rs. 8.00 per month. The eviction petition out of which this appeal has arisen was filed on 18th April, 1975 claiming eviction under clauses (a), (d), (c) & (h) of Section 14(1) of the Act alleging that the appellant had been in arrears of rent since 1st February, 1972 at Rs. 8.00 per month, that she neither paid nor tendered rent in spite of notice of demand dated 12th November, 1973, that neither she nor any member of her family had been residing therein for a period of six months prior to the institution of the eviction application, that she had shifted from Delhi and had been living at Ranchi with her son where she had acquired another residence. Lastly eviction was claimed on the ground that the premises were let for residence and were required by him and his family members as they had no other suitable residential accommodation, that the respondent's son was married and that there had been change of circumstances since the dismissal of the previous eviction application, that the landlord's son's wife was not on happy terms with the landlord's wife and that he wanted to settle them on the first floor and wanted to live himself on the ground floor having a separate mess. The appellant contested the eviction application pleading that the present eviction application was barred by principles of rest judicata, that she had been tendering rents and on refusal by the landlord she had been depositing rent and had deposited rent up to 31st May, 1975 in the office of the Rent Controller, that she had not acquired any premises at Ranchi, that she had been residing in the suit premises, that the landlord did not require the premises bonafide for his residence, that previously the landlord got vacated a portion in the suit house which was on a monthly rent of Rs. 5.00 and was subsequently let out to one Mr. R.K. Saxena at Rs. 50.00 per month, that the

family of the respondent consisted of himself and his wife only but with a view to create alleged ground introduced an adopted son and that no valid notice of demand was served. On 27th April, 1976 the Controller passed an order under Section 15(1) of the Act requiring the appellant to deposit arrears of rent at the rate of Rs. 8.00 per month with effect from 1st April, 1972 allowing her to deduct the amount of rent already deposited by him for the said period. On 25th January, 1978 the Rent Controller passed an order of eviction under clauses (a), (d) & (e) of Section 14(1) of the Act but rejected the ground of eviction mentioned in clause (h) of Section 14(1) of the Act. The appellant filed an appeal before the Tribunal but it was dismissed on 13th February, 1980 on the ground that it was barred by time. The second appeal filed in this court was also dismissed on 10th July, 1980 but on further appeal to the Supreme Court the delay in filing the appeal before the Tribunal was condoned and the case was remanded to the Rent Control Tribunal. The Rent Control Tribunal by the impugned order dated 4th March, 1981 accepted the appeal of the tenant with regard to the ground of eviction under Section 14(1)(a) & (d) of the Act giving him the benefit of Section 14(2) of the Act but dismissed the appeal so far as the ground of eviction under Section 14(1)(e) was concerned. Hence this second appeal.

(2) Learned counsel for the appellant submits that the ingredients constituting the ground of eviction mentioned in Section 14(1)(e) of the Act were not pleaded by the respondent in his eviction petition and therefore the same was liable to be rejected. He submits that the landlord never pleaded that he was the owner of the suit premises and that he had no other reasonably suitable residential accommodation. Learned counsel for the respondent however submits that all the ingredients required under Section 14(1)(e) of the Act were properly pleaded. He submits that reading of clauses 14 and 18(a) of the eviction application would disclose that all ingredients were properly pleaded. Para 14 of the eviction application reads as under :

'THE respondent was allottee from the Custodian. The date of letting is not known. The petitioner purchased the property on 20th January, 1968'.

Para 18(a) of the eviction application relating to bona fide need reads as under :

'the premises is residential and was let out for residence and is now required by the petitioner for his residence and members of his family, who are dependent on him for their residence and for whose benefit this property was purchased and they have no other reasonably suitable accommodation with them. The petitioner earlier filed a petition for ejectment on bonafide need, which was disallowed by the Rent Control Tribunal, Delhi on 20-3-73 but after that order. Petitioner's son is married and circumstances have altogether changed. The petitioner's son's wife is not on happy terms with the petitioner and his family and he wants to settle them on the first floor and want to live himself on the ground floor and have a separate mess'.

Reading these two paragraphs it is clear that the respondent pleaded that he purchased the property on 20th January, 1968. In other words he pleaded that he was the owner of the suit property. In para 18 (a) of the eviction application it was pleaded that he and his family members had no other reasonably suitable residential accommodation with them. There is thus no substance in this objection of the appellant-tenant. It is in evidence that the respondent is the owner of the suit property, that the premises were let for residential purposes. The eviction application however does not allege the particulars of the family members of the respondent and the accommodation available to him. However, in evidence it has been proved that the family of the respondent consists of himself, his wife, his son and his son's wife. It is also in evidence that one Shanti Devi was in occupation as a tenant in one room, one kitchen, one tin-shed besides two stores which she vacated and handed over possession to the respondent-landlord in July/ August, 1976 during the pendency of the eviction proceedings. The respondent-landlord had been in possession of the remaining ground floor consisting of a room measuring 15'-9"x7'-9' verandah, store, common bath and a kitchen. Learned counsel submits that the accommodation consisting of the entire ground floor now admittedly in possession of respondent is sufficient for his requirement. He further submits that in the previous eviction case which was dismissed on 9th April, 1975 it was held by this court that after getting possession of the premises in occupation of Shanti Devi bona fide requirement of the respondent-landlord would be deemed to be satisfied. I may mention that when the previous eviction application was filed in 1970 the family consisted of the respondent his wife and an unmarried son. The

appeal in the previous case was decided on 9th April, 1975 and it was observed that the premises in occupation of Shanti Devi were going to fall vacant in June, 1975 and the respondent would get vacant possession of the premises in her occupation on the ground floor. It was also observed that the entire ground floor would be available to the landlord and that accommodation would be sufficient for the needs of the respondent and his son and both could conveniently live on the ground floor of the house. Learned counsel for the appellant submits that there has been no change in the circumstances of the respondent since 9th April, 1975 when the previous appeal was decided. Learned counsel for the respondent submits that the respondent's son has been married and he has got his child. There is no evidence on record to show when the marriage of the respondent's son took place but it is admitted that he was married in March, 1975 i.e. before the decision of the previous appeal by this court. . The respondent submits that as there has been marriage of the respondent's son and birth of a child, the circumstances have changed and the respondent is entitled to an order of eviction. I do not agree. The ground floor was held to be sufficient for the respondent and his son in the previous case. At that time the premises in occupation of Shanti Devi were expected to be vacated in June, 1975 but in fact the same were vacated in July or August, 1976 and since then have been in occupation of the respondent. Prior to vacation of the premises by Shanti Devi, the respondent-landlord was having a complete residential unit for himself and when Shanti Devi vacated in August, 1976 the complete unit consisting of bed room, kitchen etc. further came in possession of the respondent for his son. The decision in the previous case on 9th April, 1975 and the subsequent acquisition of the remaining premises in occupation of Shanti Devi leads me to the conclusion that the present eviction under Section 14(1)(e) of the Act is barred by principles of resjudicata and in any case I am of the view that the requirement of the respondent was satisfied when he obtained possession of the remaining portion of the ground floor in July, 1976. There is no allegation in the eviction application that even after obtaining the possession of the premises on ground floor from Shanti Devi the respondent would be in need of suit premises on the first floor. The Tribunal has held that there was a change in the circumstances since the decision of the previous eviction case but there is no evidence in support of this finding. On contrary on 9th April, 1975 when

the previous eviction application was dismissed by this Court, the family of the respondent consisted of himself, his wife, his son and son's wife. The only addition is of a child. This is not a sufficient change in the circumstances. The respondent is therefore not entitled to claim eviction of the appellant on the ground mentioned in Section 14(1)(e) of the Act.

(3) Learned counsel for the appellant next submits that eviction on ground of non-payment is not available to the respondent. He submits that the appellant had been tendering rent to the respondent-landlord from time to time but on his refusal the rent was used to be deposited under Section 27 of the Act. The appellant had deposited rent for the period ending March, 1973 at Rs. 8.00 per month under Section 27 of the Act. On 12th November, 1973 notice of demand was issued to the appellant requiring him to pay the arrears from 1st February, 1972 at Rs. 8.00 per month. There is no evidence on record that the appellant-tenant ever paid or tendered the admitted amount of arrears of rent for the period from 1st April, 1973 to the respondent landlord after the receipt of the notice of demand. Thus the respondent had a cause of action for eviction of the appellant under Section 14(1)(a) of the Act. An order under Section 15(1) was passed on 27th April, 1976 and it is not disputed that the appellant had complied with the same. As the appellant has deposited all rents in pursuance of the order dated 27th April, 1976 under Section 15(1) of the Act, no order for eviction on the ground specified in Section 14(1)(a) of the Act can be passed. He is entitled to the benefit under Section 14(2) of the Act.

(4) Learned counsel for the respondent submits that he is entitled to order of eviction under Section 14(1)(d) of the Act on the ground that neither the appellant nor any member of his family has been residing therein for a period of more than six months prior to the institution of the eviction application. The Rent Control Tribunal has considered the evidence on record and concluded that the respondent had failed to prove the said ground. The oral evidence led by the respondent has not been believed by the Tribunal. In this second appeal evidence in support of questions of fact cannot be re-appreciated. I, therefore hold that there is no infirmity in the finding of the Tribunal holding that the appellant was not liable to be evicted under Section 14(1)(d) of the Act.

(5) Lastly it is submitted by the learned counsel for the respondent that the appellant had shifted from Delhi and has been living with her son at Ranchi where she is supposed to have acquired residence. Both the Controller and the Tribunal have held that this ground was not available to the respondent. There is no ground to differ with the conclusions of the Controller and the Tribunal on this part of the case. The alleged acquisition of the premises is not within the Union Territory of Delhi but is alleged to be at Ranchi. Moreover there is no evidence that the appellant has acquired any premises anywhere. This ground of eviction is therefore not available to the respondent.

(6) The result is that the appeal succeeds so far as the ground of eviction under Section 14(1)(e) of the Act is concerned. As regards eviction on ground of non-payment of rent, the appellant is given benefit under Section 14(2) of the Act. The eviction application on grounds mentioned in clauses (d), (e) and (h) of the proviso to Section 14(1) of the Act is dismissed leaving the parties to bear their own costs.

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