

**Kesho Ram Vs. Ramesh Kumar**

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**Court :** Delhi

**Decided On :** Mar-09-1995

**Reported in :** 1995IIIAD(Delhi)465; 1995(33)DRJ293

**Judge :** Arun Kumar, J.

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

**Appeal No. :** Civil Revision Appeal No. 942 of 1987

**Appellant :** Kesho Ram

**Respondent :** Ramesh Kumar

**Advocate for Pet/Ap. :** Keshav Dayal,; R. Dayal,; P. Dayal and;

**Judgement :**

**Arun kumar, J.**

(1) This revision petition under Section 25B(8) of the Delhi Rent Control Act (hereinafter referred to as the 'Act') is directed against the judgment of the Additional Rent Controller dated 28th July, 1987 whereby the petition filed by the petitioner landlord under clause (e) to proviso to sub-section (1) of Section 14 read with Section 25B of the Act was dismissed. This revision was allowed by this Court vide judgment dated 9th August, 1990. However, the respondent tenant took the matter to the Supreme Court. The Supreme Court remanded the case to this

Court. The grievance of the tenant before the Supreme Court was that the subsequent events pleaded by the landlord had been taken into consideration by the High Court in its judgment dated 9th August, 1990 without formal proof thereof. The Supreme Court observed in its judgment dated 30th September, 1991 that 'It will be for the High Court to decide whether, having regard to the nature of the subsequent facts, it will be necessary to collect oral evidence on them or they could be decided on affidavit - evidence'.

(2) The petitioner landlord had filed an application under Order 41 Rule 27 Criminal Procedure Code along with the revision petition being C.M. No.3490 of 1987 whereby certain medical records pertaining to petitioner's wife and his elder son Mukesh Kumar were placed on record for consideration of the Court along with photocopies of the ration card of the petitioner and site plan of the property etc. The petitioner moved another application under Order 41 Rule 27 Civil Procedure Code . being C.M. No.1404 of 1988 to bring on record certain further facts like his son Mukesh Kumar having suffered a heart attack in February 1988 and a son being borne to Mukesh Kumar in April 1988. Yet another application being C.M. No.212 of 1992 was filed on behalf of the petitioner after the remand of the case by the Supreme Court whereby all the facts stated as subsequent events in the previous applications were sought to be placed before the Court in a consolidated manner. It appears that really the intention of the petitioner landlord in moving this application was to comply with the observations and directions in the judgment of the Supreme Court. The respondent tenant also pleaded that two tenants in the property in suit, namely, Om Parkash and Murari Mohan Singh had vacated their respective portions in the property in suit and in view of these portions coming into possession of the petitioner landlord, the need of the landlord for further accommodation stood satisfied. It is to be noted in this context that vide order dated 8th April, 1992 passed on C.M. No.212 of 1992, this Court noted that the learned counsel for the respondent had no objection if the documents and affidavits as prayed for by the petitioner were placed on record and read by way of evidence. Liberty was granted to the respondent tenant to rebut the evidence as produced by the petitioner landlord. Opportunity was also granted to the parties to file further affidavits by way of evidence and rejoinder affidavits. In fact, in pursuance of an order dated 14th September, 1992 passed on C.M. No.2340 of

1992 filed by the respondent two deponents who had filed affidavits on behalf of landlord were directed to be produced in Court for cross examination. The said two witnesses were produced in Court and were cross examined on behalf of the respondent tenant. These two witnesses are Om Parkash and Murari Mohan Singh about whom the tenant had alleged that they had vacated their respective tenanted portions in the property in suit and those portions had become available to the landlord during the pendency of these proceedings. These tenants had denied having handed over possession of their respective portions in the property in suit to the landlord. The cross examination of the witnesses shows that they have not vacated the respective portions in the property in suit in their tenancy and they continued to occupy the same as also they continued to pay the rents with respect to those portions to the landlord. In cross examination one of the witnesses, namely, Murari Mohan Singh stated that he never went to the Oath Commissioner for attestation of his affidavit filed in Court. On the basis of this statement, the learned counsel for the respondent has prayed that the landlord as well as the said witness be prosecuted for filing false documents in Court proceedings and making false assertions before the Court. To my mind, this prayer is borne out more of vindictiveness than any bona fide approach to prosecute persons trying to give false evidence or preparing false documents. In the nature of the facts of the present case, I am not inclined to order prosecution on the alleged facts.

(3) Coming to the merits of the case, it has to be first noted that the findings of the Additional Rent Controller regarding the petitioner landlord being owner of the property in suit and the premises being let out for residential purposes to the respondent tenant are not in dispute in the present proceedings and, therefore, I need not dilate upon this aspect. Similarly, as noticed by the learned Additional Rent Controller, the tenant has not suggested that the petitioner landlord has any other reasonable suitable accommodation available with him for residence of himself and his family. This leaves me with the only question regarding bona fide need of the petitioner regarding the premises in possession of the respondent tenant.

(4) The respondent is an old tenant in the property. He is occupying two rooms, two kotharies (small box rooms having entrance through the main room) and a chabutara on the ground floor of the property at a monthly rent of Rs.52.50 excluding water and electric charges as per the case of the landlord in the eviction petition. The property in suit bears no.3195 and is located in Gali Sani Ram, Mohalla Dassan, Delhi. Earlier the father of the respondent was the tenant in the premises. On his death in the year 1981, the petitioner became the tenant. The eviction petition under clause (e) to the proviso to sub-section (1) of Section 14 read with Section 25B of the Act was filed by the petitioner landlord on 9th August, 1983 seeking eviction of the tenant from the portion of the premises in suit in his occupation. As per the case of the petitioner in the eviction petition, the family of the petitioner consisted of himself (age 60 years at that time), his wife (age 57 years at that time), one married son having wife and two children, another son who was unmarried at that time, one daughter of a married daughter who permanently resides with the petitioner. The petitioner had two married daughters having three children each. The petitioner had also eight married sisters and the petitioner is the only brother. The daughters and sisters according to the petitioner keep on visiting him and accommodation was required for their stay with him. The petitioner also claimed that one employee of the petitioner was residing with him. Besides this, he had a servant for whom some accommodation was required. The accommodation available with the petitioner consisted of four rooms on the first floor along with kitchen, toilet etc. and two rooms with kitchen and varandah on the second floor. The other portions in the property were stated to be occupied by other tenants. The learned Additional Rent Controller held that the needs of the married sisters and the married daughters could not be considered. The requirement on account of an employee and a servant was also turned down. The Additional Rent Controller found that the petitioner had sufficient accommodation available with him in the property in suit. This finding was based on the conclusions that one room was required by the petitioner and his wife. Another was required by one married son of the petitioner. A third room was required by the other son of the petitioner who had been married during the pendency of the petition. This makes it three rooms. One room could be used as a guest room as per the finding of the Additional Rent Controller. Another room could be used as

drawing-cum-dining room. On this basis, the Additional Rent Controller found that still one room was spare. This led the Additional Rent Controller to dismiss the eviction petition on the ground that the petitioner had sufficient residential accommodation with him in the property in suit.

(5) On the basis of the subsequent facts brought on record by the parties, after due opportunity to them for filing affidavits and counter affidavits by way of evidence in compliance with the directions of the Supreme Court, the position that emerges is that the family of the petitioner at present consists of himself (age about 72 years), his wife (age 69 years), one son Mukesh Kumar having a wife and three children (two daughters aged 13 years and 12 years and a son aged 6 years), second son Rajesh Kumar having a wife and three children (one daughter aged 8 years and two sons aged 6 years and 1 year), one daughter of a married daughter who admittedly resides with the petitioner, two married daughters having three children each, eight married sisters. Admittedly one room is being used for business purpose since long. Regarding the accommodation available with the petitioner, it consists of four rooms with kitchen and latrine on the first floor and two rooms with kitchen and varandah on the second floor. During the pendency of this petition, a portion on the second floor consisting of one room, kitchen/store etc. fell vacant on account of tenant Ram Bilas vacating the same in the year 1990 which can be taken into consideration while deciding the present petition. The respondent tenant has failed to establish that portions under the tenancy of Om Parkash and Murari Mohan Singh have fallen vacant and have become available to the petitioner. The said two tenants have filed their affidavits and have also been cross examined on behalf of the tenant. From their evidence, it is clear that they are in possession of the respective portions in their tenancy in the property in suit. So, this accommodation cannot be said to be available to the petitioner landlord.

(6) Looking to the size of the family of the petitioner, it cannot be said that the petitioner has sufficient residential accommodation available with him. The petitioner and his wife require at least one room. The two sons of the petitioner having wife and three children each require at least two rooms each which means that the two married sons of the petitioner require at least four rooms for

themselves. The grand children are growing and cannot be huddled together in the same room along with their parents. They require separate accommodation for their study. The growing children cannot be accommodated with the parents in the same room. Then, the petitioner requires at least one room for the grand daughter i.e. daughter of a married daughter who admittedly stays with him. One room is required for guests which requirement even the Additional Rent Controller has upheld. Then a room is also required for the family to sit together and eat together as a drawing cum dining room. This has also been accepted by the Additional Rent Controller. The petitioner is admittedly using one room for his business purpose since long and the said requirement cannot be turned down merely on the ground that he is not entitled to use any portion for commercial purpose when there is shortage of residential accommodation. This makes out the requirement of the petitioner to be at least nine rooms whereas the petitioner is having only seven rooms available with him in the property in suit. This is after taking into account the portion vacated by Ram Bilas on the second floor.

(7) There is yet another aspect of the case. The petitioner does not have any accommodation available to him on the ground floor. The tenancy premises consists of ground floor. The petitioner's son Mukesh Kumar having suffered a heart attack will naturally like to stay on the ground floor in order to avoid climbing stairs. This requirement cannot be said to be fanciful or unreasonable. Similarly, the petitioner and his wife are in their seventies. The petitioner's wife has suffered ailments and at this age they may be hard put to climb stairs to reach their residential portions on the first floor or the second floor. A landlord is entitled to make himself comfortable in his own house. At this stage of his life, it is not too much to let the petitioner stay comfortably in his house, particularly in view of the health of members of his family and his own old age. The petitioner should be allowed to have accommodation on the ground floor. The offer of the tenant to shift to the first or second floor by way of exchange of the accommodation which is available with him as a tenant on the ground floor cannot be taken into consideration. The accommodation available with the petitioner as it is is short and, therefore, the petitioner cannot be compelled to exchange some portion with the tenant in order to come to the ground floor.

(8) Regarding the availability of the accommodation with the petitioner, I have proceeded on the basis of the site plan prepared and filed by a local commissioner appointed by this Court vide order dated 15th February, 1993 in order to set at rest the controversy regarding availability of accommodation with the petitioner. The respondent had tried to urge that a portion on the second floor shown as without roof in the site plan filed by the local commissioner is no longer in the same condition as the landlord has provided a roof on the said portion. The landlord denied this. This matter has not been made subject matter of any application or affidavit. Oral submissions in this behalf during the course of hearing cannot be taken into consideration. If the tenant was serious about this he should have put the matter on record through affidavit. The plan was recently got prepared under directions of this Court in the year 1993 and I consider it safe to proceed on the basis of the said plan.

(9) It is to be noted that in cases based on personal bona fide need of a landlord, the facts do not remain static. Family of the owner landlord keeps on growing. Children keep on growing. The clock keeps on ticking. Deaths or births are events which keep on happening. therefore, the need of the landlord keeps on growing. During the twelve years that the matter has been pending since the institution of the eviction petition on 9th August, 1983, the petitioner's second son got married, the two sons have got more children who are growing up and, therefore, need of the family is constantly increasing. The medical reasons have also intervened. One of the sons got heart attack and needs accommodation to stay on the ground floor. Keeping all these facts in view, it cannot be said that the petitioner has sufficient accommodation with him. The approach of the Additional Rent Controller while considering the requirement of the petitioner was totally incorrect in as much as he observed that requirements of married daughters and sisters could not be taken into consideration. Similarly, married sons with growing children could not be huddled together in one room. The approach of the Additional Rent Controller was thus totally incorrect. The landlord is entitled to live comfortably in his own house. His and his family's needs based on medical grounds cannot be ignored, rather if the medical grounds appear to be genuine, the Court should try to ensure that such requirements of the landlords are met.

(10) The result is that the impugned order of the Additional Rent Controller dated 28th July, 1987 is set aside. It is held that the requirement of the petitioner for the tenancy premises for his own use and for the use of his family is genuine and bona fide. The eviction petition is allowed. An order of eviction is passed against the respondent tenant directing the respondent tenant to hand over possession of the tenancy premises as per plan exhibit AW-1/4 to the petitioner. In view of the provisions of Section 14(7) of the Act, the respondent is allowed six months' time to vacate the tenancy premises. Petition stands disposed of. No order as to costs. Crl.M.284/92, C.Ms.1404/88 & 212/92.

(11) In view of the above judgment, these applications do not survive and the same stand disposed of.

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