

## **J. Chatterjee vs Mohinder Kaur Uppal & Anr. on 29 September, 2000**

**Equivalent citations: AIR2000SC3076, 2000(6)SCALE603, (2000)7SCC510, AIR 2000 SUPREME COURT 3076, 2000 AIR SCW 3484, 2000 (1) JT (SUPP) 155, 2000 (6) SCALE 603, 2000 (7) SCC 510, 2000 SCFBRC 442, 2000 HRR 725, 2000 (9) SRJ 219, (2000) 2 RENCJ 623, (2000) 2 RENCRC 462, (2000) 2 RENTLR 531, (2000) 6 SUPREME 463, (2000) 6 SCALE 603, (2001) 1 UC 65, (2000) 4 CURCC 90, (2000) 87 DLT 705**

**Author: D.P. Mohapatra**

**Bench: S. Rajendra Babu, D.P. Mohapatra**

ORDER

D.P. Mohapatra, J.

1. Leave granted.
2. The appellant who is in occupation of the ground floor of the building K 37-C, Kailash Colony, New Delhi, as a tenant has filed this appeal assailing the Judgment passed by the Delhi High Court dismissing his Revision Petition and confirming the order of the Additional Rent Controller, Delhi, directing his eviction from the premises.
3. The respondent No. 1 who is a widow and her son (respondent No. 2 herein) filed a petition under Section 14-D read with Section 25-B of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Act') for eviction of the appellant from the premises in question of the ground of personal requirement. In the petition it was stated, inter alia, that the respondent No. 1 is as aged lady, aged about 62 years, and she is suffering from various ailments including arthritis; that the widowed mother of the respondent No. 1 who is aged about 90 years is also residing with her and she is also suffering from various ailments including arthritis; that both these ladies have difficulty in climbing up the stairs to reach the first floor of the building. It was further averred in the eviction petition that the only son of respondent No. 1 who is aged about 27 years is to get married and, thereafter, the couple will occupy the first floor and the two old ladies will need the ground floor for their occupation. It was also stated in the petition that the respondent No. 1 has three married daughters who visit her from time to time and her two married sisters who reside in the United States of America also come to see her occasionally. On these averments, the respondents sought immediate eviction of the tenant from the ground floor of the house following the special procedure laid down in Section 25-B of the Act.

4. The tenant who was arrayed as respondent No. 1 in the suit, filed an application for grant of leave to contest the eviction petition generally denying the averments made in the eviction petition. He questioned the validity of the notice served on him. He also questioned the plea of personal requirement of the petitioner for immediate occupation of the first floor of the building. He denied that the petitioner- landlady resides at Delhi and asserted that she stays in her Flat No. 802 in Natasha Manor 'A' Building, 52, Hill Road, Bandra (W), Bombay. He also denied that she suffers from any ailment including arthritis. He alleged that the petitioner had gone abroad for about 9 months in 1995-96. He also questioned the locus standi of the petitioner to file the eviction petition.

5. The Additional Rent Controller, Delhi, considering the case pleaded in the eviction petition filed by the respondents and the averments made in the petition for leave to defend filed by the appellant and the documents like ration card, papers relating to her treatment in the hospital etc. found that the petitioner herself aged about 62 years is suffering from arthritis. She has been able to prove the requirement of the ground floor for her personal occupation and thus a case for eviction of the tenant under Section 14-D of the Act has been made out. The Additional Rent Controller also found that the appellant has not been able to plead a case which, if believed, will non-suit the respondent and, therefore, declined to grant him leave to defend the eviction petition.

6. In the Revision Petition, filed by the appellant, the learned Single Judge considered the two contentions raised before him on behalf of the petitioner; that there was no relationship of landlord and tenant between the parties and that the requirement of the petitioner was not bona fide as she was not residing at Delhi, and rejected both the contentions. With regard to the stand of the petitioner that the respondent was residing at Bombay, the learned Single Judge took note of the rent agreement produced by the respondent showing that the flat at Bombay was under the tenancy of Tatas. He also took note of the ration card of the first floor of the house showing that the respondent-landlady was staying in the property in question.

7. The stand of the appellant regarding relationship of the parties as landlord and tenant, was rejected by the learned Single Judge taking note of the apparent contradictions in the averments made in paragraphs 4 and 9 of the petition filed by him seeking leave to defend. On these considerations, the learned Single Judge dismissed the revision petition.

8. The main thrust of the contentions raised by Shri Yogeshwar Prasad, learned Senior counsel appearing for the appellant, was that on the averments in the petition filed under Section 25-B of the Act, it could not be said that the prayer for leave to defend the eviction petition was not a bona fide one and the Additional Rent Controller should have given an opportunity to the appellant to place materials on record in support of the averments made in the petition. According to Shri Yogeshwar Prasad, the Additional Rent Controller clearly erred in refusing leave to the appellant to defend the proceeding for eviction and the learned Single Judge also erred in confirming the said Order.

9. Section 14-D of the Act which was inserted in the statute by Act 57 of 1988, vests a right in a widow to recover immediate possession of premises let out by her. In Sub-section (1) of that Section, it is provided that where the landlord is a widow and the premises let out by her, or by her husband, are required by her for her own residence, she may apply to the Controller for recovering the

immediate possession of such premises. In Sub-section (2) of the Section, it is laid down that where the landlord referred to in Sub-section (1) has let out more than one premises, it shall be open to her to make an application under that Sub-section in respect of any one of the premises chosen by her. On a plain reading of the Section, it is clear that it is in the nature of a special provision, meant for the benefit of a widow who requires the premises for her own residence. The provision also vests a right in a widow who has let out more than one premises to choose any one of them for her occupation. Section 25-B makes provision regarding the special procedure for the disposal of applications for eviction on the ground of bona fide requirement. Sub-sections (1), (4), (5) and (8) of the said Section, which are particularly relevant for consideration of the case on hand, read as follows:

(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in Clause (e) of the proviso to Sub-section (1) of Section 14, or under Section 14-A or under Section 14-B or under Section 14-C or under Section 14-D, shall be dealt with in accordance with the procedure specified in this section.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in Clause (e) of the proviso to Sub-section (1) of Section 14, or under Section 14-A. (8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this Section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

10. From the provisions quoted above, it is clear that in a case where a petition for eviction is filed under Section 14-D, such petition shall be dealt with in accordance with the special procedure prescribed under Section 25-B. From the provisions in Sub-sections (4) and (5), it is manifest that the Controller can grant the tenant leave to contest the application for eviction only if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground of personal requirement as provided in Section 14(1) proviso (e) or under Section 14-A. Sub-section (8) of Section 25-B bars an appeal or

second appeal against an order for recovery of possession of any premises made by the Controller under the Section. The Proviso to Sub-section (8) vests a supervisory jurisdiction in the High Court for satisfying itself that an order made by the Controller under that section is according to law.

11. From the aforementioned statutory provisions, the legislative intent is clear that if an application for eviction of a tenant is filed by a widow to recover the premises in question for her self occupation, the controller shall pass an order for eviction of the tenant from the premises with utmost expedition. The provision is intended to serve the social need to help a widow in getting possession of the premises required for her personal occupation. To subserve that purpose she has been included in the special class of landlords who are entitled to recover possession of the premises let out by them when they require the same for self-occupation and special provision has been made in Section 25-B providing for an enquiry by the controller following a summary procedure to satisfy himself that the plea of self-occupation taken by the widow-landlady as a general and bonafide one and not a mere pretence to get the tenant evicted from the premises. For that reason, heavy burden is placed on the tenant to satisfy the Controller by filing an affidavit stating such facts which, if believed, will sufficiently prove that the plea of need of personal occupation by the petitioner-widow is nothing but a pretence. Whether leave to defend will be granted to the tenant in a case depends on the facts and circumstances of the case as emanating from the averments in the eviction petition filed by the landlord and the affidavit filed by the tenant seeking leave to defend the eviction petition. No hard and fast rule or straight jacket formula can be laid down for judging the question. It is to be kept in mind by the controller and the courts that the petition for eviction filed by a widow under Section 14-D should not be frustrated by granting leave to the tenant to raise any plea denying/refuting the case pleaded in the eviction petition. Unless a real and substantial case is made out on the averments made in the affidavit filed by the tenant in support of the petition filed under Section 25-B of the Act, the proceeding should not be dragged on unnecessarily and should be disposed of with due expedition. A balance has to be maintained between the general object of the statute which is to provide protection to the tenants against arbitrary action of the landlords for their eviction and the assistance to be referred to the special class of landlords including a widow to recover possession of premises let out by her for self-occupation. We are aware that in some decided cases this Court has leaned in favour of granting leave to the tenant to defend the eviction petition but on a closer look at the decisions it will be clear that the cases were decided considering the facts and circumstances involved therein. At the cost of repetition, we may state that the decision on the question of grant of leave to defend depends on the facts and circumstances of the case.

12. Coming to the order of eviction passed by the learned Additional Rent Controller, Delhi which has been confirmed by the High Court, we are not satisfied that the eviction order suffers from any serious illegality which the High Court failed to notice in exercise of the supervisory jurisdiction vested in it under Section 25-B(8) Proviso. Accordingly, the appeal is dismissed with costs. Hearing fee is assessed at Rs. 5,000/-.