

Mithlesh Kumar Vs. Subhadra Devi

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Court : Delhi

Decided On : Apr-02-1986

Reported in : 30(1986)DLT184; 1986(11)DRJ185

Judge : S.S. Chadha, J.

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

Appeal No. : Civil Revision Appeal No. 862 of 1984

Appellant : Mithlesh Kumar

Respondent : Subhadra Devi

Advocate for Pet/Ap. : Deepa Arya,; Madhok,; R.K. Saini and;

Judgement :

S.S. Chadha, J.

(1) This petition under the provisions of sub-Section (8) of Section 25-B of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as the Act) is directed against the order for recovery of possession of the premises in dispute passed by Smt. Marnta Sehgal, Additional Rent Controller Delhi.

(2) The respondent filed a petition under Section 14(1)(e) read with Section 25-B of the Act claiming eviction of her tenant Shri Mithlesh Kumar (petitioner before

me). The details of accommodation given in para 8 of the eviction petition are one room shown red bound in the plan attached. In para 18(a), it is stated that the premises in dispute was let out to the respondent for residence purposes and the petitioner is the owner of the premises thereof, that the petitioner is now residing in Village and intends to shift to Delhi and she has no reasonably suitable accommodation to live in Delhi, that as such the petitioner requires the premises for her own use for her own use for occupation for herself and members of her family her and that the premises are urgently required by the petitioner for occupation as her residence. The tenant applied for leave to defend. The leave was granted. In the written statement, the defense, inter alia, was that the landlady was living at Village Bathera and a room is lying vacant in the premises in dispute and so, the premises in dispute are not required bona fide by the landlady. The petition for eviction was set down for trial. By the impugned order dated August 10, 1984, the Addl. Rent Controller passed an eviction order against the tenant in respect of the premises shown red in Ex. AW. 1/3 bearing house No. 2613/16, Gali No. 16, Kailash Nagar, Delhi.

(3) Mrs. Deepa Arya Madhok, the learned counsel for the petitioner herein has taken me through the records of the eviction petition. Her main submission is that the petition for eviction was mala fide as the same was filed on the pretext that the landlady wishes to shift to Delhi and there was no reasonably suitable accommodation available to her thus concealing intentionally the fact that there was already a similar room lying vacant in the building in dispute under her possession which she could easily occupy. In my view, this petition should succeed on this short ground.

(4) A mere reading of clause (e) of proviso to Section 14 of the Act shows that a landlord would be entitled to succeed and obtain an order for the recovery of possession of the premises if he is able to establish that (1) he is the owner and the landlord of the premises ; (2) the premises were let for residential purposes; (3) the premises are required bona fide by the landlord. for occupation as a residence for himself or for any member of his family dependent on him and (4) the landlord or such person has no other reasonably suitable residential accommodation.

(5) In the petition for eviction, the details of accommodation for which the recovery of possession was sought are given as only one room. In para 18(a), the landlady says that she has no reasonably suitable accommodation to live in Delhi. In the application for grant of leave to defend the eviction petition, a specific allegation is made by the tenant that one room is lying vacant and is in possession of the landlady but she is not using the same till that day. In the reply-affidavit by the landlady, it is stated that 'It is denied that the room, if any, lying vacant is sufficient for accommodating the family of the deponent'. She does not even then admit the existence of the vacant room in the building in dispute. The Addl. Rent Controller by hit order dated March 26, 1981 grants leave to the tenant to contest the eviction petition after noticing the argument of the tenant that one room is still lying vacant and is still in possession of the landlady but she is not using the same. The written statement is subsequently filed wherein again, the tenant repeats the allegation that one room is till lying vacant and is in possession of the landlady but she is not using the same till date and that she has also not disclosed this fact in her petition. In the replication that is filed by the landlady, she makes a positive averment in the corresponding paragraph that she has no accommodation in Delhi at present. She denies that she has any room vacant in the premises in dispute.

(6) Shri Dewan Chand, son and attorney of landlady appeared in the witness box. In the examination-in-chief, he states that the landlady has no other house in Delhi and that they need the premises in dispute for their own use. It is not disclosed in the examination-in-chief that there is a vacant room in the house in dispute. In the cross-examination. Shri Dewan Chand admits that there are five rooms on the ground floor of the house in dispute. Then he was confronted with the occupation of each room by different tenants. It is only then that he admitted that there is one more room in the suit premises and offered an Explanation that they had given that room to their relatives. The cross-examination proceeded as to who that relative was. It was disclosed that he was his Mausi's son. Then he again admitted that the adjoining house is owned by his Mausi i.e. house No. 2566, Gali No. 15, Kailash Nagar, Delhi.

(7) The landlady has sought eviction of the tenant from one room on the ground that she intends to shift to Delhi and she has no reasonably suitable

accommodation to live in Delhi. She had assessed her requirement or necessity of only one room. It was established on the record that she was already in possession of an identical accommodation which was available to her for accommodation in Delhi if she intended to shift to Delhi. The learned Addl. Rent Controller made out a new case for her that looking into the size of the family of the landlady, one room cannot be said to be sufficient for their requirement and at least one more room is required by the landlady for herself and for the members of the family dependent on her. No such case was pleaded by the landlady either in the petition or even at the stage of trial. In law, no amount of evidence can be looked upon as a plea which was never put forward. I, therefore, find the approach and the finding of the Addl. Rent Controller as perverse.

(8) Accordingly, the petition succeeds. The impugned order dated August 10, 1984 is set aside. The petition for eviction of the respondent landlady is dismissed leaving the parties to bear their own costs.

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