CASE NO.:
Appeal (civil) 2143 of 2000

PETITIONER:
M.L. PRABHAKAR

Vs.

RESPONDENT:
RAJIV SINGALVVV

DATE OF JUDGMENT: 04/01/2001

BENCH:
S.N.Variava, S.S.M.Quadri

JUDGMENT:

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J U D G M E N T S. N. VARIAVA, J.

This Appeal is against an Order dated 12th November, 1999. Briefly stated the facts are as follows: The father of the Respondent was the landlord of the premises in question. He filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act. This petition was on the ground of bonafide requirement. He claimed that he had two bed rooms and a verandah on the ground floor of the premises and his family consisted of himself, his wife, his son (the present Respondent), two daughters and their families. He claimed that they did not own any other residential accommodation in Delhi. He, therefore, sought eviction of the Appellant from the first floor of the premises bearing No. 16/58 Gali No.1, Joshi Road, Delhi. The defence of the Appellant was (a) that the Landlord had other suitable residential accommodation at No. 16/57 Gali No. 1, Joshi Road, Delhi and at Basant Road, Pahar Ganj. (b) that the daughters did not stay with the father as they were married and they stayed with their husbands and (c) that the Landlord already had 4 bed rooms in his possession. The Rent Controller by his judgment dated 24th February, 1993 dismissed the eviction petition. The Rent Controller held that there was suitable alternate residential accommodation both at 16/57 Gali No. 1, Joshi Road, Delhi as well as at Basant Road. The Rent Controller held that these had been suppressed. The Rent Controller also held that daughters were not residing with the original landlord. It was also held that the landlord had sufficient number of room in his possession to meet his requirement. Being aggrieved by this decision, the landlord filed a Revision in the High Court. The High Court, by the impugned order dated 12th November, 1999, allowed the Revision. The High Court set aside the order of the Rent Controller and passed an order of eviction against the Appellant. The High Court held that the requirement of the landlord was bonafide. During the pendency of this Revision before the High Court, the original landlord died. The present Respondent, being his son, was brought on record. It has been urged that there was suppression on the part of the landlord inasmuch

as he did not disclose the premises which were available at 16/57 Gali No. 1, Joshi Road as well as the premises which are available at Basant Road, Pahar Ganj. On the other hand on behalf of the Respondent Dr. Singhvi has submitted that the only requirement is to disclose such accommodation as is suitable for residence of the landlord. Dr. Singhvi submitted that if there is no other residential accommodation which is suitable then there is no duty to disclose. Dr. Singhvi relied upon the authority in the case of Ram Narain Arora vs. Asha Rani and Ors. reported in 1999 (1) S.C.C. 141, wherein it has been held that the question whether the landlord has any other reasonably suitable residential accommodation is a question which is inter-mixed with the question regarding bonafide requirement. It is held that whether the landlord has any other reasonably suitable residential accommodation is a defence for the tenant. It is held that whether the other accommodation is more suitable than the suit premises would not solely depend upon pleadings and non- disclosure by the landlord. It was held that the landlord having another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the court and case of neither party was prejudiced. In this case even though the landlord has not mentioned about the other two premises, the material in respect of the other two premises was placed before the Rent Controller as well as before the High Court, thus no prejudice has been caused. The parties have squarely dealt with this question. We have seen the material on record and read the evidence. In our view, it can not at all be said that the rooms which are available on the plot bearing No. 16/57 Gali No. 1, Joshi Road are reasonably suitable residential accommodation. These are rooms which are being used by the servants of the Respondents. It can hardly be expected that the landlord or his family shift into rooms meant for servants. Mere fact that at an earlier date a tenant was residing in these rooms does not in any way make them suitable for occupation of the landlord. In his evidence the landlord has categorically stated that the premises at Basant Road belong to his wife. The landlord deposed that those premises are being used for commercial purposes only. The landlord has also produced a licence showing that the ground floor of those premises has been licenced to be used as Bonded Ware House of the storage of the duty free shop. However, reliance has been placed upon the deposition of the landlord in cross-examination wherein it is admitted that prior to 1965 the landlord was staying on the first floor of those premises and that on the first floor there are two bed rooms, drawing, dining and latrine. It does appear from this admission, in the cross-examination, that on the first floor there are two bed rooms which are still available. However, the question would still be whether these can be considered to be reasonably suitable residential accommodation. This Court has in the case of Shiv Sarup Gupta vs. Dr. Mahesh Chand Guptas. reported in 1999 (6) S.C.C. 222, held in paras 14 and 22 as follows : "14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such

circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of non consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord must be reasonably suitable. Obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members wold be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.

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22. Reverting back to the case at hand, the landlord has been living on the ground floor of the Defence Colony house. It was conceded at the Bar that as on the day, the family of the landlord consists of the landlord himself (a practising doctor), his son (again a practising doctor), daughter-in-law and two grandchildren who are gradually growing in their age. Looking at the size of the family, availability of three bedrooms in the premises in which the landlord may live, is a requirement which is natural and consistent with the sense of decency - not to talk of comfort and convenience. There is nothing unreasonable in a family with two practising doctors as members thereof needing a room or two or a room with a verandah to be used as a residential clinic divided into a consultation room and a waiting place for the patients. A drawing room, a kitchen, a living room and a garage are the bare necessities for a comfortable living. The landlord has been living in the Defence Colony locality for more than 35 years The first floor which was let out to the tenant in the year 1978 as being an accommodation surplus with the landlord has with the lapse of time become a necessity for occupation by the landlord and his family members. More than ten years by now have been lost in litigation. The death of the wife of the landlord, and the death of the landlord’s mother-in- law, are events which have hardly any bearing on the case of the felt need of the landlord. The need as pleaded and proved by the landlord is undoubtedly natural, sincere and honest and hence a bona fide need. There is no material available on record to doubt the genuineness of such need. It continues to subsist in spite of the two deaths. It is not the case of appellant tenant that while seeking eviction of the tenant the landlord is moved by any ulterior motive or is guided by some other thing in his mind. It will be mot unreasonable to suggest that the landlord may continue to live on the ground floor of the Defence Colony house and some members of the family may move to the Sarvodaya Encalve house if the whole family cannot be conveniently and

comfortably accommodated as one unit in the Defence Colony house. It would be equally unreasonable to suggest that the entire family must shift to the Sarvodaya Enclave house which is admittedly situated at a distance of about 7- 8 kilometres from Defence Colony. The landlord and his family are used to living in Defence Colony where they have developed friends and acquaintances, also familiarity with the neighbourhood and the environment. The patients usually visiting or likely to visit the residential clinic know where their doctor would be available. Shri Arun Jaitley, learned Senior Counsel for the respondent has very rightly submitted that it could not have been the intendment of the rent control law to compel the landlord in such facts and circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself tightly into lesser premises protecting the tenant's occupancy. In addition, we find that on the date of the initiation of the proceedings, the Sarvodaya Enclave property was belonging to the wife of the landlord or to one of his sons resident abroad and was in actual occupation of the tenant. On the death of the wife of the landlord if any one of the two wills (one which was in existence at the time of the initiation of the proceedings or the one, which appears to have been subsequently executed by the landlord's wife and filed before the High Court) was to be given effect to then the ownership in the property has passed on to one son or jointly to four sons of the landlord. If the will itself is excluded from consideration as not proved then also the ownership in the property has passed on to the four sons jointly. The Sarvodaya Enclave property does not belong to the landlord and is not available for his occupation as an owner. To these facts the applicability of law laid down in Prativa Devi Case is squarely attracted. In our opinion the availability of the Sarvodaya Enclave property is not of any relevance or germane to determining the need and the bona fides of the need of the landlord. We are not therefore inclined to attach any weight to the application for additional evidence filed by the landlord before the High Court though we agree with the learned counsel for the appellant tenant that the High Court was not justified in taking into consideration the contents of the will without formally admitting the same in evidence and affording the parties opportunity of adducing evidence in proof and disproof thereof."

It is thus to be seen that the suitability has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background. On these tests let us consider the facts of this case. The trial court has come to the conclusion that the daughters do not stay with the landlord. However, even the trial court accepted that the wife, the son (who is the present respondent) and his family members stayed with the landlord. The daughters and their family members occasionally visited and stayed. The High Court has also proceeded on the footing that the daughters only occasionally visit. The High Court has held that one additional room may be required for an occasional visit by the other relatives. The High Court has thus found that the requirement of the landlord would be five rooms. In our view, it cannot be said that there is any infirmity in these findings. It was urged that in the premises presently

available there are already available five rooms. In support of this, reliance is placed upon the sketch plan which had been produced by the Appellant during the cross-examination of the daughter of the landlord. In the sketch plan it has been shown as if there are four bed rooms and one drawing and dining room. This sketch plan is identical to a sketch plan produced by the landlord. The only difference is that in this sketch plan a passage has been shown as drawing and dining room. In our view, the High Court was right in not relying on the sketch plan, which had been merely put to the daughter in cross-examination. The daughter had denied the correctness of this Plan. The correctness was not proved by anybody else. Even otherwise the evidence of one of the witnesses of the Appellant shows that the sketch plan produced by the landlord is correct. The Appellant's witness admits that the drawing and dining room are as shown in the sketch plan produced by the landlord. Lastly, even if premises at Basant Road are available it can hardly be suggested that some of the members of the family of the landlord should stay at the suit premises and the others stay at Basant Road. Neither, by itself, is large enough to accommodate fully the need of the landlord. Thus the premises at Basant Road cannot be said to be reasonably suitable alternate accommodation. In view of the above, we find no infirmity in the judgment of the High Court. It must be mentioned that for the first time in this SLP, a point has been taken that the landlord has constructed a building at Greater Kailash and that bungalow is also available to him. We were shown the counter filed by the respondent in the S.L.P. wherein the reply to this averment is as follows : "(xix) The Petitioner/tenant has also falsely alleged that the landlord has property at Greater Kailash, New Delhi. In fact, the landlord's wife owned a plot of land at Greater Kailash, New Delhi. The said property is not reasonably suitable for the landlord and his family for the reason inter alia that it is 17 Kms. away from the present residence. The family has been staying at the said residence for the last nearly three decades. It is accustomed to live at the present locality. It has friends, acquaintances and relatives living about the said premises. Over a period of time they have got accustomed to live at the said premises. The place of work of the Respondent No.1 at Basant Road, is within 5 Kms. of the present residence, as opposed to 12 Kms. from Greater Kailash, New Delhi."

We have not allowed the Appellant to urge this point in this Appeal as these are disputed questions of fact which should have been placed before the Rent Controller so that proper evidence could have been taken on this. However, it is clear that the landlord is getting the Appellant evicted on the ground of their bonafide personal requirement. If, therefore, in the near future it is found that this was a false ground and that after getting the Appellant evicted the premises are not being used for personal use of the landlord and his family as claimed, the Appellant will be at liberty to adopt appropriate proceedings for restitution and to get back the premises from the Respondent. At the request of the Appellant we grant six months' time i.e. till end of June, 2001 to vacate the premises provided the Appellant files in this Court the usual undertaking within two weeks from today.

The Appeal stands dismissed. There will be no order

as to costs.