

**Kewal Krishan Vs. Khazan Singh**

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**Court :** Delhi

**Decided On :** Jul-25-1997

**Reported in :** 1997VAD(Delhi)928; 69(1997)DLT721; 1997(43)DRJ707

**Judge :** Usha Mehra, J.

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

**Appeal No. :** Second Appeal No. 263 of 1981

**Appellant :** Kewal Krishan

**Respondent :** Khazan Singh

**Advocate for Pet/Ap. :** Parag Chawla and; O.P. Bhatia, Advs

**Judgement :**

**Usha Mehra, J.**

(1) Khazan Singh, respondent herein sought eviction against appellant of a room situated on the ground floor of property bearing No. 4/6, Singh Sabha Road, Subzi Mandi, Delhi. According to respondent the premises was let out for residential purpose. The appellant had in fact been using for the same purpose till such time he acquired a vacant possession of his own premises at C-4/21, Model Town, Delhi. He shifted to his house about three years prior to the filing of eviction petition. Secondly, before shifting the respondent handed over the premises under

his tenancy to one Mr. Bakshish Singh. Thus the eviction was sought primarily on two grounds namely, (i) sub-letting, assigning and parting with possession to his own premises at Model Town, Delhi. The learned Additional Rent Controller (in short the ARC) granted decree of eviction in favor of the respondent on the ground of acquiring a vacant possession under Section 14(1)(b) of the Delhi Rent Control Act (hereinafter called the Act) The learned Arc, however, declined to grant the relief on the ground of sub-letting under Section 14(1)(h) of the Act. Both the parties filed appeal against the said order of the learned ARC. The learned Rent Control Tribunal (hereinafter called the Tribunal) by the impugned order dismissed both the appeals - one filed by the appellant as well as by the respondent and thus maintained the order of the learned ARC.

(2) In this second appeal the main grievance of the appellant is that even though he acquired vacant possession of his own premises at Model Town, still the respondent was not entitled to an order of eviction under Section 14(1)(h) of the Act, because the suit premises was let out to him for commercial-cum-residential purpose. Since he had been using the premises for commercial purposes from the inception of the tenancy, hence acquiring of a residential premises would not make him liable of eviction under Section 14(1)(h). Secondly, the premises was being used for residential-cum-commercial purposes, for the last more than 10 years, even before appellant acquired his house. The appellant had shifted to Karol Bagh in 1965. After shifting his residence to Karol Bagh the appellant had been using the tenanted premises solely for commercial purposes i.e Milk Dairy. The respondent/landlord never objected to the same. Hence he cannot now object as he waived his right by acquiescing the same. In order to appreciate the challenge in this appeal, the admitted facts of the case are that the appellant was inducted as tenant in respect of a room on the ground floor of premises bearing No. 4/6, Singh Sabha road, Subzi Mandi, Delhi. He acquired his own house bearing No. C-4/21, Model town, Delhi. He shifted there. It has been alleged that appellant parted possession to one Bakshish Singh. Appellant does not require the tenanted, premises. Appellant's case was that he shifted his residence at Karol Bagh about 10 years back. In the premises in question i.e the room he was selling milk and using it as Milk Dairy. It was in this background the appellant took plea of waiver and acquiescence. I am afraid this plea has not been substantiated on

record. The plea raised by the appellant that he shifted from the premises in question to a house in Karol Bagh nearly 10 years back has not been proved on record. The only witness whom he examined to prove this fact happened to be his father-in-law, who made only oral assertion. he did not produce any documentary evidence to support this fact. Father-in-law being interested witness cannot be relied upon. Trial court rightly drew the conclusion that if the appellant had really shifted from the premises in question to a house at Karol Bagh then he ought to have produced the rent receipts regarding his tenancy at Karol Bagh. Moreover, he could have confronted this fact to the respondent and his witnesses. But nothing of this sort was done by the appellant. In response to the notice issued by the respondent Ex. AW-1/1 the appellant replied vide Ex. AW-1/4 dated 13th March, 1977 alleging therein that he was in possession of the premises in question even on the date he replied notice vide Ex. AW-1/4 was issued. Nowhere it was set up that he has shifted his residence from the tenanted premises and had gone to Karol Bagh for the last 10 years or that he was running Milk Dairy at the tenanted premises. This was the first available opportunity to the appellant to have put up his case. But he did not do so. It was only in the written statement for the first time that he built up the defense of having shifted to Bhamri Mansion, Karol Bagh, about 7 to 8 years before the filing of the written statement. When he led the evidence neither flat number of Bhamri Mansion, Karol Bagh, was given nor rent receipt produced, nor owner of the premises at Karol Bagh adduced, nor confronted this fact to the respondent or his witnesses. thereforee, the Courts below rightly concluded that the story of having shifted to Karol Bagh appears to be an after thought. In this view of the matter it can be said that there was no question of condoning or waiving the right on the part of respondent nor there was any question of acquiescence on the part of the respondent.

(3) Admittedly, the appellant has acquired his own house at Model Town where he has shifted with his family. thereforee, we are left only with the question whether the appellant had been using the premises in question for commercial purposes. Both the Courts below i.e. Arc and the Tribunal after appreciating and analysing the documentary and oral evidence on record concluded that the premises in question was let out for residential purpose only and had been used as such. This part of the conclusion of the Court below cannot be interfered in second appeal

because that is based on appreciation of evidence. I find no infirmity in the same. Hence the provisions of Section 14(1)(h) apply to the facts of this case. Perusal of the documentary evidence and in particular Exs. A-1 to A-5 clearly show that the premises in question was let out for residential purposes. Exs. A-1 to A-5, counter foils or rent receipts, admittedly bear the signature of appellant. He admitted his signatures on the same. Ex. A-1 clearly mentions that the room in question was let out for residential purposes. In Exs. R-2 to R-17 letting purpose has not been mentioned. However, the Courts below rightly concluded that in none of these rent receipts it was mentioned that the premises was let out for residential-cum-commercial purposes or was used for commercial purposes. On the contrary Exs. A-1 to A-5 the purposes had been clearly spelt out to be residence of the appellant. In view of the categorical stand taken by the respondent that the premises was let out for residential purpose only which fact the appellant admitted when he signed Exs. A-1 to A-5 showing the purpose of letting to be residential, it does not lie in the mouth of the appellant now to contend that the premises was let out for residential-cum-commercial purposes or was being used as such. In fact from the evidence which has come on record the appellant could not prove that he was running milk dairy business in the room in question. On the contrary the evidence which has come on record show that the appellant was selling the milk outside the house across the road on the open place. Shri Joginder Singh, AW-6 testified that selling of the milk used to be carried on by the appellant in a plot which was about 20 yds. away from the premises in question and the same was across the road. Similarly, Sh. Pyara Singh, Aw 4 who happens to be a tenant of the respondent in the premises in question testified that he never saw the appellant running milk dairy business in the tenanted premises. From the cross-examination of Aw 4 appellant could not extract any material contradiction rather Aw 4 reiterated that the appellant used to sell milk in the open plot which was at the distance of 150 sq. mtrs. from the property in question. If the appellant had been running the milk dairy business in the room, in question he would have applied for a license which in fact he did not, nor he could prove the same. Appellant could not produce any document to show that he was running milk dairy business in the room in question. The only evidence he produced was that a co-tenant, Bakshish Singh, against whom the respondent had alleged that the

appellant sub-let the premises. therefore, it is but natural that Bakshish Singh would support the case of the appellant. According to Bakshish Singh the appellant used to maintain accounts. But the appellant appearing as his own witness denied that he was maintaining any accounts. He could not produce any account books where from he could show that the premises was being used for selling milk. As regards Gokal Chand, Rw 3 he being father-in-law of the appellant was an interested witness. Hence no much reliance could be placed on his testimony. He in fact built up the story of appellant shifting to Bhamri Mansion, Karol Bagh. He, however, could not produce any rent receipt nor produced any documents wherefrom it could be proved that the appellant was a tenant at Karol Bagh. When subjected to cross-examination, Gokal Chand, Rw 3 admitted that he did not know nor could mention the flat number, block or municipal number where the appellant was selling milk. Rw 3 showed his total lack of knowledge about the appellant and his business. Even Mahender Nath, Rw 4, could not prove that appellant was selling milk from the premises in question. He could not produce the receipts for the purchase of the milk nor he was a summoned witness. His testimony did not inspire any confidence, hence rightly not relied by the Courts below.

(4) Since the premises in question as per the documentary evidence A-1 to A-5 was let out for residential purpose and as per the testimony of the witnesses on record, the appellant was not selling milk from the premises in question, therefore, it cannot be said that the appellant was using the premises for commercial purpose. Hence on acquiring a vacant possession of his own house at Model Town, the case was rightly covered under Section 14(1)(h) of the Act.

(5) For the reason stated above I find no merit in the appeal. Dismissed.

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