

Anand Gopal Jhingran and ors. Vs. Arjun Dev

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Court : Delhi

Decided On : Aug-23-1994

Reported in : 57(1995)DLT312; 1994(30)DRJ562

Judge : Sat Pal, J.

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

Appeal No. : Second Appeal No. 382 of 1980

Appellant : Anand Gopal Jhingran and ors.

Respondent : Arjun Dev

Advocate for Pet/Ap. : Sanjay Gupta,; N.B. Sinha and; Baldev Raj, Advs

Judgement :

Sat Pal, J.

(1) This appeal is directed against the order dated 15th July, 1980 passed by Shri V.S. Aggarwal, the then Rent Control Tribunal, Delhi in Rca No-245/77.

(2) Briefly, stated the facts of the case are that the appellants who are the owners and landlords with regard to the property bearing No.5958, Jawahar Nagar, Delhi filed an eviction petition under Section 14(1)(e) of the [Delhi Rent Control Act, 1958](#) (in short the act) against three tenants including the respondent Shri Arjun Dev

who is a tenant with regard to a flat on the first floor of the said house. Admittedly, this flat was let out to the respondent for residential purpose. Shri O.P. Dwedi, the then IIIrd Additional Rent Controller, Delhi by his order dated 24th January, 1977 allowed the eviction petition of the landlords against all the three tenants including the respondent.

(3) Aggrieved by the order dated 24th January, 1977 passed by the learned Additional Rent Controller, the tenant filed an appeal bearing Rca No.245/77 and the learned Rent Control Tribunal by his order dated 15th July, 1980 allowed the appeal of the tenant. In this order it was stated that during the pendency of the appeal one tenant, namely, Shri S.N. Kapur had vacated four rooms on the ground floor and had delivered the vacant possession of the said rooms to the landlords. It was further stated in this order that the landlords required three separate bed rooms, a guest room, a drawing room, a dining room and library- cum-study room i.e. to say 7 rooms and after obtaining the possession of 4 rooms from the tenant Shri Kapur, the landlords were having 7 rooms including the accommodation already available with the landlords and therefore presently they did not require any additional accommodation. Keeping in view these facts, the appeal of the tenant was accepted and the order passed by the learned Addl. Rent Controller was set-aside and the petition of the landlords for eviction was dismissed. The present appeal which has been filed by the landlords against the aforesaid order dated 15.7.80 passed by the learned Rent Control Tribunal, was admitted on 8.10.80.

(4) During the pendency of the appeal, the landlords filed an application bearing Cm No-1893/91. In this application it was stated that after filing of this appeal there had been a number of changes in the circumstances of the appellants, namely, that the mother of appellants had died on 1.2.86, the marriage of appellant No.4 namely, Shri Achyut Gopal Jhingran had taken place in November, 1980 and one son was born to him on 11th May, 1984 who was studying in a public school and the said appellant was having his separate residence and kitchen, another appellant No.1 Along with the members of his family had shifted to Delhi and son of the appellant No.2 had also settled in Delhi and was carrying on his studies and his mother was also frequently visiting Delhi, two daughters of appellant No.3 aged

about 16 years and 14 years were also studying in a public school and additional accommodation was needed for their studies, there had been a change in the status of appellant No.3 as he had become a Reader in the Delhi University and was earning about Rs. 6000.00 per month. It was, therefore, prayed in this application that the appellants be permitted to lead evidence to bring all the documents on record. Notice of this application was issued to the tenant who filed a counter-affidavit controverting the allegations made in the application. Thereafter a rejoinder was also filed on behalf of the appellants/landlords. By order dated 16th September, 1993, a learned Single Judge of this court allowed the application subject to payment of costs of Rs. 1,000.00 and remitted the matter to the Rent Controller concerned for the purpose of recording evidence in the light of the facts set out in the application.

(5) Pursuant to the order dated 16.9.93 passed in Cm 1893/91, additional evidence on behalf of the appellants was recorded by the learned Additional Rent Controller on 10.12.93 and 28.1.94. The tenant was also given an opportunity to examine his witnesses in rebuttal and his statement was recorded on 7.2.94. Shri Vinaya Jhingran appellant No.3 in his statement stated that his mother died in 1986 and he had two daughters aged 18 years and 16 years. He further stated that his elder daughter was studying in a college and younger daughter was studying in Class XI. He also produced his own ration card and the ration cards of his other three brothers copies of which were marked exhibits AW.6/A to AW.6/E. He further stated that his brother who was appellant No.4 got married in 1980 and he had one son who was studying in Class-IV. He also stated that the appellant No.1 who was earlier posted in Rajasthan had retired in 1988 and had shifted to Delhi Along with his wife, one son aged about 23 years and one daughter aged about 27 years. He also stated that son of appellant No.2 had settled in Delhi since 1985 and his mother used to come often to Delhi to stay with him. Relying on these facts he stated that he required 5 rooms for himself and for the members of his family and appellant No.1 required 5 rooms for himself and members of his family and his younger brother also required two more rooms and appellant No.2 required three rooms. He further stated that all the appellants had separate kitchen. The respondent was given the opportunity to cross examine this witness but he did not put any question to him in cross-examination.

(6) Mr. Anand Gopal Jhingran, appellant No.1 in his statement stated that he took voluntary retirement in June, 1988 and shifted to Delhi. He further stated that his family consisted of himself, his wife, his son who is 24 years old and daughter aged 29 years who was working as a teacher. He also stated that the accommodation presently available with him consisted of one room and one store and he required at least five rooms i.e. one room for himself and his wife, two rooms for children, one guest room and one drawing-cum-dining room, besides kitchen. He also stated that neither he nor any member, of his family owned any house in Delhi. The tenant was given opportunity to cross-examine this witness also but he did not put any question to him.

(7) The tenant in his statement stated that he and his wife were staying in the suit premises and both his sons were living separately in Faridabad and Vasant Kunj, New Delhi. He also stated that he was a heart patient and was under treatment of G.B. Pant Hospital. He further stated that the landlords were harassing him as well as the other tenant Shri K.D. Beri who had since retired and was unmarried. He then stated that he offered to surrender one room out of three rooms in his possession to the landlords as far back in the year 1989 and that offer was still open. He, however, did not state anything controverting the requirement of the landlords for the additional accommodation as stated by Vinaya Gopal Jhingran (appellant No.3) and Anand Gopal Jhingran (appellant No.4) in their respective statements.

(8) From the additional evidence recorded on behalf of the appellants pursuant to the order dated 16.9.93, it is clear that the appellant No.1 requires one room for himself and his wife, one room for his grown-up daughter as well as one room for his grown up son and one drawing-cum-dining room, whereas he is at present having only one room. Thus his need for additional accommodation for three rooms is justified. Similarly the appellant No.3 is also having two grownup daughters and he also requires one bed room for himself and his wife, two rooms for his daughters, one drawing-cum-dining room and one study-cum-library room and as per site plan he at present is having three rooms in his possession. Thus his requirement for additional accommodation for two more rooms is justified. It has also been proved by appellant No.3 that appellant No.4 is now married and is

now having one son. Thus he also requires one room for himself and his wife and one room for his son and one drawing-cum-dining room, whereas at present he is having only one room in his possession. Thus his requirement for additional accommodation for two more rooms is justified. The appellant No.3 in his statement has also proved that the son of appellant No.2 has been living in Delhi since 1985 and as per site plan, he is in occupation of one room and one store, though he requires at least two rooms as his mother often comes to Delhi and stays with him. Thus his requirement for one additional room is justified. The respondent as stated here-in above has not put any question to the appellants 1 and 3 in his cross-examination nor he has stated any fact contrary to the facts stated by the appellants that they needed at least eight more rooms. It would thus be apparent that the appellants need additional accommodation or eight rooms.

(9) As held by the Supreme Court in the case of *M/s.Variety Emporium Vs . V.R. M. Mohd. Ibrahim Naina*, : [1985]2SCR102 , the court must have regard to events as they present themselves at the time when it is hearing the proceeding before it and mould the relief in the light of those events. Keeping in view the law laid down by the Supreme Court, I am of the view that the requirement of the appellants for the suit premises is bonafide and their appeal has to be accepted.

(10) Mr. Sinha, learned counsel appearing on behalf of the respondent submitted that the facts regarding additional accommodation pleaded by the landlords in Cm 1893/91 were duly controverted by the tenant in his counter-affidavit filed in reply to this application and the facts stated in this counter-affidavit be also taken into consideration. I do not find any merit in the submission made by the learned counsel for the tenant. The counter-affidavit relied upon by the learned counsel was filed in opposition to the application and it was stated in the affidavit that the application was frivolous and should be dismissed. As stated hereinabove the application was accepted by this Court vide order dated 16.9.93 and it was made clear in this order that the Additional Rent Controller would record the additional evidence after giving the landlords full opportunity to produce or summon the witnesses and opportunity would also be given to the respondents/tenants not only to cross examine the witnesses examined by the landlords but also to produce evidence in rebuttal. Pursuant to this order, the tenant was given full opportunity

by the Additional Rent Controller to cross examine the witnesses of the appellants and was also given opportunity to examine his own witnesses. Inspire of this opportunity, the tenant did not put any question to the appellants in cross-examination nor he stated any fact in his statement which could be contrary to the statement of the appellants that they needed additional accommodation.

(11) For the aforesaid reasons the impugned order dated 15th July, 1980 passed by the learned Rent Control Tribunal is set-aside and the eviction petition filed by the appellants is accepted and order of eviction with regard to suit premises is passed against the respondent/tenant. However, looking at the urgency of the requirement of the landlords as well as the difficulty for the tenant to find out another accommodation, the respondent is allowed six months time from the date of this order to vacate the premises subject to the condition that, within a week from today, he furnishes an undertaking in the shape of an affidavit to this court that he will hand over the vacant possession of the suit premises to the landlords within six months from the date of this order. No costs.

(12) Lower court records be sent back forthwith.