

Delhi High Court

Bench: S Pal

Silvertoe Mfg. Co. Of India v. Usha Soi

22 August, 1994

JUDGMENT

Sat Pal, J.

(1) This petition has been filed by M/s. Silvertoe Manufacturing Company (hereinafter referred to as the tenant) and Smt. Parkash Devi (hereinafter referred to as the petitioner No.2) under Section 25-B(8) of the Delhi Rent Control Act, 1958 (in short the Act) against the order dated 24th November, 1992 passed by Shri K.S. Khurana, Additional Rent Controller, Delhi whereby the learned Additional Rent Controller executed the eviction petition filed by Smt. Usha Soi (hereinafter referred to as the landlady) under Section 14(1)(e) of the Act and passed the eviction order against the tenant and petitioner No.2.

(2) Briefly stated, the facts of the case are that the landlady who is the owner/landlady of the premises bearing No.G-14, Maharani Bagh, New Delhi had let out the first floor of the said house consisting of drawing-cum-dining room, three bed rooms with bath rooms and two dressing rooms, kitchen, pantry, verandahs and one bed room (on the terrace barasati floor) with bath room, two servant quarters and one garage as shown in the site plan filed Along with the petition to the tenant for residential purpose of petitioner No.2 who at the relevant time was the proprietor of the tenant, vide agreement dated 15th May, 1970 at a monthly rent of Rs.1500/ per month. Prior to April, 1983, the landlady Along with her husband had been living at 22, Daryaganj, Delhi which belonged to his son Shri Ashok Soi. While living in Daryaganj House, the landlady filed an eviction petition against M/s.Methodex Business System who was the tenant on the ground floor of the suit premise and as a result of the order passed in that petition, the landlady got the possession of the ground floor portion of the premises in the year 1983.

(3) Thereafter on 29th October, 1987, the landlady filed the eviction petition under Section 14(1)(e) of the Act against the tenant and petitioner No.2. In this petition, inter alia, it was stated that the age of the landlady was 67 years and her husband was 74 years old and was a heart patient and during the past one year his health had deteriorated. It was further stated that the accommodation available with the landlady consisted of drawing-cum-dining room, two bed rooms, three bath rooms, one pooja-cum-store rooms, one kitchen, two servant quarters, verandahs, lawn and a garage. It was then stated that the landlady had two married daughters, namely, Smt. Asha Chopra and Smt. Esha Chopra and a son, namely, Ashok Soi. It was further stated that on the advice of the doctors, it had become necessary for the landlady to have one of her children staying with petitioner and her husband all the time so that they were properly looked after and cared for.. It was further stated that her married daughter Esha Chopra and her husband had moved to Delhi to look after the landlady and her husband and they had already arranged for the admission for

their school going children in Modern School, New Delhi. It was, therefore, pleaded that the landlady required the entire accommodation in the suit premises i.e. first floor and one room on barsati floor of the house G-8, Maharani Bagh, New Delhi which was in possession of the tenant.

(4) The tenant and the petitioner No.2 in their written statement admitted that the petitioner was the landlady of the suit premises. It was, however, stated in the written statement that the suit premises were used by the petitioner No.2 for her residence and office. It was further stated that the son of the landlady, Ashok Soi was never dependent upon her. It was then stated that the landlady got the possession of the ground floor portion of the premises-in the year 1983 and in her eviction petition for recovery of possession of ground floor, she had claimed the premises for herself and her husband and the size of the family of the landlady remained the same even on the date of filing of the petition and as such the requirement of the landlady was not bonafide. It was also alleged in the written statement that the landlady had three large bed rooms with attached toilets, kitchen, drawing-cum-dining rooms, verandahs and a lawn besides two servant quarters. It was also stated in the written statement that the ailments attributed to the husband were normal and husband of the landlady used to drive his car regularly. It was also alleged that the landlady had got a big bungalow bearing No.22, Daryaganj, New Delhi which was in the name of her husband and her son Ashok Soi and the said bungalow had got four big rooms and one store big halls besides bath, kitchen and toilets. It was then stated that the landlady had tried to set-up the need of the children who did not live with her and were not dependent upon her and she had got more than sufficient accommodation with her.

(5) The learned Additional Rent Controller by his order dated 24th November, 1992 held that the landlady had been successful in bringing out her case within the four corners of Section 14(1)(e) of the Act and passed eviction order in favor of the landlady and against the tenant and petitioner No.2 in respect of the suit premises shown in site plan Ex.PW.1/I. Aggrieved by the aforesaid order, the present petition has been filed by the tenant and the petitioner No.2 :

(6) Mr. Sahai, learned senior counsel appearing on behalf of the tenant and the petitioner No.2 submitted that the claim of the landlady for requirement of the suit premises was malafide as the landlady at present had got sufficient accommodation for herself and her husband. He further submitted that the landlady had wrongly stated in the eviction petition that she was in possession of two bed rooms and one pooja-cum-store room, and in fact she was in possession of three bed rooms as the pooja-cum-store room was really a bed room. He further submitted that the landlady had moved to the ground floor in April, 1983 and prior to April, 1983 the tenant who was living on the ground floor was using the alleged pooja-cum-store room as a bed room. He also submitted that all these three bed rooms were of big size and besides the three bed rooms, there were also drawing-and-dining rooms, two dressing rooms, kitchen, pantry and verandahs. He further submitted that the landlady could not be permitted to deliberately create a condition of paucity of accommodation by converting one bed room into pooja-cum-store room. He also submitted that the distinction between desire of the landlady and her need must be kept in view and if the landlady had some other vacant portion of the house, she could not choose arbitrarily

and convert one bed room into pooja-cum-store room. He submitted that the landlady could perform pooja in her bed room itself or she could use the pantry for doing pooja and one bed room could not be blocked as a pooja room. He further submitted that the claim of the landlady to use one bed room as pooja-cum-store room was to create artificial scarcity and such claim should be rejected. In support of his submissions, learned counsel placed reliance on three judgments of the Supreme Court reported in the cases of M.M. Quasim Vs. Manohar Lal Sharma & Ors. , Amarjit Singh Vs. Smt. Khatoon Quamarain, , Sushila Devi & Ors. Vs. Avinash Chandra Jain & Ors., and two judgments of this court in the cases of Ranjan Gupta Vs. A.F. Ferguson & Company, . Shambhu Nath Vs. Surinder Kumar Sharma, 1991 (2) Rcr 299.

(7) Learned counsel further submitted that the son of the landlady, namely, Ashok Soi had been residing in a separate premises and the learned Additional Rent Controller had given a correct finding that there was no bonafide requirement of the landlady for the residence of her son Ashok Soi in the suit premises.

(8) Learned counsel further submitted that though the landlady has tried to make out a case that she and her husband being of old age wanted that their daughter Esha Chopra Along with members of her family should live with them to look after them but Smt. Esha Chopra was not interested to come and live with her parents. He submitted that admittedly Smt. Esha Chopra Along with her children had been living in two bed rooms house in Lajpat Nagar, New Delhi and in case she really wanted to look after her old parents, she would have joined them to live in the present accommodation available with them on the ground floor and would not have lived in a rented house. He, therefore, contended that the claim of the landlady with regard to the accommodation required for her daughter, Esha Chopra and her two children was malafide and in fact the landlady and her husband did not need any help from their children.

(9) Lastly, learned counsel for the tenant submitted that the tenant and the petitioner No.2 were willing to surrender first floor of the house, in case the landlady agreed to allow the tenant to retain the Barsati floor of the house. He further submitted that such an offer was permissible under law and in support of this submissions, he placed reliance on a judgment of the Supreme Court in the case of Jivram Ranchhoddas Thakkar and another Vs. Tulshiram Ratanchand Mantri and others, and two judgments of this court reported in Mahesh Patel Vs. Jai Karan Kohli and another 1987(2) Rcr 326. I.D. Rajput VS. Ramji Dass, . It may be noted that the learned counsel did not address any argument with regard to the House bearing number 22, Daryaganj, New Delhi as admittedly neither the landlady nor her husband is the owner/landlord of this house.

(10) Mrs. Mahajan, learned counsel appearing on behalf of the landlady submitted that the landlady was the judge of her residential requirement and it was not for the courts to dictate to the landlady how and in what manner she should live or to prescribe for her a residential standard of her own. In support of this submission, she placed reliance on a judgment of the Supreme Court in the case of Smt. Prativa Devi VS.T.V. Krishnan, 1987(2) Rcr 580. She further submitted that in the present case the landlady had pleaded and proved that she was using one room on the ground floor as pooja-cum-store room. She

submitted that the landlady who was now 75 years old wanted to have her pooja in a separate room. She submitted that the need for a pooja room by the landlady at this age was fully justified. In support of her submissions she placed reliance on a judgment of the Supreme Court in the case of Pal Singh Vs. Sunder Singh, and a judgment of this Court in the case of Shri K.D. Gupta Vs. Shri H.L. Malhotra, .

(11) Learned counsel for the landlady further submitted that admittedly the landlady was now 75 years old and her husband was 80 years old. She drew my attention to the evidence of PW-3 who was the family physician, PW-2 who had produced the documents from Holy Family Hospital and PW-4 who had produced the records from the Moolchand Hospital and submitted that all these documents showed that the husband of the landlady, besides being an old person, was not keeping good health. She submitted that it was in these circumstances that she wanted her daughter Esha Chopra to live with her in the suit premises to look after the landlady as well as her husband. She further submitted that the said daughter of landlady had agreed to stay with her provided the landlady could accommodate her and members of her family in the said premises. She, therefore, contended that in these circumstances, the requirement of the suit premises was in fact the requirement of the landlady herself. In support of this submission, she placed reliance on two judgments of this court in T. Shiv Shankar and another VS. A.L. Seth, 1986 (Suppl) Vol. 28 Rcr 147 and S.K. Arora VS. S.L. Sarna. .

(12) Learned counsel further submitted that Mrs. Esha Chopra Along with her two children admittedly was now residing in a rented premises in Lajpat Nagar which consisted of two bed rooms and drawing-cum-dining room. She further submitted that both the children of Esha Chopra were grown up and thus one bed room was required for Esha Chopra and two bed rooms were required for the children. She submitted that it was now well settled and every grown up child should be provided a separate bed room. In support of this submission, she placed reliance on a judgment of this court reported in the case of Brij Mohan Vs. Sripal fain. . She also submitted that the landlady also needed one room for the occasional visit of the other married daughter and members of her family and her son. She, therefore, contended that the requirement of the landlady for the suit premises was bonafide.

(13) Regarding the proposal made by the learned counsel for the tenant that the tenant and the petitioner No.2 were willing to surrender the first floor in case they were permitted to retain the barsati floor, the learned counsel submitted that this proposal was not acceptable to the landlady as she needed the entire suit premises which were in occupation of the tenant. She further submitted that there was no law which required that in order to show bona fide requirement the landlady must offer alternate accommodation to the tenant. In support of this contention, she placed reliance on three judgments of this court in the cases of H.S. Treohan VS. Hindustan Kokoku Wire Ltd., , Federal Motors Pvt. Ltd. Vs. D.N. Dhir, and Kesho Ram Vs. Ramesh Kumar, . Dealing with the judgments of the Supreme Court in the case of Jivram Ranchhoddas Thakur (supra) relied upon by the learned counsel for the tenant, the learned counsel for the landlady submitted that though in that case the tenant had surrendered half the portion in his occupation but that was done by mutual consent of the parties.

(14) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and have perused the record. In the case of Shri M.M. Quasim (supra) it was held by the Supreme Court that “the landlord has not unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek remove the tenant”. In the case of Amarjit Singh (supra) it was held by the Supreme Court that the distinction between desire and need of the landlord must be kept in view. However, in the case of Prativa Devi (supra) the Supreme Court held as follows : “THE landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

(15) In view of the law laid down by the Supreme Court as stated hereinabove, it is clear that though the distinction between desire and need of the landlord must be kept in view, it is the landlord who is the best judge of his residential requirement in case he chooses the same in a reasonable manner. In the present case after the landlady moved to the ground floor of the suit premises in 1983, she had been using one bed room as pooja-cum-store room as stated in the eviction petition. She cannot be dictated to do her pooja in the bed room used by her Along with her husband nor she can be compelled to do her pooja in pantry as suggested by the learned counsel for the tenant. The need of the pooja room by the landlord was held to be reasonable by the Supreme Court in the case of I al Singh (supra). A Learned Single Judge of this Court in the case of K.D. Gupta (supra) also held that need of the landlord for pooja room was justified. I am, therefore, of the view that in the present case the use of one room by the landlady as pooja-cum-store room is justified. The ratio of the judgment in the case of Ranjan Gupta (supra) is not applicable to the facts of the present case as in that case, the requirement of pooja room was not pleaded by the landlord and further the .mother of the landlady who was to perform pooja was having one bed room exclusively for herself.

(16) As regards the requirement of the landlady for the residence of her daughter Esha Chopra and her two children, it may be noted that admittedly the landlady at present is 75 years old and her husband is 80 years old. From the records it is also evident that the husband of the landlady has not been keeping good health since 1987. In view of these facts, the landlady and her husband cannot look after themselves and are in need of one of their children to stay with them so that they maybe looked after properly. From the evidence, I find that Smt. Esha Chopra has agreed to stay with the landlady provided the landlady can accommodate her and her two grown-up children. Since the landlady and her husband want that their daughter Esha Chopra should come and live with them, the requirement of the suit premises is that of the landlady herself and the said requirement is a bonafide one. The view I have taken finds support from two judgments of this court in the case of T. Shiv Shankar (supra) and S.K. Arora (supra). In the case of Amrit Lal Gupta Vs. Budhwanti, 40 (1990) Dlt 55, the Supreme Court also observed that the landlady in that case needed the presence of her son in her house so that she could be properly looked after in her old age.

(17) Now the question to be examined is as to what additional accommodation the landlady

needs for the residence of her daughter and her two grown up children. Admittedly, the present age of the son of Smt. Esha Chopra is 18 years and of her daughter is 15 years. Since these children are grown-up, each one of them requires one bed room separately. One bed room will be required by Ms. Esha Chopra. Thus in all three bed rooms will be required for Ms. Esha Chopra and her two children. The landlady and her husband require one bed room and at present the landlady is having only two bed rooms on the ground floor. Thus the landlady requires two more bed rooms to accommodate her daughter Esha Chopra and her children. Though in para 18 (a)(ii) of the eviction petition it has been stated that the landlady bona fide requires the additional accommodation for residential use for herself and members of her family consisting of herself, her husband, her son Shri Ashok Soi and two daughters Smt. Asha Chopra and Smt. Esha Chopra, but in sub-para (iii) it has been stated that the elder daughter Mrs. Asha Chopra who is staying in Delhi has to look after her ailing and aged father-in-law and her grown-up unmarried daughter and it is not possible for her to constantly attend the landlady and her husband. The learned Additional Rent Controller has held that landlady does not need any accommodation for her son Ashok Soi who is living separately. From these facts, it becomes clear the one bed room will be required by the landlady for the occasional visit of her elder daughter Asha Chopra and her son. It would thus be apparent that the requirement of the landlady for the suit premises is bonafide.

(18) Learned counsel for the tenant during the course of his arguments had stated that the tenant was willing to surrender the first floor accommodation in case the landlady permitted them to retain the barsati floor. The offer was, however, not accepted by the landlady. Since the requirement of the landlady for the additional accommodation has been found bonafide, the landlady cannot be directed to permit the tenant to retain the barsati floor. The view I have taken finds support from three judgments of this Court in the cases of H.S. Treohan (Supra), Federal Motors Pvt. Ltd. (Supra) and Kesho Ram (Supra). The judgment of the Supreme Court in the case of Jivram Ranchhoddas Thakur (supra) relied upon by the learned counsel for the tenant is of no assistance to the tenant as in that case the tenant had surrendered half portion of the suit premises by mutual consent of the parties. Similarly, the judgment of this Court in the case of Mahesh Patel (supra) is also of no assistance to the tenant as in that case the requirement of the landlord was only of a garage and it was held that for the requirement of a garage the landlord was not entitled to eject the tenant from the first floor and barsati floor of the suit premises.

(19) For the aforesaid reasons, I do not find any merit in this petition and the same is dismissed with no order as to costs. However, looking at the urgency of the requirement of the landlady as well as the difficulty for the tenant to find out another accommodation, the petitioners are allowed six months time from the date of this order to vacate the premises subject to the condition that, within a week from today, they furnish an undertaking in the shape of an affidavit to this Court that they will handover the vacant possession of the suit premises to the landlady within six months from the date of this order. Lower court records be sent back forthwith.

Equivalent: 55 (1994) DLT 563, 1994 (30) DRJ 548, 1995 RLR 24