

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC.REV. 92/2008

Date of Decision: March 13, 2009

GURCHARAN SINGH

..... Petitioner
Through: Mr. Athar Alam, Advocate

versus

SARASWATI DEVI

..... Respondent
Through: Mr. G.D. Gandhi, Advocate

MANMOHAN, J : (Oral)

Caveat No. 203/2008

1. Since the caveator has put in appearance, caveat petition stands disposed of.

C.M. No.15667/2008 (for exemption)

2. Exemption allowed, subject to all just exceptions.

The application stands disposed of.
RC.REV. 92/2008 & CM No.15668/08

3. Present revision petition has been filed for setting aside eviction order dated 12th September, 2008 passed in a petition filed under Section 14D of the Delhi Rent Control Act, 1958 (hereinafter referred to as "DRC Act") whereby petitioner's application for leave to defend has been dismissed.

4. Learned Counsel for petitioner urged that adoption of daughter by respondent-landlord was not in accord with law and, therefore, respondent daughter's and son-in-law's requirement could not be considered as respondent's requirement. However, on a perusal of leave to defend application, I find that this ground has not been taken by petitioner-tenant before the Additional Rent Controller. The Hon'ble Supreme Court of India in "J. Chatterjee v. Mohinder Kaur Uppal" reported in AIR 2000 Supreme Court 3076 has that proceedings under Section 14D should not be allowed to be dragged on by granting leave to defend to tenant unless real and substantial case is made out in the affidavit filed by tenant. The Hon'ble Supreme Court in the said judgment has highlighted the intent and import of Section 14D by pointing out that widow landladies are a special class of landlords entitled to recover possession for self occupation. Consequently, I am of the view this new ground cannot be urged in a revision petition.

5. In fact on a perusal of leave to defend application, I find that the following grounds had been urged by petitioner to deny respondent-landlady possession of tenanted premises:

(i) Suit property had been let out to petitioner for commercial purpose and is not capable of being used for a residential purpose.

(ii) Petitioner has filed a suit for permanent injunction in which she has claimed protection from dispossession of suit premises.

(iii) Petitioner does not bona fide require the tenanted premises as she was carrying on the shop of Kiryana in portion of the property and has now closed the same.

(iv) Petitioner has filed an incorrect site plan.

6. Before I deal with petitioner's submissions, I would like to refer to Section 14D of DRC Act, which reads as under:

"14D. Right to recover immediate possession of premises to accrue to a widow. –

(1) Where the landlord is a widow and the premises let out by her, or by her husband, are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises.

(2) Where the landlord referred to in sub-section (1) has let out more than one premises, it shall be open to her to make an application under that sub-section in respect of any one of the premises chosen by her."

7. Since the present eviction petition has been filed by respondent-landlady on the ground of Section 14-D of DRC Act, she has to prove only the following three requirements:

(i) She is a widow;

(ii) She is a landlady;

(iii) She requires the premises for her own residence.

8. In the present case, the first two requirements are not disputed. As far as the third requirement is concerned, I find that petitioner-tenant has primarily taken two defences namely, that premises was let out for commercial purpose and further by virtue of closure of Kiryana shop, respondent has enough space available to her for residential purpose.

9. As far as letting of premises for commercial use is concerned, the issue is squarely covered by a recent judgment of Hon'ble Supreme Court in Satyawati Sharma v. Union of India reported in 148 (2008) DLT 705 (SC). The observations of Hon'ble Supreme Court are reproduced hereinbelow for ready reference:

"38. In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned Counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:

"That the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation."

While adopting this course, we have kept in view well recognized rule that if the offending portion of a statute can be served without doing violence to the remaining part thereof, then such a course is permissible R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628, and Bhawani Singh v. State of Rajasthan, 1996 (3) SCC 105.

As a sequel to the above, the explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant."

10. Consequently, the defence that tenanted premises was let out for commercial purpose is irrelevant and untenable in law.

11. As far as closure of Kiryana Shop is concerned, I am of the view that it in no way demonstrates that tenanted premises is not required by the respondent- widow for her own residence or that her need stands satisfied.

12. In so far as, allegation with regard to an incorrect site plan is concerned, I am of the view that Additional Rent controller has rightly observed that petitioner-tenant has not pointed out or specified as to what are the discrepancies in petitioner's site plan. The impugned order in no way impairs petitioner's right to pursue his suit proceedings if so permissible in law. Consequently, all the petitioner's defences are frivolous and untenable in law.

13. In any event, I am of the view that Section 14D of DRC Act is a special provision which grants benefit to widow landladies in accordance with Article 15(3) of the Constitution of India. In this context, I may refer to the observations of Hon'ble Supreme Court in EMC Steel Limited, Calcutta v. Union of India, reported in 1991 (2) SCC 101 wherein it has been held as under:

“6. We have already held in the accompanying judgment that classified landlords such as the widow landlady under Section 14-D can apply for possession of the premises under the respective provisions even if the premises are not let for residence. It is not necessary to repeat the said discussion in this judgment. Section 14-D makes no distinction between the landladies who become widows before and after letting out of the premises. It merely says that where the landlady is a widow and the premises are let out by her or by her husband, are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises. The language of the section in that respect is very clear. The premises might have been let out by her as a widow or they might have been let out by her husband or even by herself before she had become widow. The legislature wanted to give a special privilege to the landlady who is a widow notwithstanding whether the premises were let out before or after she became widow. Such conferment of special benefit on a widow-landlady is permissible even under the provisions of Article 15(3) of the Constitution which is an express exception to the provisions of sub-clauses (1) and (2) of that article. It states that nothing in the said article shall prevent the State from making any special provision for women and children. A widow is undoubtedly a vulnerable person in our society and requires special protection. We further see no merit in the contention that if the benefit given by Section 14-D is allowed to be availed of by widows, they may make a business of it. There is no warrant for such apprehension. For, in the first instance, the right to recover possession under Section 14-D can be availed of by the widow only once. That is a sufficient guarantee against the abuse of the privilege granted by the section. Secondly, she has to prove her bona fide need for the occupation of the premises in question for her own residence like any other landlord. Thirdly, the provisions of Section 19 of the Act come into play in her case also, when the order for possession on the ground floor of bona fide requirement for occupation as residence is made in her favour.”

14. Consequently, present petition and pending application being devoid of merits are dismissed but with no orders as to costs.

Sd./-
MANMOHAN,J

MARCH 13, 2009