

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

SUBJECT : Delhi Rent Control Act

CIVIL REVISION NO.40 OF 2002

Dated : February 05, 2008

Sharifuddin .....

Through: Petitioner  
Mohd. Iqbal, Advocate

Versus

Mehrun Nisa and Ors. ....

Through: Respondents  
None.

VIPIN SANGHI, J.(ORAL)

1. This Petition under Section 25B of the Delhi Rent Control Act (the Act) has been filed by the petitioner landlord to impugn the order passed by the learned Additional Rent Controller Delhi in eviction Petition No. E-96/2000 dated 18.10.2001 whereby the eviction Petition filed by the petitioner landlord on the ground of bonafide requirement under Section 14(1)(e) of the Act has been dismissed. The Petition has been dismissed primarily on two grounds. The first is that the petitioner had failed to establish that the purpose of letting was only residential and the second that the petitioner himself has not appeared as witness and the evidence has been led on behalf of petitioner through his son and General Attorney Shri Zulfikar Ahmed.

2. The case of the Respondent tenant was that the Respondents were heirs of the Late Ahsan Ali, who had taken on rent the premises situated on First Floor of the property No.6360, Ward No. 14, Gali Babu Bashat, Kasabpura, Sadar Bazar, Delhi in the year 1965 from the erstwhile owner. The property was subsequently purchased by the predecessor-in-interest of the petitioner Late Shri Shamsuddin. So far as the ownership and the relationship between the parties is concerned, the learned Additional Rent Controller gave a finding in favour of the petitioner that the petitioner was the owner and the landlord of the suit property of which the respondent was the tenant.

3. On the aspect of the purpose of letting, the petitioner landlord had relied upon the counter foil of three rent receipts and counterfoils which had been proved on record as Ex. AW-1/6 to AW-1/8. Pertinently, these very receipts/counterfoils were proved on record by Respondent as well, as RW-2/P1 to RW-2/P3. These counter foils are in Urdu language. The learned Rent Controller has understood the purpose of letting as recorded therein as upper house. Learned Counsel for the Petitioner argued that in two of these receipts, namely RW-2/P1 and RW-2/P2, the purpose of letting is stated to be balai makan and in RW-2/P3 the same is mentioned as balai khana. Mr. R.P. Bansal, Senior Advocate, who happened to be present in court in relation to another regular matter at Srl.No.4 was called upon by the court to assist the court in reading and

understanding the said exhibits, which are in Urdu language. He has confirmed that the user recorded in the aforesaid exhibits is as aforesaid.

4. The admitted position on record is also that the bills of the water and electricity connections installed in the premises are being raised only for residential purpose. This is evident from the examination in chief of RW-3 Shri Naeem Ali son of Ahsan Ali, who is Respondent No. 5 herein. The case of the Respondents was that they were carrying on business in the name of Asha Auto Industries apart from residing in the suit premises. They were manufacturing motor parts in the tenanted premises. The respondents, to prove the purpose of letting produced Munshi Shokat, a neighbor of the Respondent as RW-1 and Smt. Mehrun Nisa, wife of Shri Ahsan Ali as RW-2). The Respondent's witness RW-1 had stated that the Respondents were manufacturing auto parts in the name of Asha Auto Industries in the open space in front of their room. However, it was also stated that there were no machinery and there was no bhatti. There is only one blower for manufacturing various parts/items. The learned ARC has relied upon these testimonies. The learned Additional Rent Controller held that the petitioner could not establish the purpose of letting to be residential. For arriving at that conclusion, the reason given by him is that the petitioners are not the original landlords and therefore they could not be aware of the purpose of letting. The premises had been let by the erstwhile owner which has been subsequently purchased in the years 1965 by Late Shri Sharifuddin.

5. I am not in agreement with the line of reasoning adopted by learned Additional Rent Controller to determine the purpose of letting. Admittedly, neither party produced any rent note or agreement, which could throw light on the aspect of the purpose of letting. Admittedly, the suit premises is situated on the First Floor. The rent receipts/counter foils relied upon by both the parties recorded the user as balai makan and balai khana. The expression balai connotes the upper floor. The expression khana generally means house, as in a premises that houses, e.g., a Karkhana. It does not necessarily connote a residential premises since it is used as a suffix to describe different kinds of houses. However, the use of the expression 'makan' in two of the rent receipts is very material and throws light on the purpose of letting. Makan clearly means a residential premises.

6. The mere use of the premises for a commercial purpose, in any case, does not establish the purpose of letting to be commercial. One has to look at the user specified in the rent deed. Since there is no rent deed produced by either side, one can look at the rent receipts and counter foils. These receipts/counter foils show the user to be as a makan i.e. a residence. In this regard I may refer to the Supreme Court judgment in *M/s Precision Steel and Engineering Works. v. Prem Deva Niranjana Deva Tayal*, AIR 2003 SC 650.

7. The Respondents had failed to produce any document to substantiate and conclusively establish the purpose of letting as residential-cum-commercial. The case of the respondents was that they were using the open space for manufacturing some motor parts using a blower. Even if that version of the respondent is believed to be true, that by itself cannot be taken to lead to the inference that the premises was let out for residential-cum-commercial purpose. A tenant may carry out some insignificant activity related to his business, trade or profession in his residential tenanted premises. That does not mean that the purpose of letting of the premises is for residential-cum-commercial purpose. For example, a lawyer, a doctor or even a businessman may use a portion of the residential premises as his office/clinic. A teacher may use a room for taking tuition classes. That does not make the user as residential-cum-commercial. Having said this, I must also observe that the actual user of the property for a particular purpose overtly, and to the knowledge of the landlord over a sustained period of time which is not objected to by the

landlord, in the absence of any other documentary evidence to the contrary with regard to the purpose of letting, may lead the Court to infer that the purpose of letting is the same for which the premises is being put to use. However, in those situations, the dominant purpose of user is required to be seen. In this case, the dominant purpose of user was for residential purpose only. Only the open space was being used, if at all, for the manufacturing purposes. Hardly any machinery was installed. It is not the respondents case that any other persons were employed to carry out the manufacturing activity. The rooms were being used for residential purpose. The suit property is situated on the first floor. The water and electricity bills continued to be raised over the decades on residential basis only. Had the user been for commercial purpose on a sustained and regular basis, and on any significant scale, the electricity and water charges, apart from property tax assessments would have been levied on commercial basis. There would be registration under the Shops and Establishment Act. There would be other workmen. However, no such evidence has been produced. Since the premises was admittedly being used for residential purpose, in my view, it was incumbent upon the Respondents to have proved that the purpose of letting was not confined to residential but also included the commercial purpose, which the Respondents failed to established. I, therefore, hold that the petitioner had established that the purpose of letting was residential.

8. The learned Additional Rent Controller also fell in error in rejecting the evidence of the petitioner on the ground that he had failed to appear as a witness and that his son and General Attorney had deposed as a witness on behalf of the petitioner in support of the petitioner. It is not necessary that the party himself should appear in the witness box in all cases. The purpose of leading evidence through a witness is to establish the case of the party. Any person, who is in a position to depose with regard to the facts about which that person deposes, can be considered to be a witness competent to depose. The witness AW-1 has deposed as per his personal knowledge being a family member of the petitioner and residing with him, and his evidence could not be rejected merely because the petitioner did not appear as his own witness.

9. The learned Additional Rent Controller while dismissing the Petition has not addressed himself on the issue of the bonafide need of the petitioner and the suitability of the accommodation available with him. This was an issue which he should have decided while deciding the Petition.

10. In view of the aforesaid the impugned order passed by the learned Additional Rent Controller in eviction Petition No.E-96/2000 dated 18.10.2001 is set aside and I remand the case back to the learned Additional Rent Controller to determine the issues with regard to the bonafide need of the petitioner and the sufficiency of accommodation of the petitioner. The parties may appear before the concerned Additional Rent Controller, Delhi on 25th February 2008.

11. In case the Respondents are not represented, the learned Additional Rent Controller shall issue notice to the Respondents and through their counsels. 12.The learned Additional Rent Controller will proceed to decide the remaining issues expeditiously, and in any event within six months from today. The record of the lower court be sent to the concerned court immediately.

13. With the aforesaid directions, the Petition stands disposed of.

Sd./-  
VIPIN SANGHI, J.

February 05, 2008