(2011) 07 DEL CK 0463

Delhi High Court

Case No: RC. Rev No. 81 of 2010

Jatinder Singh Nanra		APPELLANT
	Vs	
Sarita Rani		RESPONDENT

Date of Decision: July 12, 2011

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14(1), 19, 25(4), 25B(4), 25B(5)

Citation: (2011) 124 DRJ 574

Hon'ble Judges: P.K. Bhasin, J

Bench: Single Bench

Advocate: H.S. Phoolka, Ashok Kashyp and Kanwar Faisal, for the Appellant; Sudhir Nandrajog and Sudhir Bambha, for the Respondent

Final Decision: Allowed

Judgement

P.K. Bhasin, J.

This is a petition u/s 25B(8) of the Delhi Rent Control, 1958 against the order dated 4.12.2009 passed by learned Additional Rent Controller dismissing the application filed by the Petitioner-tenant seeking leave to defend the eviction petition filed by his landlord, Respondent herein, in respect of the ground floor of premises bearing No. K-106 Kirti Nagar, New Delhi-15 u/s 14(1)(e). As a result of dismissal of the leave application eviction order has been passed against the Petitioner-tenant and since no appeal lies against an order of eviction passed after dismissal of leave to contest application, this revision petition has been filed.

2. The tenanted portion comprising of four rooms, one store, kitchen, toilet and some open space was let out to Petitioner by its previous owner. The Respondent purchased the aforesaid house in 1985 and so he became the landlord of the Petitioner.

3. The Respondent in her eviction petition pleaded that her family comprised of herself, her husband, two married sons, two daughters-in-law, two granddaughters

and a married daughter. She further pleaded that she required the premises under the tenancy of the Petitioner for her residence and her family members since she was not having sufficient accommodation. She was in possession of entire first floor and second floor of the property. It was further pleaded that the Petitioner''s husband had suffered paralytic attack and so he was not in a condition to climb stairs and for that reason also she required the premises on the ground floor.

4. The Petitioner-tenant on receipt of summons from the trial Court sought leave to contest the eviction petition as required u/s 25-B(4) of the Delhi Rent Control Act by filing an application supported by his affidavit. The main point taken by him was that the Petitioner was already in possession of sufficient accommodation and the eviction petition had been filed by her to have the tenanted premises vacated by hook or crook since the Respondent''s husband and her sons are builders and they would sell the same after evicting the Petitioner. It was further claimed by the Petitioner - tenant that the sons of the Respondent were living separately and independently. Regarding the accommodation already available with the Respondent - landlady the Petitioner pleaded that she was having two rooms and a toilet on the barsati floor and on the other two floors she was having five rooms, out of which one on the second floor was being used as a master bed-room, and one room on the first floor was being used as a drawing-cum-dining room, two kitchens, two covered lobbies, which were also being used as rooms, and two toilets and, therefore, she was having sufficient accommodation with her. It was also pleaded that the husband of the Respondent is a healthy person and is personally attending his business from a shop in Kirti Nagar.

5. The Respondent- landlady in her counter affidavit reiterated the facts pleaded by her in the eviction petition while refuting the Petitioner''s claim that she did not require the tenanted premises in his possession bona fide for herself and her family members. It was, however, admitted that her husband and sons were doing property business but it was submitted that her husband and sons had been buying lands and raising constructions thereon for sale to earn their livelihood but the premises in occupation of the Petitioner-tenant was bona fide required for own residence and in case they sell it afterwards the Petitioner could have recourse to Section 19 of the Delhi Rent Control Act for getting back the tenanted premises. Regarding the Petitioner''s claim that her sons were residing separately, the Respondent - landlady stated in her reply that though in the year 2000 they were living separately and independently but later on there was a patch up in the family and then all of them were living together. It was denied that there were two rooms on the barsati floor and it was also claimed that at one time there was a temporary tin-shed there for keeping the obsolete items but that shed was also removed since the Petitioner-tenant had lodged a complaint with the Municipal Corporation of Delhi. It was also pleaded by the Respondent- landlady that she was having only one drawing room and one living room on the first floor and the other room could not be said to be a living room since the same was a passage for going to the other

room after entering into that area from the stairs coming from the ground floor and similar accommodation was with her on the second floor and one room there also was not usable as a living room for the same reason as was there for one room on the first floor. It was also stated that the covered lobbies also could not be used as living rooms.

6. The learned Additional Rent Controller dismissed the Petitioner''s application for leave to contest the eviction petition. While rejecting the Petitioner''s pleas on different aspects and particularly which were urged before this Court on behalf of the Petitioner-tenant the learned Additional Rent Controller gave his findings in para Nos. 9 and 11 to 13 of the impugned order and those paragraphs are re-produced below:

9. It has been further argued on behalf of the Respondent that the property in question has been purchased by the Petitioner with the sole motive to get to get it vacated and to sell it as their routine business. But I do not find any force in the contention as the property was purchased by the Petitioner n the yer1984 whereas the eviction petition was filed in the year 2007 and had he same been purchased with the sole motive to sell it as their routine business , they would not have resided therein and waited for a long period of 23 years to file the eviction petition it has been further argued by the counsel for the Respondent that the accommodation available with the Petitioner is already surplus because her family, consists only of Petitioner and her husband because as per her own notice dated 18.08.2000, both her sons are residing separately . but it is argued by the counsel for the Petitioner that though the sons were residing separately. But it is argued by the counsel for the Petitioner that though the sons were residing separately in the year 2000 but later on there was a patch up in the family and now all are residing jointly. It is worth mentioning here that the Respondent has not alleged that the sons of the Petitioner are residing at some other particular place. Neither he has provided any such address. Rather from his own documents , it has been revealed that during year 2002-2003 he had filed numerous complaints against the Petitioner , her husband and both of her sons, wherein he had complaint that they had threatened , cause physical harm to him , pelted stones on his car ,broke wind screen of his car etc. but in none of these complaints he has alleged that they used to come from some outside place. Rather it is admitted fact that in criminal case bearing FIR 54/03 lodged by the Respondent against the sons of the Petitioner , the address of her son is K-106 Kirti Nagar i.e. it is evident that the sons of the Petitioner are residing with her only.

11. It has been further argued by the counsel for the Respondent that the Petitioner has concealed that there is third floor also comprising of 2 bed rooms. But it is also argued by the counsel for the Petitioner that there is no third floor or barsati floor, rather previously there was only a temporary tin- shed which as removed when the Respondent lodged complaint with the MCD. The Petitioner even in para 12 of her

reply , has also categorically stated the same, which the Respondent has not denied or controverted it is settled law that the lack of specific denial must be treated as admission and therefore on the same analogy it is deemed admitted that the temporary shed has been removed. Regarding the allegation of the Respondent about two rooms on third floor, the counsel for Petitioner has argued that the Respondent is in the habit of lodging complaints against the Petitioner and her family members and had already lodged the complaint with the MCD with the respect to the small-temporary tin-shed , then how it is possible that he kept on sitting silently during the construction of entire alleged third floor and did not lodge any complaint regarding the same . I am inclined to accept the contention as it is evident from the own documents of the Respondent that he has been continuously lodging complaints against the Petitioner and her family members on one account or other and it is quite improbable that he would have sit quietly without lodging any complaint had there been any illegal construction over the third floor. Moreover, the Respondent has made just a bald allegation in this regard without placing any material on record to substantiate the same. The only document filed in this regard is rough site plan of third floor. But it is pertinent to mention here that neither it has been signed by any draftsman nor it is containing any mention as to which property the same is pertaining. It has been held by Hon. High Court of Rajender Kumar Sharma and Others Vs. Smt. Leela Wati and Others,
Leave to defend not to be granted to tenant on basis of false affidavit and false averments and assertions - Only those averments in affidavit are to be considered by Rent Controller which have some substance in it and are supported by some material.

Thus in view of this case-law, the contention of Respondent is rejected as the same is bare allegation without any material to substantiate it.

12. It has been stated by the Respondent in his application that Petitioner has total five bedrooms and two drawing-cum-dining rooms on the first and second floors. Even in the site plan filed by the Petitioner the position is the same. But it is worth mentioning that out of these rooms, two rooms could not be used as bedrooms because firstly, the stairs get opened in these rooms and secondly the passage to back side room and front lobby is also through these rooms. Neither the Respondent has filed any counter site plan nor is his case that stairs do not get opened in these rooms. Thus, virtually there are two rooms (one drawing-room and one bed room) on the first floor and three rooms (one drawing-room and two bedrooms) on the second floor. As the Petitioner has not denied her family to be joint family then only one drawing-room is sufficient for the family and thus apart from one drawing-room, there are four bed rooms in the possession of Petitioner and her family members. Her family consists of herself, her husband, two sons, two daughters-in-law and two grand-daughters apart from one married daughter. It has been submitted that Petitioner needs one room for herself and her husband, one

room for elder son and wife, one room for younger son and his wife, one room for grand-daughters and one guest room for her married daughter or other guests. Thus, the requirement of the Petitioner is for five bedrooms whereas at present she has only four bedrooms. Apart from this the case of the Petitioner is that room on the ground floor is required for her husband as he could not climb the stairs after paralytic attack. It is not denied by the Respondent that the husband of the Petitioner is suffering from paralysis. But the last though not the least contention of the counsel for the Respondent is that since he has been climbing stairs since 2002, then how the need can be said to be genuine now. But I do not find force in this contention as the landlord could not be compelled to adjust himself in the same accommodation just because he has been living therein till now. The mere fact that landlord so long managed to live in such accommodation does not mean that he should live in the same manner in perpetuity.

13. So, in view of the above said observations it is clear that the Respondent has failed to raise any triable issue whereas the Petitioner has set up her case for bonafide requirement for the premises in question and accordingly the application for leave to defend is dismissed and eviction order is passed in favour of the Petitioner and against the Respondent in respect to the entire ground floor comprising of four rooms, lobby, store, kitchen, toilet, back covered courtyard and open space in front side in the property bearing No. K-106, Kirti Nagar, New Delhi-15....

7. Before proceeding further to find out whether the impugned order is not in accordance with law laid down by the Supreme Court in respect of disposal of applications of the tenants for leave to contest the eviction petitions filed on the ground of bona fide requirement of the landlords, as was seriously argued by Mr. H.S. Phoolka, learned senior counsel for the Petitioner-tenant, I deem it appropriate to notice what the Supreme Court has been observing in these kind of matters and which views the Courts are expected to follow while dealing such like applications of the tenants. The Supreme Court had in " Inderjeet Kaur Vs. Nirpal Singh, , laid down the following guidelines to be followed by the Courts while deciding the applications for leave to contest filed by the tenants u/s 25(4) of the Delhi Rent Control Act,1958:

11. As is evident from Section 25B(4) & (5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in Clause (e) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.

12. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as

would disentitle the landlord from obtaining an order of eviction. It would not be right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act, Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under Clause (e) of the proviso to Sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under Clause (e) of the proviso to Sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when a leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noted that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25B(7) speaks of the procedure to be followed in such cases. Section 25B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Section 25B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced

view is to be taken having regard to competing claims.

14. This Court in Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301 while dealing with the question in the matter of granting leave to defend to contest the eviction petition filed on the ground of personal requirement, in para 5 has stated thus:

5. What should be the approach when leave to defend is sought for? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought for on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

15. In the same judgment, in para 7 it is further observed:

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave: May be in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits....

(underlining is mine)

8. In another judgment rendered by the Supreme Court in the case of Liaq Ahmed and Others Vs. Shri Habeeb-Ur-Rehman, it was observed by the Court that:

2. Rent Control legislations have been acknowledged to be pieces of social legislation which seek to strike a just balance between the rights of the landlord and the requirements of the tenants. Such legislations prevent the landlords from taking the extreme step of evicting the tenants merely upon technicalities or carved grounds. This Court in Mangat Rai and Another Vs. Kidar Nath and Others, held that where the Rent Acts afford a real and sanctified protection ot the tenant, the same should not be nullified by giving a hypertechnical or liberal construction to the language of the statue which instead of advancing the object of the Act may result in its frustration. The Rent Acts have primarily been enacted to give protection to the tenants.

3. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

4. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

5. From the scheme of the Act it is evident that if tenant discloses grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The enquiry envisaged for the purpose is a summary enquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of the facts. In the instant case the Controller as well as the High Court appear to have completely ignored the object of the Rent Control legislation and the scheme of the Act while dealing with the case of the Appellants.

9. Same view has been reiterated by the Supreme Court in a recent judgment in Rachpal Singh and Others Vs. Gurmit Kaur and Others, , in para No. 12 which is re-produced below:

12. If some triable issues are raised then the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits and other material documents. Burden is on the landlord to prove his requirements and his assertion is required....

10. Mr. Sudhir Nandrajog, learned senior counsel for the Respondent-landlady had while fully supporting the eviction order passed in favour of the Respondent-landlady by the trial Court had submitted that the trial Court had rightly appreciated the requirement of the landlady and found the same to be bona fide and there being no infirmity in the impugned finding that the tenant had not raised any triable issue which would disentitle the landlady to set an order of eviction, the

same cannot be set aside by this Court in exercise of its limited revisional jurisdiction which has been conferred by the legislature u/s 25B(8) of the Delhi Rent Control Act.

11. After giving my thoughtful consideration to the submissions made by the learned senior counsel for the parties and the reasons given by the learned Additional Rent Controller for declining leave to contest to the Petitioner-tenant I have come to the conclusion that the impugned order of the learned trial Court cannot be said to be in accordance with law and has been passed contrary to the already quoted views of the Supreme Court which had to be followed while dealing with the Petitioner''s leave application.

12. As far as the family of the Respondent - landlady is concerned, as noticed already, she had admitted in her reply to the Petitioner''s application for leave to contest that her two sons were at one time living separately and independently but later on because of patch up in the family, all of them had started living together. However, the Petitioner - tenant had claimed that the Respondent''s sons were still living separately and independently. In view of the admission made by the Respondent herself that sometime back her sons were living separately it becomes a triable issue whether they have started living with their parents or are still living separately, as is being claimed by the Petitioner - tenant. The learned trial Court has rejected this plea of the Petitioner - tenant on the ground that he had not placed on record any material to substantiate the plea that his landlady''s sons were living separately. However, at the stage of consideration of leave to contest application the Petitioner - tenant was not expected to substantiate his pleas which could be done only if he had been give an opportunity to contest the eviction petition and to adduce necessary evidence. Even otherwise, the Respondent - landlady had not pleaded in the eviction petition that her sons were dependent upon her, either financially or for residential purposes. Infact, in her reply to the leave application she admitted that her sons were gainfully employed. If these points are decided against the Respondent - landlady after trial she would become disentitled to an order of eviction.

13. I am also in agreement with the submission of the learned senior counsel for the Petitioner - tenant that even if it is accepted for the present purpose that the sons of the Respondent - landlady are also living with her in the property in question in Kirti Nagar the requirement of the premises under his tenancy projected by his landlady still cannot be said to be bona fide because of the fact that already she was having sufficient accommodation. In this regard my attention was drawn to certified copy of the site plan which had been filed by the Respondent - landlady before the trial Court. A perusal of that site plan shows that on the first floor of the property in question there are three rooms, one of which has been described as drawing room. Besides three rooms, there is a store room, one kitchen and one toilet and a lobby which, as noticed already, according to the case of the Petitioner is covered and is

being used as a room while Respondent - landlady is claiming that the same cannot be used as a room. On the second floor there are four rooms one of which has been described in the site plan as "D/room'', which admittedly is being used as a master bedroom by the Respondent - landlady. On the second floor also there is one store room, kitchen and two toilets. There is a lobby also, which according to the Petitioner - tenant is also being used as a room while Respondent - landlady while not denying that it is a covered lobby has claimed that the same is not usable as a living room / bedroom. The Respondent''s case is that two rooms on the first and second floors cannot be used as living rooms since the entry to those rooms is from the stairs coming from the ground floor. The learned Additional Rent Controller has also accepted this reason given by the Respondent -landlady while ignoring the availability of these two rooms with her. That finding has been given in para No. 12 of the impugned order which I have already reproduced in this order. However, in my view whether those two rooms could be used as living rooms/bedrooms or not, is also a triable issue considering the fact that the Respondent - landlady claims to have been living along with her family members in the aforesaid accommodation only shown in the site plan filed by her, including the said two rooms which according to her are not usable as bedrooms. Therefore, for the present the Petitioner - tenant has been able to show, prima facie, that the Respondent - landlady was having in her possession six bedrooms and a drawing room, as shown in the site plan filed by her and that much accommodation appears to be sufficient for her family as well as her married daughter even if she visits her parental house, as was also claimed in the eviction petition.

14. It was also the case of the Respondent - landlady that she required the ground floor portion because her husband is paralytic and could not climb the stairs on his own and has to be physically lifted for taking him upstairs. It was, however, admitted by her in her reply to the leave application of the Petitioner that otherwise her husband was hail and hearty and was also attending to his business as was being claimed by the Petitioner - tenant that her husband had to be lifted for going upstairs. Therefore, this aspect also becomes a triable issue. It may also be mentioned here that during the course of the hearing of the petition it was asked from the learned Counsel for the Respondent - landlady whether she was ready to offer the first or the second floor accommodation to the Petitioner - tenant to enable her to shift to the ground floor because of the ailment of her husband but learned Counsel stated that Respondent was not agreeable to that and instead barsati floor could be offered to the Petitioner. That offer of the Respondent being ridiculous for the reason that she herself was claiming that there was no accommodation on the third floor was quite naturally not accepted by the Petitioner also.

15. This petition, therefore, succeeds. The impugned order passed by the Learned Additional Rent Controller is set aside. The matter is remanded back for trial in accordance with law after giving an opportunity to the Petitioner - tenant for filing of

his written statement and recording of evidence from both the sides. The case shall now be taken up by the trial Court for further proceedings on 29th July, 2011 at 2 p.m. on which date the parties shall appear there.