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PUSHKAR SINGH

v.

ANSUIYA

AUGUST 22, 2006

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[ASHOK BHAN AND MARKANDEY KATJU, JJ.]

*Rent Control and Eviction:*

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*Delhi Rent Control Act; Section 14(1)(e): Eviction Petition—Bonafide requirements—Availability of alternative accommodation in the name of wife of the landlord—Suitability for the purpose of residence—Held: Since the tenant herself could not consider the alternative accommodation suitable for the purpose of residence, eviction petition cannot be rejected only on the ground of availability of the alternative accommodation.*

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The appellant-landlord filed an eviction petition against his tenant, the respondent, under Section 14(1)(e) of the Delhi Rent Control Act for vacating the premises on the ground of *bonafide* requirement for his family. The Additional Rent Controller allowed the petition holding that there is *bona fide* need of the appellant and his family members; and that the appellant cannot

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be compelled to occupy the property belonging to his wife.

Aggrieved, the tenant filed a Revision Petition, which was allowed by the High Court holding that since residential accommodation in the name of the wife of the landlord was available, it cannot be said that the landlord's need was *bonafide*. Hence the present appeal.

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The appellant-landlord contended that the alternative accommodation in the name of his wife as available was wholly unsuitable and he needed the premises in question for *bonafide* requirement of himself and his family; and that he has offered the premises available alternatively to the respondent-tenant on rent, but the respondent did not accept the offer.

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Allowing the appeal, the Court

**HELD:** Since the tenant herself believes that the alternative accommodation is not suitable for residence purpose, the eviction petition

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cannot be rejected only on the ground of availability of alternative accommodation in the name of the wife of the landlord. Hence, the impugned judgment and order of the Single Judge of the High Court is set aside and the order of eviction of the Additional Rent Controller is restored. [199-B]

*M.L. Prabhakar v. Rajiv Singal*, [2001] 2 SCC 355, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3582 of 2006.

From the Judgment and Order dated 7.7.2003 of the High Court of Delhi at New Delhi in Civil Misc. (Main) No. 151/2002.

Tatini Basu and Sudhir Nandrajog for the Appellant.

Satish Chand Gupta, Om Prakash and Rameshwar Prasad Goyal for the Respondent.

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.** Leave granted.

This appeal has been filed against the impugned judgment and order of the learned Single Judge of the Delhi High Court dated 7.7.2003 by which the Civil Miscellaneous (Main) Petition No. 151 of 2002 of the respondent was allowed and the order of the Additional Rent Controller dated 19th October, 2001 directing eviction of the tenant from the premises bearing flat No. 215-A, Type-B, Ground Floor, opposite GTB Hospital, Nand Nagari, Delhi under Section 14(1)(e) of the Act was set aside.

Heard learned counsel for the parties.

The appellant filed a petition under Section 14(1)(e) of the Delhi Rent Control Act against his tenant Ansuiya, the respondent herein. The flat in question comprises of two rooms, bathroom, kitchen, latrine and courtyard which the appellant had let out to the respondent in the year 1990.

In his petition under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act, the appellant contended that his family comprises of himself, his wife, two sons, three daughters who are dependent upon him for the purposes of residence. He further stated that his elder son got married on 21.7.1998 and that he required one room for himself and his wife, one room for his son and his family, one drawing room and one study room, one

A worship room and one guest room. The appellant further stated that his daughter Archana is employed and his second daughter completed BAMS and the third daughter is a student of B.Sc and that his married son and daughter-in-law are doing graduation and the younger son is a student of Physiotherapy. He further stated that the accommodation presently available with him is not sufficient for the purposes of residence and as such requires the flat in question, under the tenancy of the respondent *bona fide* for the purpose of residence. The appellant also stated that the flat in question was let out to the respondent for the purpose of residence. In the light of these submissions, the appellant filed the petition and prayed that an eviction order be passed in his favour and against the respondent, under Section 14(1)(e) the Delhi Rent Control Act.

In her written statement, the respondent stated that the appellant had an alternative accommodation bearing No. 6/213, at Harijan Basti, Delhi consisting of nine rooms which is in the name of his wife Smt. Krishna Devi. Thus, it was alleged that the appellant has sufficient accommodation.

The learned Additional Rent Controller, Karkardooma, Delhi by the order dated 19.10.2001 allowed the petition holding that there is *bona fide* need of the appellant and his family members. The said authority held that the appellant cannot be compelled to occupy the property of his wife.

Aggrieved, the tenant/respondent filed a petition under Article 227 of the Constitution which was treated as a Revision Petition under Section 25-B(8) of the Delhi Rent Control Act and that Revision was allowed by the High Court by the impugned order. The High Court held that an alternative residential accommodation cannot be ignored if it is owned by the wife when both husband and wife are co-habiting together and are joint in mess and living. The High Court held that since there is residential accommodation in Harijan Basti in the name of the appellant's wife, hence it cannot be said that the landlord needs is *bona fide*.

Aggrieved against the impugned order, this appeal has been filed before this Court.

In this Court, the learned counsel for the appellant-landlord stated that the alternative accommodation at Harijan Basti in the name of the appellant's wife is wholly unsuitable and the appellant needs the flat in question for the *bona fide* requirement of himself and family and that the appellant is prepared to offer the premises at Harijan Basti which is in his wife's name on tenancy

to the respondent-tenant if the respondent was willing to occupy the same. However, learned counsel for the respondent stated that the respondent was unwilling to accept the offer of the alternative accommodation at Harijan Basti which was in the name of the appellant's wife. In these circumstances, we are of the opinion that since the tenant herself believes that the accommodation at Harijan Basti is not suitable for residence, the petition cannot be rejected only on the ground that there is accommodation in the name of his wife at Harijan Basti. A B

A similar view was taken by this Court in *M.L. Prabhakar v. Rajiv Singal*, [2001] 2 SCC 355.

For the reasons given above, this appeal is allowed. The impugned judgment and order of the learned Single Judge of the Delhi High Court is set aside and the order of eviction of the learned Additional Rent Controller dated 19.10.2001 is restored. C

The Additional Rent Controller by his order dated 19.10.2001 had granted six months' time from the date of that order to the tenant to vacate the premises in question. Since that six months' time has long since expired, we grant the tenant two months' time from the date of this order to vacate the premises in question, failing which the tenant and his family members shall be evicted by police force. D

There shall be no order as to costs. E

S.K.S.

Appeal allowed.