

Mrs. Nishi Sharma vs Shri Subhash Chandra Mehra on 22 May, 2007

Equivalent citations: 141(2007)DLT10

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul

JUDGMENT

Sanjay Kishan Kaul, J.

1. The respondent/landlord filed eviction proceedings against the petitioner under the provisions of Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the said Act) seeking eviction of the petitioner/tenant on grounds of bona fide requirement of the premises for residential use of himself and his family. The petitioner filed an application for leave to contest the eviction proceedings and leave was granted by the order dated 22.11.2000. Para-8 of the said order sets out that the basis for the grant of leave was that the claim of the petitioner that the respondent was possessed of an alternative accommodation was disputed by stating that the property in question belong to his mother. Since the status of that property was not clear, leave was so granted. The parties led their evidence and thereafter in terms of order dated 7.8.2002 the eviction petition was allowed in respect of the tenanted premises consisting of the entire floor situated at E- 31, Jangpura Extension, New Delhi. The petitioner was granted six months time to vacate the premises.

2. A reading of the said order shows that the question of alternative property stated to be available for the residence of the respondent, as alleged by the petitioner, is property No. M-85, Greater Kailash, Part-I, New Delhi. The property was found to be in the name of Smt. Phool Rani Mehra, mother of the petitioner. It was held that this property in the name of the mother of the respondent could not be said to be one where the respondent had a legal right of residence. The order records that while seeking eviction from the tenanted premises, the respondent, no doubt, had expressed the desire to keep one room exclusively for his mother, but that was held not to be with any mala fide intent. This was more so in view of the fact that the petitioner while deposing in the witness box, admitted in her cross-examination that the mother of the respondent used to stay six months with the respondent and for the remaining six months she used to stay at the Greater Kailash property with her other son, who was residing there.

3. The petitioner aggrieved by the order of the Additional Rent Controller, filed the present petition and it kept pending for about a year and a half till it came up for hearing on 26.4.2004 when learned Counsel for the petitioner stated on instructions from the petitioner that he wanted to withdraw the revision petition and admitted the bona fide requirement of the respondent, but the petitioner

requested for time to vacate the premises. Learned Counsel for the petitioner further stated on instructions that according to the petitioner, the respondent was willing to accommodate the petitioner and gave some more time and for that purpose the respondent may be asked to appear in Court so that the time period may be finalised. The matter was thereafter adjourned to 30.4.2004 when the parties appeared in Court and made statements on oath. The petitioner stated that she was not interested in prosecuting the revision petition and would like to withdraw the same. She admitted the bona fide requirement of the respondent and requested for time to vacate the premises up to 31.3.2007. She further undertook to pay damages as per last rental of Rs. 900/- per month apart from water and electricity charges. The respondent/landlord agreed not to execute the eviction petition up to the date of 31.3.2007. The order dated 30.4.2004 records the undertaking of the petitioner to vacate the premises by 31.3.2007 and to pay monthly rent. Since the petitioner was depositing the rent in the account of the respondent, the petitioner was directed to deposit the damages in the same manner. On a perusal of the order, This Court also found that a bona fide requirement case had been made out. The revision petition was dismissed as withdrawn.

4. The present applications came to be filed only on 21.2.2007, which is a month prior to the date of 31.3.2007 undertaken by the petitioner to vacate the tenanted premises. The first application has been filed under Section 340 Cr.P.C., the second for condensation of delay under Section 5 of the Limitation Act in filing the review application, and the third the review application itself.

5. It is the plea of the petitioner that during the pendency of the petition itself, the petitioner had filed CM No. 314/2003 for bringing to the notice of This Court the factum of the demise of the mother of the respondent after the eviction proceedings. In the reply filed to the application, the respondent had taken a stand that the mother of the respondent passed away on 6.11.2002 and no family arrangement had been arrived at in respect of the house at Greater Kailash since she had left behind four sons and LRs of a pre-deceased son. The succession to the estate of Smt. Phool Rani Mehra had, thus, not been established as on that date and she had not left behind any Will. In such eventuality, the estate would devolve on five groups of people. The respondent in the reply has also stated that even the order of the Additional Rent Controller had taken note of the fact that the mother of the respondent was residing half the time with the respondent and the remaining half in the Greater Kailash house with her other son, who was staying there. The bona fide requirement of the respondent had been found established by the Additional Rent Controller even if the requirement of the mother was ignored. The respondent has further stated that his brother Mr. Promod Chand Mehra was staying in the Greater Kailash property which consisted of two bedrooms, drawing-cum-dining room on the ground floor and one bedroom on the first floor. Mr. Promod Chand Mehra has a wife and children and no other property in Delhi.

6. The petitioner has now stated in the present applications that though the reply was filed on 5.3.2003, certain developments took place after filing of the reply but before making of the statement by the petitioner before the Court on 30.4.2004 which was only to the knowledge of the respondent and was never brought to the notice of This Court. The material fact was that the property at Greater Kailash had been sold by the respondent and his brother Mr. Promod Chand Mehra vide sale deed dated 23.7.2004 which showed that the estate had already devolved on him prior to the statement made by the petitioner. The sale deed also showed that the mutation had been

carried out in the records in the name of the said two parties by the MCD on 8.1.2004

7. The petitioner makes a plea that the requirement of the respondent was satisfied with the Greater Kailash property and, thus, if the petitioner would have known the correct facts, the petitioner would not have given the undertaking to This Court.

8. The respondent has filed reply to the applications and has enclosed the relevant documents in this behalf. The first document is a family settlement dated 2.10.2003 (which is after filing of the reply by the respondent to CM No. 314/2003 dated 5.3.2003). The said family settlement refers to an earlier settlement on the demise of their father on 11.11.1980 which resulted in the family settlement of 1982 in terms whereof their mother late Smt. Phool Rani Mehra became entitled to the complete property at Greater Kailash, Part-I. Insofar as as the property at Greater Kailash, Part-I is concerned, the family settlement records that upon the demise of Smt. Phool Rani Mehra, the property is to be divided between the respondent and his brother Mr. Pramod Chand Mehra, although Mr. Pramod Chand Mehra is in physical possession of it presently. The settlement does not end at this as it further records as under:

However, in the spirit of maintaining family harmony, as referred herein, both Subhash and Pramod agree that upon the sale of M-85 GK-1 by them:

a sum equivalent to 5% (five percent), of the net accrual will be paid to each of the following: Mrs. Chander Kanta Malhotra (w/o Late Shri Jagdish Chandra Malhotra); Prakash Chandra Malhotra and Sudesh Chandra Mehra. The balance sum (85% of net accrual) be divided equally between Subhash and Pramod.

The process of the sale of the property and payment to the above to be completed on or before December 31, 2004

9. It has, thus, been agreed in terms of the settlement that the Greater Kailash property would be sold and 5% amount of the net accrual would be given to each of two brothers and a widow of the pre-deceased brother while the balance 85% would be divided between the respondent and his brother, Pramod.

10. The said family settlement was followed up by another family settlement dated 26.7.2004. The property at Greater Kailash is recorded to have been sold on 23.7.2004 for Rs. 1.50 crores with a net accrual of Rs. 1,48,50,000/-, out of which the three other parties received their share, while the remaining portion was shared equally between the respondent and his brother, Mr. Pramod Chand Mehra. The respondent then got a sum of Rs. 63,11,250/-.

11. Learned Counsel for the petitioner relied upon the Division Bench judgment of This Court in *Kuldip Gandotra v. Union of India and Ors.* in support of the proposition that concealment by the respondent of the material fact amounts to a fraud which would vitiate the undertaking given by the petitioner. Paras 9 and 10 of the said judgment read as under:

9. Failure to point out the factum of employment cannot be regarded as a mere secondary fact that was immaterial or irrelevant for granting relief. The facts concealed were not collateral or extraneous. In Story's Equity Jurisprudence, 14th Edition, Vol.1, as quoted in Hamza Haji (supra) it has been observed:

Fraud indeed, in the sense of a Court of Equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.

10. Thus omission and concealment which involves breach of legal or equitable duty and confidence justly reposed, is equal to fraud. Similarly, the Supreme Court in *Bharau Dadu v. State of Maharashtra*, reported in VI , has held that suppression of a material document would amount to fraud on a Court. In another case *S.P. Chengalvaraya Naidu (dead) thr. LRS v. Jagannath and Ors.* , , the Supreme Court was critical and did not agree with the High Court that there is no legal duty cast upon a party to come to the Court with a true case and prove it by true evidence. It was held that fraud is an act of deliberate deception with a design to secure something by taking unfair advantage. Deception to gain by another's loss is fraud. Failure to disclose relevant and material facts and non-mentioning of even a document can tantamount to playing a fraud on the Court, if it is done with the intention to gain advantage with a view to procure an order or an advantage from the Court without disclosing all facts. Obtaining relief by deliberately suppressing facts, which were fundamental to entitlement of relief and foundation of the claim amounts to practicing fraud.

12. Learned Counsel also referred to the judgment of the Apex Court in *Hamza Haji v. State of Kerala and Anr.* where the Supreme Court refused to exercise jurisdiction under Article 136 of the Constitution of India to come to the aid of the appellant to secure the fruits of fraud practiced by him on the Forest Tribunal in the High Court. In *Vijay Syal and Anr. v. State of Punjab and Ors.* it was held that making a false declaration, knowingly concealing material facts and making inaccurate statements or misrepresentations affecting the sanctity and solemnity of the proceedings should be viewed seriously and the appeal was dismissed on account of such mis- representation.

13. Learned Counsel drew the attention of This Court to the judgment of the Supreme Court in *Bhaurao Dagdu Paralkar v. State of Maharashtra and Ors.* where the concept of fraud has been explained in the following terms:

9. By 'fraud' is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression 'fraud' involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, this is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a

non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See *Vimla (Dr.) V. Delhi Admn. ;* and *Indian Bank v. Satyam Fibres (India) (P) Ltd. .*]

10. A 'fraud' is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Chengalvaraya Naidu v. Jagannath .*)

11. 'Fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letters or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letters. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (See *Ram Chandra Singh v. Savitri Devi .*)

12. In *Shrisht Dhawan v. Shaw Bros. ,* it was observed as follows: (SCC p. - 553, para 20) 'Fraud' and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Camus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary 'fraud' in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Law Dictionary , 'fraud' is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary , it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or

trick. According to Halsbury's Laws of England , a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act, 1872 defines 'fraud' as an act committed by a party to a contract with intent to deceive another. From the dictionary meaning or even otherwise fraud arises out of the deliberate active role of the representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry v. Peek (1889) 14 AC 337 what constitutes 'fraud' was described thus: (All ER p. - 22 B-C) Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false.

But 'fraud' in public law is not the same as 'fraud' in private law. Nor can the ingredients, which establish 'fraud' in commercial transaction, be of assistance in determining fraud in administrative law. It has been aptly observed by Lord Bridge in *Khawaja v. Secy. of State for Home Deptt.* (1983) 1 All ER 765 that it is dangerous to introduce maxims of common law as to the effect of fraud while determining fraud in relation of statutory law. 'Fraud' in relation to the statute must be a colourable transaction to evade the provisions of a statute.

'If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.' Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. 'In a contract every person must look for himself and ensure that he acquires the information necessary to avoid bad bargain.' In public law the duty is not to deceive. (See *Shrisht Dhawan v. Shaw Bros.* .)

13. This aspect of the matter has been considered recently by This Court in *Roshan Deen v. Preeti Lal* , *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* , *Ram Chandra Singh case 6* and *Ashok Leyland Ltd. v. State of T.N.* .

14. Suppression of a material document would also amount to a fraud on the court. (See *Gowrishankar v. Joshi Amba Shankar Family Trust* (1996) 4 SCC 310 and *S.P. Chengalvaraya Naidu case*, .)

15. 'Fraud' is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav case 11.

16. In *Lazarus Estates Ltd. v. Beasley* (1956) 1 QB 702 Lord Denning observed at QB pp. - 712 and 713: (All ER p. - 345 C) 'No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.' In the same judgment Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. (p. - 722) These aspects were recently highlighted in *State of A.P. v. T. Suryachandra Rao* .'

14. Learned Counsel for the respondent, on the other hand, has drawn the attention of This Court to the judgment of the learned single Judge of This Court in *Chander Sain Jain v. Sumer Chand* contend that the acquisition of a property by a landlord after the order of eviction was no ground to interfere with the order of the Additional Rent Controller as long as on the date when the eviction petition was filed the requirement of the landlord was bona fide. Learned Counsel also referred to another judgment of the learned single Judge of This Court in *V.S. Sachdeva v. M.L. Grover* where it has been held that juridical possession of the premises is not a relevant factor and it is the actual physical possession of the house which is the relevant consideration insofar as the proceedings of eviction under Section 14(1)(e) of the said Act are concerned. The house in that case was in the possession of the younger brother of the petitioner and it was concluded that the same could not be a suitable residential accommodation for the petitioner.

15. I have given thoughtful consideration to the rival submissions of the learned Counsel for the parties. It is trite to say that any fraud would vitiate the proceedings before the Court. This principle is well established and is further enunciated in the judgments of the Supreme Court referred to by the learned Counsel for the petitioner. The fraud can be both patent and latent. Concealment of material documents which have a bearing on the matter, could also be a fraud. Though there is no dispute about the principles enunciated, the question is whether the same would apply in the given facts of the case.

16. The aspect of the Greater Kailash house has been in question right from day one. In fact that was the basis for the grant of leave to contest the eviction proceedings. Evidence was led by both the parties on this aspect and the Additional Rent Controller came to the conclusion that the house was owned by the mother, occupied by the brother and could hardly be said to be an alternative residential accommodation available with the respondent. Not only that, the accommodation available with the respondent, excluding the requirement of a room for the mother, was also found to be inadequate. The nature of the premises at Greater Kailash property is obvious which consists of a ground floor with two bedrooms and drawing-cum-dining room and one room on the terrace. This property was being occupied by the brother of the respondent, Promod, who required at least two bedrooms for the residence of himself, his wife and children. Apparently one room was required for the mother who used to stay sometimes in that house while for the remaining period, she used to stay with the respondent. There has been no concealment up to the extent of the disposal of the eviction proceedings.

17. Even when the matter was pending before This Court, the reply of the respondent dated 5.3.2003 incorporated the facts as they stood then. The family settlements are of a subsequent date. The family settlement dated 2.10.2003 records that the house would have to be divided in a manner that two brothers of the respondent and the wife of the pre-deceased brother of the respondent would each get 5% share in the said property while the remaining was to be divided between the respondent and his brother, Promod, who is occupying that house. This could not have been achieved by the physical division and, thus, it was agreed to put the property to sale and thereafter divide the proceeds accordingly. Since the brother of the respondent was staying in the house, there was no excess accommodation available. Other than one mumty room, there was no alternative residential accommodation available for the respondent. The respondent could hardly be expected to split his family between the tenanted portion and one room on the mumty of that house even assuming the same was available for the benefit of the respondent. In this behalf, the judgment in V.S. Sachdeva (supra) makes it clear that the house should be physically available for use and occupation by the landlord. Three set of legal heirs had also to be paid 5% of value of property each for which funds were required.

18. It is no doubt true that the Court can take subsequent events into consideration while considering an eviction proceeding. However, the observations in Chander Sain Jain (supra) are to the effect that the acquisition of the property subsequent to an eviction order cannot be a ground with which I am in agreement. Not only that, in the present case there is no acquisition of a property but only devolution of interest from the mother while the physical possession was not available for the respondent. The brother of the respondent apparently agreed to sell the property so that the shares could be divided though he was alone in occupation of that property. Upon the demise of the mother, only one mumty room became available in the G.K. Part-I property.

19. I am, thus, of the considered view that there has been really no concealment or fraud practiced by the respondent so as to dis-entitle the respondent to the benefit of the undertaking given by the petitioner.

20. In the end, it must also be noticed that the petitioner enjoyed the benefit of three years of extended stay while giving the undertaking on 30.4.2004. In fact, the respondent agreed to a long period of time to vacate the tenanted premises with the object of putting an end to the dispute. A further aspect pointed out by learned Counsel for the respondent during the hearing was that the petitioner had not paid rent after the initial period and rents were outstanding for almost three years till they were so paid in February, 2007 immediately prior to the filing of the present applications. This position is not disputed by learned Counsel for the petitioner on instructions from the petitioner. This also shows violation of the undertaking by the petitioner apart from the fact that there is not even a whisper of the fact in the applications filed by the petitioner. In fact, it is the petitioner who has concealed this material fact.

21. In my considered view, the present applications are only an endeavor by the petitioner to somehow get out of the undertaking given on 30.4.2004 when the time came for vacating the premises.

22. The applications are misconceived and without any merit and are dismissed with costs, quantified at Rs. 5,000/-.