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Delhi High Court

Case No: RC.Rev. No. 119 of 2012 and CM No"s. 4828-29 of 2012 and Caveat No. 268 of 2012

Kanta Khosla	APPELLANT
Vs	
Shri Subhash Chander Kumar	RESPONDENT

Date of Decision: March 16, 2012

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14(1)

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Ashok Sapra, for the Appellant;

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.
Impugned judgment is dated 08.9.2011; eviction petition filed by the landlord had been decreed; the application seeking leave to defend filed by the tenant had been declined. Record shows that the present eviction petition has been filed by the landlord Subhash Chander Kumar seeking eviction of his tenant from shop bearing No.3 forming a part of property No.A-12, Rajouri Garden, New Delhi; premises had been let out for a commercial purpose; rate of rent was `175/- per month exclusive of electricity charges; contention of the landlord was that he was the owner/landlord of the aforenoted premises; the respondent was a habitual defaulter; she had last paid rent only on 01.3.2006; petitioner has a small family comprising of himself; his wife and one daughter; petitioner has been doing business from shop nos.1 & 2, under the name and style of "Kumar Hardware" located in the same property. Shop No.3 is the tenanted premises. Daughter of the petitioner Dr. Nidhi Kumar aged 28 years is a qualified physiotherapist from the "Institute of Rehabilitation Medicine and Allied Sciences" affiliated with the Guru Gobind Singh Indraprastha University", Delhi. She had obtained a degree in 2005 in first division. She had got married in the year 2005 but because of differences with her husband she

underwent a divorce which was a divorce by mutual consent on 02.12.2010. Since 24.5.2009 she is living with the petitioner; his daughter wishes to start a new chapter in her life. The shop is required for her need as she wants to open a clinic of physiotherapy. The shop is in a suitable and viable area and the clinic can be run from the aforenoted premises. Documents of the medical degree obtained by the daughter of the petitioner as also the divorce petition substantiating the submission that his daughter is now living with her parents have also been filed on record. This is the bonafide need which has been pleaded by the landlord.

2. Application seeking leave to defend had been filed. Contention was that the petitioner is not the owner of the premises; further contention being that the petitioner himself is running a business of hardware under the name and style of "Kumar Hardware and Sanitary Stores." He is living in the first floor of the property; he has concealed the fact that he had earlier filed an eviction petition u/s 14(1)(a) of the DRCA; the shop in occupation with him would be suffice for the need of his daughter as well. Contention is that this eviction petition has been filed only for the purpose of blackmailing the petitioner. These are the triable issues which have been sought to be raised by the tenant.

3. Reply and the corresponding paras of the reply relevant to these averments have been perused. It is reiterated that the petitioner is the owner of the suit premises; it is also not in dispute that his divorced daughter is living with him. Decree of divorce has substantiated this submission; the fact that his daughter is a qualified physiotherapist and has a decree of bachelors as a qualified physiotherapist is also not disputed as the document substantiating this submission has also been placed on record.

4. An oral submission has been made by the learned counsel for the petitioner which is to the effect that the decree of divorce shows that a sum of `22 lacs has been paid by her husband as alimony to the wife and as such this would sufficient for her lifetime need; this argument is wholly bereft of merit. Apart from the fact that this divorce decree states `22 lacs has been paid to the wife as permanent alimony and for maintenance of the child; even otherwise the argument that a sum of `22 lacs would be sufficient for a lifetime for two persons is ridiculous; the daughter is not prevented from pursuing a profession in which she is dully qualified, such an argument can in no manner be sustained.

5. In the instant case, it is clear that the tenant has been paying rent to the petitioner; he has not seriously disputed the ownership of the petitioner; it is also not his case that someone else is the owner and he is not paying the rent to the landlord; this submission is also wholly bereft of any force.

6. The Apex Court in the case of Shanti Sharma and Others Vs. Ved Prabha and Others, had an occasion to examine the concept of "owner" as envisaged u/s 14 (1)(e) of the DRCA. The Apex Court has noted that the word "owner" has not been defined anywhere in the DRCA; the following extract of the judgment of the Apex Court is relevant:-

The word "owner" is not used in Section 14 (1) proviso (e) of Delhi Rent Control Act in the sense of absolute owner; where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction, the only thing necessary for him to prove being bona fide requirement and he is the owner thereof. In this context the meaning of "owner" is vis-ï¿½-vis the tenant i.e. the owner should be something more than the tenant. In most of the modern townships in India the properties stand on plots of land leased out either by the Government or the Development Authorities and therefore it was not contemplated that for all such properties the landlord or the owner of all such properties the landlord or the owner of the property used in common parlance will not be entitled to eviction on the ground of bonafide requirement and it is in this context that we have to examine this contention. It could not be doubted that the term "owner" has to be understood in the modern context and background of the scheme of the Act.

7. The need of the landlord is to set up an independent establishment for his divorced daughter who also has a child to support; not only is a financial settlement necessary for his daughter also but an emotional stability has to be given to her in order that she can engrain herself in society once again and re-start a new chapter of her life.

8. The need of the landlord is clearly bonafide. He himself is living with his wife in the first floor and doing the business of hardware from the neighbouring shop which is in the same premises as the disputed premises. The need of the daughter to run her physiotherapy clinic from the shop which is in close vicinity for which she has a necessary qualification clearly establishes his genuine requirement. The landlord is also the best judgment of his own requirement; it is form him to decide as to how and in what manner he and his family should live and earn their livelihood.

9. In Prativa Devi Vs. T.V. Krishnan, it was held as under:-

The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.

10. These are the issues which have been raised. They do not in any manner amount fall in the category of triable issues. The Courts time and again have held that unless and until a triable issue arises leave to defend should not be granted in a routine or in a mechanical manner.

11. In Shri Nem Chand Daga Vs. Shri Inder Mohan Singh Rana, a Bench of this Court had noted as under:-

That before leave to defend is granted, the respondent must show that some triable issues which disentitle the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.

12. In Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjan Deva Tayal, the Apex Court has held as follows:

Prayer for leave to contest should be granted to the tenant only where a prima-facie case has been disclosed by him. In the absence of the tenant having disclosed a prima-facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend.

13. Reliance by the learned counsel for the petitioner upon the judgments reported in AIR 1971 J&K 67 Aziz Wani Vs. Director Consolidation is misplaced; this is a summary proceeding which has been followed by the court. This judgment has no application in this background. In this back ground the eviction petition having been decreed and leave to defend application having been dismissed suffers from no infirmity. Petition is dismissed being without any merit.