

(2002) 09 DEL CK 0068

Delhi High Court

Case No: C.R. 78 of 1998

Shri. Santosh Mehra

APPELLANT

Vs

Shri. Malik Singh Sahni

RESPONDENT

Date of Decision: Sept. 27, 2002**Acts Referred:**

- Delhi Rent Control Act, 1958 - Section 14(1)

Citation: (2002) 100 DLT 713 : (2003) 66 DRJ 232**Hon'ble Judges:** S.B. Sinha, C.J**Bench:** Single Bench**Advocate:** R.L. Kohli and Ashima Gupta, for the Appellant; J.M. Sabharwal and Rajan, for the Respondent**Final Decision:** Dismissed

Judgement

S.B. Sinha, C.J.

This civil revision petition is directed against an order dated 7th October 1997 whereby and whereunder the eviction petition filed by the petitioner herein purported to be filed in terms of Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter called and referred to for the sake of brevity as "the said Act") was dismissed.

2. The fact of the matter lies in a very narrow compass. The petitioner's father allegedly unauthorisedly inducted one Malik Singh Sahney as a sub-tenant in the year 1978. The tenancy was earlier created for residential purpose. The said tenant and his son were residing in the premises.

3. Eviction petition was filed by the petitioner's father against his tenant, inter alia, on the ground that the respondent herein had been unlawfully carrying on commercial activities in the said premises. In the said application, (since marked as Ex. RX-7), it was clearly stated that the respondents had been carrying on business which would mean that the premises in question was being used for commercial

purposes.

4. It is not in dispute that the said suit was ultimately withdrawn and the parties thereto entered into an agreement in terms whereof the petitioner's father accepted the respondent herein as a tenant. The eviction petition was filed on the ground of bona fide requirement on the part of the landlord.

5. The learned Additional Rent Controller although decided the other issues in favor of the petitioner, as regards the purpose of letting out of the suit premises, he opined that the purpose of demise was commercial and not residential and in that view of the matter, Section 14(1)(e) of the Act would not be applicable.

6. Mr. R.L. Kohli, the learned counsel appearing on behalf of the petitioner would submit that the learned Additional Rent Controller failed to take into consideration the relevant documents in arriving at the aforementioned conclusion. In this connection, the learned counsel, inter alia, drew this court's attention to the written statement filed by the respondent wherein he denied and disputed the allegations made by the petitioner herein that the premises in question was not being used other than the residential. According to the learned counsel, Therefore, the respondent must be deemed to have admitted that the purpose for which the said tenancy was given was residential only. Drawing this court's attention to the fact that the learned Additional Rent Controller while arriving at the said findings, inter alia, relied upon affidavits, agreements and rent receipts which are marked RX-11 and RX-12 and R-1, R-2 and R-3 and failed to take into consideration the same in their proper perspective. It was submitted that from the order sheet of the earlier suit, as contained in Ex. R-5 it would appear that even on 6th January 1978, the parties prayed for a long adjournment on the ground that a compromise was to be arrived at but RX-11 dated 19th January 1977 and RX-12 at p. 491 of the trial court record were purported to be executed on 20th April 1976 and 14th January 1977 respectively. The learned counsel would contend that had those documents seen the light of the day, it was not necessary to pray for an adjournment in the suit in January, 1978 on the ground that the settlement was yet to be arrived at.

7. As regards rent receipts, viz. the rent receipts being Ex.R1, R2 and R3 dated 7th July 1976, 22nd April 1977 and 7th June 1977 which are respectively at p. 469-473 of the trial court records, the learned counsel would contend that there was no counterfoil in relation thereto nor the receipts in question contained any numbers. The learned, counsel further drew our attention to the statements of the respondent wherein he had stated that the compromise was entered into on the basis of a compromise deed but the same had not been placed on record. In the afore-mentioned situation, the learned counsel would contend that having regard to the fact that even on 25th January 1978, no compromise was filed, would clearly go to show that the afore-mentioned agreements and the rent receipts did not exist.

8. The learned counsel would contend that this court has jurisdiction even to re-appraise the evidence on the question of letting purpose and in support of the said contention reliance has been placed on *Abnash Chander Sehgal etc. v. Dr. V.K. Kharbanda* AIR 1988(1) CJ 247.

9. Mr. Sabharwal, the learned counsel appearing for the respondents, on the other hand, would submit that admittedly the earlier eviction suit was filed in the year 1974 wherein having regard to the admission made by the father of the petitioner, there cannot be any doubt whatsoever that he had knowledge that the premises in question was being used for commercial purposes. The learned counsel has drawn our attention to the deposition of AW-1 wherein he admitted that the respondent was using the said premises from the very inception of the tenancy. It was submitted that the rent receipts were issued by the mother of the petitioner and not by his father. It was further contended that the signature of the petitioner's father on the disputed documents had been accepted and as such, the same can not be said to be forged or fabricated. The learned counsel would argue that having regard to the fact that the petitioner or his father did not object to the user of the premises for commercial purposes for a long time, it must be presumed that he permitted the same to be done and in that view of the matter, the doctrine of acquiescence shall apply.

10. Section 14(1)(e) of the Act reads thus:

"14. Protection of tenant against eviction. -- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) to (d)

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;

Explanation -- For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

(f) to (i)....."

11. In terms of the afore-mentioned provision, a landlord is not only required to show that he has a bona fide requirement of the premises in question for his own use or the use of his family members, he must further establish that the tenancy had been created only for residential purpose. A tenancy which has not been created for a residential purpose or the user therein has been changed with the knowledge of the landlord, a petition u/s 14(1)(e) of the said Act would not be maintainable. The Additional Rent Controller relied upon the deposition of AW-2, the mother of the petitioner, who accepted the signature to be of her husband. The petitioner also admitted signature of his father on affidavit R-5 dated 6th January 1978 at p. 489. He however, in his cross-examination first admitted the signature of his father and then denied it. AW-2 in her evidence stated that she could not tell as to what were the terms and conditions for which the premises was let out for the first time. She further stated that after 1970, her husband was not in a position to write anything because of his poor health. She further stated that her husband was bed-ridden from 1970 till 1982. As noticed hereinbefore, she admitted her husband's signature in Ex. RX-11, RX-12 and R-5. Having regard to the fact that the signatures of Shri Inder Singh Mehra on the said documents were admitted, the learned Additional Rent Controller rightly held that the said documents cannot be said to be forged and fabricated.

12. It may be, as has been submitted by Mr. Mehra, that from the order sheet of earlier execution petition, it would appear that till 6th January 1978, the compromise had not been entered into which would otherwise have been indicated to show that the agreements for forged and fabricated but having regard to the nature of the evidence on record and particularly in view of the signature of the executor stands admitted, we are of the opinion that no case has been made out to hold that the findings of the learned Additional Rent Controller are incorrect. We do not know under what circumstances, the said statements were made. The possibility that the parties were yet to execute a deed of settlement containing all the terms and conditions Therefore cannot be ruled out.

13. So far as the statement made in the written statement filed by the respondent herein is concerned, the same was in response to the allegation made by the petitioner herein that the said premises was not being used for residential purpose. In that view of the matter, the said pleadings on the part of the petitioner shall also be binding on him.

14. Furthermore, in this case, the materials on record clearly go to show that the petitioner at all material times was and still is aware of the fact that the respondent had been using the premises for commercial purposes. User of the tenanted premises for commercial purpose for a long time would give rise to a presumption that the premises in question was let out for the said purpose alone. In the instant case, as noticed hereinbefore, in the eviction petition filed by the father of the petitioner, an absolute, clear and unequivocal statement was made that the

respondent was using the premises in question for commercial purposes. It also stands admitted that in the premises in question, business in being carried out in the name and style of M/s. Paul Brothers, Parsi Hind Agency and Sethi International Enterprises.

15. In that view of the matter, there cannot be any doubt whatsoever that the petitioner and/or his father had all along knowledge that the premises in question was being used for commercial purposes.

16. In [Smt. A.N. Kapoor Vs. Smt. Pushpa Talwar](#), the Apex Court clearly held:

"8. If the landlord is in a position to establish that the premises have been let for residential purposes and that he has never consented to the user of the premises for any other purpose, the mere fact that such premises have been incidentally used for commercial or other purposes would not change or affect the residential character of the premises. In respect of such premises, it is open to the landlord to prove his bona fide requirement and thus establish the ground mentioned under Clause (e). On the other hand, if the premises have been regularly and openly used for non-residential purposes, the knowledge and consent of the landlord, unless proved to the contrary, are ordinarily would be of no avail to save the ground under Clause (e).

9. In the present case, it is not disputed that the premises had been let for residential purposes, but it is also beyond doubt that to the knowledge of the landlord the premises have been regularly used by the tenant not only for her own residence but also for the foreign guests. The landlord has at all material times known or is presumed to have known that foreign students have been staying with the appellant as her paying guests and that she has been ever since 1961 running a boardinghouse in the premises. At no time did the landlord object to the user of the premises by the appellant for such purpose.

10. The continued user of the building ever since 1961 for the purpose of lodging paying guests shows that the respondent landlord and her father have not only been aware of such user of the building, but have also impliedly consented to such user. This presumption is irresistible from the evidence on record. Such user takes the premises in question out of the ambit of "premises let for residential purposes" so as to exclude the ground contained in Clause (e)."

17. In view of the afore-mentioned authoritative pronouncement, we are of the opinion that no case has been made out for interference with the impugned judgment.

18. For the views we have taken, it is not necessary to refer to the decision of this court in *Abnash Chander Sehgal* (supra).

19. This revision petition is dismissed but in the facts and circumstances of this case, there shall be no order as to costs.