

Smt. Nanki Devi Vs. Satish Kumar

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Court : Delhi

Decided On : Feb-09-2000

Reported in : 2000IVAD(Delhi)723; 85(2000)DLT405

Judge : Madan B. Lokur, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1); [Constitution of India](#) - Article 227

Appeal No. : C.M. (Main) 245 of 1998

Appellant : Smt. Nanki Devi

Respondent : Satish Kumar

Advocate for Def. : Mr. Rohit Kumar, Adv.

Advocate for Pet/Ap. : Mr. J.C. Mahindru, Adv

Judgement :
ORDER

Madan B. Lokur, J.

1. The Petitioner is the landlady of the suit premises comprising one drawing-cum-dining room, one bed room, one kitchen, one bath and toilet on the first floor and a barsati on the second floor in premises No. A-314, Kalkaji, New Delhi.

2. She had filed a petition seeking the eviction of the respondent under the provisions of provisos (b) and (e) of section 14(1) of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as the Act). The petition, insofar as it pertained to proviso (b) of Section 14(1) of the Act had failed before the learned Additional Rent Controller and apparently no appeal was filed against that order dated 4th April, 1996. She had, however, succeeded in proving her case under proviso (e) to Section 14(1) of the Act before the learned Additional Rent Controller.

3. Section 14(1) proviso (e) of the Act reads as follows:

'14. Protection of tenant against eviction-

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or Controller in favor of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) to (d) xxx xxx xx

(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any number of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanationn - xxx (not relevant)'

4. In appeal, the learned Rent Control Tribunal (hereinafter referred to as the Tribunal) passed an order dated 2nd April, 1998 and set aside the findings of the learned Additional Rent Controller and allowed the appeal thereby dismissing the eviction petition. In other words, it was held that the Petitioner had not been able to prove that she bona fide required the suit premises for her use and occupation.

5.The petitioner preferred a writ petition under Article 227 of the Constitution challenging the correctness of the order dated 2nd April, 1998 passed by the learned Tribunal.

6.Learned counsel for the Respondent raised a preliminary objection that a writ petition under Article 227 of the Constitution was not maintainable and in fact the petitioner ought to have filed a second appeal. This contention was, quite naturally, opposed by learned counsel for the petitioner. Decisions were cited by learned counsel for the parties in support of their respective submissions.

7.However, I am not inclined to go into this aspect of the matter for the reason that the petitioner is stated to be above 75 years of age and to require her to file a second appeal would result in an avoidable delay in the disposal of the case. Moreover, the eviction petition was presented on 17th April, 1986 and the matter has been lingering on for almost about 14 years. I am of the view that the interests of justice would be served if the present petition is converted into a second appeal. It is ordered accordingly. The Registry should re-number this case as an S.A.O.

8.On merits, the Petitioner contended that she was living with her son who is the owner of house No.A-76, Ashok Vihar Phase-I, New Delhi. Her son has a wife, three sons and a daughter. At the time of filing the eviction petition, one of the sons was married and during the pendency of the proceedings another son also got married. The Petitioner has a daughter who is dependant on her and this daughter has been staying with her mother in the son's house in Ashok Vihar. Although there is no specific pleading about the extent of accommodation available in Ashok Vihar , it has come on record, through the oral testimony of the witnesses, that the Ashok Vihar premises consist of three rooms, one kitchen, one bath and one toilet.

9.Learned counsel for the petitioner submitted that the relations between the petitioner and her son are quite cordial, and in fact the son is her attorney and had even come into the witness box on behalf of the Petitioner. Yet, for her own comfort, as also the comfort of her dependent daughter and in view of the growing need of the son's family, the petitioner wanted to shift to her own house. The expression used by the learned Tribunal that the son wanted to 'turn out his

mother at such an old age' is not really quite apposite, Moreover, the Petitioner's daughter had divorced her husband and in this regard he placed reliance on the certified copy of a decision in HMA Case No.35 of 1984 decided by the learned Additional District Judge, Delhi on 25th September, 1985.

10. Learned counsel for the respondent however, contended that the accommodation in Ashok Vihar is quite adequate and that there is no real or bona fide necessity for the Petitioner to shift into her own house which is at the other end of Delhi. He submitted that it is quite unnatural for such aged lady to shift out of her son's house more so when they have cordial relations. He further submitted that insofar as the Petitioner's daughter is concerned, there is nothing on the record to show that she is divorced. On the contrary, when she entered the witness box, she described her status as wife of Shri Vijay Kumar.

11. Having heard learned counsel for the parties, I am of the view that the Petitioner has made out a case that she bona fide required the suit premises.

12. There is no doubt that the Petitioner's son has a growing family and that one of his sons was married at the time when the eviction petition was filed and during the course of the proceedings, another son got married. Even if one disregards the testimony concerning the extent of accommodation available with the Petitioner's son, there is nothing on the record to suggest that there is so much accommodation available with the son for the comfortable living of his family as well as his mother and sister. The Petitioner does not appear to be better off than a middle class resident of Delhi and, therefore, he cannot be expected to have a palatial accommodation. In this view of the matter, one has to be pragmatic and proceed on the basis that (at best) the accommodation available with the Petitioner's son is sufficient for himself and his immediate family.

13. Even though the Petitioner and her daughter have been living with the Petitioner's son and are having cordial relations with him, it is quite natural for the Petitioner to want to shift out of the premises belonging to her son in view of his needs and, consequently, her requirements. The requirement of the Petitioner cannot be said to be unfounded or lacking in bona fides. It is true that the suit premises are at the other end of Delhi but this is entirely fortuitous. The Petitioner

would, I suppose, want to live close-by with her son but in the absence of her owning a house in the vicinity of her son's house, she has no option but to shift to the suit premises. She cannot be blamed or disbelieved merely because her house is at one end of the city and her son (who purchased his house later) lives in the other end of the city.

14. It is also not as if the Petitioner will be living alone in the suit premises. She intends to live with her daughter who is said to be dependent on her and who can look after her.

15. The learned Tribunal has proceeded on the basis that there is nothing to show that the Petitioner's daughter is divorced or dependent on her. The evidence on record shows that the Petitioner's daughter is living with her mother in the house of the Petitioner's son, at least since the eviction petition was filed. Even if one ignores the decree of divorce dated 25th September, 1985, one cannot ignore the fact that it is extremely unnatural for a married lady to live away from her husband in her brother's house along with her mother. Obviously, the relationship between the husband and wife is strained. This being the position, whether the Petitioner's daughter was married or divorced is of no consequence. The fact is that she is not staying her husband and has not been staying with him at least since the eviction petition was filed. Clearly, it is not possible for her to live with her husband and she can live only with her immediate family.

16. The learned Tribunal has drawn an adverse inference against the Petitioner since she did not enter the witness box. The learned Tribunal assumed that she is infirm or is of old age and not capable of visiting the Court. During the course of hearing of the present case, the Petitioner was, in fact, present in Court, but this is neither here nor there. Although the Petitioner is of old age and may be infirm, this is no ground to assume that she would be dependent only upon her son and it was not possible for her to stay separately with her daughter. This is not, with respect, a relevant assumption for non-suiting the Petitioner.

17. In view of the above, I am of the view that the learned Tribunal seriously erred in appreciating the bona fide requirement of the Petitioner. The impugned order is, therefore, liable to be set aside.

18. Accordingly, I set aside the order passed by the learned Rent Control Tribunal in RCA No. 492 of 1996 decided on 2nd April, 1998. There will, however, be no order as to costs.

19. The record of the lower Court be sent back.

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