

Charan Dass Duggal

Vs

Brahma Nand

Civil Appeal No. 179 of 1982

(D. A. Desal, R. M. Misra JJ)

11.01.1982

ORDER

1. Special leave granted.

2. Respondent Shri Brahma Nand moved a petition for eviction of the appellant-tenant on the ground that he requires the premises reasonably for this own personal use. In the petition he also averred that he has three sons. Virender Kumar, Rakesh Kumar and Narender Kumar and an unmarried grown up daughter. It was admitted that Rakesh Kumar is a student studying in Guru Nanak Engineering College at Ludhiana; that Virender Kumar is married and both the husband and wife are employed at Bhos but they casually visit respondent-landlord. In respect of Narendra Kumar it was stated that he is serving as a teacher somewhere in Punjab. He refers to two others daughter Smt. Santosh Vyas and Smt. Tripta who are at present staying in Dhar and Namrup in Assam respectively but they also casually visit twice or thrice a year the respondent-landlord. The appellant-tenant moved an application seeking leave to defend the ejection petition. He inter alia, contended that the respondent landlord has a big house named 'Parkash Bhawan' Gurdaspur Road, Pathankot, and is residing at that place and is not residing in Delhi. A serious contention was raised that the landlord was not in need of the premises at Delhi. A further averments was that the rent has been increased from time to time and this discloses that the present attempt is merely to bring pressure to increase rent.

3. The learned Rent Controller rejected the application for leave to defend the action. Appellant-tenant carried the matter to High Court in Civil Revision No. 467 of 1980 without success.

4. When landlord seeks possession for personal requirement he has to prove his present need. If he has nay premises in his possession he must allege and prove why that is not sufficient for his present use or why he has to shift to the premises of which he seeks possession. If the tenant avers that the landlord is not in need of the premises and that he is not staying in the city in which the premises involved in dispute in situated and that the landlord has a big building in his possession at a different place where he is shown to be staying obviously a very serious triable issue would arise. To return to the fact of the this case it is not in dispute that there is a house named 'Parkash Bhawan' situated at Pathankot but in this behalf of the case of the landlord is that the same belongs to his sons and daughter and he would stay in that house whenever he visits Pathankot and his normal correspondence address is at Pathankot. A sale deed was shown to the learned Judge of the High Court relating to Pathankot house which appears to be in the name of the sons and daughter of the respondent-landlord. The High Court concluded that there was no reason to doubt the plea of the landlord that he want to live at Delhi.

5. What should be the approach when leave to defend is sought? 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. 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 (see Santosh Kumar v. Bhai Mool Singh) At the State of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one may or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be some thing more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased may be in the name of this sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

6. Recently in a good number of cases from Delhi we have noticed that long contested judgment are written refusing leave as if the trial has been concluded after recording evidence and a final decision is being reached. That is certainly not apposite at the stage of granting leave.

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at this back without giving him an adequate and effective opportunity to participate to disprove the case against him and prove his own case. Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised enjoins a duty to grant leave. Maybe in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averment of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. Burden is on the landlord to prove his requirement and has ascertain is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in a such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.

8. We accordingly allow this appeal, set aside the order of the learned Rent Controller as well as of the High Court and grant leave to defend to the appellant-tenant and remand the matter to the learned Rent Controller for disposal according to law.

9. Mr. D. D. Sharma, learned counsel for the respondent informs us that the respondent is in urgent

need of the premises for personal occupation. In order to expedite the matter we direct that the appellant tenant shall file his written statement within two weeks and the matter shall be disposed of as early as possible but not later than four months from today. There will be no order as to costs.

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