

**Bilkish Vs. Khushnuma**

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**Court :** Delhi

**Decided On :** Feb-21-2012

**Judge :** The Honourable Ms. Justice Indermeet Kaur

**Appeal No. :** RCR No. 83 of 2012 & CM No. 3168 of 2012

**Appellant :** Bilkish

**Respondent :** Khushnuma

**Judgement :**

**INDERMEET KAUR, J.**

(Oral)

1. Order impugned before this Court is the order dated 02.07.2011 vide which the eviction petition filed by the landlady under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) seeking eviction of the tenant from the premises i.e. 60/218, ground floor, Sunlight Colony, Old Seemapuri, Delhi had been decreed in favour of the landlady; the application seeking leave to defend had been dismissed.
2. Record shows that the present eviction petition has been filed by the landlady under Section 14 (1)(e) of the DRCA; the aforementioned premises (comprising of one room and a verandah on the ground floor) had been tenanted out to the

tenant in January, 1998; the family of the petitioner comprised of herself, her husband, two daughters and one son i.e. 5 family members who were presently living in the one pucca room/structure on the first floor and tin shed on the second floor; site plan depicting the suit premises has also been filed along with the eviction petition. Further contention in the eviction petition is that the tenant had initially asked for temporary shelter to provide treatment for her handicapped son and that is why the premises had been leased out but inspite of requests she has thereafter refused to vacate the suit premises. The accommodation presently available with the petitioner is insufficient; she has no other alternate suitable accommodation; the tenant in fact has an accommodation in Ghaziabad UP which is less than one kilometer from the present premises; tenant can leave in the said premises; present premises are bonafide required by the petitioner for use for herself and her family members.

3. Application for leave to defend had been filed. The averments made in the said application have been perused. On behalf of the tenant, it has been contended that in the pleadings in this application seeking leave to defend admittedly raise no triable issue; he has conceded that this application seeking leave to defend had been badly drafted; in fact it does not contain any defence which the petitioner now proposes and submits before this Court. The only averment in the application seeking leave to defend is that the petition is not maintainable as the need of the landlady is not bonafide; she has another accommodation available with her at Jawahar Park, UP which is hardly a kilometer away which can be used by her and the present premises are not required by her; the present accommodation available with her is also sufficient for her needs.

4. No other submission has been pleaded in this application seeking leave to defend. Today before this Court, it has been urged that the premises are in fact located in a slum area and permission under Section 19 of the Slum Areas (Improvement and Clearance) Act 1956 has not been obtained; further submission being that the bar of Section 14 (6) of the DRCA also hits the landlord and in fact the impugned judgment has also noted this submission made by the tenant but has not dealt with it in the correct manner; the impugned

judgment has in fact recorded a finding that even if a landlord wishes to sell the property after receiving the vacant possession of the suit premises, nothing bars him from doing so.

5. Record has been perused.

6. The triable issues have to be read from the pleadings of the parties which is primarily from the defences raised by the tenant in his application seeking leave to defend. As noted supra, the averments made in the application seeking leave to defend have not raised any triable issue except the issue that the landlady has an another alternate accommodation at Jawahar Park which is sufficient to meet her bonafide need and as such the need of the landlady is not bonafide. No other ground has been pleaded in the said application. It has in fact been stated by learned counsel for the petitioner that the application is ill-drafted but the litigant should not suffer for this fault of the counsel. This submission shall be dealt with in the discussion to follow.

7. Submission of the petitioner before this Court that permission under the Slum Areas (Improvement and Clearance) Act is required cannot be gone into in the absence of there being any such plea in the application seeking leave to defend. Even otherwise, the Supreme Court in Ravinder Dutt Sharma Vs. Ratan Lal Bhargava reported in AIR 1984 SC 967 had held that the special procedure contained in Chapter III-A as introduced in the Rent Act by the amendment Act 1976 makes it no longer a requirement of the landlord to obtain a permission from the Competent Authority under Section 19 of the Slum Area (Improvement and Clearance) Act, 1956 before instituting an eviction petition under Section 14(1)(e) of the DRCA. The submission of the learned counsel for the petitioner on this score is thus even otherwise without merit.

8. The second submission orally urged before this Court is that the bar of Section 14 (6) of the DRCA operates against the present landlord also does not find mention in the application seeking leave to defend; this argument cannot be raised as no chance has been given to the landlord to rebut this oral submission which has now been pleaded. Even on a specific query put to learned counsel for the petitioner, he has no answer as to how this provision would apply in the

present case; it is not the case of the tenant before this Court that the premises had been acquired by transfer by the landlady; this provision would thus not be applicable.

9. The only ground urged by the tenant in his application seeking leave to defend is that the landlord has an alternate accommodation at Jawahar Park to which reply filed by landlord and the averments made in the corresponding para has been perused. This accommodation at Jawahar Park is admittedly in UP and is not a part of Delhi. The landlady presently is in occupation of one pucca room on the first floor and a tin shed on the second floor; the tenant is in occupation of one room with verandah on the ground floor on the same premises; family of the petitioner comprise of five persons i.e. the couple as also their two daughters and one son; the accommodation is highly insufficient as the children are school going and they require separate rooms for their studies and tuition; this has been specifically averred in the eviction petition. The only pucca one room on the first floor is thus insufficient. The second floor comprise of a tin shed. The tenant is in occupation of one room with a verandah which is in the same premises i.e. on the ground floor and as such the bonafide need of the landlady to take back these premises from the tenant has been established.

10. No triable issue has been raised by the tenant on this count.

11. The Courts time and again have held that unless and until a triable issue arises leave to defend should not be granted in a routine and a mechanical manner. If this is allowed, the very purpose and import of the summary procedure as contained in Section 25 B of the DRCA shall be defeated and this was not the intention of the legislature.

12. In *Nem Chand Daga Vs. Inder Mohan Singh Rana* 94 (2001) DLT 683, a Bench of this Court had noted as under:-

“That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the

eviction follows.”

13. Impugned order thus decreeing the eviction petition of the landlady suffers from no infirmity. Petition is without any merit. Dismissed.

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