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Court : Delhi

Decided On : Nov-28-1986

Reported in : AIR1987Delhi115; 32(1987)DLT135; 1987(12)DRJ190; 1987RLR121

Judge : Sultan Singh, J.

Acts : [Stamp Act, 1899](#) - Sections 35; [Registration Act, 1908](#) - Sections 17; [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Civil Revision Appeal No. 864 of 1985

Appellant : M. Mohan

Respondent : Maheshwari Seth

Advocate for Pet/Ap. : L.R. Gupta,; Rajiv Gupta,; Mahendra Rana and;

Judgement :

Sultan Singh, J.

(1) This revision petition under Section 25B(8) of the [Delhi Rent Control Act, 1958](#) (for short 'the Act') is directed against the judgment and order dated 4/7/1985 of the Additional Rent Controller, Delhi under Section 14(1)(e) of the Act against the petitioner.

(2) Briefly the facts are that on 8/7/1981 Smt. Maheshwari Seth, respondent filed a petition for eviction of her tenant M/s. M. Mohan & Co. through the sole proprietor Shri M. Mohan, petitioner under Section 14(1)(e) of the Act. She alleged that the petitioner was inducted as a tenant on 15/1/1975 at Rs. 500.00 per month besides electricity and water charges in two bed rooms, kitchen, W.C. and courtyard of her property at A-2/1 Vasant Vihar, New Delhi in terms of a deed of lease dated the 15/1/1975 executed between the parties, the premises were let for residential purposes and were required bonafide for occupation as a residence for herself and members of her family dependent upon her ; she was the owner thereof and she had no other reasonably suitable residential accommodation. She alleged that her husband died on 4/7/1972 who was a Government servant and thereafter her daughter Meena was given an appointment on compassionate grounds by the Government, who was also allotted accommodation of two rooms and the entire family started residing with her; on 15/4/1976 her daughter Meena was married and therefore other members of the family moved out to a rented accommodation in R.K. Puram ; she and her two sons then arranged accommodation in D.D.A. flats, Munirka and Kalkaji where they lived for sometime and thereafter they started living at G-13, Narouji Nagar, New Delhi, her family consisted of herself, her two sons and one daughter.

(3) The petitioner in his written statement pleaded that the premises in suit were let for all purposes i.e. residential-cum-commercial purposes as no purpose was specified in the lease deed and orally it was agreed that the premises were let for residential-cum-godown/office purposes ; sufficient accommodation was available to the respondent on various occasions but she let out the same on enhanced rent ; the ground floor premises were lastly vacant in 1979 and 1980 but the same were re-let to Jai Parkash Associates at enhanced rate ; she was not in need of any additional accommodation ; the eviction petition was malafide. The allegations were controverted in her replication by the respondent.

(4) The Additional Controller by his judgment dated 4/7/1985 held that the respondent was owner of the premises which were let for residential purposes ; she had no other reasonably suitable residential accommodation and her need for the suit premises was bonafide and passed an eviction order under Section

14(1)(e) of the Act against the petitioner.

(5) Learned counsel for the petitioner does not challenge the finding regarding ownership of the respondent with respect to the suit premises. He submits that the premises were let for residential-cum-commercial purposes and the respondent has been in possession of the suitable accommodation ; she did not occupy the front portion of the ground floor when it was vacated ; the accommodation in her possession is sufficient.

(6) Arguments in this revision petition were heard earlier. Learned counsel for the petitioner-tenant had submitted that the lease deed dated 15/1/1975 marked 'C' by the Additional Rent Controller signed by the petitioner and the respondent and executed on a stamp paper of Rs. 2.00 only was deficiently stamped and as such it was not admissible in evidence and could not be looked into for any purpose whatsoever under Section 35 of the Indian Stamp Act. After arguments, the respondent made an application (C.M. No. 3814 of 1986) seeking opportunity to pay deficit duty and penalty under Section 35 of the Indian Stamp Act. By order dated 14/11/1986 she was allowed to deposit deficit stamp duty Rs. 53.00 and penalty Rs. 530.00 total Rs. 583.00. The respondent deposited Rs. 583.00 on 18/11/1986. The lease deed which was marked 'C' by the Additional Rent Controller has since been marked Ex. 'AZ'.

(7) Learned counsel for the petitioner submits that under Section 107 of the Transfer of Property Act the lease deed Ex. Az required registration and as the same was not got registered it cannot be looked into under Section 49 of the Indian Registration Act. Section 49 of the Registration Act provides that no document required by any provision of the Transfer of Property Act, 1882 to be registered shall affect any immovable property comprised therein unless it has been registered. The proviso to Section 49 of the Registration Act however provides that unregistered document affecting immovable property and required to be registered may be received as evidence of any collateral transaction not required to be effected by registered instrument. To determine the letting purpose the lease deed Ex. Az can be looked into as the letting purpose is a collateral purpose as has been held by this Court in J.N. Banerjee v. Sohan Lal Bhargava, :

AIR1971 Delhi243 . Learned counsel for the petitioner further submits that the lease - deed does not specify any purpose while learned counsel for the respondent submits that the terms of the lease deed do specify that the premises were let for use as residence. The lease deed refers to letting of 'house', and letting of 'house' means letting for residential purposes. Clauses 1, 2 and 7 of the lease deed refer to letting of a 'house'. Further the lessee has been given a right to allot or cancel, allotment of the said house to one or more of its officers for residential purposes without prior consent of the Lesser. In other words, it means that the premises were taken on rent by the petitioner lessee for use as a residence for himself and for his officers. The dictionary meaning of the word 'house' is 'building' for human habitation'. Thus mere reading of the lease deed shows that the premises were let for use as a residence to the petitioner.

(8) In *Des Raj v. Sham Lal*, , it has been observed that if a demised building is identified as a 'house' in a lease deed, it would be taken that the parties had used the expression 'house' in the sense in which the 'house' is understood in common parlance or as indicated by its dictionary meaning. Similar observations were made in *Prem Saroop Chopra v. S.N. Bhatia*, 1985 Raj. L. R 212.

(9) The respondent-landlady appearing as her own witness (A.W. 1) has deposed that she let out the demised premises for residential purposes only ; the land under the property was leased out to her late husband by Government Servants' Co-operative House Building Society. Certified copy of the said lease deed is Ex. Aw 3/1 according to which the plot of land was leased for the construction of a residential building for private dwelling. There is a further clause that the building shall not be used for any other purpose. Thus the sub-lease deed in favor of the respondent throws light that the house is to be used as a residential house. In cross-examination the respondent denied the suggestion that the garage of the demised premises was let out for use as a godown. It was also denied that the garage was used for godown purposes. The petitioner-tenant has not produced any evidence to show that the premises were let for non-residential purposes or any portion of it was ever used by him for non-residential purposes. The only evidence is that the petitioner made an application for allotment of Code number for export purposes and the Reserve Bank of India New Delhi on 28th January'.

1976 allotted the number Ds 002058 to the petitioner at the address of the suit premises i.e. A-2/1 Vasant Vihar, New Delhi. But there is no evidence to show if any goods were ever stored or any commercial activity was ever carried out in any portion of the demised premises. Merely getting the code number at the address of the suit premises does not mean that the premises were let to the respondent for non-residential purposes. The premises were let on 15/1/1975 while the Code number for export purposes was allotted on 28/1/1976 as is apparent from the documents marked Ex. R.W. 1/7 and Ex. R.W. 1/8. Both are dated 28/1/1976. The petitioner did not produce any document to show that any commercial activity was ever carried on by him in the suit premises. From the evidence on record it is clear that the premises have been used as residence. Further according to F the petitioner only a garage which is a small portion of this demised premises was used as a godown. In *Joginder Singh v. Smt. Uma Vuti*, 1985 (2) R.C.J.I, it has been observed that in the absence of convincing evidence, documentary or oral, the purpose of letting has to be inferred from the surrounding circumstances, namely, nature of the premises, extent of accommodation, the location of the building and the dominant use to which it has been put, besides other relevant factors. It is not denied that the premises were constructed on lease-hold plot of land and the building thereon is to be used for residential purposes. It is also not disputed that the demised premises except the garage has always been used for residence. The premises are situated in residential locality. Vasant Vihar is a locality of the Delhi Development Authority where lease-hold plot of lands were allotted to a co-operative society of which the husband of the respondent was a member. The buildings in this colony are used for residential purposes. The Additional Rent Controller on the basis of oral and documentary evidence and surrounding circumstances has rightly held that the premises were let for use as a residence.

(10) Learned counsel for the petitioner submits that the respondent has sufficient accommodation. It is in evidence that the husband of the respondent died in 1972. There daughter Meena got a Government job at a salary of Rs. 345.00 per month. She was allotted a Government quarter at Sarojni Nagar where the respondent her two sons and daughter shifted. Meena was married on 15/4/1976 and naturally the other family members had to shift. The respondent and her two sons first shifted to R.K. Puram, Munirka, Kalkaji and then to Sarojni Nagar. These are colonies where

the allottees of accommodation are Government servants and they have no right to sublet it. The respondent was not in a position to produce any rent receipt with respect to the portion occupied by her in these colonies and she has also not been able to produce any allottee i.e. her landlord. Learned counsel for the petitioner submits that the accommodation in Sarojni Nagar is sufficient for the respondent. It is admitted that the respondent is in possession of one room, one kitchen, common W.C. and bath. The family of the respondent consists of herself and her two sons. The elder son is aged 29 years. He is a Chartered Accountant and was married on 18th November, 1984 during the pendency of the eviction petition. The younger son is aged 27 years and is still undergoing the course of chartered accountancy. It is unimaginable that the family of the respondent can be accommodated in one room at 0-1/727 Sarojni Nagar, New Delhi where at present the respondent and her family reside. I, therefore, hold that the respondent is not in possession of any other reasonably suitable residential accommodation for the residence of herself and her two sons.

(11) Learned counsel for the petitioner next submits that the front portion of the ground floor was let in 1972 to one Mr. Kamboo at Rs. 100.00 per month who shifted to first floor in 1974, that the first floor accommodation is also available to the respondent. There is evidence on record that the respondent is entitled to collect rent and use the portion of the ground floor while her sister is entitled to use or collect rent of the first floor. A decree of the civil court between the respondent and her sister dated 30/1/1975 Ex. A-1 is sufficient to disclose that the respondent's sister is entitled to use and collect rent with respect to first floor of the suit house.

(12) Learned counsel for the petitioner next submits that the front portion of the ground floor was let in 1974 to Mr. Ranade at Rs. 750.00 per month and in October, 1979 it was let to Mr. Saroop and again in January, 1980 it was re-let to Jai Parkash Associates at Rs. 1,250.00 per month. His argument is that the requirement of the respondent arose in 1976 when the respondent's daughter got married but the respondent did not occupy the front portion of the ground floor though it fell vacant in October, 1979 and January, 1980. Learned counsel for the respondent submits that the respondent had no source of income except the rental

income of the suit property and a meagre amount of pension. It is on record that previously the respondent was getting monthly pension of Rs. 100.00 and in August, 1984 she was getting Rs. 130.00 per month. The respondent's son qualified as a Chartered Accountant in 1982. In other words up to January, 1980 when Jai Parkash Associates was inducted as a tenant in the front portion of the ground floor the financial position of the respondent was very weak. It may be that on account of economic reasons the respondent was forced to let out the front portion of the premises at Rs. 1,250.00 in January, 1980 to Jai Parkash Associates. The requirement of the respondent cannot be said to be mala fide, if she asked the petitioner-tenant paying Rs. 500.00 as rent to vacate the premises for her residence. Under the circumstances she has a choice to ask the petitioner to vacate the premises. Her choice cannot be termed as mala fide. In *Kailash Chander Bhai v. Mangal Singh*, 1984 (1) R.C.J. 45 an eviction petition was filed under Section 14(1)(e) of the Act, as the accommodation was insufficient for the requirement of the landlord. Ground floor which was quite spacious was not occupied by the landlord. He filed a petition against the tenant, and this court confirmed the order of eviction on account of economic reasons as it was beyond the means of the landlord to shift to spacious ground floor portion. In the instant case I am also of the opinion that the respondent landlady was justified in her circumstances in not occupying the front portion of the ground floor when it fell vacant in January, 1980 and let out the same at Rs. 1,250.00 per month.

(13) It is well settled that the word 'require' in Section 14(1)(e) of the Act denotes a need and not a mere 'wish' or 'desire'. The requirement of the landlord also must be 'bonafide' which means that it must be 'honest' and 'genuine' and not 'frivolous' or 'whimsical'. No other reasonable suitable residential accommodation is admittedly available for use to the respondent. Her requirement is genuine. She needs the suit premises. I am therefore of the opinion that the order of eviction passed by the Additional Rent Controller against the petitioner-tenant in the circumstances of the present case is in accordance with law.

(14) The revision petition has no merit and it is dismissed with costs. Counsel fee Rs. 500.00. The petitioner-tenant was liable to pay stamp duty on the lease deed Ex. Az under Section 29(c) of the Indian Stamp Act, which he had not paid. The

lease deed was executed on a stamp paper of Rs. 2.00 only. As the lease deed was tendered in evidence by the respondent-landlady and the same has been admitted into evidence under Section 35 of the Indian Stamp Act on payment of deficit stamp duty and penalty, the petitioner-tenant is liable to pay the deficit stamp duty and penalty to the respondent who has already paid the sum of Rs. 583.00. I therefore under Section 44(3) of the Indian Stamp Act further direct the petitioner to pay Rs. 583.00 on account of deficit duty and penalty to the respondent.

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