

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DRC ACT

Date of Reserve: August 18, 2008

Date of Order: November 27, 2008

C.R.P. 224/2003

Sharifuddin
Through: Mr. Mohd. Iqbal, Advocate

...Petitioner

Versus

Rizauddin
Through: Mr. S.N. Gupta, Advocate

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

JUDGMENT:

1. The petitioner is aggrieved by an order dated 4th December 2002 passed by learned Additional Rent Controller (ARC) dismissing an eviction petition filed by the petitioner under Section 14(1) (e) of Delhi Rent Control Act (DRC Act).

2. The petitioner has filed the eviction petition in respect of premises comprising one room, kitchen and toilet on the ground floor of the property bearing number 6359, Ward No.14, Gali Babu Bashirath, Quasabpura, Sardar Bazar, Delhi on a monthly rent of Rs.8. The petitioner's contention was that his family consisted of himself, his wife, four sons and three daughters. Two daughters were married and the elder son was 25 years old and of marriageable age. The other children were school going. He filed this

eviction petition in 1993. The petitioner's requirement (at the time of filing of eviction petition) was of minimum five bed rooms, one drawing room, one study room, storeroom, kitchen, bathroom, toilet etc. for a dignified living. He was in occupation of only two rooms in property bearing number 5084, Gali Masjid Chapparwali, Qusabpura, Sadar Bazar, New Delhi. It was contended by the respondent that the petitioner was in occupation of much more accommodation than what he pleaded. The property No.5084 consisted of four rooms on the ground floor and three rooms on the first floor. Besides this, the petitioner was also having property bearing number 5093 to 5095 in Gali Chowikdarwali being used by the petitioner and his children. The respondent also took a stand that he was using the premises as residential-cum- commercial premises and when the tenancy was created neither the present petitioner nor the present respondent were in existence. The respondent and the petitioner came on the scene later on. The learned ARC after considering the evidence of the parties came to conclusion that the premises was let out for residential purpose and not residential-cum-commercial purposes. Regarding bonafide necessities, the learned ARC observed that the petitioner's two witnesses i.e. his son and himself had given inconsistent facts in the court and had not disclosed true facts so they are not reliable and trustworthy witnesses. In the site plan of the premises No.5084 the top floor has not been shown whereas in the cross examination, witnesses had admitted that there was a room on the top floor, which was in occupation of his Bua. About the ground floor it was stated that it was occupied by his brother Mohd. Illiyas but he was not produced in the court. The trial court observed that the ration card of Mohd. Illiyas produced in Court was prepared on 3rd January 1977 i.e. during the pendency of the petition. The learned ARC therefore held that the claim of the petitioner was not bonafide. The learned ARC also observed that in view of the fact that a portion of the property was got vacated from other tenant and was not occupied by the petitioner and nothing has been brought on record to show that this property was in dilapidated condition. The learned ARC dismissed the eviction petition of the petitioner.

3. The petitioner has assailed the order of the trial court on the ground that the trial court had considered the facts extraneous to the subject matter. It is submitted by counsel for the petitioner that the petitioner was not supposed to file the site plan of the entire building but was only to file the site plan of the premises in his occupation. Even if it was not shown in the site plan that there was a room on the second floor, that could not be a factor against the petitioner since petitioner was not in occupation of that room. It is also

submitted that the trial court had failed to consider the extent of the family of the petitioner, accommodation in possession of the petitioner and how the premises was sufficient to meet the requirements of the petitioner. The trial court rejected the eviction petition only on conjectures and surmises and that on the ground that the site plan was not correct since two witnesses had put responsibility on each other for preparation of the site plan. Trial court ignored that the petitioner was an old person aged above 70 years. He had not appeared in the witness box initially and only his son had appeared. He was compelled to appear in the court, despite his old age and serious ailments, since he had lost two other eviction petitions on account of his non appearance. The trial court did not rely upon the exhibited documents and did not appreciate the evidence.

4. It is settled law that while exercising power of revision under Article 227 of the Constitution of India; this Court cannot act as a Court of appeal and has not to re-appreciate the evidence as an appellate court. However, this Court can appreciate the evidence of the witnesses to assure itself that the learned ARC has not given its verdict contrary to the evidence or without evidence.

5. A perusal of the testimony of AW-1, the son and attorney of the petitioner, would show that he deposed about the extent of the family of the petitioner as four sons including himself and three daughters out of which two were married at the time of filing of the eviction petition. The petitioner was residing at the first floor of house bearing number 5084 consisting of two room, kitchen, latrine and bathroom. Elder son of the petitioner at the time of deposition, was married and was having two children. All the daughters of the petitioner had got married by the time of deposition. AW-1 proved the original ration card of the petitioner's family and his own family showing their residence at premises No. 5084. He also proved that this house initially was in the name of his grandfather. He proved the original allotment letter and testified that the ground floor of the house was in occupation of other son of his grandfather i.e. his father's brother Mohd. Illiyas and he proved his ration card. He testified that the second floor was in occupation of his father's sister (bua). The petitioner had no other accommodation available with him. He admitted that there was a room measuring 6x6 ft. on the second floor which was in occupation of his bua and this room was not shown in the site plan. He denied the suggestion that Mohd. Illiyas was living at other premises and not on 5084.

6. It is settled law that in civil cases and in cases of rent, the proof beyond reasonable doubt is not the standard to be considered by the Civil Court and the Civil Court and the learned ARC has to weigh the evidence by preponderance of probabilities. The trial court could not have rejected the evidence of petitioner's witnesses altogether on the ground that there were some contradictions between the testimony of father and son. It was obligatory on the learned ARC to sift chaff from the grain. A perusal of the statements made by father and son would show that the testimony of father on material points is almost the same as that of the son. Father has also testified about his family and the accommodation in his occupation on the same lines as that by the son. It has also come in the testimony of AW-2 (petitioner herein) that the relations of the petitioner with his brother were not cordial. Regarding preparation of ration card in 1997, it was specifically stated that it was a renewed ration card as the old ration card had been surrendered.

7. I do not find any reason for disbelieving the testimony of witnesses, because this is how the ration cards are renewed. Whenever a new ration card is issued, the old ration card has to be surrendered. Renewal of the ration card is a necessity when more family members are to be added or the ration card has expired.

8. It is quite evident from the order of learned ARC that it had not taken into account the requirements of the petitioner's family and the accommodation available with the petitioner and hence it failed to even consider whether the requirement of the petitioner was bonafide or not. While considering the evidence in a case of an eviction petition under Section 14(1)(e), the ARC has a primary duty to consider as to how big the family of the petitioner was and how large was the accommodation available with him and whether this accommodation was sufficient or insufficient for his family taking into account the necessities of the family, including that of the children and grandchildren living with him. The trial court cannot ignore or loss sight of the growing needs of the family, increase in the number of family members during the pendency of the petition, marriage of the family members etc and has to keep in mind all these factors since the eviction is sought on the ground of bonafide necessities.

9. Keeping in mind the large family of the petitioner including himself, his wife, four married sons and three married daughters (at the time when petition was decided) and then family of his sons, I consider that the

accommodation available with the petitioner was highly insufficient to meet growing requirements of his family. Even if it was presumed that the petitioner had in his possession in 2002 three rooms, vacated by the tenants, the petitioner's requirements was much more than what it was projected in 1993. The trial court, therefore, had to take into account the entire requirement of the petitioner in order to consider whether the necessity was bonafide or not.

10. This court has allowed another revision petition of landlord in respect of eviction of two rooms vide CRP No.468 of 2002. However, the family of landlord is so large that his necessities would still continue for more accommodation, even if those two rooms are vacated.

11. In view of my foregoing discussions, I allow this petition. The order passed by the trial court is hereby set aside. The eviction petition of the petitioner is allowed. The respondent is hereby directed to vacate the premises within a period of 60 days from today.

Sd/-

SHIV NARAYAN DHINGRA J.