

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : EVICTION MATTER

Dated of Reserve: July 03,2008

Date of Order: July 28, 2008

RCR No.16/2008

Sahu Basheshar Dayal Bankers & Anr.

...Petitioners

Through: Mr. Arvind Nigam with Mr.
Rakesh K. Singh, Advocate.

Versus

Sujata R. Nath Decd. Thr. LR's

...Respondent

Through: Mr. Neeraj Kishan Kaul, Sr.
Advocate with Mr. Nitin Soni, Advocate

SHIV NARAYAN DHINGRA J.

1. The petitioner, who was a tenant in the first floor of the premises bearing No.2-B, Commissioner Lane, (Kirpa Narain Marg), Delhi-110006 on a monthly rent of Rs.800 per month since 1971, has preferred this revision petition against the order of learned Rent Controller dated 13th November 2007 whereby he dismissed the application of the petitioner for leave to defend. The land lady had filed the eviction petition against the petitioner under Section 14(1) (e) of the Act claiming that she required the premises for her bona fide requirements.

2. The land lady contended that she was in possession of first floor and second floor of her premises. The accommodation available with her was three rooms with a drawing-cum-dinning room on the first floor and store room and a tin shed on the second floor. She was having a mentally retarded son incapable of looking after himself, therefore, one of her grandchildren namely Udit, was residing with her so as to help her mentally retarded son, who required one attendant. She(landlady) herself was of old age and was suffering from cancer and other diseases. She had to go through chemotherapy twice a month. It had become increasingly difficult for her to climb to the first floor. Her married daughters were helping her in her daily rituals by coming and staying with her. The married daughters have minors sons and as and when they come, the landlady required a guest room and a study room for the children of her married daughters.

3. The leave to defend was sought by the petitioner on the ground that the landlady had filed another petition under Section 14D of the Act, which was pending between the parties since long. The landlady was not expediting the disposal of that petition and the instant petition filed during pendency of the earlier petition, was not maintainable. The

other ground taken was that the landlady had other accommodation at her disposal. She could easily live along with her relatives and her retarded son on the first floor and second floor. She also had premises at 6-Commissioner Lane where she had five bedrooms available with her.

4. The pendency of the petition under Section 14 D of the Act was considered no ground to grant leave to defend. The other contentions raised by the petitioner were also found untenable so as to grant leave to defend. The learned trial court observed that the petitioner's contention that the adjoining property at 6, Commissioner Lane, was available to the landlady, was not correct. It was admitted by the petitioner that a play school had been running at the property 6, Commissioner Lane earlier. The photographs of the property had been filed by the landlady to show that the portion fallen to her share consisted of only two sheds which were not habitable and could only be used for running a play school. The petitioner had not filed any site plan in order to controvert the photographs, hence the learned Rent Controller came to conclusion that the portion of the premises at 6, Commissioner Lane, available to the landlady, was not a suitable accommodation. The learned ARC also observed that the landlady cannot be asked to shift to other property merely for the convenience of the tenant. The other property was required by her either for selling the same so as to meet the huge expenses being incurred by her on her cancer treatment or to let out the premises for running a school so as to have financial assistance.

5. Learned ARC found that the requirement of the landlady was bona fide. She was suffering from cancer and was of old age. She could not be compelled to live on the first floor, as it had become increasingly difficult for her to climb the stairs.

6. It was not disputed before the ARC that the landlady was suffering from cancer. She had placed on record documents showing that she was undergoing cancer treatment. The ARC also concluded that her mentally retarded son would require one bedroom and the grandchild of the landlady, who was living in the premises so as to help the mentally retarded son, would also require one bedroom. Her married daughters, who were coming to help her, would also require at least one bedroom, one study room. Thus, the requirement of the family was four bedrooms, one guest room, one study room for the children of her married daughters who come and stay there with their moms when their moms come for helping the landlady. The learned ARC found that the landlady has successfully shown that her requirements were bona fide and the petitioner had failed to show sufficient grounds so as to controvert the landlady and entitle him a leave to defend.

7. The order of eviction was passed on 17th November 2007 in favour of landlady. However, the landlady died of her ailment before she could take benefit of the order. She died on 17th January 2008. It is submitted by the petitioner that in view of the changed circumstances and death of landlady, this eviction order should be set aside. This issue has been set at rest by successive recent decisions by the Supreme Court. In *Usha P. Kuvelkar v. Ravindra Subrai Dalvi* 2008(1) RLR 63, the Supreme Court observed as under:

“It was tried to be argued by the learned counsel for the respondent that since the landlord had died, the need had expired with him and that the question will have to be examined again regarding the bonafide personal need of the landlord. The question is no more res integra and is covered by the decision of this Court in Shakuntala Bai & Others vs. Narayan Das & Ors. [(2004) 5 SCC 772]. This Court has observed:

“...The bonafide need of the landlord has to be examined as on the date of institution of the proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.”

In the same decision a contrary note expressed by this Court in P.V. Papanna v. Padmanabhaiah [(1994) 2 SCC 316] was held to be in the nature of an obiter. This Court in Shakuntala Bai & Ors. (supra) referred to the decision in Shantilal Thakordas v. Chimanlal Maganlal Telwala [(1976) 4 SCC 417] and specifically observed that the view expressed in Shantilal Thakordas case did not, in any manner, affect the view expressed in Phool Rani v. Naubat Rai Ahluwalia [(1973) 1 SCC 688] to the effect that where the death of landlord occurs after the decree for possession has been passed in his favour, his legal heirs are entitled to defend the further proceedings like an appeal and the benefit accrued to them under the decree. Here in this case also it is obvious that the original landlord Prabhakar Govind Sinai Kuvelkar had expired only after the eviction order passed by the Additional Rent Controller. This is apart from the fact that the landlord had sought the possession not only for himself but also for his family members. There is a clear reference in Section 23 (1) (a) (i) of the Act regarding occupation of the family members of the landlord. In that view the contention raised by the learned counsel for the respondent must be rejected.”

8. In 2007(2) RLR 481 Carona Ltd.Vs.Parvathy Swaminathan and Sons the Hon'ble Supreme Court had consider the impact of subsequent events on the eviction decree and held as under:

37. In our judgment, the law is fairly settled. The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit. Thus, if the plaintiff has no cause of action on the date of the filing of the suit, ordinarily, he will not be allowed to take advantage of the cause of action arising subsequent to the filing of the suit. Conversely, no relief will normally be denied to the plaintiff by reason of any subsequent event if at the date of the institution of the suit, he has a substantive right to claim such relief.”

9. I consider that merely because the landlady has died, the eviction order passed by learned ARC cannot be buried or set at naught. The LRs have a right to reap the benefits of the decree. In the instant case, the requirements considered by the learned ARC were of the landlady and her family. The main member of her family living with her was a mentally retarded son who needed care and attention apart from landlady's own care and attention. The visits and stay of her daughters and other relatives would be more frequent now since the mother (landlady) of the mentally retarded son has died and he would need care, love and affection of sisters and other relatives. Irrespective of the fact that the landlady has died, the eviction order shall remain valid and enforceable.

10. The plea of the petitioner that the learned ARC had not considered the accommodation available at 6-Kirpa Narain Marg is a baseless plea. The learned trial court had considered the photograph of the property and the accommodation available. He found the same unfit for habitation and only fit for running a play school. The property had earlier been used for running a play school. A landlady is not supposed to close a source of her income and suffer so that requirements of the tenant can be fulfilled. The landlord/landlady has a right to life and earn livelihood by either running a school in the property which was earlier being used for running a school or by selling the property so as to meet the expenses on her ailments and family. The tenant has no right to tell the landlady that she should not run the school in the other premises available with her and should shift to that premises.

11. The revisional jurisdiction of the High Court under Section 25B (8) does not warrant that High Court should enter into merits of the case and re-appreciate the evidence so as to take different view on facts as if it were a court of appeal. The High Court is only required to test the order of the ARC on the touch stone "whether it is according to law or not". In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*, AIR 1999 SC 2507, the Hon'ble Supreme Court observed as under:

"11. Section 25-B of Delhi Rent Control Act, 1958 finding its place in Chapter III-A of the Act was inserted into the body of the main Act by Act No .18 of 1976 with effect from 1.12.1975. It provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bona fide need. Obviously, this ground for eviction of the tenant has been treated on a footing different from the one on which other grounds for eviction of the tenant stand. Section 25-B is a self-contained provision in the sense that remedy against an order passed by the Rent Controller thereunder is also provided by that provision itself. Sub-section (8) provides that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in Section 25-B, provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law (or not), call for the records of the case and pass such order in respect thereto as it thinks fit'. The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller in according to law'. The revisional jurisdiction exercisable by the High Court under Section 25-B (8) is not so limited as is under Section 115 CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the

order of the Rent Controller on the touchstone of "whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion from the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-Section (8) of Section 25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law. [See; Sarla Ahuja Vs. United India Insurance Co .Ltd. - (1998) 8 SCC 119 and Ram Narain Arora Vs. Asha Rani and Ors. - (1999) I SCC 141.]”

12. The order of the learned ARC does not suffer from any infirmity neither the order is based on wrong premises of law nor it lacks reasoning and objectivity so as to warrant interference by this Court. The bona fide or genuine requirement of a landlord or landlady has to be assessed keeping in view the peculiar facts and circumstances of each case. The landlady or landlord who is hale and hearty and can take care of himself or herself, may not have bonafide need to live on the ground floor and may not have a bonafide need to take help of his relatives but when a landlord or landlady becomes old and is suffering from diseases, his or her needs of living at ground floor and taking assistance from other family members who are young and can stay with him, is a bonafide need and the requirements of his sons and daughters who would come and stay along with grandchildren, has to be considered by the Courts. The Court cannot impose the tenant's view of bonafide necessities on the landlady or landlord. I find that the learned ARC rightly came to conclusion that the needs were bonafide.

13. I find no force in this petition. The petition is hereby dismissed. No orders as to costs.

July 28, 2008

Sd./-
SHIV NARAYAN DHINGRA J.