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Court : Delhi

Decided On : Oct-05-2011

Judge : P.K.Bhasin, J.

Acts : Delhi Rent Control Act, 1958 - Sections 25-B(8), 14(1)(e)

Appeal No. : RC.REV. 41/2011

Appellant : Sunil Kumar

Respondent : Sahi Ram

Advocate for Def. : Mr. Rishi Prakash, Adv.

Advocate for Pet/Ap. : Ms. Manjula Gandhi, Adv.

Judgement :

1. This petition under Section 25-B (8) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') has been filed against the order passed by the Rent Controller (South) whereby the application filed by the petitioner-tenant seeking leave to defend the eviction petition filed against him by his landlord, the respondent herein, under Section 14(1) (e) of the Act in respect of shop no. 378/5 on the ground floor of property no. 378, Hanuman Market, Munirka, New Delhi (hereinafter to be referred as the 'tenanted shop') has been dismissed and he has been ordered to vacate the tenanted shop.

2. The respondent -landlord had let out the tenanted shop to the petitioner's father and after his father's death the petitioner became the tenant by operation of law. In June, 2008 the respondent filed an eviction petition against the petitioner, under Section 14(1) (e) of the Act alleging that he was 80 years old and was unable to undertake any work to earn livelihood for himself and his family comprising of twelve persons who were dependent upon him and so his two married sons who were unemployed wanted to start their business to earn livelihood for themselves and their family members including the respondent since theirs was a joint family but since the petitioner did not have any other suitable accommodation he required the tenanted shop in occupation of the petitioner.

3. As required under Section 25-B (4) of the Act the petitioner-tenant had sought leave from the trial Court to contest the eviction petition. The main plea taken by the petitioner-tenant in his leave to contest application (as also before this Court) was that respondent-landlord's sons were settled and living in village Tawroo in Haryana where they have agricultural lands and substantial agricultural income and were maintaining luxury cars. It was further pleaded that the sons of the respondent-landlord were also having car and tractor repair workshop at Village Tawroo and they have no intentions of shifting to Delhi. In any case ,they were not in any way dependent upon their father. Another plea taken was that the petitioner had let out many shops in property no. 378 and was having huge rental income of more than ` 40,000/- from the tenants every month and so his plea that the tenanted shop was required to earn more for the family is not bonafide.

4. The respondent-landlord in his reply to the petitioner's leave application refuted the allegation that his sons are permanently settled in Village Tawroo, Haryana. He claimed that he and his sons have meagre agricultural income with which they cannot even make both ends meet rental income from various shops let out to other tenants, is claimed by the petitioner, was not denied.

5. The learned trial Court rejected the plea raised by the petitioner by observing as under in the impugned order:

"3. ..... The first ground put forth by the respondent in the leave to contest the eviction petition which requires consideration is that the essential ingredients of

Section 14(1) (e) of DRC Act are missing in the present petition. Respondent contended that petitioner has nowhere stated that petition or his sons have no other reasonable suitable accommodation. It is clearly stated in para 18A page 5 of the petition that two sons of petitioner are unemployed and as such want to start their own business to earn their livelihood to support their above mentioned joint family but have no other reasonable business premises. These averments are sufficient so far as the ingredients of Section 14(1)(e) of DRC Act are concerned.

8. Petitioner has strongly disputed the contention of respondent that sons of petitioner are settled in Tauru, Haryana and they have their own car and tractor repair shop. Even if, the sons of petitioner are running their business at Tauru, they will find it more convenient to have their business in Delhi where their father is residing as sons will not like their father who is aged about 80 years to live alone. Even otherwise, no document has been placed on record by the respondent to show that the sons of petitioner are gainfully employed in Tauru, Haryana. In other words, the defence that the sons of petitioner are settled in Tauru, Haryana is a sham and bogus defence which will not entitle the respondent to leave to contest the eviction petition.

9. Keeping in mind the factual position of the case and being guided by the aforesaid legal proposition, the Court is of the considered opinion that the application of respondent seeking leave to contest the eviction petition miserably fails to give rise to any triable issue. In fact none of the contentions raised by the respondent requires trial and investigation. I find no merit in the application. Accordingly, the application of respondent seeking leave to contest the eviction petition is dismissed."

6. Feeling aggrieved by the dismissal of his leave to contest application the petitioner-tenant has invoked the revisional jurisdiction of this Court.

7. Learned counsel of the petitioner-tenant had submitted that the respondent - landlord had filed two eviction petitions against two tenants, including the petitioner herein, in respect of two different shops and both the tenants were declined leave to contest by the Rent Controller. However, this Court has already set aside the order of eviction passed against the other tenant Satpal on 27.05.2011 in RCR No.

25/2010. She produced before me a copy of that order.

8. On the other hand, learned counsel for the respondent - landlord while not disputing the fact that the two eviction petitions filed against two tenants, including the present one, were filed on the same grounds and both the tenants had sought leave to contest also on almost similar grounds, contended that in the order passed by this Court in the case of other tenant Satpal reversing the trial Court's order declining leave to defend to him this Court had not taken into consideration the provisions of Sections 19 and 48 of the Act.

9. From the order dated 27.05.2011 passed by me, I find that the eviction petitions against both the tenants were on identical averments and leave was also sought by both the tenants on almost similar grounds. The relevant findings of mine in the order in respect of the other tenant Satpal are re-produced below:

"10. After considering the facts pleaded by the respondent - landlord in his eviction petition and the facts stated by the petitioner - tenant in his leave to contest application and the decision of the learned trial Court I am of the view that this revision petition deserves to be allowed. The leave application filed by the petitioner - tenant does raise triable issues which cannot be decided without giving him an opportunity to substantiate the same by producing relevant material/evidence and cross-examining the landlord. I also find force in the contention of the learned counsel for the petitioner that the facts of this case are quite similar to the facts in Inderjeet Kaur's case (supra) before the Supreme Court wherein leave to defend was granted to the tenant.

11. There is another reason also for grant of leave to the petitioner- tenant in the present case. The petitioner-tenant has filed an additional affidavit claiming that the respondent-landlord had four more shops also in his property in Munirka and the same had been let out to different tenants and he was getting rent of ` 2,000/- from two tenants, ` 2,700/- from one tenant and ` 2,500/- from another one and with effect from 1st January, 2011 he had re-let all the four shops at a monthly rent of ` 8,000/- each. Learned counsel for the petitioner had submitted that this subsequent development which came to the knowledge of the petitioner after the disposal of the eviction petition, shows the mala fides of the respondent-landlord in

filing the eviction case against the petitioner. The respondent-landlord in his counter affidavit to the said additional affidavit of the petitioner claimed that the rent had been increased because of the rise in price index and further that actual market rent of the shops was much higher and, therefore, the bona fides of the respondent cannot be doubted because of his having got the rents of other tenants increased to a reasonable extent. Learned counsel for the respondent had submitted that though this Court could consider this subsequent development the justification given by the respondent in his counter affidavit should be accepted and no mala fides can be inferred from that circumstance.

12. I am, however, of the view that at least for the purpose of grant of leave to contest to the petitioner-tenant the aforesaid circumstance of the respondent-landlord having increased the rent of other tenants four times does bring an element of mala fides in his decision to initiate eviction case against the petitioner herein and learned counsel for the petitioner was justified in submitting that eviction petition against him appears to have been filed to increase the rent in respect of the shop in dispute."

10. In my view, since this Court has already granted leave to contest to another tenant against whom also the respondent - landlord had filed eviction petition on the same ground of bona fide requirement there is no reason for this Court not to give the same relief to the petitioner herein.

The reasons given by me for granting leave to contest to the other tenant have already been reproduced by me in the earlier part of this order and those reasons are applicable to the facts of the present case also. As far as the provisions of Section 19 of the Act are concerned the same have no relevance while considering the case of the petitioner - tenant for grant of leave to him to contest the eviction petition this Section comes into play only if a landlord, who has succeeded in securing eviction order against a tenant on the ground of bona fide requirement etc. re-lets the tenanted premises within a particular period the tenant can be put back in possession. Since the petitioner - tenant has raised a plea that the respondent's sons, for whose benefit alone, the eviction petition was filed against the petitioner, are already well settled in Haryana and which plea has not

been specifically denied by the respondent - landlord, that plea raises a triable issue. In this regard a useful reference can be made to a decision of the Hon'ble Supreme Court in "Charan Dass Duggal vs. Brahma Nand", (1983) 1 SCC 301 wherein the landlord was settled in Pathankot and he had filed an eviction petition against his tenant in respect of some premises in Delhi on the ground that the landlord wanted to shift to Delhi. The tenant had sought leave to contest on the ground that since the landlord was settled in Pathankot a triable issue did arise entitling him to get the leave to contest the eviction petition on the ground of bona fide requirement filed by the landlord and accordingly leave to contest, which was rejected by the Rent Controller as well as by this Court in revision, was granted to the appellant - tenant by the Supreme Court. Therefore, leave could not be declined to the petitioner - tenant in the present case since he had raised a strong triable issue which, in the event of being proved by the petitioner, would disentitle the respondent-landlord from securing eviction.

11. This revision petition, therefore, succeeds. The impugned order of eviction is set aside. The matter is remanded back to the trial Court for trial in accordance with law. The case shall now be taken up by the learned Rent Controller on 24th October, 2011 at 2 p.m. for giving further appropriate directions in the matter.

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