

Avinash Chander Vs. Sohini Devi

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SooperKanoon Citation : sooperkanoon.com/691588

Court : Delhi

Decided On : Apr-12-1982

Reported in : 21(1982)DLT486; 1982RLR604

Judge : Yogeshwar Dayal, J.

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

Appeal No. : Civil Revision Appeal No. 122 of 1981

Appellant : Avinash Chander

Respondent : Sohini Devi

Advocate for Pet/Ap. : Arun Kumar and; J.N. Verma, Advs

Judgement :

Yogeshwar Dayal, J.

(1) This revision petition is directed against the order dated 29th October, 1980 passed by the learned Additional Rent Controller, Delhi.

(2) The revision petition has been filed on behalf of the tenant-Avinash Chander. The Additional Rent Controller has passed an order for eviction of the petitioner from ground floor of property No. 21/66, old Rajinder Nagar, New Delhi, on the ground of bona fide personal requirement of the respondent-Smt. Sohini Devi.

(3) Before filing the eviction petition, the landlady Smt. Sohini Devi sent a notice to the petitioner requesting him to vacate the premises occupied by him. It was stated in the notice that the landlady is residing on the first floor and because of very old age and being chronic patient of heart disease her condition has deteriorated so much that she has been medically advised to restrain herself from climbing upstairs and she requested the tenant, who is occupying the ground floor, to vacate it at the sametime offering that the tenant may occupy the first floor. In the notice she also mentioned that the landlady is an issueless widow and has to depend on one Shri Gopal Dass, who happens to be her near relation and who has been looking after her in her old age and has been putting up with the old lady along with his family. No reply was sent to this notice and the landlady-Smt. Sohini Devi filed the petition for eviction on or about 10th February, 1978.

(4) Instead of appreciating the bona fide offer of the landlady, the tenant went all along to oppose the eviction petition. He even denied the purpose of letting as being only residential. He took up the plea that the premises were not let out for residential purposes but for residential-cum- commercial purpose. It was also denied that the landlady being a widow have to depend upon Sh. Gopal Dass. It was also denied that the landlady cannot go to the first floor any more. It was pleaded that the landlady is hale and hearty and had been herself attending the Court on every date of hearing. It was denied that she is suffering from any disease. It was also denied that she has been advised to reside on the ground floor. The tenant even went up to deny the ownership of the landlady.

(5) Regarding the offer given by the landlady it was stated in the written statement as under :-

'ASregards root of this para that the option to the respondent that if he so likes he can shift to the first floor of the premises in question on the terms and conditions at his convenience, it is submitted that the offer was made at the bar but the petitioner refused to accept the same.'

In fact it is further stated in paragraph 19 as under :

'MOREOVER, the very fact that she was offered the same accommodation which is available to her on the ground floor and she refused to accept the offer shows that her intentions are not bona fide but mala fide.'

(6) In the written statement the relationship of Gopal Dass as to the near relation of the landlady was also denied. It was also denied that Gopal Dass was looking after the landlady. In fact it was pleaded that the landlady had asked for increase of rent or in the alternative to vacate the premises. It was also pleaded that the landlady wants to sell the house and many of the prospective vendees have come to see the premises.

(7) Before the trial Court, the landlady examined Shri Shyam Dass, A.W. 1, Shri Vijay Kumar Gupta, A.W. 2; Shri H.R. Srivastava, clerk from the office of the Settlement Commissioner. A.W. 3, besides examined herself as A.W. 4 and Sh. Gopal Dass, A.W. 5.

(8) The petitioner-tenant on the other hand examined himself as his only witness.

(9) The Addl. Rent Controller by the impugned order held that Smt. Sohini Devi is the owner of the property in view of the conveyance deed Ext. Aw 3/1 having been executed in her favor by the President of India. He also found that the premises were let out by a rent note with effect from 1st May, 1967 and the rent note (Ext. AW4/1) specifically mentions that the lessee shall not utilise the premises for any other purpose except residential purposes. The Additional Rent Controller also found that the respondent Smt. Sohini Devi had become widow in childhood and childless and was being looked after by Gopal Dass. The Additional Rent Controller also found that Sh. Gopal Dass along with his family has been residing with her as is clear from the copies of the ration cards Ext. Aw 2/1 and Aw 2/2 as well as from the copies of the electoral rolls Exts. Aw 4/10 and AW4/11 for the years 1971 and 1975. The learned trial Court also found that the landlord is suffering from the maladies complained by her. This finding was given on consideration of the statement of the landlady as well as medical prescription (Ext. Aw 4/6) and medical certificate (Ext. Aw 4/12). The medical certificate Ext. Aw 4/12 was issued by Dr. L.R. Pathak, R.S.F.R.C.S., F.A.C.S. At the time when the certificate was issued the said doctor was working in Dr. Ram Manohar Lohia

Hospital & Nursing Home, New Delhi. The certificate is dated 20th March, 1979. The medical certificate giving the medical opinion of Dr. V.L. Kochhar, Orthopedic Surgeon of Dr. Ram Manohar Lohia Hospital & Nursing Home, reads as under :-

'I have examined Smt. Sohini Devi vide Orth. No. 3256/79. She is an old lady of over 78 years and as such suffering from generalised pain in all joints of body on account of osteoarthritis. Her request for shift from 1st floor to ground floor is considered on compassionate grounds is recommended.'

The trial Court also noticed the age of the landlady.

(10) The learned trial Court also noticed the offer made by the landlady to the petitioner in the notice as well as in the petition for eviction and also noticed the reply of the tenant.

(11) Considering all circumstances, learned trial Court took the view that the requirement of the landlady was bona fide. He also noticed that the tenant did not accept the offer made in the notice and also did not accept the offer made in the petition for eviction. The trial Court also noticed that the case of the tenant was that he is prepared to shift on the first floor if he is allowed to retain a room on the ground floor or in the alternative he is allowed to construct another room on the first floor. This position was not accepted by the landlady.

(12) The findings recorded by the learned Additional Rent Controller are borne out from the record.

(13) Today landlady is at least 80 years of age, if not more, and her need was most genuine and bona fide when she wanted to shift to the ground floor. The offer was made in a bona fide manner to the tenant but it appears that the tenant has opened his mouth too wide without any regard to the bona fide requirement of the landlady. The landlady was involved in a litigation which went on for four years. Today the landlady is not willing to offer the first floor either and the reason is obvious. She has completely lost faith in the tenant and feels that she may be involved in further litigation with him in her old age.

(14) I have heard Mr.Arun Kumar in support of the revision petition. He urges that today he is prepared to accept the offer of the landlady made in the petition for ejectment provided he is allowed to construct another room on the first floor.

(15) The landlady is not willing to give any such concession. For that reason it cannot be said that the requirement of the landlady to shift to the ground floor is not bona fide.

(16) I am in complete agreement with the reasonings and conclusion of the learned trial Court and in view of the limited scope for interference in revision in the light of the judgment of the Supreme Court in 1962 P.L.R. 1097, where the Supreme Court was called upon to define the scope of powers of revision under Section 35 of the Delhi and Ajmer Rent Control Act, 1952 which is in pari materia with the provisions of the proviso to Sub-section (8) of Section 25-B of the [Delhi Rent Control Act, 1958](#). I find no case is made out for interference with the order of the learned Additional Rent Controller. The result is that the revision petition fails and is dismissed with costs.

(18) The petitioner is, however, allowed three months time to vacate the premises.