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Subhash Chand Vs. Trilok Chand

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Court : Delhi

Decided On : May-30-1997

Reported in : 1997IVAD(Delhi)576; 67(1997)DLT754; 1997RLR464

Judge : Usha Mehra, J.

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

Appeal No. : Civil Revision Appeal No. 250 of 1994

Appellant : Subhash Chand

Respondent : Trilok Chand

Advocate for Def. : Mr. Bansal

Advocate for Pet/Ap. : S.K. Chaudhary and; R.P. Bansal, Advs

Judgement :

Usha Mehra, J.

(1) The present respondent (petitioner before the Trial Court) sought eviction in respect of one room, one Kata with common use of W.C. on the first floor of property bearing No. 8362 constructed on plot No. 112, Model Basti, hear Filmistan, New Delhi. The eviction was sought on the ground of bonafide requirement. The case set up by landlord was that he possessed two rooms on the

ground floor, one room on the first floor and two rooms on the second floor whereas his family members consisted of himself, his wife, four children two aunts and his mother. Keeping in view the number of his family, he required minimum 8 rooms, whereas in fact he was in possession of five living rooms. The ground floor rooms were used for commercial purpose. He, thereforee, required additional accommodation to accommodate his family. So far as two mezzanines rooms.were concerned, those were being used for storing the goods. Out of the two rooms on the second floor, one room was being used by the respondent/landlord as his bed room. The other room was being used by his aunts. There was also one tin shed provided on the second floor which was hiring used for keeping the cots. One room on the second floor was used for keeping the house hold goods. The petitioner's aunts felt inconvenience because the kitchen, bathroom and the W.C. were situated on the first floor whereas they were occupying the room on the second floor. During the pendency of the petition two more rooms on the first floor in occupation of Shri I.D. Garg fell vacant. The same came in possession of the respondent landlord. The rest of the accommodation was in possession of different tenants. It was in this background that the petition for eviction was filed. This petition was contested by the present petitioner thereby raising the plea that the accommodation with the landlord was sufficient. That the landlord had created artificial scarecity by reletting the premises on the second floor to someone under the garb of friendship. Parties led their respective evidence. The landlord Trilok Chand appeared as his own witness as Aw I. On behalf of the tenant, the present petitioner appeared as Rw 1. No other witness was examined by either side. On the basis of the evidence available on record, the Additional Rent Controller came to the conclusion that the need of the landlord was bonafide and, thereforee, granted a decree of possession in his favour.

(2) The main grievances of the petitioner against the impugned order is that the Controller misconstrued the plea of bonafide requirement of the landlord. The friend of the landlord to whom he parted with the possession of two rooms on the second floor, could not be treated a member of his family dependent on him for the purpose of residence. Hence the Controller ought to have held that the respondent by letting out those two rooms on the second floor created artificial scarecity of accommodation available with the landlord. However the subsequent events which

the Controller refused to consider clearly shows that the landlord has sufficient accommodation to accommodate his entire family. His two old relative died during the pendency of the petition. Thus the room in their occupation became available to him. Moreover, the inconvenience to these two old ladies could not be a ground any more since they are not alive and finally the landlord had constructed additional accommodation on the second floor. Because of the charged circumstances, the revision should be accepted and the impugned order be set aside.

(3) I have heard Mr. S.K. Choudhary appearing for the petitioner and Mr. R.P. Bansal, Senior Advocate appearing for the respondent. So far as the ownership of the respondent is concerned that is not in dispute. The letting purpose being residential is also not in dispute. It is also not disputed that when the petition was filed, the landlord's family consisted of himself, his wife, three school going children, one small child, two aunts and his mother. It is also admitted that his aunts died during the pendency of the petition. It is also a fact on record that two of the rooms became available to the landlord during the pendency of the petition as these were vacated by Mr. I.D. Garg.

(4) That the only question for consideration is did this landlord re-let these rooms vacated by Mr. I.D. Garg to Mr. Satish Chander and subsequently to Mr. Rakesh Rustogi. If so then naturally the contention of the petitioner is justified that the respondent-landlord created artificial scarecity of accommodation. Unfortunately no such evidence was placed on record to prove that these rooms were given to Subhash Chander or Rakesh Rustogi on rent. On the contrary the landlord appearing as Aw I clarified that he did not relet those rooms. On this part of his tenancy no contradiction could be extracted though he was cross examined at length. So far as two rooms on the second floor are concerned those were given by him to a friend for a short period. He denied categorically that he let out the second floor to any one. He in fact needed the premises for himself because his elder daughter who was studying in 9th class and elder son in 8th class required separate rooms and the second son daughter also studying required a room for himself. He needed one room for his mother, one room each for his three children and one room for the guest besides drawing and dinning room. So far as the

accommodation on the ground floor was concerned, it was testified that except the room in his possession the rest was with different tenants, who had been using the same for commercial purposes (portion marked A and A-l in the site plan Exhibit Aw I /2) was in possession of Bhalla Ram. Room marked 'B' on the ground floor was in landlord's possession. The possession of the room was taken by him in 1984-85. Possession of room marked 'D' on the ground floor was under dispute because the eviction order obtained by him was stayed and the matter was pending. The room marked 'C' on the ground floor was in possession of another tenant which he let out in 1975-76. Besides the portion described in Ex. Aw 1/2 of the ground floor there was no other accommodation available on the ground floor. His fourth child at that time was nine month old. It was denied by him that during the pendency of the eviction he inducted any Guru Dutt. He explained that telephone connection of Guru Dutt he got it installed in his premises. Guru Dutt came and stayed on the second floor of this premises as his friend. He demolished tin shed constructed on the second floor and thereafter constructed a kitchen and bathroom on the second floor. Two rooms on the first floor were made available to him during the pendency of the petition because Mr. I.D. Garg vacated the premises. On this part of his testimony he was not subjected to any fruitful cross-examination, nor any fact could be elicited which could prove that the landlord had more accommodation than described by him. Room marked 'D' was a miyani in which he stated he kept superdari goods. He had filed a suit for getting the possession of that room. Court gave some goods in superdari which were lying in it. He further testified that Rakesh Kumar was his co-brother (wife's sisters husband). The telephone connection in the name of Rakesh Kumar he got it installed in his house. Rakesh Kumar was not his tenant. Respondent could not prove either by cross examination or by adducing evidence that Rakesh Kumar was not his relative but a tenant. He was running a shop in Model Basti where he was dealing in cloth business. Similarly in partnership at his residence he was dealing in the iron business in partnership with Rakesh Rustogi, which business he started in 1988. He denied that Rakesh Rustogi was his tenant.

(5) That the tenant appearing as Rw 1 admitted that the ground floor portion of this premises was being used as commercial purposes. He also admitted that the height of the miyani was only 5' and that a big room on the first floor was being

used by the landlord as drawing cum-dinning. He also admitted that the size of the rooms were small except two cots nothing else could be accommodated there.

(6) From the above discussion, it is clear that providing of short duration accommodation to a friend cannot amount to creating artificial scarecity of accommodation. Landlord in no uncertain words testified that the accommodation on the second floor was in his possession. He was using the same for himself. To my mind, in the facts of this case the question of friend of the landlord being a member' of his family and dependent upon him for the purpose of residence did not arise. Landlord never parted with possession of two rooms to his friend on the tenancy basis. His testimony that he accommodated his friend on the second floor for a short while by no stretch of imagination means that the landlord treated the friend member of his family or counted him in this need for additional accommodation. The contention of the counsel for the petitioner that since the respondent gave a room to a friend thereforee his need is not bonafide has no substance. I am not persuaded to accept this argument. If this argument is accepted it would mean that if a relation or a friend come to visit the landlord and stay with him inspire of the fact that the landlord being short of a accommodation then in such an eventuality it would not mean that the need of the landlord was not bonafide. From the evidence it cannot be inferred that the landlord let out the two rooms on the second floor to any tenant.

(7) Contention of the petitioner that intervening events should be taken note of in particular death of landlord's two aunts. Admittedly a room became available one their death but at the same time we cannot loose sight of the fact that when the petition was filed in 1987, the children of the respondent landlord were small. They were school going. Now after a span of 10 years, they are grown up. His eldest daughter is stated to be 20 years now, the rest in the age group of 18, 15 his son has grown to be 6 years and he has also an old aged mother. In view of the fact that his children are grown up now and need separate rooms, the total requirement of the respondent landlord has not changed. He still requires minimum six living rooms, one guest room, one drawing and dinning room, that means all total 8 rooms are required by him. This accommodation is not available to him at the moment. One room which he is occupying on the first floor measure

17.4'x9.4' and is being used by him for drawing, cum, dinning. That is only big room in his possession. This fact was admitted by the present petitioner in his testimony. Other rooms on the first floor measure less than 100 sq.ft.

(8) Mr. Bansal appearing for the respondent contended that the mezzanine room cannot be called a living room. This Court in umpteen number of cases held that mezzanine room or miyani cannot be equated with a living room. thereforee the availability of mezzanine room or miyani having height of 5 ft. cannot be called a living room nor the landlord can be dictated by the tenant to accommodate his family in such mezzanine room or miyani. The petitioner admitted in his evidence that the miyani in possession of the landlord cannot be used for residential purpose. Those could only be used for storing the goods. Miyani cannot be called a living room. Support can be had to the decision of this Court in the case of Kumari uma Chopra v. R.N. Jindal, 4 1988 Dlt 85. where it was held that having a height of 6' cannot be treated as regular room. In the case reported as Bulaki Das v. SurajBhan, 1980 RCJ 450,thisCourtheldthattheminimum height of a room should be 9 ft. Since the height of miyani in this case is hardly 5 ft, thereforee, it cannot be called a regular living room. Thus the accommodation available to the respondent landlord the mezzanine or miyani rooms cannot be counted towards living rooms. On the basis of the accommodation available, it cannot be said that he had sufficient accommodation with him.

(9) I find force in the contention of Mr. Bansal, when he contended that the landlord used one room for his commercial purpose on the ground floor for earning his livelihood. It cannot be said that by using a room for his livelihood the landlord created artificial scarecity of accommodation. After all landlord has to make his earning. If he uses a room on the ground floor for commercial purpose, it cannot be said that that accommodation was available to the landlord for his living or for the living of his family members dependent upon him. Supreme Court in the case of Pritima Devi, 1987 (2) Rcr 580 observed that the landlord is the best Judge of his residential requirement. Neither the tenant nor the Court can dictate to him as to how and in what manner he should live or use the residential accommodation nor the Court can prescribe for him a residential standard of his own.

(10) In view of my above discussion, I find no fault with the reasoning given by the Additional Rent Controller. The impugned order is well reasoned, it does not require any interference. I find no merit in the petition. Dismissed.

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