

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

Date of Judgment: 15.11.2011

R.C.R. No.133/2011 & CM Nos. 8362/2011 & 12858/2011

MOHD.ILLYAS

...Appellant

Through: Mr.Vijay Tandon, Advocate.

Versus

NOORUDDIN AND ORS.

.....Respondent

Through: Respondent no.1 in person.
Mr.Puneet Aggarwal, Advocate for
Respondent Nos. 2 and 3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the order dated 19.01.2011 vide which the application for leave to defend filed by the tenant Mohd. Ilyas in a pending petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') had been dismissed.

2. The premises are a suit shop i.e. no. 3865/3, ground floor, a part of property no.3865, Ward No.XI, Khirki Tafazzal Hussain, Darya Ganj, Delhi. H. Zahiruddin Ahemad was the owner and landlord of the premises who had tenanted them out to the tenant namely Mohd. Ilyas in the year 1960; rate of rent is `200/- excluding electricity and water charges. After the death of the original landlord, the present petitioner had inherited this property and since that period i.e. since 29.9.1977 is realizing the rent of the suit premises from the tenant. In the eviction petition the grounds of bonafide requirement have been pleaded ; it is stated that the petitioners (three in number) have no other reasonably suitable residential and commercial accommodation with them. They have a large family and the details have been described. Petitioner no.1 has a family comprising of himself, his wife and one married son, a grandson and four daughters. He is residing on the first floor; the premises in dispute which comprises of a shop on the ground floor (6 feet x 12 feet) is suitable for him for his accommodation; petitioner no.2 is the other brother of petitioner no.1. It is contended that his family is also large and this shop is also suitable for his residential and commercial welfare; so also is submission qua the petitioner no.3.

3. In the application for leave to defend filed by the tenant it has been alleged that the shop in question is very small measuring 6 feet x 12 feet i.e. having an area of 72 sq. feet which is neither suitable for commercial and nor for a residential purpose; a double bed would also not fit in there. The triable issue sought to be raised by the petitioner is that the landlord has not approached the court with clean hands; he has a huge property measuring about 300 sq. yards at 5310, Sadar Bazar, Delhi which can be fit for the needs of the respondents; this factum has deliberately been concealed. In the reply to this corresponding para of the application for leave to defend this factum has not been disputed, however, it is baldly denied that the area is 300 sq. yards; the measurement of the said property has, however, not been disclosed. Submission of the petitioner that this factum of the concealment of this fact as also the area which is in possession of the landlord not having been disclosed, contention of the tenant being that a reasonably suitable accommodation is available with the respondents and this has raised a triable issue.

4. This submission of the petitioner has force. Present case has thus raised a triable issue. The application for leave to defend has been dismissed summarily; impugned order is accordingly set aside. Parties to appear before the Rent Controller on 28.11.2011, who shall proceed to deal the case on its merits.

Sd./-

INDERMEET KAUR, J

NOVEMBER 15, 2011