
(2011) 05 DEL CK 0489

Delhi High Court

Case No: RC. Rev. 1 of 2004

Ishwari Devi

APPELLANT

Vs

Bata Shoe Company
Pvt. Ltd. and Another

RESPONDENT

Date of Decision: May 12, 2011

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14D, 25B

Citation: (2011) 163 PLR 17 : (2011) 1 RCR(Rent) 492

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

Bench: Single Bench

Advocate: Sunil Malhotra, for the Appellant; None, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Bhasin, J.

This petition u/s 25B(8) of the Delhi Rent Control Act, 1958 is against the order dated 16th July 2003 passed by the Additional Rent Controller whereby the eviction petition filed by the Petitioner - landlady u/s 14D of the said Act has been dismissed after trial.

2. The Petitioner claimed to be the owner of property bearing No. 319/5/5A, (main road), Gandhi Nagar, Delhi having purchased the same vide sale deed dated 25th March 1969. One big room on the ground floor ("the tenanted premises") portion of the said house was given on rent to Respondent No. 1 Bata Shoe Company Ltd., name of which Company later on after becoming a Private Limited Company came to be changed to Bata India Ltd., which had also been separately impleaded as Respondent No. 2 in her eviction petition by the Petitioner - landlady. The tenanted premises were let out in the year 1972 at a monthly rent of Rs 1275/- for commercial user. Fifteen years thereafter the Petitioner filed an eviction case against the Respondents u/s 14D of the Rent Act alleging that her

husband had died in the year 1996 and she being a widow required the tenanted premises for her own residence. In the eviction petition she claimed that she had two sons and six married daughters, five of whom lived in Delhi and they frequently come to her house. The elder son of the Petitioner was married and he along with his family comprising of his wife and two children were living with the Petitioner. The second son of the Petitioner was also of marriageable age (when the eviction petition was filed). Regarding the accommodation in her possession the Petitioner had pleaded that she was having three rooms, one kitchen, one small store room and one small bathroom on the ground floor and two rooms on the first floor along with one kitchen and one toilet.

3. The Respondents in their written statement pleaded that the name of the tenant Company initially was Bata Shoe Company Ltd. and later on it became a Private Limited Company and then in the year 1973 its name came to be changed to Bata India Limited (Respondent No. 2 herein). On merits, it was pleaded, inter alia, that the eviction petition was vexatious and did not disclose any cause of action as the tenanted premises were let out for commercial purpose and that the Petitioner in any case already had sufficient accommodation available for herself and her family members who in any case were not dependant on her. It was further pleaded that the tenant Company had financed a sum of Rs. 50,000/- in the year 1972 itself for the construction of the tenanted premises as per its requirement for being used for commercial purposes and that the same could not be used for residential purposes since it did not have any kitchen bathroom and latrine.

4. After granting leave to contest to the Respondents the learned Rent Controller put the case for trial. The Petitioner-landlady examined herself in support of her case and also examined her son Ashok and from the side of the tenant Company one of its officials was examined as its sole witness.

5. The learned Additional Rent Controller has after evaluating the evidence adduced by the parties dismissed the eviction petition. The conclusion of the trial Court is contained in the concluding para No. 12 of the impugned order which is re-produced below:

12. In the present petition, admittedly, premises was let out for commercial purposes as a shop and admittedly shop is being run from the tenanted premises till date. Admittedly there is no basic amenity in the premises in dispute. Admittedly, pert. has five rooms in her possession i.e. three on the ground floor and two on the first floor along with verandah, open courtyard, store, toilet, bathroom and two kitchens. The constitution of the family of the pert., is not disputed. The law with regard to commercial premises u/s 14D of the DRC Act has already been settled. It is true that even commercial premises can be brought within the purview u/s 14D of the DRC Act, the only rider is as to whether the premises can be used for residential purposes or not. In the present petition, admittedly there is no basic amenity in the entire tenanted premises. It has been admitted by the Petitioner that premises was constructed as commercial on the advance given by the Respondent. The shop is still being run from the premises in dispute. In view of the

same additional requirement of the Petitioner has to be seen and evaluated with caution and care. Petitioner has one unmarried son and one married son along with six married daughters. Admittedly, all the six married daughters are living in their matrimonial homes. Her visits at the residence of Petitioner is not in dispute hence, from the conservative estimate Petitioner requires at least one room for herself, one for unmarried son, one for her married son and his wife, one for grandchildren who are aged six and eleven years and one room for guests. Hence, at the most she requires five rooms for her bona fide requirement. It is true that keeping in view her status she may require one additional room for other purposes like pooja or accommodating the guests but the same has to be considered with caution viz-a-viz the commercial nature of the tenanted premises. Any additional accommodation can be considered only if there is highly scarcity of the accommodation. Any accommodation leading to her luxury has to be seen with caution and care. Her desire to seek eviction of the commercial premises without any basic amenity is not reasonable keeping in view the accommodation available to her. There is specific law with regard to the speedy eviction of the tenanted premises for widows. This is a social legislation and intention of the legislation is not to make business of the same. It is true that even commercial premises can be brought within the purview u/s 14D of DRC Act in fact need of the residential accommodation with the widow. Each and every case has to be examined in the facts and circumstances of the case. In the present petition, I am of the view that the Petitioner has failed to prove her bona fide requirement seeking eviction of the commercial tenanted premises. Keeping in view the possession of residential accommodation with the Petitioner, I am of the view that the additional requirement of the Petitioner cannot be allowed to be met through commercial tenanted premises available with the Respondent. Hence I find no merit in the petition, the same is hereby dismissed.

6. Feeling aggrieved, the Petitioner-landlady has invoked the provisional jurisdiction of this Court. Notice of the petition was served upon the Respondents and they had entered appearance also and the petition was admitted for hearing. However, when this petition was taken up for final hearing on 28th April, 2011 and 29th April, 2011 none had appeared for the Respondents but matter was not heard on those two dates as adjournment was requested on behalf of the Petitioner. Then on 2nd May, 2011 the matter was taken up for hearing and on that date also nobody appeared for the Respondents. Counsel for the Petitioner was however present and so he argued the matter.

7. I have considered the submissions of the learned Counsel for the Petitioner and perused the trial Court's record which had been requisitioned. I have also gone through the reply to this petition which had been filed by the Respondents.

8. From the impugned order and particularly the observations already extracted therefrom it is clear that the learned Rent Controller had virtually accepted the landlady's case but still denied her the relief of eviction of the tenant on the ground that the tenanted shop did not have any amenities like kitchen, bath etc. which are required to be there for any

premises to be used for residential purpose. This reasoning, in my view, was not sound enough to reject the eviction petition of the Petitioner-landlady. The learned Rent Controller lost sight of the fact that the tenanted shop was a part of the main residential house on the ground floor which had all the necessary facilities of a kitchen and bathroom and in case the tenanted shop is vacated by the tenant the same would once again become a part of the original residential Unit on the ground floor. This reason, thus, given by the learned trial Court for declining the relief to the landlady is not tenable at all.

9. The learned trial Court itself had also come to the conclusion that the Petitioner requires one room for herself, one room for married son, one room for her grand-children, one room for unmarried son and one room for guests. Though not specifically stated but the reference to the requirement of one room for guests here must be to the unmarried daughters of the Petitioner-landlady. That takes care of five rooms already with the landlady. The learned trial Court has further recognised the requirement of one room for pooja also. And the Respondents in their written statement had also pleaded that one room could be required by their landlady for being used as a drawing-cum-dining room. Still, the trial Court has refused to pass eviction order against the Respondents. In my view, it is a fit case where the requirement of the tenanted premises by the landlady was bona fide and the finding of the learned trial Court that it was not bona fide is not sustainable at all.

10. This revision petition is accordingly allowed. The impugned order of the learned Additional Rent Controller dismissing the Petitioner's eviction petition is set aside and eviction of the Respondents from the tenanted shop is hereby ordered. The Respondents are, however, granted three months' time to vacate the shop.