

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC.REV.No.275/2012

DATE OF DECISION : 3rd December, 2014

RAJENDER KUMAR JAIN

.....Petitioner

Through: Mr. Subhash Chandra, Advocate.

VERSUS

SH. SHIV KUMAR AND ORS.

..... Respondents

Through: Mr. Jitendra Kumar, Advocate with Mr. Keshav Yadav,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. This rent control revision petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is filed by the petitioner/tenant impugning the judgment of the Additional Rent Controller dated 8.5.2012 by which the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner/tenant and has decreed the bonafide necessity eviction petition filed under Section 14(1)(e) of the Act with respect to the tenanted premises being one shop on the ground floor of the property no.X/2809, Gali No.5, Raghubar Pura-II, Gandhi Nagar, Delhi-110031 as shown in red colour in the site plan annexed with the eviction petition.

2. The case of the respondents/landlords was that the suit shop was required for the benefit of petitioner no.2 in the eviction petition, and who is the respondent no.2 herein, because respondent no.2 herein is unemployed and wants to open a business in the tenanted shop.

3. In a bonafide necessity eviction petition under Section 14(1)(e) of the Act, three aspects are required to be seen by the court for decreeing the bonafide necessity eviction petition. First is that there is a relationship of landlord and tenant between the parties and that the landlord is the owner of the tenanted premises. Second aspect which is required is that the suit/tenanted premises are required for the bonafide need of the landlord and/or his family members and third aspect which is required to be seen is whether the landlord has any other alternative suitable accommodation.

4. At the outset, I must state that the impugned judgment has already been executed and the petitioner has already been evicted in execution of the impugned judgment and decree. The petition is in a way infructuous, however, since there is a right of revision to the petitioner/tenant, this case is argued and I am accordingly deciding the same.

5. Before this Court, two arguments were urged on behalf of the petitioner/tenant to seek leave to defend and also seek restitution by putting the petitioner/tenant back in possession of the tenanted premises and possession of which has been lost in execution of the impugned judgment. The first argument which is raised is that in the very same premises there is one additional shutter and therefore this shutter constitutes an alternative suitable accommodation for the petitioner no.2 to carry on his business. The second aspect which is argued is that the respondents/landlords owned the property no.X-2627, Gali No.6, Raghubar Pura-II, Gandhi Nagar, Delhi and which is therefore an alternative suitable accommodation.

6(i) So far as the first aspect is concerned, counsel for the petitioner places reliance upon para 16 of the leave to defend application and which para 16 reads as under:-

“16. That the site plan filed alongwith the petition does not show the measurements of the suit property. The petitioners have intentionally not disclosed the measurement in the site plan. In fact the petitioners have filed a site plan for 80 sq. yds. only whereas they have adjoining shop built-on 60 sq. yds., which is being run in the name of Sareen General Stores, there is one shutter on the said 60 sq. yds. plot and three shutters on 80 sq. yds. plot. The 60 sq. yds. is also owned by the petitioners. The petitioners have intentionally concealed the said fact.”

(ii) On the basis of the aforesaid para, it is argued that since the respondents/landlords have alternative suitable accommodation being the

additional shutter, leave to defend had to be granted and the eviction petition was in fact not maintainable.

(iii) The argument urged on behalf of the petitioner is misconceived because just stating that a shutter exists does not mean that there is an alternative suitable accommodation being a shop from where the respondent no.2 would be able to carry on business. In para 16 of the leave to defend application quoted above, it is not the case of the petitioner/tenant that there is a shop of a particular size which exists behind the so called shutter, and consequently this shop will be an alternative suitable accommodation. Existence of a shutter is like existence of a gate and existence of a gate cannot create an alternative suitable accommodation unless there are sufficient pleadings that there is a specific shop of a particular size which is available behind the shutter for use of the respondents/landlords and which is not the case as set up in para 16 of the leave to defend application quoted above.

(iv) The first argument urged on behalf of the petitioner/tenant is therefore rejected.

7. The second argument urged on behalf of the petitioner is also equally misconceived because the respondents/landlords have denied that they have anything to do with the property no. X-2627, Gali No.6, Raghubar Pura-II, Gandhi Nagar, Delhi and therefore a self-serving bald averment of ownership of a particular property by the respondents/landlords, and which is denied by the landlords, cannot create any triable issue.

8. In view of the above, there is no merit in the petition, which is therefore dismissed. No costs. Whatever amount has been deposited by the petitioner/tenant in this Court be released to the respondents/landlords alongwith accrued interest, if any, and which amount will be taken as interim user charges by the respondents/landlords in view of the ratio of the judgment of the Supreme Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. (2005) 1 SCC 705.

Sd/-
VALMIKI J. MEHTA, J

DECEMBER 03, 2014

