

(2008) 12 DEL CK 0122**Delhi High Court****Case No:** RCR 42 of 2008

Mohd. Shamim Siddiqui

APPELLANT

Vs

Gurdayal Wadhwa

RESPONDENT

Date of Decision: Dec. 19, 2008**Citation:** (2009) 107 DRJ 397**Hon'ble Judges:** S.N. Dhingra, J**Bench:** Single Bench**Advocate:** Prem Kumar and Nitesh Sawhney, for the Appellant; C.P. Vig, for the Respondent**Final Decision:** Allowed**Judgement**

Shiv Narayan Dhingra, J.

The petitioner is aggrieved by an order dated 6th September, 2007 passed by learned ARC whereby an Eviction Petition filed by the petitioner was dismissed.

2. The relevant facts for deciding this petition are that the petitioner claimed that he was landlord/owner of the property No. T-563/7B/A Gali No. 3, Baljit Nagar. One room with use of common bath room, WC and open courtyard forming part of aforesaid property was let out to the respondent for residential purpose in November, 1998 at monthly rent of Rs. 650/-. The petitioner bona fide required the premises in question for his own residence and residence of his family members. His family consisted of himself, his wife and his three sons aged 30, 28 and 20 years respectively. He was presently residing at premises No. 3460/6, Gali Thelewali, Bara Hindu Rao, Delhi. His sons were of marriageable age but because of paucity of accommodation he had not been able to marry his sons. He submitted that there was another tenant in the property in question named Mohammad Yakub who had assured that he would vacate the portion under his tenancy as and when respondent vacated the premises and the petitioner, on vacation of the premises by the respondent, intends to shift to his house in Baljit Nagar, which has better surroundings and hygienic conditions.

3. Leave to defend was granted to the respondent. In the WS filed by the respondent, the respondent challenged the ownership of the petitioner and stated that the premises was let out to him for residential-cum-commercial purpose. He used to do his tailoring work/job in the premises. He also took a stand that the petitioner was in possession of the two rooms on the ground floor and one room on first floor of the premises in question which he was keeping locked and unused. There was no tenant named Mohammad Yakub as alleged. The petitioner had failed to show his social status and income of himself and family members dependent upon him. The petitioner, in fact, had no social status. It was also stated that the petitioner was in possession of two rooms in the property No. 3460/6, Gali Thelewali, Bara Hindu Rao while he has only shown one room in his possession. The present accommodation available with the petitioner was much more than sufficient since the sons of the petitioner were not dependent upon the petitioner for residential purpose. Elder son of the petitioner was residing separately. The petitioner had no love and affection for his elder son.

4. The Trial Court while deciding this case in para 8 of its order, observed that the petitioner in order to have eviction order from the ARC has to establish the following:

- (1) That he was the owner landlord of the suit premises;
- (2) That the premises were let for residential purposes;
- (3) That he requires the premises for himself or for any members of his family dependent upon him.

5. After coming to conclusion that the petitioner was the landlord/owner of the premises within the meaning of the Delhi Rent Control Act and the premises was let out for residential purpose, the learned ARC while deciding the question of bona fide requirement totally misdirected herself.

6. It was admitted case of the respondent that the petitioner was living in house No. 3460/6, Gali Thelewali, Bara Hindu Rao. However, the learned ARC entered into an analysis of the status of the petitioner in the property where he was presently living and the property number. In some of the documents, the property No. was given 3459/6, Gali Thelewali, Bara Hindu Rao. The ARC concludes that the documents filed by the petitioner show that the family members were residing in 3459/6, Gali Thelewali, Bara Hindu Rao and not in property No. 3460/6, Gali Thelewali, Bara Hindu Rao. This was not the case set up by the petitioner in the Eviction Petition. In these circumstances, she came to conclusion that the petitioner failed to prove that he was residing in tenanted premises No. 3460/6, Gali Thelewali, Bara Hindu Rao.

7. The learned ARC also concluded that the petitioner had failed to produce the landlord of premises No. 3460/6, Gali Thelewali, Bara Hindu Rao which was the best evidence to show that the petitioner was living in premises No. 3460/6 as a tenant.

Since best evidence had been withheld and petitioner has failed to prove that he was residing in premises No. 3460/6, it cannot be held that he required the property bona fide for purpose of residing himself and his family members and dismissed the petition.

8. It is obvious from the judgment of the learned ARC that the learned ARC traveled much beyond her jurisdiction and contrary to settled position in law as stated by herself. There was no issue framed by learned ARC whether the petitioner was living in premises No. 3459/6 or 3460/6 as a tenant. This issue could not have been framed because there was no lis between petitioner and his landlord. It is settled law if someone gives evidence against him than it is the best assurance of his speaking truth. If the petitioner had been owner of the premises either premises No. 3459/6 or 3460/6 he would not have described someone else as its owner and described himself as a tenant, as it was fraught with danger for him as such evidence could be used against him. It was also not a case of the respondent that the petitioner was not living as a tenant either in premises No. 3456/6 or 3460/6, Gali Thelawali, Bara Hindu Rao. The Trial Court was supposed to consider whether the premises in occupation of the petitioner either at 3459/6 or at 3460/6 was sufficient keeping in view the family of the petitioner. Instead of addressing this question, the Trial Court addressed a wrong question to herself and decided an issue which was not before the Trial court. Even otherwise, the conclusion arrived at by the Trial Court is contrary to the documents on record. The Trial court had relied upon election card of the family members of the petitioner to come to conclusion that premises in occupation of the petitioner was 3459/6. However, Trial Court ignored the fact that the different documents produced by the petitioner showed either house No. 3459/6 or 3460/6 and some documents showed the number as 3459/6 to 3461/6, Gali Thelewali, Bara Hindu Rao. In fact in old Delhi, the numbers of the premises are normally not single numbers and they are a cluster of numbers and most of the premises are identified by this cluster of numbers. The petitioner in his own evidence has made it clear that the property Nos. 3459, 3460 and 3461 are all owned by Moh. Iqbal who is the landlord and he was a tenant in a portion of a property bearing these three numbers. He also in his testimony denied the suggestion that he was the owner of the property No. 3459/6-3460/6 in his occupation and categorically stated that he was a tenant. Cross examination of this witness itself shows that the property No. 3459/6-3460/6 were the same properties and they were not two different properties.

9. The learned ARC however after misdirecting herself on the issue misread the evidence also. It was not necessary for the petitioner to bring his own landlord in the witness box to prove that he was a tenant. Normally, no landlord comes to depose in favour of the tenant. There was no reason with the learned ARC to dis-believe the testimony of the petitioner who claimed himself as a tenant and also produced rent receipts on record and the copy of the notice received by him from the landlord asking him to vacate the premises. In civil and rent cases a fact is not

required to be proved on the scale of "beyond reasonable doubt" but it is only required to be proved on the preponderance of probabilities and the Court must keep in mind that it has to arrive at a conclusion only in respect of issues regarding the suit and not in respect of those issues which never arose.

10. The petitioner's evidence regarding his bona fide requirement has totally been ignored by learned ARC. The petitioner testified that his family consisted of himself, his wife and three sons. His one son Rehan Naveed got married in 1999 and he had one child. He lost his one son in September, 2002. He was employed as a Journalist getting salary of Rs. 5,705/- besides bonus and other benefits. He also used to write manuscripts in Urdu and earned around Rs. 4,000/-. His son Rehan Naveed was employed as a Manager in Show Teenik International Corporation Ltd. and was getting around Rs. 12,000/- per month. His other son was a Doctor and he had done his Bachelor in Medicine and Surgery in 1996 and was practicing as a Doctor having his clinic in Jafferabad. He and his family had a status in life and the present accommodation was highly insufficient to meet the requirement of himself and family.

11. This evidence of the petitioner has gone un-challenged. The petitioner placed on record sufficient documents to show that his entire family was living together. The evidence and pleading of the respondent were not only scornful about his status but were contemptuous. The respondent stated that the petitioner was only a labourer and had no status in life. I consider that social status of a person cannot be determined by his earnings and job only. The status of the petitioner was at least much more than the status of the tenant since the petitioner was owner of the premises where the tenant was living at rent.

12. Sons of the petitioner were young and living with the petitioner at the time when the petitioner gave this premises on rent. With the growth in the family and his sons getting educated and becoming adult and of marriageable age, requirement of the petitioner was to be considered by the ARC keeping in view all these facts and circumstances. The petitioner's married son required at least two rooms for himself and his child. The petitioner himself required one room for himself and his wife and one drawing room. He required another room for his other son who was working as a Manager and one room was minimum requirement for his guests. Even if it was considered that the petitioner was in occupation of two rooms at premises No. 3459/6-60/6, Gali Thelewali, Bara Hindu Rao, the requirement of the petitioner of his own premises was undoubtedly bona fide as the petitioner's both sons had grown up; one had already married and other was of marriageable age. I therefore allow this Revision Petition. The Eviction Petition filed by the petitioner is hereby allowed and eviction order is passed in favour of the petitioner and against the respondent in respect of premises in question. The respondent is directed to vacate the premises within a period of 60 days.