

Anand Prakash Vs. Ganeshi Devi

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Court : Delhi

Decided On : May-29-1985

Reported in : 28(1985)DLT235; 1985RLR402

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25B(4)

Appeal No. : Civil Revision Appeal No. 307 of 1982

Appellant : Anand Prakash

Respondent : Ganeshi Devi

Advocate for Pet/Ap. : G.N. Aggarwal and; S.M. Grover, Advs

Judgement :

Sultan Singh, J.

(1) This petition under Section 25B(8) of the [Delhi Rent Control Act, 1958](#) (for short 'the Act') is directed against the judgment and order dated 23rd January, 1982 of the Addl. Rent Controller dismissing the petitioner's application for leave to defend and passing an order for his eviction under Section 14(l)(e) of the Act.

(2) Briefly these are the facts. The respondent-landlady filed a petition for eviction of the petitioner-tenant on the ground mentioned in Section 14(1)(e) of the

Act. It has been alleged that the petitioner is a tenant in respect of two rooms, kitchen, bath, toilet, balcony with right to use the stair case and open space on first floor in House No. B-39, New Rajinder Nagar, New Delhi on a monthly rent of Rs. 450.00 ; the respondent is the owner ; the premises were let for residential purposes and the same are required bona fide for her residence and for the residence of her family members dependent upon her and she has no other reasonably suitable residential accommodation. It has been further alleged that the family of the landlady consists of herself, her son, daughter-in-law and three grand-children ; her relations with her daughter-in-law have not been cordial and on account of quarrelsome nature of daughter-in-law she has to lodge a report with the police, and she wants to have a separate mess for which there is no facility in the existing accommodation ; her grand-daughter is studying in 11th standard and grandson is studying in 8th class who require separate rooms for study ; her married daughter lives in Bihar and whenever she visits with the family, there is no accommodation for her stay ; for daughter's daughter Miss Gyatri Chugh has taken admission in College of Home Economics South Campus, Delhi University to pursue her studies and she had to seek accommodation in Hostel on payment of Rs. 1200.00 quarterly on account of non-availability of accommodation in the suit house. The respondent is in possession of ground floor consisting of three rooms, measuring 11'0"X13'-0", 11'7"X15'0" and 11'.0"X9'7" besides kitchen, bath, latrine. The petitioner filed an application for leave to defend which was dismissed by the Additional Controller hence this revision.

(3) In Precision Steel & Engineering works and another v. Prem Deva Niranjana Deva Tayal, : [1983]1SCR498 it has been laid down that the Controller has to confine himself to the affidavit filed by the tenant under Sub-Section (4) of Section 25B of the Act and the reply, if any, on behalf of the landlord. If the affidavit disclose such facts as would disentitle the landlord from recovering possession, the mere disclosure of such facts must be held sufficient to grant leave. Such facts on which leave to defend may be granted as enumerated by the Supreme Court are that the landlord has other accommodation in his possession which is sufficient for him, that the conduct of the landlord discloses avarice for increasing rent by threatening eviction, that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it

for himself, that the dependents of the landlord for whose benefit possession is sought are not persons to whom in the eye of law the landlord was bound to provide accommodation ; that the past conduct of the landlord is such as would disentitle him to the relief of possession etc.

(4) In the instant case the petitioner in his application for leave to defend has alleged that the eviction petition is mala fide as the landlady enhanced the rent from Rs. 350.00 to 450.00 per month in May, 1980 and an application for fixation of standard rent was filed wherein interim rent has been fixed at Rs. 380.00 per month ; the requirement of the respondent-landlady is denied ; it has been alleged that she has failed to prove her ownership ; no member of her family is dependent upon her ; the story of mutual quarrels with her daughter-in-law is incredible ; the accommodation with her is sufficient ; the eviction petition is a counterblast to the application for fixation of standard rent and her married daughter does not require the accommodation. The respondent-landlady has denied all these allegations.

(5) For the grant of leave to defend it is also necessary that the defense must be clear, specific, positive and bona fide and if true must result in the dismissal of the petition of the landlord. The defense of negative character which are intended to put the landlord to proof or are vague, are not of the kind which will entitle the tenant to the grant of leave. For example, if tenant urges that the petitioner is not the owner/landlord, then he must state the name and address of the person whom he alleges to be his landlord/owner. Again if the defense raised is that the landlord has other reasonably suitable accommodation then he must state what other accommodation is. Further if the tenant denies the alleged number of members of the family dependent on the landlord, then he must state who according to him are the members of the family dependent on the landlord Thus in the present case it has to be seen whether the allegations made in the application for leave to defend are bona fide, clear, specific and positive and disentitle the respondent to an order of eviction.

(6) For the grant of an order of eviction following facts are to be proved under Section 14(1)(e) of the Act :

(I)the premises were let for residential purposes ;

(II)the premises are required bona fide by the landlord for occupation as residence for himself and members of his family dependent upon him;

(III)the landlord is the owner ; and

(IV)the landlord has no other reasonably suitable residential accommodation.

(7) The number of family members of the respondent-landlady, and the accommodation with her are admitted. It is not alleged if the landlady is in possession of any other premises. It is not denied that the premises were let for residential purposes. As regards ownership the petitioner alleges that the respondent-landlady has failed to prove her ownership and title in spite of requests made by him by means of registered letters. This is not even denial of ownership. There is also no allegation as to who is the owner of the property in suit if the respondent is not the owner. In the absence of specific denial regarding ownership the petitioner-tenant is deemed to have admitted ownership of the landlady.

(8) As regards mala fides the allegation is that the rent was enhanced to Rs. 450.00 in May, 1980 and on filing an application for fixation of standard rent the interim rent was fixed at Rs. 380.00 by order dated 5th October, 1980. The rent was enhanced mutually in May, 1980. There is no allegation that the respondent ever threatened to increase the rent. Merely filing an application for fixation of standard rent does not show any mala fide. If mere filing a petition for fixation of standard rent, is held to be mala fide on the part of the landlord, it would mean that a landlord would not be able to recover possession under Section 14(l)(e) of the Act wherein the tenant had at any time filed an application for fixation of standard rent. In *Lalit Kumar Vijay v. Saroj Kumari*, 1969 R.C.J. 545 it has been held that mere fact that the tenant had applied for fixation of standard rent would not deprive the requirement of the premises by the landlord of its bona fides. The petitioner has further challenged the bona fide requirement of the respondent on the ground that there is no quarrel between the respondent and her daughter-in-law, that her son is totally independent and she does not require the premises for the residence of her family. The mala fides of a landlord can be considered by taking into consideration his family members and the accommodation available to him. The respondent-landlady on account of her relations with daughter-in-law desires to

have a separate mess. She also requires the accommodation for the three grandchildren and her daughter's daughter. The accommodation admittedly consists of three rooms. Thus three rooms considered from any standard are not sufficient for the family of the respondent even if her relations with her daughter-in-law are alleged to be cordial. The respondent requires at least one room for herself, one room for her married son, one room for her granddaughter studying in 11th standard, and one room for her grandson studying in 8th standard, one room for daughter's daughter studying in Delhi or a room for her guests specially her married daughter who has been residing in Bihar and visit the respondent. Drawing room and kitchen are also necessary. All family members of the landlady cannot be accommodated in the existing accommodation. Thus it cannot be said that the requirement of the respondent-landlady is not bona fide.

(9) Next question is 'Whether the son of the respondent is dependent upon her for purposes of residence. There is no allegation that the respondent or her son has any other residential accommodation. It is well known that financial independency of the son is different from his dependence on mother for the purposes of residence. The respondent's son is getting a salary of Rs. 600.00 and her daughter-in-law is getting a salary 'of Rs. 400.00 . These facts are not denied by the petitioner-tenant. Thus in these circumstances it cannot be imagined that the respondent's son is independent for the purposes of residence.

(10) In the application for eviction various allegations made by the landlady have not been challenged by the tenant. It is not denied that the respondent's daughter's daughter has taken admission in the college of Home Economics in South Campus, Delhi University and she is required to pay Rs. 1200.00 quarterly for hostel accommodation on account of non-availability of space for her in the suit house. It is not denied that the grand daughter of the respondent studies in 11 the standard and grandson studies in 8th class and both require separate rooms for their studies. Reading the entire application for leave to defend I find that there is no allegation of any fact which would disentitle the respondent-landlady from obtaining an order of possession against the petitioner-tenant. There is thus no merit in the revision petition.

(11) Dispossession of the tenant-petitioner was stayed by order dated 19th May, 1982 in execution of the eviction order passed by the Additional Rent Controller on deposit of rents. The respondent-landlady filed an application (C.M. No. 342 of 1984) for the vacation of the stay order on the ground that the petitioner-tenant and his wife had built, acquired, vacant possession of the premises at ND-60, Pritampura, New Delhi. She also filed an application (C.M. No. 4688 of 1984) under Order 6 rule 17 of the Code of Civil Procedure for leave to amend the eviction petition alleging that she was also entitled to claim eviction on the ground mentioned in Section 14(l)(h) of the Act as the petitioner-tenant and/or his wife have built, acquired vacant possession of the residential accommodation in the said house at Pritampura. In reply it is asserted by the petitioner that the residential house at Pritampura was constructed and completed in February, 1983 by his wife from her own income ; the front portion of the house was let out to one B.K. Jain from 21st June, 1983 to 10th July, 1984 and back portion was let out to Anil Narang from 15th October, 1983 to 15th June, 1984, the entire building was let out by his wife from 12th July, 1984 to D.A.V. College and no portion of the house at Pritampura is lying vacant. In view of these facts and my finding that the petitioner is not entitled to the grant of leave to defend the eviction petition it is not necessary to allow the landlady to amend her eviction petition. The revision petition has no merit and the same is hereby dismissed with costs.