

Delhi District Court

Sh. Ved Vrat Dagar vs Sh. Rakesh on 27 September, 2018

IN THE COURT OF SH. AJAY NAGAR, COMMERCIAL CIVIL
JUDGE-CUM-ADDITIONAL RENT CONTROLLER (WEST), TIS
HAZARI COURTS, DELHI.

ARC No- 25849/2016

1. Sh. Ved Vrat Dagar,
S/o Late Sh. Nanhar Singh,
R/o Village Samaspur Khalsa,
P.O. Ujwa, Najafgarh,
New Delhi-110043.
2. Sh. Ved Mitter Dagar,
S/o Late Sh. Nanhar Singh,
R/o H.No.791/24, Near HSEB Rest House,
Circular Road, Rohtak-124001,
Haryana. Petitioners

VERSUS

Sh. Rakesh,
S/o Late Sh. Babu Ram,
R/o H.No.177/3, Gali No.7,
Than Singh Nagar, Anand Parbat,
New Delhi-110005. Respondent

Date of filing : 28.05.2013
Date of order : 27.09.2018

ORDER ON LEAVE TO DEFEND

1. The present petition U/Sec. 14 (1) (e) of Delhi Rent Control Act, 1958 (hereinafter referred to as 'D.R.C. Act') is filed by the petitioners against ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 1 /24 the respondent for his eviction from the premises i.e. two rooms on the ground floor along with common facility of toilet forming part of property bearing no.177/3, Gali no.7, Than Singh Nagar, Anand Parbat, New Delhi- 110005 more specifically shown in red colour in the site plan annexed (hereinafter referred to as 'tenanted premises') in favour of the petitioners and against the respondent with costs on the ground of bonafide requirement.

2. It is averred by the petitioners that petitioners are the co-owners/co- landlords of the property bearing no. 177/3, Gali No.7, Than Singh Nagar, Anand Parbt, New Delhi-110005 (hereinafter referred to as 'suit property') and the petitioners are filing this petition with the consent and knowledge of other co-owners/landlords.

It is further stated that the grandfather of the respondent namely Sh. Prabhu Dayal was a tenant in respect of two rooms on the ground floor of suit property along with common facility of toilet as more specifically shown in red colour in the site plan annexed at the last agreed monthly rent of Rs.800/- excluding electricity and water charges. The said tenanted premises was given for residential purposes and after his demise the tenancy was transferred in the name of the respondent's father Sh. Babu Ram.

It is further averred that the respondent being the legal heir of Late Sh. Babu Ram has inherited the tenancy rights qua the tenanted premises by operation of law.

Petitioners further submit that petitioner no.1's family consists of himself, his wife Smt. Kaushalya Dagar, four daughters namely Ms. Sushila Bala Dagar, Mrs. Sharda, Mrs. Poornima, Mrs. Monika and one son namely ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 2 /24 Sh. Ajay Dagar. The petitioner no.1 along with his wife and son are presently residing in Village Samaspur Khalsa, P.O. Ujwa, New Delhi.

It is further stated that the petitioner no.1's son namely Sh. Ajay Dagar aged about 25 years has completed his B.Tech (Engg.) and presently employed at Janakpuri, New Delhi. The petitioner no.1's son is of marriageable age but the petitioner no.1 could not get suitable match for his son as the proposals are not coming from affluent and educated families as no educated girl is inclined to live with the petitioner no.1's son and family in village Samaspur Khalsa, P.O. Ujwa, New Delhi and there is no likelihood of marriage of the petitioner no.1's son with suitable educated girl while living in the said village.

It is further submitted that the petitioner no.1's son has to travel at least 30-35 kms. every day from village to his place of working at Janakpuri, New Delhi and in this way he has to spend about 3 hours on traveling in a day, causing lot of health and other inconveniences besides huge expenditure on conveyance etc. It is further claimed that since the petitioner no.1 and his wife with son are living in the said village Samaspur Khalsa, they are virtually cut off from their relatives as well as the husbands and in laws of their three married daughters, who are hesitant to visit to the petitioner no.1 and his family even on occasions.

It is further submitted that petitioners brother namely Sh. Ved Parkash who has since deceased and his family is presently residing in a rented accommodation at 106, Model Basti, Filmistan, Delhi consists of his widow Smt. Pushpa Dagar, two married daughters and one unmarried son namely Sh. Vijay Dagar, who is aged about 25 years and is also of marriageable age, but the said rented accommodation is quite inadequate ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 3 /24 and insufficient to accommodate, therefore, the marriage of Sh. Vijay Dagar is being prolonged. Sh. Vijay Dagar also bonafidely requires the tenanted premises in possession of the respondent as well as the other premises which is under the tenancy and possession of another tenant sh. Kamal Sharma @ Kanwal who is in occupation of two rooms on the ground floor of the said property bearing no.177/3, Gali No.7, Than Singh Nagar, Anand Parbat, New Delhi-110005 and therefore, a separate petition on the ground floor of bonafide requirement is also being filed against the said tenant.

It is further submitted that petitioner no.2 is presently residing at Rohtak, Haryana along with his family members and his son is working at Delhi and the petitioner no.2 used to visit frequently but since having no accommodation at Delhi he faces inconveniences and hardships to stay at Delhi.

It is further submitted that elder son namely Sh.Birender Singh Dagar of the petitioner no.2 is working as Additional Public Prosecutor at Police Training College, Village Jharoda Kalan, Najafgarh, New Delhi- 110072. He is bound to come from Rohtak, Haryana to Jharoda Kalan, Delhi and has to travel almost 110 kms and to spend three and a half/four hours for the said purposes, which causes great hardships and inconveniences. The tenanted premises is required to shift him permanently at Delhi.

It is further submitted that they have one son namely Pratyush Dagar who has attained the age of 8 years and is a student of 2 nd class presently studying in a school situated at Karnal, Haryana but the standard of education in schools at Karnal, Haryana is lower in compare to schools at Delhi. Petitioner no.2 wants to settle down his entire family at Delhi in ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 4 /24 the tenanted premises.

It is further submitted that petitioner No. 2 Sh. Ved Mitter Dagar is under observation of Rajeev Gandhi Cancer Hospital, Rohini, Delhi as he was suspected of carcinoma. He has to come Delhi periodically to get his check up from the said hospital.

It is further submitted that petitioner no.1 does not own or possess any other suitable and reasonable accommodation with him except the tenanted premises. So far as the native house in village Samaspur Khalsa, P.O Ujwa, New Delhi is concerned, the same is not suitable as narrated in petition. The petitioner no.1's wife and son also do not own or possess any accommodation and they are dependent upon the petitioner no.1 for the purpose of their residence.

Lastly, it is prayed by the petitioners to pass an eviction order from tenanted premises.

3. Notice of this eviction petition was sent to the respondent in the prescribed format which was duly served on the respondent. In response to which the respondent filed leave to defend application accompanied by affidavit.

4. Respondent in his leave to defend application inter-alia contends that the respondent/applicant is entitled to unconditional leave to contest the present proceedings as the petitioners have no bonafide requirement of the tenanted premises or any part thereof.

It is further contended by the respondent that the other co-owners have not been made party to the present case as there is a dispute between co-owners regarding tenanted premises.

ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 5 /24 It is further claimed by the respondent that the tenanted premises were let out for residential as well as for commercial purposes.

It is further contended that petitioners have not filed any site plan as well as particulars of other property available to them. The petitioner no.1 has big Haweli of more than 1000 sq. yards. Both the petitioners having rural back ground and can not live in a little house in polluted area which is 100 sq. yard plot with tin shed and kacha construction.

It is further claimed that petitioners are big jamidars having chunk of big agricultural land in village as well as other properties in Najafgarh and Rohtak area.

It is further contended that petitioner no.1 has not disclosed in which company his son is working and where is his office. If he is working in Janakpuri then the present house is about 8-9 kms from Janakpuri while the tenanted premises are in slum area and is more than 15 kms. away.

It is further contended that the land on which the tenanted portion is constructed was owned by Ramjas Foundation on the one side and DDA on the another. Recently, Ramjas Foundation has lost the case. Hence, DDA became the owner of the property and DDA is a necessary party.

It is further contended that petition has been filed with malafide intention to evict the poor respondent who has no accommodation to survive or shelter. If the same is leased out today then it can get rent in manifold.

It is further contended that petitioner no. 2 is having big accommodation with agricultural land in Rohtak. He has not disclosed the property available to him. The alleged place of working of his son I.e. Sh. Bijender Singh in Police Line, Jharoda Kalan is also situated on Haryana- Delhi Border. Name of school of grandson is also not mentioned. No ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 6 /24 documentary proof about the illness of petitioner no.2 is placed on record. The alleged suffering of his wife from hypertension/diabetes is result of pollution.

Lastly, it is submitted by respondent that petitioners or their family members do not require the tenanted premises bonafidely.

5. Reply to leave to defend filed by the petitioner no.2 stating that all the co-owners are not necessary parties to file the petition for seeking tenanted premises for bonafide requirement. Respondent has failed to place on record any document to suggest that the tenanted premises in question was used for composite purpose and further submits the site plan as alleged is not necessary to be filed in the present case for the available accommodation.

It is further contended that for the purpose of deciding the present petition, the accommodation available at Delhi only is relevant. Furthermore, it is wrong to say that the petitioners and their families belong to the family of big jamidars and can not reside in little shed of tin sheds and kacha rooms. Respondent has no say in this regard. That respondent can not put question mark over the title of the petitioner by saying that the property belongs to DDA. The respondent is taking dual stand. At one place, he is admitting the petitioners as co-owners of the property and on the another side, he is trying to take contrary stand.

It is further contended that the respondent has no say with regard to the conditions of the employment of the son of the petitioner no.2. It is further contended that eviction order may be passed in favour of the petitioners and against the respondent.

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6. I have heard the arguments advanced by both the Ld. Counsels and perused the record very carefully.

Learned counsel for the respondent inter-alia submits that petitioners are not the owners or landlords of the tenanted premises. Learned counsel for respondent submits that the petitioners have not disclosed all the properties in their possession. He also claims that petitioners do not have any bonafide requirement and the motive of petitioners is to re-let or to sell it out at higher rates.

It is argued by Ld. Counsel for the respondent that the other owners have not been made parties to the present case as there is a dispute between co-owners regarding tenanted premises. He further argues that the premises were let out for residential as well as for commercial purposes and the petitioners have not filed any site plan as well as particulars of property available to them. He further argues that the petitioners are having rural background and can not live in a little house in polluted area which is 100 sq. yard plot with tin shed and kacha construction and the petitioners own several properties. He further argues that the petitioner no. 1 has not disclosed in which company his son is working and where is his office and if he is working in Janakpuri then the present house is about 8-9 kms from Janakpuri while the tenanted premises are in slum area which is more than 15 kms away.

Ld. counsel argues that DDA is the owner of the tenanted premises. He further argues that petition has been filed with malafide intention to evict the poor respondent who has no accommodation to survive or shelter. If the same is leased out today then it can get rent in manifold.

He also argues that petitioner no.2 is having big accommodation with agricultural land in Rohtak and he has not disclosed the property available ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 8 /24 to him. The alleged place of working of his son I.e. Sh. Bijender Singh in Police Line, Jharoda Kalan is also situated on Rohtak-Delhi Border. Ld. Counsel argues that no documentary proof about the illness of petitioner no.2 is placed on record.

On the other hand, Ld. Counsel for the petitioners inter-alia submits that petitioners are the landlords as well as co-owners of the tenanted premises. He further submits that the petitioners have residential bonafide requirement for themselves and for their respective family members. He further submits that the petitioners do not have any alternative reasonably suitable accommodation in Delhi.

Ld. Counsel also submits that co-owner can also file an eviction petition and tenant cannot challenge the ownership of the petitioners. Lastly, he prays to the court to pass an eviction order against the respondents.

Ld. Counsel argues that the petitioners have filed the present petition with the consent and knowledge of other co-owners/landlords. He also argues that the grandfather of the respondent namely Sh. Prabhu Dayal was a tenant in respect of two rooms on the ground floor of the said property. He argues that petitioners do not have any reasonably suitable residential accommodation with them.

THE LAW:

It is well settled that burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in clause (e) are good enough to grant leave to defend.

ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 9 /24 It is further well settled that at a stage when the tenant seeks leave to defend, it is enough if he prima-facie makes out a case by disclosing such facts as would dis-entitle the landlord from obtaining an order of eviction. Unless the tenant at that stage itself establishes a strong case as would non-suit the landlord leave to defend should not be granted when it is not the requirement of Section 25 B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act, leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of landlord to recover possession of the premises from a tenant. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction.

It is also well settled at the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend where either frivolous, untenable or most unreasonable.

It is also well settled that when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire.

In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the rent controller by the statute itself to grant ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 10 /24 leave. It would expeditious disposal of eviction petition so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.

There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly

improper. When leave to defend is sought for, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action.

7. I have carefully and minutely gone through petition, leave to defend application accompanied by affidavit, reply, documents and material on record.

8. It is expedient to reproduce the Section 14 (1)(e) of DRC Act which is as under:

"Section-14. Protection of tenant against eviction- (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 court or any 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 recovery of possession of the premises on ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 11 /24 one or more of the following grounds only, namely:-

"That the premises are required bonafide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation."

As such, followings are the ingredients of Section 14 (1)(e) of D.R.C.

Act:-

(i) There should be relationship of landlord and tenant between the petitioners and respondent.

(ii) Landlord should be the owner of the tenanted premises.

(iii) That the premises are required bonafide by the landlord for himself/herself or for any member of his/her family dependent upon him/her.

(iv) Landlord should not have other reasonable suitable accommodation.

9. Let us discuss the ingredients of Sec. 14(1)(e) of D.R.C. Act:-

(i) & (ii). LANDLORDSHIP AND OWNERSHIP:-

10. Perusal of the record shows that the respondent has not disputed the landlordship but he has disputed the ownership of the petitioners as DDA is the owner of the tenanted premises. On the other hand, petitioners have ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 12 /24 claimed

that they are co-owners of the tenanted premises.

In the leave to defend, the respondent has prayed that the petitioners are co-owners of the tenanted premises but they have not made the other co-owners parties in the present case.

As such, the respondent has admitted that the petitioners are owners of the tenanted premises but he has claimed that they are co-owners and they cannot file the eviction petition without impleading all the co-owners.

It is well settled that one of the co-owners can file a petition for eviction of a tenant in the property generally owned by the co-owners. The consent of other co-owner is assumed to have been taken unless it is shown that the other co-owners were not agreeable to eject the tenant and eviction petition was filed inspite of their disagreement.

In case titled as Pal Singh vs Sunder Singh (Dead) By Lrs. & Ors. 1989 AIR 758, 1989 SCR (1) 67, it is observed by Hon'ble Supreme Court as under:-

"This in our opinion falls within the ratio of Kanta Goel v. B.P. Pathak (supra) where this Court clearly held that when the other co-owner did not object to the eviction one co-owner could maintain an action for eviction even in the absence of other co-owner".

In case titled as Jiwan Lal Vs. Gurdial Kaur & Ors. 1995 RLR 162 a Bench of Hon'ble High Court of Delhi while dealing with the concept of ownership in a pending eviction petition under Section 14(1)(e) of the DRC Act had noted as follows:

"There is a tendency on the part of tenants to deny ownership in cases under Section 14(1)(e). To test the ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 13 /24 substance of such a plea on the part of the tenants the courts have insisted that they should state who else is the owner of the premises if not the petitioner. In the present case it is not said as to who else is the owner. Further these cases under Section 14(1)(e) are not title cases involving disputes of title to the property. Ownership is not to be proved in absolute terms. The respondent does not claim the owner of the premises."

Further, in the case titled as Smt. Shanti Sharma & Ors. Vs Smt Ved Prabha & ors 1987 AIR 2028, the Hon'ble Supreme Court observed : -

"That the meaning of term 'owner' is vis a vis the tenant i.e. the owner should be something more than the tenant."

11. It is also well settled that the petitioner should be something more than the tenant and the petitioner need not prove his ownership in absolute terms. It is sufficient for the petitioner to prove or to show that he is something more than a tenant. In my view, the petitioners have been able to prove that they are something more than the respondent.

In view of the settled proposition of law, this contention of the respondent that co-owner have not been pleaded does not have any force. As such, it cannot be considered as triable issue. As such, ingredient in respect of landlordship and ownership are satisfied.

(iii) & (iv). BONAFIDE REQUIREMENT AND ALTERNATIVE ACCOMMODATION:-

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12. It is expedient to discuss some case laws before deciding the leave to defend which are as under:-

In the case titled as "Mittar Sain Vs Rajesh Kumar" passed in RC Revision 196/2013 and CM 8431/2013 passed by the Hon'ble High Court of Delhi, the relevant portion is as under:-

"14. On the issue of alternate accommodation, this court is of the view that the reliance by the tenant on the cases of S.M. Mehra, Santosh Devi Soni and Liaq Ahmad (Supra) are misplaced. This court is of the view that decision in the said cases were given in the peculiar set of facts and such decisions would not be applicable to the present case as the facts are entirely different. Moreover, as has been relied upon by the Ld. Counsel for the landlord, in the case of Madan Lal Gupta (Supra) the Hon'ble Supreme Court has held that neither Santosh Devi Soni (Supra) nor Liaq Ahmad (Supra) laid down any principle of law, it was further observed in these cases, certain orders were passed on the facts arising in them."

In the case titled as Madan Lal Gupta Vs Ravinder Kumar passed in SLP (Civil) 10729/2000 passed by the Hon'ble Apex Court, the Hon'ble Apex Court inter-alia observed as under:-

"However, the learned Counsel for the petitioners sought to rely upon two decisions of this court in Santosh Devi Soni Vs Chand Kiran, J.T 2000 (3) SC 397, and Liaq Ahmad ORS Vs Shri Habib Ur Rehman, JT 2000 (5) SC 611. Neither of these two decisions set down any principle of law so as to call for interference by us. In these two cases on the facts arising in the case certain orders have been passed by this court."

In the case titled as Sudesh Kumar Soni & Ors. Vs. Prabha Khanna & Ors. 153 (2008) DLT 652 it was observed that:-

"24. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

25. Suitability has to be seen from the convenience of the landlord and his family members and on the basis of the circumstances including their profession, vocation,

style of living, habits and background. Landlord is the best judge of his residential requirement".

In the case titled as Ragavendra Kumar Vs Firm Prem Machinery AIR 2000 SC 534, it was observed as under:-

"It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter, (See: Prativa Devi (Smt.) v. T.K Krishnan, [1996] 5 SCC

353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted."

In the case titled as Sarla Ahuja Vs United India Insurance Co.

ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 16 /24 Ltd. AIR 1999 SC 100 , the Hon'ble Supreme Court has held that:

"The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

In Shiv Sarup Gupta Vs Dr. Mahesh Chand Gupta AIR 1999 SC 2507, at pg-2512 in para 14 & 15, the Hon'ble Supreme Court held that:-

"14. The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of Clause (e) of Sub-section (1) of Section 14 which speaks of non- availability of any other reasonably suitable residential accommodation to the landlord, would ARC No.

25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 17 /24 not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant fact Ors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."

In the case titled as Metropolitan Book Company Ltd. vs. Ajay Rastogi & Ors. Passed in RC. Rev. No. 484/2013, the Hon'ble High Court of Delhi observed as under:-

"Even assuming the other properties available, and which actually they are not as stated below, these other properties situated far from the present residence of respondent no. 1 and his family members cannot be considered as alternative suitable accommodation."

13. As such, in view of the observations made by the Hon'ble Superior Courts, it is not mandatory for the Rent Controller to grant the leave to defend in each and every case where additional accommodation is sought by the petitioner/landlord.

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14. The respondent has pleaded that the tenanted premises were let out for residential-cum-commercial purposes.

It is well settled proposition of law that an eviction petition can be filed U/Sec. 14(1)(e) of D.R.C. Act for the premises which were let out for residential purposes and for commercial purposes and composite purposes. As such, this plea does not have any force.

15. The respondent has contended that the petitioners have not filed any site plan as well as particulars of the properties available with them.

I have carefully gone through the leave to defend and the material on record but in view of the settled propositions of case law, the respondent does not have any force in this plea as it is not mandatory for the petitioner or landlord to file the site plan of all the properties in his possession. It is sufficient if the petitioners have filed the site plan of the suit property or tenanted premises. And in the present case, the petitioner has placed on record the site plan of the suit property. As such, this plea of the respondent in respect of not filing of the site plan of the alternative properties

available with them does not have any force.

16. The respondent has also contended that petitioner no. 1 is a big Zamidar and he is owner of a big Haweli of 1,000/- square yards and he cannot move in the tenanted premises.

It is well settled proposition of law that the tenant cannot dictate terms to the landlord and he cannot decide the standard of living of the landlord. It is the prerogative of the landlord to decide which premises are more suitable and convenient to him and his family.

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17. Another contention of the respondent is that the present house of petitioner No. 1 is more suitable for the son of the petitioner No. 1 than the tenanted premises.

It is well settled that suitability is to be viewed from the point of view of the petitioner/ landlord and not from the point of view of the tenant and tenant has no right to dictate the terms to the landlord in respect of use of the property available to the landlord.

18. One of the contentions of the respondent is that they are dependent upon the tenanted premises and there is no other residential premises available with them.

In the case titled as Raj Kumar Khanna vs. Parduman Singh passed in RC Rev. No. 548/2012 and C.M. No. 18936/2012 on 04.10.2013; the Hon'ble High court of Delhi observed as under:-

"17. In the case of Mohd. Ayub vs. Mukesh Chand (2012) 2 SCC 155 it was observed that the hardship appellants would suffer by not occupying their own premises would be far greater than the hardship the respondent would suffer by having moved out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be sole determinative factor."

19. In my view, this plea of the respondent certainly attracts the sympathy of this court but it is well settled that in deciding the present eviction proceeding, this kind of plea need not be weighed by the court.

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20. Another contention of the respondent is that the petitioner No. 2 is having big accommodation in Rohtak and he has not disclosed his property in Rohtak.

It is well settled that the petitioner/ landlord is required to disclose the property available with him in Delhi only and not which are situated outside Delhi. As such, this argument of the respondent has no substance at all.

21. Another plea taken by the respondent is that the petitioners have not given details of school of grandson and he has claimed that Karnal is a very high class town of Haryana.

In my view it is well settled that the tenant cannot dictate the landlord or his family to use a particular city instead of city of the tenanted premises merely to save the tenancy.

22. Next plea of the respondent is that no document in respect of illness of petitioner No. 2 is placed on record and it is merely an apprehension.

In my view, the respondent has not disputed the illness of petitioner No. 2 but has claimed that it is merely an apprehension and in my view the petitioner is not required to prove the same with strict proof merely to prove the bonafide requirement.

23. One of the arguments of the respondent is that the petitioners want to sell or re-let the property in question after getting it vacated from the respondent.

"19. Recovery of possession for occupation and re- entry. -

(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (c) of ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 21 /24 the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 148 and 21], the landlord shall not, except with the permission of the Controller, obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made on him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit."

In the case titled as Ramesh Kumar & Ors. vs. Smt. Neelam Dawar & Ors. Passed in RC (Rev.) 44/2014, C.M. Application 1313- 14/2014, the Hon'ble High Court of Delhi inter-alia observed as under:-

"The tenant's apprehension that upon eviction the tenanted premises would be let out at a higher rent was found to be baseless and prematured since ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 22 /24 such contingency has been taken care of U/Sec. 19 of the Act."

24. As such, statute clearly lays down that the petitioners/ landlord has to occupy the vacated tenanted premises within two months and the landlord cannot re-let to any person other than the evicted tenant within three years from the date of obtaining possession and in case he does so, the evicted tenant may approach the Rent Controller seeking direction to the landlord to put the tenant in possession of the premises. As such, this contention of the respondent does not have any force and cannot be treated as triable issue.

25. In the light of the aforesaid legal proposition, all the pleas taken by the respondent have failed to raise any triable issues. The contents of the application for leave to defend have failed to rebut the presumption of bonafide qua the requirement of the petitioners.

CONCLUSION:

26. In view of the above discussion, I am of the considered opinion that no purpose would be served, even if, the petitioners are compelled to appear in the witness box and position would not be different than it is today. For this reason also, I find no triable issue in the leave to defend application of the respondent. The application for leave to defend filed by the respondent is thus, dismissed.

27. Hence, as a consequence thereof, an eviction order is passed U/s. 14 (1) (e) of DRC Act in favour of petitioners and against the respondent in ARC No. 25849/16 Ved Vrat Dagar & Ors. Vs Rakesh 23 /24 respect of two rooms on the ground floor along with common facility of toilet forming part of property bearing no.177/3, Gali no.7, Than Singh Nagar, Anand Parbat, New Delhi-110005 more specifically shown in red colour in the site plan annexed with the petition which is marked as Mark-P1 (Put by the court for the purpose of identification).

28. However, this order shall not be operative before the expiry of six months from today keeping in view Sec. 14(7) of D.R.C. Act.

29. File be consigned to the Record Room after due compliance.

Announced in the open Court
on 27th September, 2018.

(This order contains 24 pages)

AJAY

NAGAR

Digitally
signed by
AJAY NAGAR
Date:
2018.09.27
17:36:39
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(Ajay Nagar)
Commercial Civil Judge-Cum
Additional Rent Controller,

Sh. Ved Vrat Dagar vs Sh. Rakesh on 27 September, 2018
West District, THC, Delhi.

ARC No. 25849/16

Ved Vrat Dagar & Ors. Vs Rakesh

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