

Anand Kumar Vs. Shakuntla Devi

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Court : Delhi

Decided On : Apr-25-1997

Reported in : 1997IIIAD(Delhi)734; 67(1997)DLT769

Judge : Usha Mehra, J.

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

Appeal No. : Civil Revision Appeal No. 24 of 1997

Appellant : Anand Kumar

Respondent : Shakuntla Devi

Advocate for Pet/Ap. : Rajat Aneja and; Sanjeev Anand, Advs

Judgement :

Usha Mehra, J.

(1) A 68 years old widow of an Army Officer who died in Chines War in the year 1962, filed an eviction petition under Section 14D of the Delhi Rent Control Act (hereinafter called the Act). She sought eviction against Mr. Anand Kumar her tenant residing in her House No. A-155. Ganesh Nagar, New Delhi. Eviction was sought on the ground that she needed the premises in question for her residence and also for the residence of her members of the family. Being a war widow she was allotted one room tentament having asbestos sheet roof by the Government in

order to rehabilitate her and her family after her husband was killed in Chinese War of 1962. The said tenement bears No. C-103, Sainik Sadan Lajpat Nagar, New Delhi. She with her family was residing in that house. But now since her children had grown up she found that accommodation not sufficient for herself and for the members of her family. Her family consists of her three sons namely S/ Shri Prem Chand, Praveen Kumar and Pramod Kumar. Prem Chand was married. He died leaving behind his widow and children. Predeceased son's family has been residing with her and dependent upon her for the purpose of residence: After her children grew up and got married, she found that one room accommodation at C-103, Sainik Sadan was not sufficient to accommodate her whole family. therefore, she sought eviction of the petitioner herein in order to occupy her house where she with her family could be accommodated.

(2) Her petition was contested by the present, petitioner, inter alia, on the grounds namely, (1) that Anand Kumar was not her tenant. It was his mother Smt. Chanderkanta @ Kanta Rani who was the tenant; (2) That the respondent herein has alternative suitable residential accommodation available i.e. her property bearing No. C-103, Sainik Sadan; (3) That there had not been any change in the family of the landlady nor the accommodation available with her at C-103, Sainik Sadan; (4) That one room set at A-155, Ganesh Nagar had been lying vacant. The same having not been occupied by the landlady, therefore, her need cannot be called bonafide. Moreover, there are four rooms beside kitchen, bath and latrine available at C-103, Sainik Sadan which accommodation is sufficient for the respondent and her family; (5) That Smt. Chandrakanta alias Kanta Rani has already filed a suit for injunction against the present respondent claiming therein to be the tenant of the premises in question and till such time that suit is decided this petition is not maintainable; (6) that the premises was let out for residential-cum-commercial purpose; (7) Moreover, the married sons of the landlady are financially independent and living separately, hence they are not dependent on her for the purpose of residence; (8) That the eviction has been sought by her with ulterior motive to increase the rent; (9) That she intends to sell this property.

(3) Respondent herein refuted these averments. She denied that this premises was let out to Smt. Chanderkanta alias Kanta Rani. Moreover, the suit for

injunction filed by Smt. Chanderkanta in no way effect her petition filed under Section 14-D of the Act. The house at C-103, Sainik Sadan where she has been residing is not owned by her. That property belongs to Government of India. It was given to her for occupation so that she and her family members after the death of her husband may get rehabilitated. It was in this backdrop she per force had to stay in such a small accommodation. She denied having relet this premises after the same was vacated, her requirement is minimum 3 to 4 rooms. Since only one room is available at A- 155, Ganesh Nagar, hence she could not occupy the same. She wants full house. She denied that she wants to increase the rent or sell the house and also denied that there are four rooms at C-103, Sainik Sadan.

(4) Parties adduced their respective evidence. Smt. Shakuntala Devi petitioner herein appearing as Aw I testified that Anand Kumar and not Smt. Chanderkanta alias Kanta Rani was her tenant. To strengthen this stand she proved the admission made by Mr. Anand Kumar in his own handwriting before the police as Ex. AW- 1/12. In that statement Anand Kumar admitted that he was the tenant of Smt. Shakuntala Devi regarding her premises bearing No. A-155, Ganesh Nagar, New Delhi. Opening words of Ex. Aw 1/12 reads as under:

'NIVEDAN Yeh Hai Ki Mein Anand Kumar S/O Shri Mukund Lal R/O A-155, Ganesh Nagar Karib Chheh Saal Is Kiraye Per Hun Jo Makan Maalik Smt. Shakuntala Devi HAIN. Isme Ek Or Kirayedar hai jo ke Khalli Karke Chala Gaya hai jo jis Ka Kabja Makaan Maalik Ke Paas HAI.'

(This is to certify that I, Anand Kumar, S/o Shri Mukund Lal, R/o A-155, Ganesh Nagar, am tenant in this house for the last six years. That Smt. Shakuntala Devi is the owner of the same. There was another tenant in this house who has since vacated and gone, the possession of which is now with the owner). In view of this admission made by Mr. Anand Kumar as far back as on 10th October, 1990 when even the petition for eviction had not been filed, it cannot be said that that statement was procured or made falsely. The said statement of Mr. Anand Kumar made way back in October, 1990- when parties were not facing eviction proceedings fully establishes the case of the landlady that it is Mr. Anand Kumar who was her tenant in the premises in question. The mere fact that he Along with

his mother, co-applicant deposited the rent under Section 27 of the Act cannot wash away or diminish the admission made by the petitioner herein. His statement admitting himself to be the tenant in 1990 has a direct bearing on the facts of this case. Moreover, joint application filed by the petitioner with her mother under Section 27 of the Act would not bind the respondent/landlady nor it proves that she accepted mother of the petitioner to be her tenant. The order of the Rent Controller passed on their application under Section 27 of the Act now here indicates that the Controller treated Smt. Chandrakanta to be the tenant. The only direction given by the Additional Rent Controller was that the landlady can withdraw the amount deposited by the applicants. The Controller nowhere held that Chanderkanta was the tenant. therefore, it does not lie in the mouth of the petitioner now to contend that he was not the tenant or that his mother was the tenant in the premises in question. In fact he has not given Explanation regarding Ex. AW-I/12. On the aspect of his admission, the landlady was not subjected to any cross-examination. Rather she reiterated that she had no concern with Smt. Chanderkanta. The Money Orders sent by Smt. Chanderkanta were returned by her. However, one money order she when she was not well and suffering from fever and cataract. She did not realise as to who had sent the said money order nor could know what was written therein. But after getting well when she found money order was being sent by Smt. Chanderkanta she returned the same. She has not withdrawn the amount deposited by Smt. Chanderkanta under Section 27 of the Act. While refusing to withdraw she took the objection that Mr. Anand Kumar was her tenant and not Smt. Chanderkanta. This part of her statement has been corroborated by her son who appearing as Aw 2 reiterated that Mr. Anand Kumar was the tenant of his mother and that accommodation at C-103, Sainik Sadan, Lajpat Nagar, New Delhi was insufficient for the landlady and her family members dependent on her for their residence.

(5) That appearing as his own witness as Rw I Mr. Anand Kumar neither denied the execution of Aw 1/12 nor explained as to under what circumstances he wrote the same. The defense taken by him that he was a tenant of House No.A-148, Ganesh Nagar, New Delhi appears to be afterthought. The statement of his cannot stand the test of trustworthiness. When subjected to cross-examination he had to admit that in all, previous litigation he mentioned his address as A-155 Ganesh

Nagar, New Delhi. Even in the written statement as well as in the leave to defend affidavit he has mentioned his address as A-155, Ganesh Nagar, New Delhi. He had to admit that the owner of house No. A-148, Ganesh Nagar, New Delhi happens to be his relation. Neither he nor the owner of house No. A-148, Ganesh Nagar, New Delhi could produce any document to show that present petitioner was tenant in that house. Rw 3 being relation of this petitioner hence cannot be called an independent witness. Rw 3 is testimony without substantiating through documents does not inspire confidence. Being relation of the petitioner it cannot be ruled out that he deposed in order to favor the petitioner herein. No documentary evidence was produced by him to show that Anand Kumar was his tenant. In view of the overwhelming evidence against the petitioner, the conclusion arrived at by the Trial Court that it is this petitioner who was the tenant of the respondent cannot be faulted with. The admission of the petitioner Ex. AW-1/12 which admission remained unchallenged goes to prove that the defense set up by Mr. Anand Kumar in reply to eviction petition was after thought taken with a view to defeat the claim of the respondent a widow. The factom of his having his tenanted accommodation at A-148, Ganesh Nagar, New Delhi is belied by the affidavit filed by him by any of leave to defend affidavit. In that affidavit he gave his residential address as A- 155, Ganesh Nagar, New Delhi. This affidavit was sworn and filed on 25th May, 1993. In this affidavit he no where took the plea that he was a tenant of House No. A-148, Ganesh Nagar, New Delhi. This shows this defense taken subsequently was after thought raised with ulterior motive. This defense taken by him contradicts his own stand taken in the affidavit filed by him on 25th May, 1993. Had he been a tenant of premises No. A-148. Ganesh Nagar, New Delhi he would not have given his address in this affidavit as A-155, Ganesh Nagar, New Delhi. The stand of this petitioner cannot be accepted nor can be appreciated. In view of the documentary evidence available on record, the Additional Rent Controller rightly came to the conclusion that it is the petitioner who is the tenant of the respondent. Hence on this count, I find no infirmity in the order of the learned Additional Rent Controller.

(6) Now turning to the next question regarding sufficiency of accommodation available with the respondent herein, admittedly she is in occupation of premises No. C-103, Sainik Sadan. This accommodation was allotted to her after the death

other husband in Chinese War of 1962 with a view to rehabilitate her and member of her family. From 1962 till 1992 when she filed the eviction petition much water had flown. Her children have grown, they are married having their children. All of them are dependent on this respondent for the purpose of their residence. It is in this background we can say there is change of circumstance. Her need for additional accommodation was increased with the increase in the family. With the marriage of her sons and on the arrival of her grandchildren she requires bigger accommodation. Suit premises consists of three bed rooms out of which one room is lying vacant. Two rooms are in occupation of the present petitioner. If these two rooms are also made available to her, she can easily accommodate herself as well as her family members in the premises in question. Whereas accommodation at C- 103, Sainik Sadan consists of only one room. This is so apparent from the report of the local commissioner appointed by this Court. In his report, the local Commissioner has categorically stated that the house at Sainik Sadan bearing No. C-103 is built on 38 sq.yds. of land. That that property is not a Pacca construction. There is only one room measuring 14-1' x 10'. This room has a tin shed. There is no Pacca roof. The other room she has carved out by converting a temporary room with a wooden partition wall of the height of approximately 6 ft. Apart from that there is no other room in the said house. He also reported that at C-103, Sainik Sadan the entire building is covered with the Acc sheets. In view of the large family of the respondent the accommodation with her at C-103, Sainik Sadan cannot be called sufficient for her and for the members of her family. Whereas suit premises consists of three rooms of concrete with Pacca roof. therefore, when the landlady desired to occupy her own house keeping in view that that is a better accommodation and more convenient for her, this Court cannot shut her out simply because she had been living in that house for long nor can force her to go on living in that temporary structure in which she had been accommodated out of sympathy by the Government. Now since her children have grown up and she wants to live in a better accommodation, the Court cannot decline the same to her. It cannot be said that her need is whimsical or fanciful. The fact that one room is lying vacant and she had not occupied the same has been explained by this respondent. She explained that in one room neither she alone could shift nor her family could shift. She needed approximately three to four rooms so that she Along

with her entire family members could shift in one go. The fact that her son on account of paucity of accommodation had to hire a houses shows that she needs the premises in question for herself and members of her family who are dependent on her. Being an old lady she alone cannot shift and in the absence of adequate accommodation other family members cannot shift. It is in this predicament that the room is lying vacant.

(7) In view of the facts stated and discussed above it can safely be said that this war widow of 73 years old needs bona fide the premises in question. I find no substance in the arguments of the petitioner nor any substance to-interfere with the conclusion arrived at by the Trial Court which conclusions are based on the evidence produced on record. No merits in the petition, dismissed.

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