

Om Parkash Vs. Inder Kaur

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Court : Delhi

Decided On : Dec-19-2008

Reported in : 156(2009)DLT292; (2009)154PLR35

Judge : Shiv Narayan Dhingra, J.

Acts : Delhi Rent Control Act - Sections 14, 14D, 19(2) and 25B

Appeal No. : RCR 86/2004

Appellant : Om Parkash

Respondent : inder Kaur

Advocate for Def. : Anil Nag, Adv.

Advocate for Pet/Ap. : P.N. Lekhi, Sr. Adv. and; R.K. Saini, Adv

Disposition : Petition dismissed

Judgement :

Shiv Narayan Dhingra, J.

1. The petitioner is aggrieved by an order dated 5th August, 2004 whereby an Eviction Petition of the respondent under Section 14(d) read with Section 25-B of DRC Act was allowed.

2. The brief facts relevant for deciding this petition are that the respondent/landlady claimed that she had become widow on 9th October, 1998 on death of her husband. The petitioner was a tenant in respect of two rooms, kitchen, bath room, WC, front and rear verandah on the ground floor of house No. 353, Block-C-1, Yamuna Vihar (front verandah to be used jointly by the landlady and the tenant). She had one daughter Preeti Minocha, aged 5 years and a son Gurpreet Singh, aged 3 years residing with her. She was living at first floor of the same property. She was a Group-D Government employee and used to leave her house at 7.30 am in the morning (her office was around 18 kilometers away from the house), since she had to reach there around 9.00 am. Her children were studying in nearby school named Lovely Rose Public School. They had to go to school around at 7.45 am and come back around at 1.15 pm, in her absence. Both the children were under care of her parents who used to reside at a distance of about one kilometer from her house. Her parents used to take the children to school and receive the children after school and also take care of private tuitions. Since children could not be left at home alone being of young age, she required presence of a close relative of her at the house, who could reside at the ground floor under tenancy. She also stated that she had accommodation of only one bed room and a drawing-cum-dining room apart from kitchen, bath room, etc. Her husband was a gazetted officer and was allotted type-IV accommodation of two bed rooms, one big drawing room, one dining, store, kitchen, bath, latrine with large size verandah, garage and lawn. She was accustomed of living in a spacious accommodation. Her present accommodation was not sufficient in view of the need of her growing age children who required individual study-cum-bed room. She was in a position to engage domestic servant, so that her children could be taken care of but for want of accommodation, was not able to do so. She also required one Pooja room being a religious lady and a guest room to entertain her guests and visitors including her brother who was posted in Bhilai and used to come and visit her but could not stay with her due to paucity of accommodation. She had also a sister who used to come to visit her. She stated that the petitioner was finding it difficult to ask the close relatives to stay and take care of children, because of paucity of accommodation. She further submitted that due to low pressure of water, water supply does not reach first floor and she was not in a

position to store water by carrying buckets full of water through the stairs as she had met a road accident and received injuries for which she had received compensation through Lok Adalat. She also could not take her children to CGHS dispensary for which they were entitled as she was not at home at day time. Her children can be taken to CGHS dispensary only by some attendant whose necessity was there. She could not take delivery of LPG gas cylinder or regular 'Dak' due to non-availability of domestic servant or adult member at home when petitioner was out to her office. She bonafidely required the ground floor. She had no other alternate or suitable accommodation.

3. The petitioner/tenant contested the Eviction Petition and denied that the landlady required premises bonafidely for her needs. He submitted that during lifetime of petitioner's husband there were 4 family members and now after his death there are only 3 family members and the accommodation in occupation of landlady was sufficient for her requirement. He also submitted that the landlady in fact was not in occupation of one bed room and one drawing-cum-dining room but she was in occupation of 4 rooms since she had converted rear verandah and front verandah into rooms. She thus had more than sufficient accommodation for herself and family members. She along with her husband were residing at the first floor since 1993. Her parents were living separately and they were not family members of the landlady, neither they were dependent on her for residential need. She cannot afford to occupy the entire house for herself and 2 children and after getting it vacated she may convert the premises into commercial use and let it out. She does not want to accommodate any servant for the children. In fact the children were safer at the first floor than at the ground floor.

4. The learned ARC appreciated evidence of both the parties and also examined the various issues raised by the parties. After considering the requirement of the petitioner, the ARC came to conclusion that the covered verandahs on both sides of the house could not be considered as rooms and accommodation in occupation of the landlady was only one bed room and one drawing-cum-dining room. The doors of other rooms opened in these verandahs and even otherwise verandahs cannot be used as rooms. Regarding her requirement, the learned ARC came to conclusion that the landlady was working in Sucheta Kriplani Hospital and her duty

hours were proved by the witness from the Hospital. Her both children were of tender age and there was no one to take care of them during the day time. The need of the landlady to have a relative or servant cannot be said to be a fanciful need.

5. The ARC also concluded that at the time when the petition was filed, the children were of the age of 3 years and 5 years. But by the time the petition came for final hearing, the age of the children was 9 years and 11 years and since both the children were of growing age and one was daughter and another son, each of the child required a separate bed room-cum-study room. The ARC observed that neither the tenant nor the Court can dictate the terms to the landlord about standard to be adopted or to keep living in the accommodation available for the sake of tenant. A widow was undoubtedly a vulnerable person in the society and required special protection and that was the reason, Section 14(D) had been enacted.

6. The learned ARC observed that the two rooms' accommodation in occupation of the landlady consisting of one bed room and one drawing-cum-dining room on first floor was not sufficient for her needs and needs of her two growing children and the premises in occupation of the tenant was bonafidely required by the landlady. The apprehension of the tenant that she may re-let the premises for commercial purpose can be taken care of by Section 19(2) of Delhi Rent Control Act. The learned ARC therefore passed an order of eviction.

7. The order of the learned ARC is challenged by the petitioner on the ground that the learned ARC failed to appreciate that the petitioner herself did not appear in the witness box and only her father appeared in the witness box to depose about the bonafide requirement. The learned ARC should have drawn an adverse inference against the petitioner. The other ground taken is that the husband of the petitioner who was aged around 60 years and one adopted daughter aged around 22 years were earlier living together in the same premises along with the petitioner and the children. After their death the family actually reduced from 5 members to 3 members and the landlady/widow did not require the premises and wanted to get the premises vacated only for re-letting it. Counsel for the petitioner also argue

that the landlady was a class-IV employee and had no status in life. She herself being class-IV could have no capacity to engage a domestic servant and she had exaggerated her need and requirement.

8. It is also submitted that the learned ARC should have held that the petitioner was in occupation of 4 rooms and not 2 rooms and the Trial Court failed to appreciate that PW-4 had not supported the case of the respondent and admitted that verandahs were covered and not open and were fitted with grill windows and the area of verandah was over 100 square feet each. It is also submitted that no independent witness from the locality was produced by the respondent to prove that there were only 2 rooms.

9. All the arguments advanced by the petitioner have been specifically dealt with by the learned ARC. It is not pointed out by the petitioner how the decision of the learned ARC dealing with these arguments was contrary to law or suffered from an illegality. The fact that the landlady's family had to cover verandahs in order to meet some of the requirements of the family proves the bonafide necessities of the landlady and her family. A verandah is a place where the doors of the rooms open. The site plan placed on record in this case would show that in the rear verandah, the doors of WC and the door of one bed room open and in the front verandah, staircase and door of another room open. The dimensions of rear verandah are 14'8"x6'11'. By no stretch of imagination the rear verandah or the front verandah can be considered as rooms. Even from the verandah of the petitioner who is living at ground floor, a passage goes to the landlady's house and this verandah is in common use. Similarly, from the front verandah at first floor a passage goes to the terrace. A bed room is a place where a person can privately sit and sleep. It cannot be a place where the doors of kitchen, bed room of someone else or door of staircase open so that person cannot have a little privacy. Mere covering of verandah would not convert verandah into a room. Verandah can be covered for various reasons. They are normally being covered these days for security reasons. I therefore consider that verandah can not be considered as a room and the learned ARC rightly dismissed this contention of the petitioner.

10. As far as status of the landlady is concerned, I consider that there is a deep-rooted prejudice in this country in respect of dignity of work and this country has to learn to honour dignity of labour. Whether a person is class-IV or a class-I employee, his rights cannot be considered different because he is a class-IV or class-I employee. A class-IV employee has a right to live with equal dignity as class-I employee. If he has a house and wants to live in the house with all luxuries, he has a right to live in that manner. If he wants that his children should have separate study room and bed room and he should have a guest room, this requirement cannot be objected to on the ground that he is a class-IV employee, nor right of a landlady to have an 'ayya' can be doubted on the ground that she was a class-IV employee. People get employment according to their education. Their right to live in a dignified manner depends upon their concept of life.

11. In this case, the husband of petitioner was a class-I gazetted officer at the time of his death. Obviously, he must have left behind sufficient funds so that the landlady can give education to the children and can afford an 'ayya' for the children who can take care of the children in her absence when she is on job. Even otherwise, the children by now are aged 13 and 15 years respectively. Being school going, they are in need of separate bed room. Since one is daughter and another a son, each had to have a separate bed room-cum-study room. Mother also needs one room for herself, one room is needed for guests etc. The accommodation in occupation of the tenant is in fact bonafidely required for herself and family.

12. The contention of the petitioner's counsel that she herself did not appear in witness box is also of no use. The family of the petitioner is not disputed. The accommodation available to her and the accommodation in occupation of the tenant is not in dispute. The ages of children are not disputed. The fact that the children are school going is not disputed. The fact that children are of tender age and need care during day time cannot be disputed. There was not much to be proved in this case. Even otherwise, any person is a good witness if he deposes about the facts which are in his personal knowledge, whether he is a father or an attorney or a son or a neighbour. What law requires is that the deposition must be of the facts within the knowledge of the witness to which witness is a privy. The

evidence given by a witness cannot be rejected on the ground that he is a father or a relative, nor any adverse inference can be drawn against the plaintiff on the ground that he had not appeared his own witness in the case. The plaintiff is master of his case. He can prove his case without appearing in the witness box.

13. I find no force in this petition. The petition is hereby dismissed.

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