

**Krishan Kumar Vs. R.C. Dhingra**

**Krishan Kumar Vs. R.C. Dhingra**

**SooperKanoon Citation :** [sooperkanoon.com/692482](http://sooperkanoon.com/692482)

**Court :** Delhi

**Decided On :** Feb-29-1980

**Reported in :** 1980RLR472

**Judge :** B.N. Kirpal, J.

**Acts :** Delhi Rent Control Act - Sections 14(1); [Code of Civil Procedure \(CPC\), 1908](#) - Order 17, Rule 3

**Appeal No. :** Criminal Revision No. 306 of 1979

**Appellant :** Krishan Kumar

**Respondent :** R.C. Dhingra

**Advocate for Pet/Ap. :** S.M. Grover,; H.L. Sabarwal and; Mukul Rohatagi, Advs

**Judgement :**

**B.N. Kirpal, J.**

(1) This revision petition is directed against the order of Shri J. D. Kapoor, Additional Rent Controller, Delhi who allowed the respondent's application under section 14(l)(e) of the Delhi Rent Control Act (hereinafter referred as 'the said Act') and directed the petitioner to vacate the suit premises within six months from the date of the order.

(2) The respondent/landlord filed an application under section 14(l)(e) of the said Act contending that he has a large family and is in occupation of only three rooms in the premises known as M-63, Kirti Nagar, New Delhi. It was averred that he bona fide required the premises in the occupation of the petitioner-tenant for his own use.

(3) The petitioner applied and obtained leave to defend as provided by section 25B of the said Act. The case of the petitioner was that the premises were residential-cum- non-residential and had been let out as such and therefore eviction could not be ordered under the provisions of section 14(l)(e). The petitioner also denied the ownership of the landlord of the suit premises and also contended that the landlord did not require the suit premises bona fide for his own residence.

(4) The Additional Rent Controller by his order dated 7th February, 1979, held that the landlord has been able to prove his case and ordered the eviction of the petitioner. Aggrieved from the said decision the present revision petition has been filed by the tenant.

(5) The first contention on behalf of the petitioner is that the petition could not be proceeded with under section 25(B) of the said Act. The contention is that the procedure provided by section 25(B) is a special procedure and as in the eviction application no reference was made to the said provision, the Additional Rent Controller was wrong in proceeding in the manner prescribed by the said section. The said contention is without any merit. The provisions of Chapter 3A, in which section 25(B) is included, are to have effect notwithstanding anything inconsistent contained elsewhere in the Act or in any other law for the time being in force. This is so provided by section 25(A) S. 25(A) provides that when an application for recovery of possession is filed under section 14(l)(e) the same shall be dealt with in accordance with the procedure specified in this section'. It is therefore, mandatory for the Rent Controller to adopt the procedure prescribed by section 25(B) and he is not entitled to abandon the said procedure.

(6) The next contention made by petitioner is that he was not given any opportunity to lead any evidence. It will be seen that the evidence on merit was concluded on 17th May, 1978. Thereafter the respondent- landlord moved an

application under Order 18 Rule 17 for being permitted to lead evidence so as to prove the notice stated to have been issued under section 106 of the Transfer of Property Act. The Additional Rent Controller by order dated 16-8-78 allowed the said application and gave right to the tenant to lead evidence in rebuttal but only on the question of notice. The case was fixed for evidence of the tenant- petitioner on 16-12-78 on this limited question. Prior to that date on a request being made by the counsel for the petitioner the date of evidence was shifted to 19-12-78. On that day one witness was examined and the case was adjourned to 31st January, 1979. On that day again no witnesses were present. The Additional Rent Controller observed that the addresses given on the summons were incorrect and no witness could be summoned. The petitioner himself was absent but a medical certificate was produced. The Additional Rent Controller did not grant any adjournment and closed the evidence of the petitioner and fixed the case for arguments at a later date. I do not find any infirmity to the aforesaid procedure adopted by the Addl Rent Controller. It is however, contended by Shri Grover that by adjourning the case and not proceeding to deliver the judgment the Addl Rent Controller had violated the provisions of Order 17 Rule 3 C. P. C. In this behalf reliance has been placed on a single Bench judgment of the Punjab and Haryana High Court reported as M/s Beri Ice Factory and another v. Sukhdev Kumar 1979 (2) R. L. R. 109. The contention of Shri Sabharwal, on the other hand, is that the above decision does not lay down the correct law. It does appear that the decision of the Punjab and Haryana High Court to the effect that it is incumbent on the Court to decide the case forthwith once the evidence is closed does not flow from the language of the said provision. Order 17 Rule 3 is only an enabling provision. It empowers the court to close the evidence if the conditions mentioned in the said section are satisfied and proceed to decide the case forth- with. The use of the word 'may' in the said rule clearly shows that the power is discretionary and not mandatory. To my mind the rule does not prohibit the court from closing the evidence and adjourning the case for arguments. In any event this question as well as the question as to whether the Additional Rent Controller was right or wrong in not adjourning and permitting an opportunity to be given to the petitioner to lead evidence on the question of notice become academic because the issue of notice itself was not necessary. The Supreme Court in a recent decision reported

as v Dhan Val Chattiar v. Yasodat Ammal, 1979 (2) R.C. J. 358 had held that in such cases where the tenants are under the protection of rent laws no notice is required to be given under section 106 of the Transfer of Property Act. In case no notice was necessary the petitioner cannot have any grievance if the witnesses were not allowed to be examined.

(7) The main argument on behalf of the petitioner is that the premises were let for residential-cum-commercial purposes. The Additional Rent Controller, in his detailed order, has referred to all the evidence which was before him both oral and documentary and came to a finding of fact that the premises in question were let to the petitioner only for residential purposes. The Rent Controller has referred to the evidence of A W. 1, A W. 7 as well as of the respondent and accepted their evidence in coming to the conclusion that the premises were let only for residential purposes. The only documents which were placed by the petitioner on the record were those which came into existence after the tenancy had commenced on 1st October, 1962 the Additional Rent Controller rightly did not place any reliance on the said documents. There was admittedly no agreement of lease or rent note where the purpose of letting has been specified. Shri Grover has, however, relied on a photo copy purported to be of the registration certificate alleged to have been granted by the Central Sales Tax Authorities in Delhi. It will be seen that attempts were made by the landlord before the Additional Rent Controller to produce documentary evidence from the Sales Tax and Income Tax Authorities. The respondent- landlord filed an application under Order 11 Rules 12 and 14 read with section 151 C.P.C. on 5th October 1977. By the said application the landlord had required that the petitioner should be ordered to bring the following documents : -(---)

(8) The petitioner filed a reply to this application dated 13th December, 1977. Except for stating that the sales tax registration certificate had already been filed on the record, which does not appear to be correct, no other document was produced. It was contended in the said reply that the registration certificate of the shop was not traceable ; no register of employee' attendance was maintained ; cash books were not produced ; sales tax returns etc. were stated to be privileged and confidential documents ; firm was stated not to be assessed to income tax ;

and it was stated that no stock register was maintained. It is thus evident that the petitioner chose not to produce any evidence which could have supported his contention that the premises were let to him for residence-cum-commercial purposes. At the time of the admission of this petition a photostat copy of an alleged registration certificate under the Central Sales Tax Act had been filed. No reason has been given as to why such a document could not be filed at the time when the landlord had asked it to be produced. What has been filed is only a photostat copy and the original is still not forthcoming. At this late stage and in these circumstances the photo copy of the alleged registration certificate now filed cannot be taken on record or relied upon. Moreover the petitioner wants to show from the said photo copy that the change of business address to the premises in dispute was noted thereon with effect from 15-9 1962. It is not disputed that the premises were let on 1.10.62. Obviously no reliance can be placed on the document which purports to show that the business had shifted to these premises on 15.9.62 i. e. 15 days before the the premises were even let out. In my opinion the Additional Rent Controller was right in coming to the conclusion that the premises were not let for residence-cum-commercial purposes but were in fact lei only for residential purposes.

(9) The next contention on behalf of the petitioner is that he had moved an application for two witnesses to be examined on commission and had also moved another application for additional evidence. It is contened that these applications were wrongly rejected. Both the applications were delat with and disposed of by the Additional Rent Controller by his order dated 24th May, 1978. In the application filed for permission to examine two witnesses on commission under Order 26 C.P.C. by way of issuing interrogatories, the Additional Rent Controller rightly observed that the said application had been moved at a belated stage. It was noticed that the petitioner had already been examined as a writness and he had also examined three other witnesses in support of his case. No attempt was made at that stage to summon the witnesses by paying or depositing the air fare which he now wanted to examine on commission. It also appears that the documents which those witnesses were required to prove were in any case not such as could have carried the case of the petitioner any further. The said documents were post 1st October, 1962 documents, on which date the premises

had been let out, and could not possibly show that the premises were let out on 1st October, 1962 for residential?cum-commercial purposes. The other application under Order 18, Rule 17 for additional evidence was also rightly rejected by the Additional Rent Controller. By the said application the petitioner wanted to prove additional documents It was observed and in my opinion rightly, that the petitioner had been granted several opportunities and he had examined himself as a witness and these documents were not produced or proved at that stage. It is further stated that the documents in question were neither written by the positioner nor addressed to him. In any event there is nothing to show that such documents, which were sought to be produced at the late stage would have any, bearing on the point in issue. It is to be seen that in order to prove that premises were let out for residence cum-commercial purpose there should be in existence documents of or about 1st October, 1962 to shaw that the business was carried on in the premises in question. Even if subsequent to the letting business was commercial in said premises it cannot be ipso facto said that the premises were originally let out for residence-cum-commencal purpose. The Additional Rent Controller has rightly observed that all the documents relied up to by the petitioner were those which came into existence long after 1st October, 1962.

(10) The last contention of the petitioner is that the premises were not bona fide required by the respondents. The question, like other questions in a question of fact which has been decided by the Additional Rent Controller correctly. The landlord is in possession of only three rooms. His family consists of himself, his wife, two daughters. It cannot be said that the requirement of the landlrod is not bona fide. The respon- dent is an income-tax payee and a man of status and nothing has been shown by the petitioner which could lead me to the conclusion that the requirement of the respondent-landlord was not bona fide. The revision petition accordingly fails and is dismissed with no order as to costs.