

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Reserve: November 27, 2008

Date of Order: January 06, 2009

CM(M) 920/2008

VIJAY ...

Petitioner
Through: Mr. Shiv Kumar Sharma, Adv.

Versus

HARI RAM ...

Respondent
Through:

JUDGMENT:

1. The petitioner is aggrieved by an order of learned ARC dated 4th June, 2008 whereby an application of the petitioner under Section 25-B for leave to defend was dismissed on the ground that the petitioner failed to raise any triable issue and the Eviction Petition of the respondent was allowed.

2. The respondent in this case had filed an Eviction Petition under Section 14C read with Section 25-B of Delhi Rent Control Act. The respondent had retired from Delhi Government's Service on 31st October, 2005. He was owner/landlord of the property no. 202 Gajju Katra, Shahdara, Delhi-32. The petitioner was in occupation of one room and a kitchen out of this property. The landlord submitted that he was residing with his family in the house of his cousin-brother at property no. 203, Gajju Katra, Shahdara. He required the tenanted premises for himself and his family which consisted of his wife, one married son and daughter-in-law and two growing grand children. Besides, he had three married daughters who frequently used to visit him.

3. In leave to defend, the petitioner had stated that the respondent/landlord was owner of the property no. 203, Gajju Katra, Shahdara and he was in occupation of 5 rooms in this property. Besides, he was also having a DDA flat in Rohini which was lying vacant. The landlord had earlier also filed two cases against him for eviction but did not succeed. The landlord wanted to re-let the premises at higher rent as the rent was only a meager amount of Rs.12.75/- per month.

4. The landlord filed a counter affidavit along with documents. The landlord denied that he was owner of the property no. 203, Gajju Katra, Shahdara and stated that the

house no. 203 stood in the name of late Sohan Pal and Gopi Ram originally. Thereafter, the property was partitioned among them and at present the sons and families of Sohan pal and Gopi Ram were owning the property and living there. He placed on record, copies of Election I-card, Ration I-card and office I-card of Laxman, son of Gopi Ram and Hari Chand, son of Sohan Pal. He also placed on record registered sale deed dated 15.11.1946 in favour of Gopi Ram and Sohan Pal in respect of this property and a partition deed dated 6th April, 1981 qua this property showing that the property was partitioned among the two. He also placed on record a copy of order dated 31.5.1968 passed by Sh. R.L. Gupta, the then sub-Judge in suit no. 178/1968 showing that the property belonged to these two persons and was partitioned among them. The landlord also denied that he had any property in Rohini. The landlord also placed on record the documents showing his retirement. On the other hand, tenant failed to place on record any document showing that the landlord had any property in Rohini or he was owner of the property no. 203, Gajju Katra, Shahdara.

5. The learned ARC concluded that in view of the fact that the landlord was living at the mercy of his relatives as a licensee and he was having no other property, his requirement of the property in question was bonafide and the fact that he had retired from Government service was also not disputed, thus no triable issue had been raised.

6 The order of the learned ARC is challenged on the ground that learned ARC failed to appreciate that the landlord gave false, frivolous and baseless facts. The landlord was in possession of property no. 203, Gajju Katra, Shahdara in his own right. He had not placed on record a notice of eviction from the owner of the property no. 203, Gajju Katra, Shahdara. The accommodation in occupation of the landlord in 203, Gajju Katra, Shahdara was sufficient for his family. He had been living there before retirement and after retirement his requirement has not increased. The Trial Court failed to consider that sufficient material was placed by the tenant to raise triable issues and the tenant was not supposed to prove the issues before grant of leave to defend. 8. The tenant is not entitled to get leave to defend merely by filing an affidavit and alleging certain facts. A tenant may allege that the landlord was owner of XYZ property without himself believing that he was owner of the property. Whenever a tenant alleges that the landlord was owner of the another property, the tenant is supposed to place before the Court some material to show that the landlord was owner of that property.

7. In the present case, the tenant had stated that landlord was owner of 203, Gajju Katra, Shahdara without any document in his possession, only because landlord was living there.

8. On the other hand, landlord has placed before the Court all documents about the title and ownership of this property showing that landlord was living there only as a licensee and he had no right to live there. The fact that the landlord has retired was not disputed. The extent of family of the landlord is also not disputed. Since the landlord was living in the present premises only as a licensee at the mercy of his cousin brothers, the requirement of his own premises for living has to be held as a bonafide requirement. There is no jurisdictional error in the order passed by the learned ARC nor the order of

the learned ARC suffers from any material irregularity. I find no force in this petition.
The petition is hereby dismissed.

January 06, 2009

Sd./-
SHIV NARAYAN DHINGRA J.