

**Shiv Chanter Bhan Vs. Vasdev**

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**SooperKanoon Citation :** [sooperkanoon.com/694383](http://sooperkanoon.com/694383)

**Court :** Delhi

**Decided On :** Dec-19-1984

**Reported in :** 1985(8)DRJ183

**Judge :** Yogeshwar Dayal, J.

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

**Appeal No. :** Civil Revision Appeal No. 606 of 1983

**Appellant :** Shiv Chanter Bhan

**Respondent :** Vasdev

**Advocate for Pet/Ap. :** Usha Kumari,; S.K. Kaul and; Atul Kumar, Advs

**Judgement :**

**Yogeshwar Dayal, J.**

(1) This revision petition was directed against the order of 3rd Additional Rent Controller, Delhi dated 22nd February, 1983 whereby learned Additional Rent Controller passed an order for eviction against the petitioner under clause (e) to the proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act.

(2) The case of the respondent-landlord was that the family of the landlord consists of himself, his wife, two sons aged 23 years and 17 years, three

daughters aged 20 years, 18 years and 15 years and a daughter-in-law and a grand son. The son of the petitioner aged 17 years and two daughters aged 18 years and 15 years are studying in B.A., Higher Secondary and 7th class respectively and the whole family of the petitioner landlord has been residing with him in the following accommodation out of the property in dispute : (1) one drawing room and a bath room on the ground floor, (2) one room one store room and a tin shed kitchen on the first floor and (3) one the barsati which has only 21 High wall on three side and open towards the roof of the house having tin sheets roof, as such the same is on pillars and cannot be used as a room for residential purposes and a latrine on the second floor. The aforesaid accommodation was shown in blue colour in the plan attached with the petition. It was also pleaded that the landlord and his family has no other accommodation in their possession except the one mentioned above. The married son has no separate room for himself, wife and the child as bed room and living room and the school going children have no separate study room : that the landlord and his wife have no separate bed room that the income of the landlord and his married on is about Rs. 16,000.00 per annum and his married son is about Rs. annum and the landlord is an Income tax assessed paying income tax.

(3) I may mention there is no dispute about the respondent being owner-landlord nor there is any dispute about the purposes of letting before this Court. There is also no dispute regarding family member of the landlord. The only dispute centres round to the extent of accommodation available to the landlord. The plea of the tenant in the written statement was that a room shown as store room on the first floor is in fact suitable as a living room and the second plea was that there is a room in occupation of one Smt. Phool Wati and she has vacated that portion and handed over that portion to the landlord.

(4) The learned Additional Rent Controller accepted the case of the tenant-petitioner that the room which has been shown as store room on the first floor is in fact a large size room and is living room. Learned Additional Rent Controller, however, rejected the case of the tenant that Smt. Phool Wati had surrendered the possession of the room which was in her occupation as a tenant. On examining the entire evidence particularly the report of the Local Commissioner, the learned

Additional Rent Controller took the view that Smt. Phool Wati has not surrendered room under her occupation and, infact, is still in her occupation though she may not be living there.

(5) Before me again Mrs. Usha Kumar, learned counsel for the petitioner submits that the room which was with Smt. Phool Wati is available to the landlord as she has vacated that room. Normally it is pure question of fact, whether Smt. Phool Wati has vacated and handed over the possession of room in her occupation or not. However, I would proceed with this petition on the assumption that the room which was with Smt. Phool Wati is also available with the landlord. The learned trial court found that the respondent-landlord has one living room and a bath room on the ground floor. The landlord has two rooms and a tin shed kitchen on the first floor and one barsati on the second floor as well as a latrine on the second floor. The learned trial court also found that the barsati on the second floor cannot be used as living room. Thus, the position boils down to this that even if I accept the submission of learned counsel for the petitioner-tenant that Smt. Phool Wati had vacated the premises under her occupation and the accommodation available with the landlord is (1) one room and a bath room on the ground floor, (2) two rooms and a tin shed kitchen on the first floor and (3) one tin barsati and latrine the second floor then looking at the size of the family of the landlord. It will be noticed that there is a married son and a grand son and now two grand sons, so one room is definitely required by the landlord for himself and one bed room is definitely required for the family of the married son. There are three married and two unmarried daughters besides a son who was student and is now aged about 25 years and working and thus, is of marriageable age.

(6) There can be no doubt that a room is also required as a study loom for such a flare family. Thus, there is no accommodation worth the name for any of the unmarried children either for study or for living. A family of this size also require a store room. Even though the room which has been found by the trial as a living room in fact a store room, it has not been found by the learned trial court which room will be used as a store room.

(7) It is common that a family of this size has to have a kitchen besides a store. It has been pointed out that the kitchen is not a puce kitchen and the kitchen itself has been found to be a tin shed kitchen by the learned trial court. thereforee a store room was very necessary. I do not agree with the learned trial court when he treat the room Mark G on the first floor as a living room which has been described by the landlord as a store room. May be it can be used as a living room but this size of family has to have a store room also. thereforee, the position boils down to this that there are really only two living rooms, one on the ground floor and one on the first floor. Where the un married children are to be accommodated They are of grown up age. They are not small children who can sleep on the floor or with the parents. The need of the landlord was imminently bona fide. There is, thus, no merit in the revision petition. Same fails and is dismissed.

(8) Petitioner, is however, allowed one year's time on the request of the learned counsel for the petitioner to vacate the premises provided the petitioner files an undertaking in this Court within one month that he will peacefully handover the possession of the premises in dispute to the landlord on the expiry of one year. The petitioner may appear before the Registrar for verification of the undertaking on 21st January, 1985.