

## Sharifuddin Vs Babuddin and Another

**Court:** Delhi High Court

**Date of Decision:** Nov. 24, 2008

**Acts Referred:** Constitution of India, 1950 " Article 227  
Delhi Rent Control Act, 1958 " Section 14(1)

**Hon'ble Judges:** S.N. Dhingra, J

**Bench:** Single Bench

**Advocate:** Mohd. Iqbal, for the Appellant; S.N. Gupta, for the Respondent

**Final Decision:** Allowed

### Judgement

Shiv Narayan Dhingra, J.

The petitioner has assailed the order dated 27th March 2002 of the learned Additional Rent Controller (ARC)

dismissing the eviction petition of the petitioner u/s 14(1)(e) of the Delhi Rent Control Act (DRC Act) filed on the ground of bonafide requirement

in respect of two rooms, kitchen, latrine on premises bearing No. 6362, Ward No. XIV, Gali Babu Bashrat.

2. The landlord (petitioner herein) filed the eviction petition in the year 1998 on the ground of bonafide requirement of his family comprising of

himself, his wife, four sons and three daughters. His two daughters were married and the elder son, aged 25 years, was of marriageable age. The

other children were school-going. The petitioner was in occupation of only two rooms in the property bearing No. 5084, Gali Masjid

Chhapparwali, Qassabpura. The petitioner's requirement at the time of filing of the eviction petition was of at least five bedrooms, one drawing

room, one study room, a store, kitchen, bathroom and a toilet so that the petitioner and his family could live in a dignified manner.

3. The respondents in the written statement had not denied the ownership and relationship of landlord and tenant but took a stand that the premises

was let out for residential-cum-commercial premises and the accommodation in occupation of the petitioner was not correctly shown. The extent

of the family of the petitioner was, however, not disputed. It was stated that the petitioner was having entire property bearing number 5084, Gali

Masjid Chhapparwali, Qassabpura in his occupation. The property consisted of four rooms on the ground floor and three rooms on the first floor.

Besides this, the petitioner was also having property bearing number 5093 to 5095 in Gali Chowkidarwali in his use and occupation and the need

of the petitioner was not bonafide. Both the parties adduced evidence to prove their respective case. The learned ARC after considering the

evidence of both sides observed that although the respondent had not stated in the written statement as to for what commercial purpose he was

using the premises, but the onus to prove that the premises was let out for residential purpose was on the petitioner and this onus has not been

sufficiently discharged. Learned ARC, however, considered the ground of bonafide requirement of landlord/petitioner also and observed that the

petitioner has failed to show his bonafide requirement and has not come clean on the accommodation available with him.

4. It is settled law that while exercising power of revision under Article 227 of the Constitution of India, this Court cannot act as a Court of appeal

and has not to re-appreciate the evidence as an appellate court. However, this Court can appreciate evidence of the witnesses to assure itself that

the learned ARC has not given its verdict contrary to the evidence or without evidence.

5. In order to consider the bonafide requirements of the petitioner, the learned trial court was supposed to consider the extent of the landlord's

family and what was its requirement keeping in view the number of family members and their ages and what accommodation was available with the

landlord. The petitioner (landlord) had contended that it was in occupation of the first floor bearing No. 5084 while ground floor was in possession

of his brother and the second floor was in possession of his sister, since the property was an ancestral property and his share was only the first

floor. Instead of considering the extent of the petitioner's family and the accommodation available to the petitioner, the learned ARC entered into

the controversy as to why the petitioner had not appeared in the witness box initially but later on appeared and no document was placed on record

to show that he was seriously ill or was not able to appear in the witness box earlier. It was also observed that the petitioner has not deposed

anything about the purpose of letting out or bonafide requirement.

6. I consider that the trial court went wrong in making these observations. While deciding a case, the learned trial court has to consider the

evidence which comes on record. In this case, initially the son of the petitioner appeared as a witness and deposed about the facts. Later on, in

view of the fact that another eviction petition of landlord was dismissed on the ground of his not appearing in the court personally, the father also

appeared in the Court. Merely because father had appeared in the court as a witnesses, the testimony of the son aware of the factum of family

needs and the accommodation available with the family, would not stand washed away and even if father, who was an old person, had not

deposed about the extent of family, that does not mean that the family's bonafide requirements was not to be considered as proved by other

witness. The trial court seems to have ignored the testimony of son of the petitioner who appeared in the witness box and deposed on oath. Being

son of the petitioner he was fully aware about the extent of the family of the petitioner and the extent of accommodation available with the

petitioner. His deposition is categorical that the petitioner and his family lived in two room, kitchen, latrine, bathroom and a small courtyard and the

petitioner's family comprised of petitioner himself, his wife, four sons, three daughters. At the time when this testimony was given each one of them

had got married. AW-1 was the elder son of the petitioner and was married and having three children aged three and a half years, two years and

one month respectively. He had proved ration card of the entire family and his ration card showing his residence there, telephone bills etc. He

stated that there was a small store of measurement 6" x 6" on the second floor which was in occupation of his Bua and the ground floor was in

occupation of his paternal uncle (chacha). He also deposed that different portions of the building were in occupation of brother and sister of the

petitioner as per the mutual understanding. He also placed on record the ration card of his chacha. In his testimony he also confirmed that during

pendency of the eviction petition, one room portion in the suit property had been vacated by another tenant after passing of eviction order against

the tenant. He also deposed that this portion could not be put to residential use since it was in a dilapidated condition and required reconstruction

and also needed extensive repair which could only be done along with the rest of the building. The learned ARC considered that non-use of the

room got vacated showed that the petitioner's requirement was not bonafide and observed that even if the eviction order was passed against the

petitioner, the petitioner cannot occupy the premises since it was in dilapidated condition. The eviction petition was u/s 14(1)(e) and not u/s 14(1)

(g) of the DRC Act. He dismissed the petition.

7. The testimony of AW-1 shows that the premises had been under tenancy for about more than 80 years. AW-1 was born and brought up at

there. It is obvious that since the premises had been in occupation of the tenant and the rent being meager, the premises had not been taken care of

for the purpose of repair and maintenance. No fault can be found with the petitioner if the premises even after being vacated cannot be occupied

directly and has to be given extensive repair or reconstruction. There is no conflict between provisions of Section 14(1)(e) and 14(1)(g) of DRC

Act. A decree can be passed u/s 14(1)(e) even in respect of a dilapidated premises where the landlord intends to live in the premises after

repairing it. Section 14(1)(g) operates in a different area. In case of 14(1)(g) the premises is required by the landlord for the purpose of re-building

or making any substantial additions or alterations not because the premises was in dilapidated condition but because the landlord wants to re-

construct or wants to make additions or alterations in the premises for whatsoever purposes. u/s 14(1)(e) the landlord can require the premises for

his own use or for the use of his family members from the tenant who is in occupation of the premises. A tenant who is paying low rent may

continue to live in a dilapidated premises because of meager rent being paid by him but after evicting the tenant from the premises, it was not

necessary for the landlord to shift into the premises in the same condition. He is always at liberty to first bring the premises to habitable and suitable

condition by either reconstruction or repair and then shift to it. It is not necessary for him that he should get the premises vacated u/s 14(1)(g) and

not u/s 14(1)(e), if he wants to shift to the premises, after making it a habitable.

8. The learned ARC in the present case also did not take into account that enhanced requirement of the family of the petitioner due to lapse of time

and increase in the ages of his children, his married sons and daughters who would visit him with families and dismissed the eviction petition on the

ground alien to Section 14(1)(e).

9. As far as letting purposes are concerned, this controversy has been rest at rest by the Supreme Court in Satyawati Sharma (Dead) by LRs. Vs.

Union of India (UOI) and Another, and now even the premises let out either for residential or commercial purposes can be got vacated by the

landlord for bonafide necessities.

10. In view of the foregoing facts and circumstances, I allow this petition. The order passed by learned ARC is hereby set aside. The eviction

petition filed by the petitioner (landlord) is hereby allowed. The respondents are directed to vacate the premises in question within a period of 60

days from today.