

Jasbir Kaur (Smt)

Vs

Girdhari Lal Mehra (dead) by Lrs.

Civil Appeal No. 3118 of 1984

(K.N. Singh, P.B. Sawant JJ)

09.08.1991

ORDER

1. The appellant is owner and landlady of House No. III-E/9, Lajpat Nagar, New Delhi. Girdhari Lal Mehra, Advocate, was tenant of the aforesaid premises. He had been residing in the premises but in one portion of the same he had set up his office. The appellant filed eviction suit against the respondent-tenant under Section 14(1)(e) read with Section 14(1)(h) of the Rent Control Act on the ground that the premises in dispute was bona fide required by the appellant for her residence and that the respondent had a residential house in the name of his wife in Jangpura which could meet his need. The Rent Controller decreed the eviction suit in favour of the appellant. On appeal by the respondent the Rent Control Tribunal, Delhi set aside the findings of the Rent Controller holding that the demised premises had been let out for residential-cum-commercial purposes, therefore, the appellant could not evict the respondent for the purpose of her residence. The appellant challenged the order of the Tribunal in appeal before the High Court of Delhi but the High Court upheld the findings of the Tribunal. Hence the present appeal by special leave.

2. After hearing learned counsel for the parties and having regard to the facts and circumstances of the case and especially the subsequent events which took place during the pendency of the appeal, we are of the opinion that this appeal must succeed. In *Hiralal Kapur v. Prabhu Choudhury* [(1988) 2 SCC 172], this Court held that where an accommodation is let out to an advocate for his residence and office, the character of the user of the building is not changed and it continues to be residential accommodation. Merely because an advocate has an office in one room of the residential premises is not sufficient to change the nature of the purpose for which the premises were let out. In this view the impugned judgment and order of the High Court holding that the premises in dispute were commercial-cum-residential cannot be sustained.

3. There is ample evidence on record to show that the appellant's need for the premises in dispute is bona fide. During the pendency of the appeal in this Court, Girdhari Lal Mehra died and his widow and sons have been brought on record. There is no dispute that the widow and legal heirs of Girdhari Lal Mehra have evicted their tenant and they have taken the possession of their house in Jangpura. It was further admitted before us during arguments that the widow of Girdhari Lal Mehra had let out one portion of the house in Jangpura to the Ministry of Defence wherein one of her sons, who is officer in the Army, is residing as an allottee from the Ministry of Defence. These facts clearly show that the respondents have got their own accommodation and they will not suffer any irreparable injury if the appellant's suit is decreed.

4. In this view, we allow the appeal, set aside the order of the High Court and decree the appellant's suit for eviction. The respondents are directed to hand over vacant possession of the premises in

dispute to the appellant within three weeks. It has been brought to our notice that the respondents have not been paying rent to the appellant and they have deposited the same with the Rent Controller. It is contended on behalf of the appellant that a large amount of money as arrears of rent is due from the respondents. There can be no dispute that the respondents are liable to pay rent and damages for the use and occupation of the premises in dispute. The appellant, therefore, is entitled to withdraw the amount deposited by the respondent before the Rent Controller and she is further entitled to recover amount, if any, due from the respondent-tenants in accordance with law. The respondents shall pay to the appellant a sum of Rs 5000 as costs.

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