

(2014) 05 DEL CK 0008

Delhi High Court

Case No: RC. Rev. 137/2012 and CM Appl. 5502/2012

Kedari Lal Gupta

APPELLANT

Vs

C.B. Singh Raja

RESPONDENT

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**Date of Decision:** May 5, 2014**Acts Referred:**

- Delhi Rent Control Act, 1958 - Section 14(1)(e), 25B

**Citation:** (2014) 3 ILR 1797**Hon'ble Judges:** Najmi Waziri, J**Bench:** Single Bench**Advocate:** Tanuj Khurana, Honey Jain, Ashish Batra and Gaurav Malik, Advocate for the Appellant; Ram Lal, Advocate for the Respondent**Final Decision:** Allowed

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### Judgement

Najmi Waziri, J.

The petitioner/landlord is aggrieved by an order dated 14.2.2012 whereby the respondent/tenant was granted leave to defend, in a petition filed u/s 14(1)(e) of the DRC Act, 1958 seeking eviction of the respondent/tenant from the tenanted premises i.e. property bearing No. 106, Ground Floor, Janta Flats, GTB Enclave, Delhi-110093. The case of the petitioner is that he had only two residential premises; one of which has been sold out and the other is occupied by the respondent. He is presently living in a rented accommodation and is having to suffer the tenancy at a mere rent of Rs. 550/- per month, whereas the landlord himself is having to pay an amount of Rs. 1,500/-. He contends that the impugned order erred in granting leave to defend, inasmuch as the application for leave to defend, along with the affidavit, discloses no triable issues; that the issues purporting to be triable are ex facie vague and cannot be deemed to be of any substantive value which would prima facie lead to denial of the issuance of an eviction order. He contends that the issues raised in the leave to defend were as under:-

i) That the so-called sale of House No. 1560, Janta Flats, GTB Enclave in favour of Mr. Nirmal Garg was a sham. In response, the learned counsel for the petitioner submits that the sale was by way of a registered sale deed and it would not be open to a tenant to question the legitimacy of the sale documents. This Court is mindful of the settled law that the question of legitimacy of a registered sale deed cannot be determined at the instance of a tenant in a petition under Sections 14(1)(e) and 25B of the DRC Act.

ii) The tenant then argued that the landlord's alleged tenancy apropos House no. 1483 Janta Flats, GTB Enclave too is a sham and is fabricated. However, this Court is of the view that the said contention is self-destructive since the tenant does not disclose the address where the landlord is residing. After all a person would be residing at some address. If the tenant argues that the landlord is not resident of the address claimed by the latter, then the tenant must furnish the actual address with documents to disprove the landlord. Mere denial of the residential address as claimed by the landlord would not be sufficient.

iii) The tenant argued that the landlord has five houses which are in his name. However, the details of the same were not given.

iv) Finally, the tenant argued that none of the relatives of the landlord were dependent upon him for accommodation. Therefore, the alleged need was not bona fide.

2. The learned counsel for the petitioner submits that the Trial Court had fallen into error in assuming that three flats which are said to be owned by the petitioner are not even mentioned in the leave to defend. In his reply, to the application for leave to defend, the landlord has categorically denied that he had three flats bearing Nos. 1559, 1560 & 1670 in GTB Enclave. He submits that the petitioner was residing in a rented accommodation, i.e. property No. 1483, 1st Floor, Janta Flats, GTB Enclave, Delhi-110093 because of a strained relationship with his family. He further submits that the petitioner did not have sufficient accommodation for himself and that after the demise of his brother Gopal, the latter's widow and his three children were dependent upon him. Furthermore, it is submitted, the petitioner being the elder member of the family had social responsibilities towards the care and accommodation of the deceased brother's family of four persons.

3. The learned counsel further submits that the impugned order erred inasmuch it concludes, quite contrary to the settled law, that it is for the landlord to show that he did not have sufficient accommodation and that the flats mentioned in the leave to defend were owned by some other person(s). He relies upon seven judgments, which have been dealt with in the impugned order, to emphasise that it is not for the landlord to prove beyond a prima facie case, at the stage of consideration of the application for leave to defend. He submits that the courts are to lean in favour of the presumption that the landlord's need was bona fide unless, the tenant shows

something to the contrary.

4. He also relies upon this Court's judgment in [Jitender Kumar Jain and Others Vs. J.K. Horticultural Produce Marketing and Processing Cor. Ltd.,](#). In particular, reliance has been placed on paragraph nos. 4 and 5, which reads as under:-

The accommodation available with the petitioner at Greater Kailash is one drawing-cum-dining room and three bed rooms. By no stretch of imagination such an accommodation be treated or deemed as reasonable, suitable or sufficient for the petitioners. Family of petitioner no. 1 consists of his wife, married son and unmarried daughter. Similarly the family of the deceased brother consists of his wife, two married daughters and one married son. To say that three bed-rooms accommodation for the size of such a family is sufficient and reasonable is to negate the concept of requirement of the premises by the landlord who at given point of time wants to live comfortably and not in crowded conditions.

It appears from the impugned order that the learned ARC was more swayed and influenced from the allegations that the petitioners have concealed the question of vacation of the first floor premises. The fact remains that the premises on the first floor was not owned by the petitioners. It was bequeathed by their mother in favour of their sister. Any property or accommodation over which the landlord has no legal control or legal right to occupy cannot be included in the accommodation available with such a landlord for the purpose of ascertaining the requirement or need.

5. In reply the learned counsel for the respondent refers to a statement of the landlord where he has admitted as under:-

I have only two houses in Delhi. My other family members are having five flats in the name in DDA Janta Flats, GTB Enclave, Delhi. My family and myself have own three flats in the same vicinity. Two flats are adjoining are each other and third is in the same street at some distance.

6. The counsel for the respondent further submits that this admission was available to the Trial Court at the time of consideration of the leave to defend application and it is only after having appreciated the facts & circumstances of the case that the leave was granted. He submits that the impugned order does not suffer from any infirmity. However, this Court finds that the aforesaid argument of the respondent is specious since a perusal of the document would show that what has been admitted by the landlord is his ownership of only two premises, i.e., the one which was with him and the other which was occupied by the tenant. The other properties were not owned by him but were owned by his relatives. The adjoining flats could well have been put to use as a single unit depending upon the requirement of his extended family. However, it cannot be the case that a relative's property can be deemed to be the property of the landlord. It is settled law that the property which is not in possession of the landlord cannot be deemed to be an alternative suitable accommodation to be taken into consideration as a defence by the tenant opposing

his own eviction. Logically, therefore, the property which was not owned by the landlord cannot be considered as an alternative accommodation available to him. This Court is of the view that the leave to defend application did not disclose any triable issue especially since the record before the Trial Court stated that the landlord owned only two premises. Thus, leading to a denial of the eviction in the summary procedure envisaged in Section 25B of the Delhi Rent Control Act, 1958. A landlord cannot be made to lean upon his relatives to provide him accommodation. It is not for a tenant to dictate how else the landlord could adjust himself so as to obviate the need of the tenant's eviction. Evidently, the Trial Court fell into an error in considering such properties which were not available to the landlord as being alternate suitable accommodation. In the circumstances there were obviously no triable issues and hence the grant of leave to defend the eviction petition was unwarranted. In view of the aforesaid discussion, the petitioner's bona fide need is clearly made out.

7. In the circumstances the petition is allowed and the impugned order is set aside and the respondent is directed to be evicted from premises No. 106, Janta Flats, G.T.B. Enclave, Delhi-110093.

8. No orders as to costs.