

## **S.N. Kapoor (Dead) By His Lrs. ... vs Basant Lal Khatri & Ors. Respondents on 5 November, 2001**

**Equivalent citations: AIR 2002 SUPREME COURT 171, 2002 (1) SCC 329, 2001 AIR SCW 4753, 2001 (4) LRI 808, 2002 SCFBRC 48, 2001 (8) SCALE 16, (2001) 9 JT 456 (SC), (2001) 2 RENTLR 668, (2001) 6 ANDHLD 123, (2002) 1 MAHLR 740, (2002) 1 RENCJ 59, (2002) 1 RENCRC 217, (2001) 8 SUPREME 65, (2001) 8 SCALE 16, (2002) 46 ALL LR 209, (2001) 94 DLT 460**

**Bench: M.B. Shah, Doraiswamy Raju**

CASE NO.:

Appeal (civil) 7517 of 2001

PETITIONER:

S.N. KAPOOR (DEAD) BY HIS LRS.

Vs.

RESPONDENT:

BASANT LAL KHATRI & ORS.

DATE OF JUDGMENT: 05/11/2001

BENCH:

M.B. Shah & Doraiswamy Raju

JUDGMENT:

W I T H CIVIL APPEAL NO. 7518 OF 2001 (Arising out of S.L.P.[C] No.13103 of 2000) J U D G M E N T RAJU, J.

Leave granted.

The Landlady is the appellant in the above appeals of which one arising out of the order dated 19.1.2000 passed by the learned Single Judge of the Delhi High Court in C.M. No.5154/99 in C.R. No.513/98 rejecting the prayer for converting the application filed initially for eviction under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 into one under Section 14 D of the said Act and to consider the claim of the Landlady accordingly and the other arising out of the order dated 3.7.2000 made in Civil Revision No.573/98 dismissing the main revision petition.

Late Shri S.N. Kapoor, the original owner of the premises at A-278, Defence Colony, New Delhi, was serving in the Indian Army and after his retirement he established his residence at Bhopal with his wife and 5 children in the year 1968. The premises in question at New Delhi was under tenancy. In 1982 the eldest son was said to have got married. Late Shri Kapoor and his wife began residing with their eldest son and daughter in law. After the Bhopal Gas Leak Accident, Late Shri Kapoor was also affected with serious ophthalmic problems and he was under going treatment in All India Institute of Medical Sciences at New Delhi. In view of all the above, he called upon the respondents to vacate and deliver vacant possession of the premises for him to occupy by shifting his residence from Bhopal to New Delhi. Since the request was not complied with in 1986, Eviction Case No. E.119/86 for eviction of the respondent No.1 came to be instituted also for the reason that the relationship between Mrs Kapoor and her daughter in law were getting strained and in the advance age of Mr. Kapoor he wanted to live in peace with his wife at Delhi. After getting leave to defend, the first respondent opposed the application contesting the bona fides of the landlord.

After trial by an order dated 16.3.98, the Additional Rent Controller held that though late Shri Kapoor was the owner of the property in question and did not own any other property in Delhi, yet the claim for owners occupation was not bona fide, in that the desire to shift to Delhi was not in accordance with law. Aggrieved, late Shri Kapoor filed Civil Revision No.513/98 before the High Court of Delhi. Pending disposal of the revision, on 1.4.99 Shri S.N. Kapoor expired and his wife was brought on record by way of substitution to enable her to continue the proceedings. Thereafter, the wife of Shri Kapoor filed an application under Order VII Rule 7 of the Code of Civil Procedure read with Section 14-D of the Delhi Rent Control Act, 1958 that the petition filed for eviction under Section 14 (1) (e) be converted as one under Section 14-D of the Delhi Rent Control Act, 1958, she having become a widow entitled to recovery of possession and her claims considered accordingly. As noticed earlier, this application came to be rejected by an Order dated 19.1.2000 on the ground that the High Court had no such powers to order for such conversion and the decision in 1995 Supp. (3) SCC 172 in which this Court had an occasion to entertain such a claim for conversion could not be a precedent for the High Court to do so since this Court had wide powers under Article 142 of the Constitution of India. It is against this Order of rejection SLP (c) No.12298/2000 came to be filed. Subsequently, the revision was also heard on merits of the claim under Section 14 (1) (e) of the Act and came to be rejected resulting in the filing of SLP (c) No.13103/2000.

Heard, Shri Kailash Vasdev, Senior Advocate, for the appellant in both the appeals and Shri Prag P. Tripathy, Senior Advocate, for the respondents. Learned counsel for the appellant strenuously contended that the orders of the Rent Controller as well as that of the learned Single Judge in the High Court are contrary to law and that the correct principles governing the claim have not been properly applied to the indisputable material on record and that grave miscarriage of justice resulted thereby. Argued the learned counsel for the appellant that on the indisputable materials on record the High Court ought to have allowed the application for conversion as prayed for and ordered eviction of the respondent and the conclusion to the contrary are unsustainable in law. Per contra, the learned counsel for the respondent contending with equal force urged that the concurrent findings recorded by the Rent Controller as well as the learned Single Judge of the High Court on the question of bona fide need for owners occupation of the premises in question are well merited and do not call for any interference in this appeal. It was also further contended that even under

Section 14-D of the Act, the essential pre-requisite of the claim being bona fide need to be substantiated to get relief and in as much as there had been concurrent findings against the claim, no exception could be taken to the Order passed declining the request for conversion of the claim even on merits de hors the question of entertainability of the same at that stage of the proceedings.

The plea based on concurrent findings, in our view, could not come to the rescue of the tenant in this case, having regard to the perfunctory nature of the said findings and want of proper consideration and lack of application of relevant principles governing the issue. When the Court exercising jurisdiction under Section 25-B (8) was obliged to objectively consider whether the order passed by the Rent Controller was according to law, but has miserably failed to do so resulting in miscarriage of justice, the High Court must be held to have failed to exercise its powers and consequently, this Court is bound to interfere in the matter to render real and substantive justice. All the more so when as in this case it is shown that improper and wrong inferences have been drawn in utter disregard of the materials on record and too technical a view has been found to have been taken.

So far as the challenge made to the order of the High Court rejecting the prayer to modify the relief claimed under Section 14(1)(e) of the Act for eviction into one under Section 14-D, the manner of disposal adopted seems to be to summary and cursory. The Court has not chosen to, except stating that this Court had such powers under Article 142 of the Constitution of India, has not assigned any reason as to why it cannot do so, if the circumstances so warranted or justified in a given case. The tenability or otherwise of such a claim would depend upon the question as to whether a decision on the claim based upon such altered provision would require any fresh enquiry and proof of new facts, before it could be taken up for consideration. In *Surjit Singh Kalra Vs. U.O.I. & Anr.* [1991(2) SCC 87], this Court held that Sections 14-B to 14-D though different from proviso to Section 14(1)(e) and the tenant cannot contest the application on grounds specified therein, can and is entitled to show that landlords requirement was not bona fide, even when made under Section 14-D. In *EMC Steel Limited, Calcutta Vs. Union of India & Anr., etc.* [(1991)2 SCC 101] also this Court, while upholding the constitutional validity of Section 14-D, observed that the special right conferred upon the widow under Section 14D can be availed of by her only once and she had to also prove her bona fide need like other landlords and that the restriction under Section 19 on re-letting after recovery of possession will also apply to her. This Court in *V. Rajaswari Vs. Bombay Tyres Intdl. Ltd.* [1995 Suppl.(3) SCC 172] countenanced such a claim of the widow in an appeal filed under Article 136 of the Constitution of India, even when the claim under Section 14(1)(e) came to be rejected by the courts below. In that case, this Court held that we are of the view that under Section 14-D, the tenant has practically no defence whatever. All that has to be proved under the said Section extracted above are (i) that the landlady is a widow and (ii) the premises are required by her for her own residence. The Court further observed that the fact that she is living with her daughter or any other person, is no ground to say that the premises in question is not required for her residence. So far as Section 14(1)(e) is concerned, the bona fide nature of the requirement need be established for getting an order of eviction and even in the absence of a specific stipulation in this regard this Court, in order to make the enabling power under Section 14-D to be more reasonable read into it also the need to substantiate that the request of the widow to recover possession of the premises for her own residence should be bona fide. The common determining factor being the Bona fides in both cases, and the landlady seeks an adjudication on the basis of materials already on record there should be

no impediment for the Authorities/Courts functioning even under the Act to permit such conversion or alteration and consider the claims made under the altered provision of law. As a matter of fact subsequent developments and altered circumstances were held to be relevant in adjudging the nature and character of the claim made, at all stages of the proceedings. The High Court, in our view, erred in refusing to allow the application for modification of the claim made under Section 14(1)(e) into one under Section 14-D, for being considered on its merits. The order dated 19.1.2000 in CM 5154/99 is set aside and the appeal filed against the same is allowed and application of the appellant for modification of the claim is allowed.

That the landlord has no other building in New Delhi is not in controversy and it is also a fact specifically noticed also by the Rent Controller. The question that does really arise for consideration is as to whether the claim of the landlady or the need to occupy the premises at New Delhi, in the circumstances, pleaded or demonstrated could be said to be not bona fide or reasonable merely because the landlady is residing, for the time being, at Bhopal altogether a different city in a different State also, along with her son and his family notwithstanding her decision to live separately at New Delhi. The need felt by the landlady to do so does appear to be sincere and honest and not a mere pretence only to evict the tenant. No material has been brought on record and no proof has been made by the tenant by any positive material that it is neither genuine nor bona fide or reasonable but a mere excuse to get rid of the tenant. Though the choice or proclaimed need cannot be whimsical or merely fanciful yet certain amount of discretion has to be allowed in favour of the landlady too and courts should not also impose its own wisdom forcibly upon the landlady to arrange her own affairs, according to their own perception carried away only by the interests or hardship of the tenant and inconvenience that may result to him in passing an order of eviction. In adjudging the claim under Section 14-D what is required to be substantiated is that the landlady is a widow and that she wants the premises for her own residence and that the claim by her is bona fide and not a feigned one. So far as a claim under Section 14(1)(e) is concerned, the very requirement has to be shown not only to be bona fide but the move of the landlord/landlady to seek the eviction of the tenant must be genuine. As far as the claim under Section 14-D is concerned, the widow-landlady's need for her own residence is recognized statutorily to be a valid one, but the move or request made to avail of the special benefit must be shown to be a bona fide and not a pretext only to get rid of the tenant. Viewed in the context of the indisputable facts on record that the widow has no other premises of her own at New Delhi and that she wants to reside away from Bhopal and aloof from her daughter-in-law are by themselves sufficient to sustain her claim. The rejection of the claim seems to be on hyper technical appreciation of the materials on record and does not constitute a real, proper and effective consideration at all. Therefore, viewed from any angle, we find the need and requirement of the appellant-landlady to be bona fide and consequently an order of eviction shall follow. We allow the claim of the landlady for eviction and the appeal against the order dated 3.7.2000 shall stand allowed.

So far as the time to be granted to the tenant to vacate and deliver vacant premises is concerned, the learned senior counsel appearing for the appellant fairly consented for one year's time, subject, of course, to the usual undertakings to be given by the tenant. We accept the same and, accordingly, give one year's time to the tenant to deliver vacant premises and this is subject to the condition that the first respondent tenant shall file in this Court the usual Undertaking within two weeks from the

date of this judgment. The parties will bear their respective costs.

J. [M.B. Shah] J. [Doraiswamy Raju] November 5, 2001.