

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 07.3.2012

RC.REV. 522/2011 & CM Nos.22570-72/2011

ANIL KUMAR VERMA Petitioner
Through: Mr.Ashutosh, Advocate.

versus

SHIV RANI & ORS Respondent
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Separate statement of the petitioner has been recorded. On the last date, his counsel had appeared in the Court and had made a statement that he is not pressing the petition on its merits; he had only sought extension of time for vacation of the suit premises. Today a statement has been made by the petitioner which has been affirmed by his counsel that the petition should be dismissed on merits in order that the petitioner can challenge this order before a higher Court; he does not want any time for vacation of the property. This statement was recorded in the Court today to the following effect.

“Mr. Ranjan Kumar is my advocate. On the last date he had taken time on my behalf to get the suit premises vacated. I am finding it very difficult to find an alternate accommodation as I am doing the business of sale of Silver Utensils from this shop since 1947-1948 and an alternate accommodation at this rate would not be available in the market. I do not want any time for vacation of the suit property; my petition may be dismissed.”

2 Arguments have been reheard.

3 Record shows that the present eviction petition has been filed by the landlords (six in number) against the tenant; contention is that they are the owners of the suit premises; the tenant is an old tenant; these premises is a shop i.e. shop No. 2895 in premises No.2893-99, Chehlpuri, Kinari Bazar, Delhi; monthly rent is `45/-; the petitioners have inherited this property from Sham Sher Singh who had executed a registered Will dated 07.08.1976 in favour of his wife and two sons; the petitioners being the legal representatives of deceased Sham Sher Singh have filed the present eviction petition. It is contended that the premises are required bonafide by them for commercial use; petitioner No. 1 Shiv Rani is aged 75 years and is fully dependent upon her children i.e. petitioners No. 2 to 6; she is a house wife and has no source of income. Petitioner No.2 (Rajender Kumar) is her elder son and is married; his son is also married. Petitioner No. 3 has two married daughters and one married son Sidharth who is presently unemployed; he has experience in business; he needs the aforementioned shop to carry on his business. Petitioner No. 3 is the widow of predeceased son; she has also got experience of boutique business as also of running a beauty parlour and she also requires the aforementioned suit premises to carry on commercial trade; petitioners No. 4 to 6 are the unmarried children of deceased Vijay Kumar; they are also not doing anything because of lack of space; they also require aforementioned shop. In fact the requirement of the present petitioners is of at least six shops of which four are tenanted out to four persons; present eviction is qua one shop. These are the grounds which have been pleaded in the eviction petition.

4 Leave to defend has been filed; the averments made in the said application have been perused. Contention is that the Will of Sham Sher Singh does not disclose as to which property has been bequeathed to whom; in fact there are no document of title of deceased or of Sham Sher Singh which would enable them to bequeath this property; ownership had been denied on this count. It is however admitted that petitioner No. 1 has been collecting rent from the respondent; contention is that this rent was being paid to petitioner No. 1 under impression of the tenant that she was the owner/landlady but there is no such relationship between the parties as the petitioners are not the owners. The second submission that petitioner No. 6 is working with Ozone Pvt Ltd. Health Club, Safdargang Enclave; petitioner No. 4 is employed with M/s Home Appliance, Noida; petitioner No. 5

Sidharth (son of petitioner No. 2) who is also known as Gopal is running a shop under the name and style of M/s Uttam Collections in Kinari Bazar; petitioner No. 3 Veena is a house-wife and the premises are not required for her; petitioner No. 2 Rajender Kumar is a drug addict; petition has been filed mala fide. Further contention is that on 01.12.2008, the landlady had sold shop No. 2898; if the need of the petitioners is not bona fide, had it been bona fide she would not have sold this shop; present eviction petition has been filed only to extract a higher rate of rent.

5 Corresponding paras of the reply filed by the landlords have also been perused. It has been reiterated that the petitioners are the owners/landlords of the suit premises; it is admitted that shop No.2898 was sold but this was because of a financial crunch and because of heavy debt on the petitioners; this shop as per the version of the tenant was sold on 01.12.2008; present eviction petition has been filed more than one year later i.e. January, 2009.

6 It is in this background that the contentions of the respective parties have to be considered. Record shows that the petitioners have claimed ownership of the suit premises by virtue of a registered Will which was executed by the deceased Sham Sher Singh stated to be the owner of the suit premises in favour of his legal heirs. It is also not in dispute that the tenants have been regularly paying rent to petitioner No. 1; submission is that they have been paying rent under the belief that petitioner is their landlord although there is no such relationship between the parties.

7 The Courts have time and again held that while dealing with an eviction petition under Section 14 (1)(e) of the DRCA which is not a title suit, it is only a prima-facie title which has to be established by the owner; in this context, the registered Will of the deceased cannot be subject matter of challenge in such an eviction proceedings.

8 A Bench of this Court in AIRCJ 1971 2 Arjan Dass Vs. Madan Lal, has in fact held, as follows:

“a tenant has no locus standi to challenge the validity of the Will made by the landlord as he is not an heir of the landlord.”

In (1987) 4 SCC 193 Smt. Shanti Sharma & Ors. Vs. Ved Prabha & Ors.

“The word 'owner' has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the

learned Counsel for the appellant appears to be is that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term 'owner' in the provision of Section 14(1)(e) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term 'owner' has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.”

This objection is clearly without any merit.

9 The only other objection raised by the tenant is that the petitioners do not require these premises bonafide as petitioners No. 1 & 3 are housewives; petitioner No. 2 is a drug edict and petitioners No. 4 & 5 are already employed at M/s Home Appliances, Noida and Uttam Collections, Safdarjung Enclave. There has been a categorical denied to this submission. Even assuming that petitioner No. 4 is working with M/s Home Appliances and petitioner No. 6 is working with Ozone Pvt Ltd. Health Club; these employments of petitioners No. 4 & 6 are private jobs and it does not take away their bonafide need to start their own business from the shop which is owned by them and which is located in a highly viably commercial area of Delhi i.e. Kinari Bazar where even as per the submission made by petitioner on oath in Court today, the market rent of the premises has gone up substantially; because of this business viability earlier rents (in the year 1947-48 the rent of `45/- per month) being paid by the tenant were meager amounts and no such accommodation at this rate is now possible to be obtained by the tenant; contention being that the petitioners cannot be prevented from carrying out their business from this shop; their bonafide need has in fact been established.

10 In this context the Supreme Court in 2009(2) RCR 455 titled as Ram Babu Agarwal vs. Jay kishan Das, had observed as under:-

“However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son

Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

In *Mattulal v. Radhelal* [1975]1SCR127 the Apex Court had observed as follows:-

“A like principle was laid down stating that the test was not subjective but an objective one and that the Court was to judge whether the need of the landlord was reasonable and bona fide. This Court held that the Additional District Judge in that case was wrong in thinking that the landlord who wanted to start iron and steel business, had to produce proof of preparations for starting his new business, such as making arrangements for capital investment, approaching the Iron and Steel Controller for the required permits etc. This Court held that the above circumstances were "wholly irrelevant" and observed.”

In *Raghunath G. Panhale G. Panhale (D) by Lrs. v. Chaganlal Sundarji and Co.* AIR1999SC3864 the Supreme Court had inter alia held as follows:

“It was not necessary for landlord to prove that he had money to invest in the new business contemplated nor that he had experience of it. It was a case for eviction on the ground of bona fide requirement of the landlord for non-residential purpose, as he wanted to start a grocery business in the suit premises to improve his livelihood.”

On this count also, no triable issue has been raised.

11 The only other submission is that Shop No. 2898, has been sold by the landlord in the year 2008; this was admittedly more than one year prior to the filing of the present eviction petition; the reasons explained by the petitioner was that because of financial crunch and debt which has been incurred by the petitioners and to pay up his debts it had necessitated the sale of his shop. There is no dispute to this submission; as such this is a sufficiently justifiable submission. On this count also no triable issue has arisen.

12 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.

13 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.”

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

Sd/-
INDERMEET KAUR, J