

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Delhi Rent Control Act

CIVIL REVISION PETITION No. 32 of 2007

Date of Decision: NOVEMBER 30, 2007

Smt.Bhauri Devi (Deceased)
through her legal heirs Petitioner
Through Mr. V.M.Issar, Advocate

versus

Shri Mahender Kumar Respondent
Through Mr. Mukesh K.Goel Advocate

AND

CIVIL REVISION PETITION No. 33 of 2007

Shri Gian Chand (Deceased)
through his legal heirs Petitioner
Through Mr. V.M.Issar, Advocate

versus

Shri Mahender Kumar Respondent
Through Mr. Mukesh K.Goel Advocate

CORAM:

HON'BLE MISS JUSTICE REKHA SHARMA

REKHA SHARMA, J.

By this common order I shall dispose of RCR No.32/07 and RCR No.33/07.

The short question which arises for consideration is whether in a petition under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, the Rent Controller or the Additional Rent Controller are empowered to grant leave to defend to a tenant limited only to one of the several grounds raised by him in his application for leave to defend. In other words is it permissible to grant limited leave to defend?

The facts relevant for disposal of the aforementioned issue as stated in the petition are as under:-

In the year 2002 the respondent landlord namely, Mahinder Kumar had filed four eviction petitions under Section 14(1)(e) read with Section 25 B of the Delhi Rent Control Act, 1958 (hereinafter called the Act) bearing No. E-121/02 to 124/2002 against his four tenants namely late Smt.Bhauri Devi (now deceased) represented by her legal heirs, late Shri Gian Chand (now deceased) represented by his legal heirs, Smt.Nango Devi and Smt.Narayani Devi in respect of various portions in their occupation as tenants in suit property bearing No.10585, Manakpura,

Karol Bagh, New Delhi. All the four tenants named above filed separate applications for leave to defend and thereby contested the bonafide requirement of the respondent, the letting purpose and his ownership of the suit premises. They also alleged that he had sufficient alternative accommodation with him for his residence and the residence of his family members.

By an order dated April 21,2003 the Additional Rent Controller dismissed all the four applications and consequently a decree of eviction was passed in favour of the respondent. Aggrieved by the said order of April 21,2003 all the four tenants challenged the same in this court by preferring Revision Petitions No.166/03 to 171/03. A learned Single Judge of this Court vide separate orders dated February 11,2004 set aside the order dated April 21,2003 and remanded the cases back for deciding the leave to defend applications filed by the tenants after permitting them to file additional affidavits in the matter. Pursuant thereto the tenants filed additional affidavits to which the respondent filed his counter affidavit. Initially all the four eviction cases filed by the respondent were pending in the court of Shri R.K.Sharma the then Additional Rent Controller. Later two of the cases including the cases filed by the respondent against the petitioners herein were transferred to other courts. The case of

Smt.Bhauri Devi (now deceased) was transferred to the court of Shri Sanjeev Aggarwal, whereas the case against the tenant Shri Gian Chand (now deceased) was transferred to the court of Ms.Savita Rao . The cases against the other two tenants Smt.Nango Devi and Smt.Narayani Devi remained in the court of Shri R.K.Sharma.

The then Additional Rent Controller Shri R.K.Sharma vide order dated September 6,2005 granted unconditional leave to contest the eviction cases filed by the respondent against Smt.Narayani Devi and Smt.Nango Devi. As against this the Rent Controller Shri Sanjeev Aggarwal vide detailed order dated March 17,2007 granted conditional leave to defend to the tenant Smt.Bhauri Devi (now deceased) restricting only to the point of bonafide requirement. The Additional Rent Controller Smt.Savita Rao followed suit and vide her order dated March 29,2007 relying upon the order of Shri Sanjiv Aggarwal, she too granted conditional leave to the tenant to defend the petition on the limited aspect of bonafide requirement. The resultant position that has now emerged is that while the two tenants, namely, Narayani Devi and Smt.Nango Devi have been granted unconditional leave to defend, the other two, namely, Smt.Bhauri Devi (now deceased) and Shri Gian Chand (now deceased) have been granted conditional leave to defend.

It is the legal heirs of Smt.Bhauri Devi and Shri Gian Chand who have filed these revision petitions against the orders of the Rent Controller Shri Sanjiv Aggarwal and the Additional Rent Controller Smt.Savita Rao granting them conditional leave to defend the eviction proceedings initiated against them.

With the above background, I now take up the issue posed in the very first paragraph of this order. It may be noticed at the outset that the question raised is no longer res-integra. It came up for consideration before a Single Judge of this Court in S.K.Dey Vs.D.C.Gagera AIR 1985 Delhi 169 wherein it was held that the Controller is not competent to grant restricted leave i.e. leave limited to any particular issue. It was further held that whenever the Controller is satisfied that the tenant is entitled to leave to contest on one or more of the grounds disclosed in his application for leave to defend such leave would be deemed to be unrestricted and untrammelled by any kind of fetters and it would be open to the tenant to take up whatever pleas are available to him under law in his written statement. The learned Single Judge in taking the aforementioned view had relied upon a judgment of the Apex Court in Precision Steel & Engineering Works and another Vs. Prem Deva Niranjana Deva Tayal AIR 1982 SC 1518 wherein it has been held that the

Controller is not competent to grant conditional leave or leave limited to any particular issue.

It is clear from the above judgments that the Controller cannot grant restricted leave to defend and once he reaches the conclusion that affidavit in support of leave to defend application filed by the tenant discloses a triable issue then the only option left with the Controller is to grant unconditional leave to defend in which event the entire defence set up by the tenant would be at large.

It may be reiterated that the respondent had filed four eviction petitions against four tenants on identical facts. The leave to defend applications filed by all the four tenants raise similar issues denying the letting purpose, the bonafide requirement and the ownership of the landlord. As already noticed above two of the tenants, namely, Narayani Devi and Nango Devi were granted unconditional leave to defend. It will be an irony if the other two tenants who are also contesting the eviction petitions on similar grounds are permitted to contest the same only on the ground of bonafide requirement. Similarly situated litigants cannot be discriminated when the facts they intend to prove in their defence are identical.

In the above view of the matter the impugned orders in relation to

the petitioners cannot be sustained either on facts or in law.

For the foregoing reasons, the impugned orders dated March 17,2007 and March 29,2007 are set aside. The petitioners are granted unconditional leave to defend. The Revision Petitions are allowed with the direction to the Additional Rent Controller to dispose of the eviction petitions expeditiously.

Parties shall appear before the Rent Controller on 14th December 2007.

Sd/-

REKHA SHARMA,J.