

**Maya Devi Vs. Rajender Kumar**

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**SooperKanoon Citation :** [sooperkanoon.com/949037](http://sooperkanoon.com/949037)

**Court :** Delhi

**Decided On :** Mar-12-2012

**Judge :** P.K. Bhasin

**Appeal No. :** R.C.R.NO. 224 OF 2010

**Appellant :** Maya Devi

**Respondent :** Rajender Kumar

**Judgement :**

**P.K.BHASIN, J.**

This Petition Under Section 25-B(8) Of The Delhi Rent Control Act, 1958(Hereinafter Called 'The Rent Act') Has Been Filed By The Petitioner-Landlady Against The Order Dated 14.07.10 Passed By The Learned Additional Rent Controller Whereby The Application Filed By The Respondent Herein, Seeking Leave To Defend The Eviction Petition Filed By Her Against Him Under Section 14(1)(E) And 14-D Of The Rent Act For His Eviction From A Part Of Her Property No.4071, Basti Mansa Ram, Gali Barna, Sadar Bazar, Delhi(Hereinafter Referred To As 'The Tenanted Premises') Was Allowed And He Has Been Permitted To Contest The Eviction Petition.

2. The Relevant Averments Made In Para No.18 (A) Of The Eviction Petition On The Basis Which Eviction Of The Respondent-Tenant Was Sought Are Re-Produced Below:-

“(I) That The Premises In Tenancy/Occupation Of The Respondent Of Which The Petitioner Is The Landlady/Owner Was Let Out By Late Husband Of The Petitioner Shri Kishan Lal To The Father Of The Respondent Namely Mr. Parbhati Lal Long Back For Residential Purpose And The Same Is Required Bona Fide By The Petitioner For Herself And For Other Family Members Dependent Upon The Petitioner For The Purpose Of Residence And For Whom The Petitioner Or Any Of Her Family Members Has Got No Other Alternative Accommodation Available For Their Residence. (Ii) That The Family Of The Petitioner Consists Of Petitioner Herself, Her Daughter-In-Law Namely Smt. Prem Lata Wife Of Deceased Son Of The Petitioner Namely Mr. Ghanshyam Singh, His One Son Swantra Kumar Aged 22 Years, One Daughter Ms. Shobha Aged 20 Years And The Second Son Aditya Aged 14 Years. The Son Of The Petitioner Mr. Ghansham Singh Died On 1.09.2008 Leaving Behind His Wife And Three Children As Aforesaid. The Said Grand Children Of The Petitioner Are Studying. The Petitioner Is Residing In The Room Shown In Yellow Colour, Which Is Also Being Used As A Kitchen, Whereas The Family Of His Deceased Son Ghanshyam Singh Is Residing In The Room Shown In Orange Colour. (Iii) That The Petitioner And Her Husband Had Taken In Adoption Mr. Ajay Sinh @ Ajay Kumar When He Was Only Aged 15 Days And The Said Son Was Brought Up By The Petitioner And Her Husband And Is Living With The Petitioner In This Very Property. Said Mr. Ajay Singh Is Married And Has Got A Son Aged About 4 Years. The Family Of Ajay Singh Is Residing In The Portion Shown In Black Colour In The Site Plan. (Iv) That The Petitioner Has Also Got A Daughter Named Mrs. Vijay Laxmi And Is Residing With Her Husband And Four Daughters At Shalimar Bagh. She Also Frequently Visits And Stays With The Petitioner. Petitioner Has Got No Separate Guest Room Or Separate Rooms For Her Grand Children As Detailed Above.”

3. The Respondent Had Filed An Application For Leave To Contest The Eviction Petition Along With His Affidavit. The Main Plea Raised By Him Was That There Was No Relationship Of Landlord And Tenant Between The Parties And That The Tenanted Premises Were Not Let Out To His Father By The Petitioner's Husband And, In Fact, His Deceased Father Had Purchased The Property In Question Orally From Its Erstwhile Owner On Pugree In The Sixties And Further That He Himself Was Born In That Property And Water And Electricity Connections Were

In His Name. The Respondent Further Pleaded That The Documents Of Alleged Tenancy Between The Parties Placed On Record By The Petitioner Were Forged And Fabricated.

4. The Petitioner Had In Her Reply To The Leave Application Of The Respondent Reiterated Her Plea That The Tenanted Premises Had Been Let Out By Her Deceased Husband To The Respondent's Deceased Father And Also That She Required The Tenanted Premises For Own Residence And For Her Big Family.

5. The Learned Additional Rent Controller After Hearing The Counsel For The Parties Permitted The Respondent To Contest The Eviction Petition Vide Impugned Order And This Is What Was Observed In The Concluding Two Paras Of The Order:-

“By Way Of Present Application The Respondent Has Denied The Ownership Of The Applicant. The Respondent Has Also Denied That The Applicant Is Landlord Qua The Premises. Although, In The Present Application, Ownership Of The Applicant Is Not Relevant And Only Landlord-Tenant Relationship Is To Be Seen And During The Course Of Arguments, It Is Submitted By Counsel For The Applicant That She Has Also A Sale Deed Qua The Premises In Her Favour, But It Is Not Produced By The Applicant That She Has Also A Sale Deed Qua The Premises In Her Favour, But It Is Not Produced By The Applicant. The Respondent Has Also Disputed The Rent Receipts And Reply To The Notice Being Forged. In These Circumstances, I Am Of The Opinion That An Opportunity To Test The Genuineness Of Requirement Of The Applicant Be Granted To The Respondent. The Application For Grant Of Leave To Defend Is Allowed.”

6. Feeling Aggrieved By The Grant Of Permission To The Respondent To Contest The Eviction Petition The Petitioner Had Filed This Revision Petition In Which After Hearing The Counsel For The Parties The Case Was Reserved For Orders. After This Case Had Been Reserved For Orders A Point About The Maintainability Of A Revision Petition Under Section 25-B(8) Of The Rent Act At The Instance Of A Landlord Had Been Raised In Some Other Revision Petitions Filed By Some Landlords In Whose Eviction Petitions Also Their Tenants Had Been Granted Leave To Contest And So I Had Thought It Appropriate To Give An Opportunity To

The Parties In The Present Case Also To Make Their Submissions On That Aspect As Well Though No Such Objection Had Been Raised On Behalf Of The Respondent At The Time Of Earlier Hearing In The Matter, And So The Case Was Ordered To Be Listed Again For Hearing. On Behalf Of The Petitioner Arguments Advanced In Another Revision Petition On The Same Point Were Adopted While None Appeared For The Respondent To Address Arguments On This Point When The Matter Was Taken Up For Hearing On 23rd February,2012.

7. On The Maintainability Of A Revision Petition At The Instance Of A Landlord Under Section 25-B(8) Of The Rent Act A Division Bench Of This Court Has Held In The Case Of “**R.S.Bakshi Vs H.K.Malhari and Anr.**”, **2002(62) DRJ 272**, That Such A Revision Petition Is Maintainable Even At The Instance Of A Landlord. That View Was Taken By The Division Bench After Noticing Two Conflicting Decisions Of The Apex Court On This Very Point. One Of Those Two Decisions, Which Has Been Relied Upon On Behalf Of The The Tenants, Was Rendered By A Two Judge Bench Of The Supreme Court In The Case Of “**Major D.N. Sood Vs. Shanti Devi**”; **1997(10) SCC 428**, In Which It Was Held That A Revision Petition At The Instance Of A Landlord Is Not Maintainable And The Other Judgment, Which Has Been Strongly Relied Upon On Behalf Of The Landlords, Was Of A Three Judge Bench In “**Vinod Kumar Chaudhary Vs. Smt. Narain Devi**”; **AIR 1980 Supreme Court 2012** In Which It Was Held That Revision Petition By A Landlord Is Also Maintainable. The Division Bench Of This Court Has Held The Supreme Court’s Judgment In Maj. Sood’s Case(Supra) To Be Per Incuriam Since The Earlier Judgment Of The Larger Bench In Vinod Kumar Chaudhary’s Case(Supra) Had Not Been Considered By The Two Judge Bench Hearing Maj. Sood’s Matter. That Judgment Of The Division Bench Has Been Subsequently Followed By A Single Judge Bench Also Of This Court In The Case Of “**Sanjay Mehra V. Sunil Malhotra**”; **2010, DRJ (117) 654**. So, This Revision Petition Is Held To Be Maintainable.

8. Now, I Proceed To Consider The Case Of The Parties On Merits. I Have Already Extracted The Two Paragraphs From The Impugned Order In Which The Learned Additional Rent Controller Has Given His Findings And In My View That Order Cannot Be Said To Be In Accordance With Law At All And So Is Liable To

Be Set Aside. The Respondent Had Not Disputed The Family Strength Of The Petitioner Herein, Which She Had Claimed In Para No. 18(A) Of Her Eviction Petition Which Has Already Been Extracted In This Order. He Had Also Not Disputed The Claim Of The Petitioner Before The Controller As Well As Before This Court That She Was Having Only Three Rooms With Her To Accommodate Her Big Family. That Much Accommodation Can Hardly Be Said To Be Sufficient For Herself And Her Big Family And Her Requirement Of Two Room Set In Occupation Of The Respondent Certainly Is Bona Fide. Though The Respondent Has Denied The Relationship Of Landlord And Tenant Between Him And The Petitioner But That Denial Was Clearly An Afterthought And That Is Evident From The Fact That Even Though The Petitioner Had Specifically Pleaded In Her Eviction Petition That Before Filing The Eviction Petition She Served Upon The Respondent A Notice Dated 04.09.2009, Copy Of Which Was Placed On Record In Which She Had Claimed That The Tenanted Premises Had Been Let Out To His Deceased Father By Her Deceased Husband, And He Had Sent A Reply Also To That Notice, Copy Of Which Was Also Placed On Record Of The Trial Court In Which He Had Admitted That Fact, But Still In The Application Filed By Him Seeking Leave To Contest The Eviction Petition He Did Not Take The Plea That He Had Not Received Any Such Notice Or That He Had Not Given Any Reply As Was Being Claimed By The Petitioner. It Was Only When The Petitioner Had In Her Reply To The Leave Application Once Again Referred To Her Notice And Respondent's Reply That The Respondent Decided To Deny The Receipt Of Any Such Notice Or Having Sent Any Reply To Her Admitting The Relationship Of Landlord-Tenant In His Rejoinder. This Aspect Has Been Totally Ignored By The Learned Additional Rent Controller While Granting Leave To The Respondent On The Ground That He Had Denied Relationship Of Landlord And Tenant With The Petitioner And Also The Receipt Of Legal Notice Before The Filing Of The Eviction Petition And His Sending Any Reply Through His Advocate. Permission To Contest The Eviction Petition Has Thus Been Granted To The Respondent Without His Having Been Able To Raise Any Triable Issue And, Therefore, The Impugned Order Is Liable To Be Set Aside.

9. This Petition Is Accordingly Allowed. The Impugned Order Of The Learned Additional Rent Controller Granting Leave To The Respondent To Contest The

Eviction Petition Filed Against Him By The Petitioner Is Set Aside And His Application For Leave To Contest Stands Rejected. Consequently, An Eviction Order Is Passed Against Him But He Is Given Six Months Time To Vacate The Tenanted Premises.

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