

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. Revision No.616/2015 & CM APPL.28340/2015**

Decided on: 27th November, 2015

ASHOK KUMAR (DECEASED) THR. LRS. Petitioner

Through: Mr. B.L. Mehta, Advocate with
Mr. Shagun Mehta, Advocate

Versus

KEWAL KUMAR Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 05.05.2015 by virtue of which the leave to defend application of the petitioner was dismissed and an order of eviction was passed in case titled *Kewal Kumar v. Ashok Kumar (since deceased)*, bearing E No.76/2012.
2. I have heard the learned counsel for the petitioner and have also gone through the record.
3. The respondent-landlord had filed an eviction petition against the present petitioner-tenant under Section 14 (1) (e) of the Delhi Rent

Control Act, 1958 in respect of a Janta Flat bearing No.208-A, Ground floor, Paschim Puri, New DDA Market, Landmark Khati Restaurant, opposite Ordinance Depot, New Delhi-110063.

4. The case which was set up by the respondent-landlord is that he is living in a tenanted premises in DDA Flat No.15/388, Madangir, New Delhi-110062.
5. It has been stated that the family of the respondent-landlord consisting five members including the petitioner, his wife and three adults sons and the respondent-landlord's health is not very sound because of which he is not able to bear the expenses of rentals apart from the expenses of his family members who are dependent on him. Therefore, the respondent-landlord desires to shift to his own flat in order to save the money. The respondent-landlord has also stated that he has no other suitable alternative accommodation available to him. So far as the present petitioner-tenant is concerned, it was stated that he was paying rent of Rs.2,000/- per month and the premises were being used by him for residential purposes.

6. On the notice being served, the petitioner-tenant filed his leave to defend application raising pleas regarding the bona fide requirement of the respondent-landlord. It was also stated that he is not the owner of the flat and that the respondent-landlord does not require the premises for his own use. During the pendency of the eviction petition the petitioner-tenant Ashok Kumar died and his legal heirs, namely, widow and the daughter were substituted as parties. The learned Additional Rent Controller, West District, Tis Hazari Courts, Delhi passed an order of eviction after rejecting the leave to defend application by observing that the petitioner-tenant was not able to make out a triable issue which would disentitle the respondent-landlord from claiming back the possession of the premises.
7. I have considered the submissions carefully and have gone through the impugned order.
8. I am fully satisfied that the petitioner-tenant has not been able to point out any illegality, impropriety or jurisdictional error in rejecting the leave to defend application of the present petitioner-tenant and consequently passing an eviction order against him.

The reason for this is that the points which are raised by the petitioner-tenant are not such, which if proved would disentitle the respondent-landlord from claiming back the possession. The relationship of landlord and tenant is not disputed by the petitioner although he has disputed the ownership of the respondent-landlord in respect of the property in question. It has been held by the learned ARC and rightly so that for claiming the possession, the respondent-landlord does not have to be the absolute owner of the suit property. An absolute owner would be one in whose favour there is registered documents in respect of the property which could be called Sale Deed, Title Deed or Conveyance Deed, but in the instant case the flat in question has been allotted admittedly to the respondent-landlord by the DDA and that is considered to be good enough by the Rent Controller to establish his ownership qua the entire world to have a better title to occupy the property.

9. In addition to this, the Rent Controller has rightly observed that since the petitioner is claiming himself to be the tenant under the respondent-landlord, he is estopped from challenging the title of the respondent-landlord in the eviction petition in question in view

of Section 116 of the Evidence Act, 1872. Rightly so, it has been held in catena of authorities that the petitioner will be permitted to challenge the ownership of a party only if he has not attorned or paid rent to the respondent. In this case that situation is absent. The petitioner/tenant has admitted that he has been paying rent to the respondent-landlord as a matter of fact he has assailed the rate of rent. Therefore, admittedly, there is relationship of tenant and landlord and the petitioner is stopped from retracing his step by challenging the title of the respondent-landlord.

10. So far as the question of bona fide requirement of the respondent-landlord is concerned, it has been the endeavour of the learned counsel for the petitioner to get the case tagged along with other cases which are stated to be still pending for consideration of this Court.
11. I do not agree that the decision in the present case be deferred or the present case be adjourned to a date in future so as to club this case along with other cases. The respondent-landlord has been admittedly living in a rented accommodation and because of his adult sons he wants to shift to his own property, which he has

created with his sweat and blood, then the tenant must be refused leave to defend. The landlord should be permitted to decide for himself in case he wants to shift to his own and sole property unless there are compelling circumstances to show that his desire is not genuine and it is actuated by ulterior consideration.

12. In the instant case the issue of bona fides is not successfully assailed by the petitioner/tenant. He does not dispute the number of family members or the nature of job of the respondent-landlord and thereby admitting indirectly the bona fide requirement of the respondent-landlord. I do not feel that anything remains to be done by the respondent in this regard.
13. Regarding the availability of an alternative accommodation, the respondent has categorically stated that there is no other accommodation owned by him or his dependent family members, and therefore, this point also goes against the present petitioner. The totality of the circumstances and the examination of the order clearly show that if a person is living in a tenanted premises and is not getting huge money from his own premises then his desire to shift to his own premises ought to be permitted. It is the earnest

desire of a right thinking person to have a shelter over his head where he could lock his room and keep his personal belongings and yet does not suffer from any anxiety syndrome or live the way he wants to.

14. Therefore, I feel that the petitioner-tenant do not have any issue up their sleeves, which if permitted to be proved by the Court to them which would disentitle the respondent-landlord from claiming back possession of the suit premises.
15. I therefore, hold that the present revision petition is totally misconceived and is accordingly dismissed.
16. Pending application also stands disposed of.

NOVEMBER 27, 2015
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V.K. SHALI, J.