Baldev Sahai Bangia vs R.C. Bhasin on 16 April, 1982

Equivalent citations: 1982 AIR 1091, 1982 SCR (3) 670, AIR 1982 SUPREME COURT 1091, 1982 UJ (SC) 405, (1982) 3 SCR 670 (SC), (1982) 2 RENCJ 98, 1982 RAJLR 500, (1982) LS 47, (1982) DRJ 264, 1982 (2) RENCJ 98 (2), (1982) 1 RENTLR 741, (1982) 2 RENCR 133, (1982) 2 SCJ 193, 1982 (2) SCC 210, (1982) 22 DLT 220

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Bench: Syed Murtaza Fazalali, A. Varadarajan

PETITIONER:
BALDEV SAHAI BANGIA

Vs.

RESPONDENT:
R.C. BHASIN

DATE OF JUDGMENT16/04/1982

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1982 AIR 1091 1982 SCR (3) 670
1982 SCC (2) 210 1982 SCALE (1)366
CITATOR INFO :
D 1987 SC 514 (5)

ACT:
Delhi Rent Control Act, 1958 -S. 14(1)(d) -Application for ejectment of tenant-Tenant ceasing to reside in premises for over six months-When maintainable.
Words and pharases-'Members of family'-Who are-S. 14(1)(d) of Delhi Control Act, 1958.

HEADNOTE:
A landlord is entitled to recover possession of the premises let for residential purpose under s. 14(1)(d) of the Delhi Rent Control Act, 1958 , if he can show that neither the tenant nor any member of his family has been

residing therein for a period of six months immediately before the date of the filing of the application.

The appellant took the house in question on lease in May, 1961 and lived there with his parents, sisters and a brother. He went to Canada in 1971, leaving behind in the house, his mother and brother, who continued to pay the rent.

The landlord filed an application for ejectment of tenant under s. 14(1)(d) of the Delhi Rent Control Act in September 1972 contending that with the migration of the tenant to Canada, his mother and brother could not be treated as members of the appellant's family. The application was dismissed by the Rent Controller who found that the mother, brother and sister of the appellant were undoubtedly residing in the disputed premises along with the appellant and continued to reside there even on the date when the action for ejectment was brought.

The landlord's appeal against the order of the Rent Controller was allowed by the Rent Control Tribunal which ordered eviction of the family members of the appellant from the tenanted house.

The appeal of the family members against the order of eviction was dismissed by the High Court on the ground that after the exit of the main tenant to Canada, neither the mother nor the brother or the sister could be legally termed as a member of the family of the appellant.

Allowing the appeal,

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HELD: 1. (a) The Act affords intrinsic evidence to show that the non-applicants were undoubtedly members of the family residing in the house and the migration of the main tenant to Canada would make no difference. [674 H]

(b) The term 'family' has to be given not a restricted but a wider meaning. There are abundant authorities to show that the term 'family' should always be liberally and broadly construed so as to include near relations of the head of the family. A beneficial provision must be meaningfully construed so as to advance the object of the Act. [676 F; 678 E]

Price v. Gould and Ors., [1930] Vol. 143 Law Times 333; G.V. Shukla v. Shri Prabhu Ram Sukhram Dass Ojha, [1963] P.I.R. (Vol. LXV) 256; Govind Dass and Ors. v. Kuldip Singh, A.I.R. 1971 Delhi 151 and Hira Lal and Ors. v. Banarsi Dass, [1979] 1 R.L.R. 466 referred to.

(c) The Act has manifested its intention by virtue of a later amendment. The definition of 'tenant' inserted in s. 2(1) of the Act by the Amending Act 18 of 1976 expressly included 'parents' in sub-clause (iii) thereof and also indicated that apart from the heirs of the tenant specified therein, even those persons who had been ordinarily living in the premises with the tenant would be treated as members of the family. [675 B; 677 H; 678 A]

2. (a) The legislature has advisedly provided that any member of the family residing therein for a period of six months immediately before the date of the filing of the action would be treated as a tenant. The stress is not so much on the actual presence of the tenant as on the fact that the members of the family actually live and reside in the tenanted premises. Clause (d) of s. 14(1) of the Act is a special concession given to the landlord to obtain possession only where the tenanted premises have been completely vacated by the tenant. [676 G-H; 677 A]

(b) The landlord had failed to prove the essential ingredients of clause (d) of s. 14(1) of the Act so as to entitle him to evict the members of the family of the main tenant. It could not be said that when the appellant migrated to Canada, he had severed all his connections with his mother so that she became an absolute stranger to the family. Such an interpretation is against our national heritage and could never have been contemplated by the Act. [680 B; 675 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1533 of 1980.

From the Judgment and Order dated the 20th February, 1980 of the High Court of Delhi at New Delhi in S.A.O. 149 of 1979.

S.K. Mehta for the Appellant.

Yogeshwar Prasad, Ravinder Bana and Mrs. Rani Chhabra for the Respondent.

The Judgment of the Court was delivered by FAZAL ALI, J. This appeal by special leave is directed against a judgment dated February 20, 1980 of the Delhi High Court decreeing the landlord's suit for ejectment of the tenant.

The facts giving rise to the present litigation are summarised in the judgments of the Rent Controller and the High Court and need not be repeated.

Shorn of details, the position seems to be that Baldev Singh took the premises on rent on May 12, 1961 at a monthly rental of Rs. 95/-. At the time when the tenancy started, the tenant was living in the tenanted house with his father, mother, two sisters and a brother. The tenant himself was at that time a bachelor but seems to have married subsequently. One of his sisters was married in this very house.

As it happened, in 1971 the tenant went to Canada followed by his wife and children. It is alleged that after having gone to Canada, the husband alongwith his wife took up some employment there.

Admittedly. the tenant did not return to India after 1971. While leaving for Canada the tenant had left his mother and brother in the house who were regularly paying rent to the landlord. There is some controversy as to whether or not the mother and brother, who were left behind, were being supported by the tenant or were living on their own earnings or by the income of the property left by the tenant in India. Such a controversy however, is of no consequence in deciding the question of law which arises for consideration in this case.

On September 27, 1972 the landlord filed an application for ejectment of the tenant on the ground of bona fide requirement and non-residence of the tenant under clauses

(d) and (e) of sub-section (1) of section 14 of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Act'). The fundamental plea taken by the landlord was that with the exit of the tenant from the house it became vacant and his mother and brother who were left behind could not be treated as members of the family. Hence, in the eye of law the tenanted premises must be deemed to have fallen vacant.

The suit was resisted by the mother, brother and sister of the tenant who averred that even if the tenant alongwith his wife and children had shifted to Canada, the non- applicants were continuing to live in the tenanted premises and as they had been paying rent to the landlord regularly, who had been accepting the same, no question of the tenancy becoming vacant arose.

Thus, the entire case hinges on the interpretation of the word 'family' as also clauses (d) and (e) of s. 141(1) of the Act. So far as clause (e) is concerned, both the courts below found as a fact that the landlord was not able to prove his bona fide necessity. Therefore, as far as ground (e) is concerned, the same no longer survives in view of the findings of fact recorded by the courts below. The only question that remains to be considered is whether the landlord can bring his case for eviction within the ambit of clause (d) of s. 14(1) which may be extracted thus:

> "14 (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:
>
> Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:
>
> XX XX XX
>
> (d) that the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof;

A close analysis of this provision would reveal that before the landlord can succeed, he must prove three essential ingredients-

(1) that the premises were let out for use as a residence, (2) that the tenant after having taken the premises has ceased to reside, and (3) that apart from the tenant no member of his family also has been residing for a period of six months immediately before the date of the filing of the application for ejectment.

It is manifest that unless the aforesaid conditions are satisfied the landlord cannot succeed in getting a decree for ejectment. In the instant case, while it is the admitted case of the parties that the tenant had shifted to Canada alongwith his wife and children, yet he had left his mother, brother and sister in the house, hence the second essential condition of clause (d) continues to apply with full force.

The learned counsel for the appellant, however, submitted that the mother, brother and sister were undoubtedly living with the tenant and so long as they continued to reside in the tenanted premises, there could be no question of the premises falling vacant. To this, the counsel for the landlord countered that neither the mother, nor the brother nor the sister could in law be treated as members of the family of the tenant after he had himself shifted to a country outside India. Even though while he was living in Delhi, he was in Government service. Thus, it was argued that in the eye of law, the so-called family members would lose their status as members of the family of the tenant and would be pure trespassers or licensees or squatters.

While the suit of the landlord was dismissed by the Rent Controller, the Rent Control Tribunal allowed the appeal and directed eviction of the family members of the tenant under clause (d) of s. 14(1) of the Act. The family members of the tenant then went up in appeal to the High Court which also affirmed the findings of the Tribunal and upheld the order of eviction passed by it. The High Court was also of the view that after the exit of the main tenant from India to Canada, neither the mother, nor the brother, nor the sister could be legally termed as a member of the family of the tenant.

We have heard counsel for the parties and given our anxious consideration to all aspects of the matter and we feel that the High Court has taken a palpably wrong view of the law in regard to the interpretation of the term 'member of the family' as used in clause (d) of s. 14(1) of the Act. In coming to its decision, the High Court seems to have completely overlooked the dominant purpose and the main object of the Act which affords several intrinsic and extrinsic evidence to show that the non-applicants were undoubtedly members of the family residing in the house and the migration of the main tenant to Canada would make no difference. The word 'family' has been defined in various legal dictionaries and several authorities of various courts and no court has ever held that mother or a brother or a sister who is living with the older member of the family would not constitute a family of the said member. Surely, it cannot be said by any stretch of imagination that when the tenant was living with his own mother in the house and after he migrated to Canada, he had severed all his connections with his mother so that she became an absolute stranger to the family. Such an interpretation is against our national heritage and, as we shall show, could never have been

contemplated by the Act which has manifested its intention by virtue of a later amendment.

Coming now to (the definitions, we find that in Words and Phrases (permanent Edition-volume 16) at pp. 303-311 the word 'family' has been defined thus:

> "The father, the mother, and the children ordinarily constitute a "family".
>
> "The word "family" embraces more than a husband and wife and includes children."
>
> "A "family" constitutes all who live in one house under one head."
>
> "Father and mother of two illegitimate children, and children themselves, all living together under one roof, constituted a "family."

(pp. 303-304) "The word "family" in statute authorizing use of income for support of ward and "family" is not restricted to those individuals to whom ward owes a legal duty of support, but is an expression of great flexibility and is liberally construed, and includes brothers and sisters in poor financial circumstances for whom the insane ward, if competent, would make provision."

(p. 311) "The general or ordinarily accepted meaning of the word "family", as used in Compensation Act, means a group, comprising immediate kindred, consisting of the parents and their children, whether actually living together or not."

(p. 343) (Emphasis ours) Similarly, in Webster's Third New International Dictionary, the word 'family' is defined thus:

> "Family-household including not only the servants but also the head of the household and all persons in it related to him by blood or marriage...a group of persons of common ancestry."

(p. 821) (Emphasis supplied) In Chambers Twentieth Century Dictionary (New Edition 1972), the word 'Family' has been defined thus:

> "family-the household, or all those who live in one house (as parents, children, servants): parents and their children)"

In Concise Oxford Dictionary (Sixth Edition), the same definition appears to have been given of the word 'family' which may be extracted thus:

> "family-Members of a household, parents, children, servants, etc. set of parents and children, or of relations, living together or not; persons children. All descendants of common ancestor."

A conspectus of the connotation of the term 'family' which emerges from a reference to the aforesaid dictionaries clearly shows that the word 'family' has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. More particularly, in our country, blood relations do not evaporate merely because a member of the family-the father, the brother or the son-leaves his household and goes out for some time. Furthermore, in our opinion, the legislature has advisedly used the term that any member of the family residing therein for a period of six months immediately before the date of the filing of the action would be treated as a tenant. The stress is not so much on the actual presence of the tenant as on the fact that the members of the family actually live and reside in the tenanted premises. In fact, it seems to us that clause (d) of s. 14(1) of the Act is a special concession given to the landlord to obtain possession only where the tenanted premises have been completely vacated by the tenant if he ceased to exercise any control over the property either through himself or through his blood relations.

In fact, a controversy arose as to what would happen to the members of the family of the tenant if while residing in the premises he dies and in order to resolve this anomaly the legislature immediately stepped in to amend certain provisions of the Act and defined the actual connotation of the term 'members of the family'. By virtue of Act 18 of 1976 the definition of "Tenant" was inserted so as to include various categories of persons. Sub-clause (iii) of clause (i) of section 2 of the Act actually mentions the persons who could be regarded as tenant even if main tenant dies. This sub-clause may be extracted thus:

> "(1) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable and includes-
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> (i) a sub-tenant;
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> (ii) any person continuing in possession after the termination of his tenancy; and
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> (iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause such of the aforesaid person's-
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> (a) spouse,
>
> (b) son or daughter or, where there are both son and daughter, both of them,
>
> (c) parents,
>
> (d) daughter-in-law, being the widow of his predeceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include, ..."

It would appear that parents were expressly included in sub-clause (iii). It has also been provided that apart from the heirs specified in clauses (a) to (d) (extracted above), even those persons who had been ordinarily living in the premises with the tenant would be treated as members of the family. The statement of objects and reasons for this amendment may be extracted thus:

> "There has been a persistent demand for amendments to the Delhi Rent Control Act, 1958 with a view to conferring a right of tenancy on certain heirs/successors of a deceased statutory tenant so that they may be protected from eviction by landlords and also for simplifying the procedure for eviction of tenants in case the landlord requires the premises bona fide for his personal occupation. Further, Government decided on the 9th September, 1975 that a person who owns his own house in his place of work should vacate the Government accommodation allotted to him before the 31st December, 1975. Government considered that in the circumstances, the Act required to be amended urgently."

If this was the intention of the legislature then clause (d) of section 14(1) of the Act could not be interpreted in a manner so as to defeat the very object of the Act. It is well settled that a beneficial provision must be meaningfully construed so as to advance the object of the Act, and curing any lacuna or defect appearing in the same. There are abundant authorities to show that the term "Family" must always be liberally and broadly construed so as to include near relations of the head of the family.

In Hira Lal & Ors. v. Banarsi Dass(1) even the learned Judge who decided that case had observed at page 472 that the term "members of the family" on the facts and circumstances of the case should not be given a narrow construction.

In Gobind Dass & Ors. vs. Kuldip Singh(2) a Division Bench of Delhi High Court consisting of H.R. Khanna, C.J. (as he then was) and Prakash Narain, J. while recognising the necessity of giving a wide interpretation to the word "family" observed as follows:

> "I hold that in the section now under consideration the word "family" includes brothers and sisters of the deceased living with her at the time of her death. I think that that meaning is required by the ordinary acceptation of the word in this connection and that the legislature had used the word "family" to introduce a flexible and wide term."

In Mrs. G. V. Shukla v. Shri Prabhu Ram Sukhram Dass Ojha(1) Mahajan, J. (as he then was) observed as follows:

> "Therefore, it must be held that the word 'family' is capable of wider interpretation, but that interpretation must have relation to the existing facts and circumstances proved on the record in each case."

Even as far back as 1930, Wright, J. in Price v. Gould & Ors (2) (a King's Bench decision) had clearly held that the word "family" included brothers and sisters and in this connection observed as follows:

> "I find as a fact that the brothers and sisters were residing with the deceased at the time of her death..It has been laid down that the primary meaning of the word "family" is children, but that primary meaning is clearly susceptible of wider interpretation, because the cases decide that the exact scope of the word must depend on the context and the other provisions of the will or deed in view of the surrounding circumstances."
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> ... ...
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> "Thus, in Snow v. Teed (1870, 23 L.T. Rep. 303; L. Rep. 9 Eq. 622) it was held that the word "family" could be extended beyond not merely children but even beyond the statutory next of kin."

In view, however, of the very clear and plain language of clause (d) of section 14(1) of the Act itself, we do not want to burden this judgment by multiplying authorities.

On a point of fact, we might mention that the Rent Controller had given a clear finding that the mother, younger brother (Davinder Kumar Bangia) and sister (Vijay Lakshmi) were undoubtedly residing in the disputed premises alongwith the main tenant and continued to reside there even on the date when the action for ejectment was brought.

In these circumstances, we are satisfied that the view taken by the High Court is legally erroneous and cannot be supported. The landlord has miserably failed to prove the essential ingredients of clause (d) of section 14(1) of the Act so as to entitle him to evict the members of the family of the main tenant.

We therefore, allow this appeal, set aside the judgment and order of the High Court and dismiss the plaintiff's action for ejectment and restore the judgment of the Rent Controller. In the peculiar circumstances of the case, there will be no order as to cost.

H.L.C. Appeal allowed.