

(2016) 05 DEL CK 0242

DELHI HIGH COURT

Case No: RC. REV. 158 of 2015 and C.M. No. 5867 of 2015

Roger Samion

APPELLANT

Vs

Rashida Begum

RESPONDENT

Date of Decision: May 4, 2016

Citation: (2017) 1 RCRRent 123 : (2016) 2 RentLR 190

Hon'ble Judges: Mr. V.K. Shali, J.

Bench: Single Bench

Advocate: Mr. Raman Kapur, Senior Advocate with Mr. Gursharan Singh, Advocate, for the Respondent; Ms. Rajni Singh, Advocate, for the Petitioner

Final Decision: Disposed Off

Judgement

V.K. Shali, J. - This is a revision petition filed by the petitioner/tenant against the order dated 22.01.2015 by virtue of which the leave to defend of the petitioner has been rejected and an order of eviction has been passed.

2. Briefly stated the facts of the case as given in the petition are that respondent/landlady is the owner of premises comprising two rooms, two bath rooms, one WC along with open terrace, bearing municipal No.B-16/1, first floor, Connaught Place, New Delhi, hereinafter referred to as the tenanted premises. The said tenanted premises were let out to one Charles Samion way back in 1933 or so and the present monthly rent of the premises is stated to be Rs. 86/- per month excluding electricity and water charges. Charles Samion died sometime early 50's and he was survived by two sons Harry Samion and Joseph Samion. Harry Samion attorned the present respondent as the landlady and continued to pay rent @ Rs. 86/- to the respondent/landlady. Harry Samion died in the year 2005 and he was stated to be residing along with his family in the tenanted premises. After his death Cyril Samion son of Harry Samion was accepted to be the tenant by the respondent/landlady as there was no other legal heir of Harry Samion living along with him at that point of time. Cyril Samion was having three sisters and one brother. All sisters were married and brother by name of David had unfortunately

expired.

3. Respondent/petitioner in her petition stated that she herself is aged 68 years, her husband is around 70 years and she has two sons Mohd. Zafar Yamin and Mohd. Firoz Yamin both of whom are married and are having their wives and children. She has also stated that there are four grandchildren in the age group of 16, 4 and 14 and 3 years respectively. Thus the family consists of almost ten members. She has stated that she is living in her first floor flat measuring around 1260 sq. ft. consisting drawing room, dining room, two bed rooms, one pooja room, one kitchen, apart from verandah etc. and an open terrace at property No.8/48, Malcha Marg, New Delhi which is grossly insufficient to meet the requirement of the entire family. She has accordingly set up a claim of her bona fide requirement of six bed rooms, six bath rooms, one drawing room, kitchen, prayer room, two servant rooms, etc. which obviously, cannot be met without seeking the eviction of the present petitioner from the tenanted premises. It has been stated that in case the tenanted premises are vacated she will ask her younger son, namely, Mohd. Firoz Yamin to shift to the premises at Connaught Place, New Delhi along with his wife and children.

4. So far as the availability of alternative accommodation is concerned, it has been claimed by her that she does not have any other accommodation apart from the flat at Malcha Marg, New Delhi and the tenanted premises. In addition to this, she has couple of rooms without any kitchen in building adjoining to the tenanted building known as property No. B-16/9, first floor, Connaught Place, New Delhi. She has stated that these two rooms with one small room and WC and open courtyard in property No. B-16/9, first floor, Connaught Place, New Delhi cannot be used as residential premises because there is no provision for the kitchen.

Though the entire building is claimed to be owned by her but it has been stated that the entire building is actually a commercial building. Accordingly, she has prayed for eviction of the present petitioner from the tenanted premises.

5. As stated above, the petition was filed by the respondent/petitioner against Cyril Samion, who had attorned the respondent as the landlady but the respondent has stated that as abundant caution, she had also made two of the married sisters of Cyril Samion, named, Mrs. Yvonne Bijlani and Mrs. Eidth Nath as respondents because they never wanted any technical objection to be taken by the legal heirs of Harry Samion who was actually a tenant after the death of his father Cyril Samion.

6. So far as the present petitioner Roger Samion is concerned he is the son of one Joseph Samion, who was the real brother of Harry Samion and the son of the original tenant Cyril Samion who was inducted way back in early 30s.

7. Roger Samion had filed an application under Order 1, Rule 10 CPC for being impleaded as a party which was permitted by the learned ARC. Thereafter he filed the leave to defend application seeking leave to contest on the ground denying the ownership of the respondent/petitioner in respect of the property in question and

also assailing the bona fides of the respondent/petitioner to retrieve the possession as well as the factum that she had ample suitable alternative accommodation available to her to meet her requirement. It was alleged by respondent No.1/landlady that as a matter of fact there was a collusion between the respondent/petitioner and his cousin Cyril Samion against whom the petition was originally filed. He accordingly sought leave to defend on that score.

8. It may also be pertinent here to mention that during the pendency of the petition before the learned ARC the son of Harry Samion, Cyril Samion and his sister voluntarily surrendered possession of the tenanted premises except one room and one bath room which was under the occupation of the present petitioner as they had arrived at some kind of understanding or a settlement. So far as the leave to defend application of the present petitioner is concerned that was considered by the learned ARC on merits and after hearing the learned counsel for the parties it not only rejected the application seeking leave to defend but also observed that the averments made in the application do not raise any triable issue which may warrant the grant of leave to the petitioner.

9. I have heard Ms. Rajni Singh, the learned counsel for the petitioner as well as Mr. Raman Kapur, the learned senior counsel for the respondent/landlady. I have carefully considered their respective submissions.

10. One of the grounds which has been urged by the learned counsel for the petitioner is that it has alleged collusion between the present respondent and Cyril Samion and their sisters who have purportedly surrendered the accommodation to the respondent/landlady with a view to oust the present petitioner. It has been urged by Ms. Singh that so far as Roger Samion, the present petitioner is concerned he has deliberately not been made a party only with a view to seek his eviction surreptitiously from the suit property. It has been stated by her though after the death of Charles Samion that his two sons, namely, Harry Samion, predecessor-in-interest of the Cyril Samion and the Joseph Samion, the father of the present petitioner were the joint tenants in respect of the suit property but after the death of Harry Samion and James Samion, the present petitioner along with Cyril Samion became the joint tenant in respect of the suit property. It has been stated by her that he was paying his share of the rent to Cyril Samion who was thereafter paying the same to the respondent and therefore he too had a right to hold the premises and defend his possession.

11. So far as the bona fides of the respondent/landlady in seeking retrieval of possession of the premises is concerned, it was urged by Ms. Singh that it was a case of additional accommodation. It is urged that the Supreme Court in case title **S.M. Mehra (Dr.) v. D.D. Malik, (2001) 1 SCC 256** has clearly laid down that wherever an additional accommodation is sought, the leave to defend must be given. No doubt, in case of additional accommodation, ordinarily leave to defend should be given but this is not a case of additional accommodation in the sense that

additional accommodation is not required in the same building. The landlady is saying that they are a family of ten persons which is not disputed and in case, the tenanted premises once vacated, a few persons would shift for the new accommodation.

12. It has also been contended by her that there is an alternative accommodation available to the respondent/petitioner in the adjoining building known as property No. B-16/9, where she is in occupation of the two vacant rooms apart from store, verandah, bath room, etc. which is not being occupied by her yet she has chosen to file the present petition against the petitioner.

13. Mr. Kapur, the learned senior counsel for the respondent/petitioner has contested vehemently the submissions and has stated that the petitioner has not disputed the number of family members of the respondent/landlady and the accommodation which is available to her. It is truthfully disclosed by her in her petition itself. She has stated that she has a flat measuring approximately 1300 sq. ft. at Malcha Marg, New Delhi where ten people are residing in a cramped manner. It has also been stated by him that the accommodation which the respondent/landlady is claiming to be available to her at B-16/9, Connaught Place, New Delhi is concerned, the entire building is a commercial building and the names of the tenants to whom the properties have been let out, have been given by the respondent/landlady. These names have been refuted by the petitioner/tenant. It has been stated by the petitioner/tenant that the respondent/landlady has stated that she has available to her two rooms, with store room, etc. which is not able to meet her requirement for residential purposes for two reasons; firstly, that it does not have the kitchen and secondly, that the whole building is being utilised for commercial purpose and therefore is not conducive to be used as a residence.

14. I have carefully considered the submissions made by the respective sides and gone through the judgment of the learned ARC.

15. At the outset it is pointed out that the present revision petition which has been filed is under Section 25-B(8) of the Rent Act and this point is no more res integra that while considering the revision in exercise of the aforesaid provision, the scope of interference by the High Court is very limited and only aspect which the High Court is expected while examining the judgment passed by the learned ARC rejecting the leave to defend application is as to whether there is any illegality, impropriety or any jurisdictional error in passing the judgment by the learned ARC by not giving the leave to defend to the petitioner/tenant.

16. Before a decree of eviction on the ground of bona fide requirement is passed, the landlord/landlady is suppose to satisfy the following four ingredients;

(i) That the petitioner who has filed the eviction petition is not only the landlord or the landlady, as the case may be, but also the owner of the suit property.

(ii) That the purpose of letting should not be in dispute;

(iii) That the premises in question is required bona fide by the petitioner/landlord or any of his/her dependant family members; and

(iv) Lastly, that the petitioner does not have any alternative suitable accommodation available to him/her.

17. Simultaneously, the question of grant of leave to defend by the Court has been subject matter of the number of judgments by the Apex Court and the point is no more res integra that before the leave to defend is granted to a tenant, he must make out a triable case. The triable case has been interpreted to mean that the tenant must make out a case by way of a Affidavit and the documents filed by him by filing a leave to defend and convince the Court that if he is given an opportunity to adduce evidence, it may result in dismissal of the eviction petition. In **Charan Das Duggal v. Brahma Nand (1983) 1 SCC 301**, the Apex Court has clearly held that while considering the question of triable case the tenant is not expected to make out a fool proof case which will result in dismissal of the eviction petition and the respondent/landlady. All that he has to show that he has a strong case which may in all probabilities, if permitted to be prove may non-suit the petitioner seeking eviction.

18. Now coming back to the facts of the present case, so far as the ownership of the suit property by the respondent/landlady is concerned, that is not disputed. The relationship of landlady and tenant has been contested by the petitioner. He has considered himself to be a joint tenant along with Cyril Samion. It has been stated by him that he has been paying his portion of the rent which is half of the total rent for user of the premises to his brother Harry Samion son of Charles Samion, who in turn has been paying the same to the respondent/landlady. No prima facie evidence or a document in this regard has been filed by him. On the contrary, the respondent/landlady has categorically stated that after the death of Harry Samion his son had attorned the respondent as the landlady and no grievance in this regard was ever made by the present petitioner. Merely because this plea has been raised by the respondent does not mean that he becomes tenant. He may be in occupation of the premises on account of the fact that his cousin was paying the rent and therefore he has no independent right, title or interest in the property. This clearly establishes the first ingredients of the aforesaid proposition of law.

19. The purpose of letting is not in dispute. The premises in question was let out to the grandfather of the petitioner in early 30's for residential purpose and had continued to be used so till the time the eviction petition was filed. Thus the purpose of letting is also established.

20. As regards the bona fide requirement, the present petitioner has not challenged the total number of family members of the respondent/landlady. He has taken the plea that the son of the respondent/landlady are adults and are not financially

dependent on the respondent/landlady and therefore, they can arrange their own accommodation. In any case, it has been stated that they are in possession of alternative accommodation at B-16/9, first floor, Connaught Place, New Delhi the adjoining property where two rooms are lying vacant which has been admitted by the respondent/landlady herself. The petitioner/tenant has on the contrary stated that the entire building is available to her. This fact has been disputed that the adjoining building B-16/9, first floor, Connaught Place, New Delhi in its entirety is lying vacant. It is claimed by the respondent/landlady that the building is commercial in nature and only two rooms with one small room and WC and open courtyard are lying vacant which cannot be utilised for residential purposes. The reason is that there is no provision for kitchen. So far as the other portion of the building are concerned, she has stated on Affidavit that the same are occupied by different tenants and thus are not available to her. This aspect has neither been refuted or disputed by the present petitioner. Therefore, so far as the availability of alternative accommodation in the shape of adjoining building at Connaught Place itself is concerned that loses the sting because the building is commercial in nature.

21. As regards two room in the said building which are stated to be available by the respondent/landlady herself she has clearly stated that the same cannot be used as alternative accommodation because there is no provision for kitchen. This fact has also not been disputed by the petitioner. Therefore, there is absolutely no reason as to why the Affidavit of the respondent/landlady in contrast to the Affidavit of the petitioner where he is making bald assertion with regard to availability of alternative accommodation should not be accepted. Thus, in nut shell so far as the alternative accommodation is concerned, that is not available to the respondent/landlady.

22. The number of family members has not been disputed by the petitioner. The quantum of accommodation available to the respondent/landlady at property No.8/48, Malcha Marg, New Delhi Malcha Marg in the shape of drawing room, dining room, two bed rooms, one pooja room, one kitchen, etc. apart from verandah etc. and open terrace, has not been at all contested. In such a situation it is very difficult for the family of ten members to live a normal descent life.

23. Ms. Singh has contended before this Court that so far as Mohd. Firoz Yamin is concerned for whose benefit the accommodation is required, he is not financially dependent on the respondent/landlady and since he is not financially dependent he can arrange for his own accommodation. It may be pertinent here to mention that specific case which has been urged by the respondent/landlady is that in case the premises in question are made available to her then she would like her younger son along with his wife and two minor children to shift to Connaught Place so as to ease out their problem of paucity of accommodation available to them at Malcha Marg. A person may be financially independent yet for the purpose of accommodation, he may still depend on the parents. In a city like Delhi, where owning a residence costs

fortune, it is but imminent that children would depend on parents for accommodation.

24. This aspect has been dealt with by the learned ARC. I also agree with the finding of the learned ARC that a person may be financially independent but yet he may be dependent for the purpose of accommodation on his parents. In the instant case also though it has been urged that Mohd. Firoz Yamin is financially independent but merely because he is financially independent does not mean that he cannot be dependent of for the purpose of accommodation on the respondent/landlady. I, therefore, feel that this submission of the learned counsel for the petitioner is without any merit and there being no content with regard to number of family members or there being no alternative accommodation available to her respondent/landlady, she is well within her right to seek retrieval of accommodation from the petitioner.

25. So far as the petitioner is concerned he has also not been able to raise any triable issue from the leave to defend.

26. For the reasons mentioned above, I feel that as the petitioner has not been able to make out any triable case in the leave to defend application, his application has been rightly rejected by the learned ARC by detailed speaking order dealing with all such submission as have been raised by him. I do not find that there is any illegality, impropriety or jurisdictional error in the rejection of the leave to defend application of the petitioner.

27. Accordingly, the present petition is totally misconceived and the same is dismissed.

28. Since the leave to defend application was rejected on 15.02.2015 and the petitioner statutorily is to get six months time which has expired in the month of August, 2015 itself and from August, 2015 itself he has further availed of almost eight months, therefore, no more than one month deserves to be given to the petitioner so as to enable him to vacate the premises.

29. I accordingly, direct that the petitioner must vacate the premises within a period of one month from today, failing which the respondent/landlady shall be well within its right to seek execution of the eviction order.

30. Parties to bear their own costs.

31. Pending applications also stand disposed of.