

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**SUBJECT : DELHI RENT CONTROL ACT**

Date of Judgment: 09.02.2012

R.C.REV No. 22/2005 & CM No.10203/2009

SHUSHMA JAIN

..... Petitioner

Through: Mr.R.M.Bagai , Advocate.

versus

JINENDER KUMAR JAIN & ORS.

..... Respondents

Through: Mr.A.P.Aggarwal, Advocate for R-1.

CORAM:

INDERMEET KAUR, J. (Oral)

1. Present petition has impugned the order dated 25.9.2004 vide which the eviction petition filed by the landlord-Shushma Jain under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) seeking eviction of her tenant-Jinender Kumar Jain from the suit premises on the ground of bonafide requirement had been dismissed.

2. Record shows that the petitioner's case is that the respondent was a tenant in her premises i.e. premises bearing No.4663-64, Deputy Ganj, Ward No.13, Delhi-6 in respect of two rooms, one store, one kitchen, one bathroom and open courtyard situated on the first floor, barsati and tin shed along with open terrace on the second floor. Petitioner is stated to be the owner of the said premises having purchased from the previous owner vide sale deed dated 14.11.1991. Premises were required bonafide for her and the use of her family members who comprises of herself, her husband and three children aged 20,18 and 16 years; presently she is living in one room with kitchen on the second floor of the property bearing No.4494, Gali Raja

PatnaMal, Pahari Dheeraj, Delhi which was ancestral property of her father-in-law.

3. Leave to defend had been granted and the tenant filed his written statement. Contention of the tenant was that he had lastly paid rent to Shanti Swaroop; he never attorned to the present petitioner. Further contention was that the property where the petitioner is presently residing is property bearing No.4494, Gali Raja Patna Mal, Pahari Dheeraj, Delhi and the same is three storied structure constructed on a 400 sq. yards plot and the accommodation presently available with the petitioner is sufficient for her needs; there are 10 rooms in the said premises; her husband has independent right over the said property. It is denied that the need of the petitioner was bonafide for the present accommodation. The additional contention of the tenant was that property bearing No.C-76, Mahendroo Enclave, G.T.Karnal Road, Delhi constructed on a plot measuring 150 sq. yards having 2½ storied structure was also owned by the petitioner and her husband; it was sold on 02.7.1996 only to create a paucity of accommodation to get the tenant evicted from the suit premises.

4. Evidence was led both oral and documentary. Three witnesses were examined on behalf of the landlord and one witness had come into witness box on behalf of the tenant. Record shows that it is an admitted fact that the landlord after his occupation of the premises at D-43, Ashok Vihar had shifted residence to A-63, Ashok Vihar; but in what capacity he was retaining occupational possession of these premises has to be answered.

5. Parties have agreed that this is a fit case for remand; opportunity is granted to the landlord to adduce his evidence to establish his averment that the premises at D-43/A-63, Ashok Vihar were tenanted premises as also his further submission that his share in the ancestral property i.e. property bearing no.4494, Gali Raja Patna Mal, Pahari Dheeraj, Delhi is only a meager share of 1/45th which finds returned in the decree and judgment by the Trial Judge dated 12.3.2010 against which an appeal had been filed but as on date the share of the petitioner is only 1/45th in the said property. Learned counsel for the respondent has no objection to the remand but he states that he should also be granted corresponding permission to lead his evidence in defence. Accordingly the matter is remanded back to the trial court. For the said purpose the Additional Rent Controller after recording the evidence of the respective parties shall return finding in terms of the averments/evidence led by the parties. Parties are directed to appear before

concerned District Judge (Central) on 22.02.2012 at 10.00 AM who shall assign the matter to the concerned court.

6. With these directions, the petition is disposed of.

7. Trial court record be sent back.

INDERMEET KAUR,J

FEBRUARY 09, 2012/rb