

# DELHI HIGH COURT

Amarnath Bahri

Vs.

Jai Dayal Puri (since deceased)

S.A.O. 325 of 1969  
(V. S. Deshpande, J.)

23.7.1971

## JUDGMENT

### V. S. Deshpande, J (Oral)

1. The appellant herein is the tenant against whom the original petition for eviction was filed by the then landlord Jai Dyal Puri under proviso (e) to section 4(l) of the Delhi Rent Control Act, 1958 (hereinafter called the Act) on the ground that The premises were required *bonafide* by the landlord for the residence of himself and his wife. The Controller dismissed the petition for eviction on the ground that the landlord did not really intend to come to live in these premises. He was living at Ludhiana where his sons were also living. He was getting only a small pension and it was not believable that he really wanted to come to live in Delhi with his wife away from his children with such a small income. In the appeal before the Rent Control Tribunal by the landlord, however, the Tribunal was of the view that the view of the Controller that the landlord did not really want to come to live in Delhi was erroneous. The Tribunal believed the evidence of the landlord that he did not want to reside with any of his sons and that he and his wife wanted to come to live in Delhi in the premises in dispute. The finding of fact given by the Tribunal at the end of paragraph 6 of the judgment is as follows:-

"The appellant has thus *bonafide* requirement of the premises in dispute for occupation as his residence and the residence of his wife."

2. Jai Dyal Puri died after the decision of the Rent Control Tribunal. The tenant, therefore, filed this second appeal under section 39 of the Act against the legal representatives of Jai Dyal Puri, namely, his widow, sons and daughters. In Ground No. 2 of the grounds of appeal the appellant has stated that the case of Shri Jai Dayal

Puri was that the premises in suit was required by him for himself and the learned Rent Control Tribunal also observed in the judgment that the premises in dispute are *bonafide* required by Shri Jai Dyal Puri, but now after the judgment of Rent Control Tribunal, the relief of eviction has become in fructuous on account of the death of plaintiff landlord when more especially the premises in question would not be required *bonafide* for the residence of any member of his family including his widow. The appellant craves leave to amend his written statement for which a separate application is being made in this Hon'ble Court".

3. The application by the appellant is C.M. 1670-J of 1969 It merely states that the ground on which the eviction petition was filed by Jai Dyal Puri that he required the premises in suit for his own residence had become infructuous. It does not go further and state that the premises were not required *bonafide* by the wife of Jai Dyal Puri. The additional plea sought to be raised is that "the premises in question would no longer be required *bonafide* for the residence of the petitioner and members of his family". There is no plea sought to be raised that the widow of the deceased landlord alone would not need the premises bonafide. As the appellant has not in his application sought to amend the written statement to take the plea that the widow of the landlord does not need the premises *bonafide* and as the need of the landlord along with his wife has already been the subject-matter of the finding by the Rent Control Tribunal, no sufficient ground is made out by the appellant for the amendment of the written statement. Consequently, the question of remanding the case back to the trial Court for evidence on any new pleading does not arise, The necessity for the amendment of the pleading not being proved, the application is rejected.

4. Two questions arise for decision, the first being a question of law and the second primarily a question of fact, namely:-

(1) Whether the cause of action survives on the death of the landlord Jai Dyal Puri ? And

(2) Whether the finding of the Rent Control Tribunal that the premises are needed *bonafide* by the landlord for the residence of himself and his wife is valid in respect of the widow of the landlord alone after the death of the landlord ?

Question No. 1:

5. The procedure of the Controller is to be the same as that of the Court of Small Causes according to section 37(2) of the Act According to rule 23 of the Rules made

under the Act, the principles underlying the provisions of the Civil Procedure Code would guide the procedure under the Act. The appellant himself has made an application for bringing on record the legal representatives of the deceased landlord presumably, guided by the principle underlying Order 21I rule 4 Civil Procedure Code which applies to appeals according to Order 21I rule 11. The legal representatives of the landlord are entitled to represent him in the appeal if the cause of action survives to them. The rule regarding the survival of cause of action is stated in section 306 of the Indian Succession Act, 1925 in the following words :-

"All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favor of or against a person at the time of his decease survive to and against his executors or administrators; except causes of action for defamation assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory."

The cause of action arising under section 14(1)(e) of the Act is of the need of the landlord himself and his wife. In *P.D. Sharma v. Ram Lubhaya*,<sup>1</sup> I had occasion to analyze the terms of proviso (e) which is as follows :-

"that the premises let for residential purposes are required *bonafide* by the landlord for occupation as a residence for himself or for any member of his family dependant 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 residential accommodation."

In paragraph 6. it was observed that the word "himself" used in proviso (e) would include not only the landlord alone but also, his family inasmuch as man is a social being and no one in this world lives alone by himself. The wife of the landlord was a member of his family and, therefore, the need of the landlord for the premises was assessed to be both for himself and his wife. The cause of action arising in favor of the landlord thus consisted of the need of the landlord himself and of the wife. Even after the death of the landlord, therefore, the need of the wife who is one of his legal representative survived and, therefore, the cause of action survived to the widow.

6. In *Anil Kumar v. Jai Narain Gautam*,<sup>2</sup> the original petition for eviction was filed by the landlady pleading the need not only of herself but also of her family. Therefore, even though she and another member of the family died during the eviction proceedings, the need of the remaining member of the family, namely, Anil Kumar

was ordered by this Court to be considered by the Controller by a remand in the same proceedings. In *Naubat Rai Ahluwalia v. Smt. Phool Rani and others*, (S.A.O. 178 of 1970 decided on 24th May 1971) however, The decision in *Anil Kumor's* case was distinguished and it was observed that on the death of the landlord during the eviction proceedings, the premises were not required either for the landlord or for his family and the requirements of the successors of the landlord were to be determined on a different cause of action. The Controller should have required the eviction application to be amended and he should not have continued the proceedings on the basis of the requirement of the deceased landlord either for himself or for his family. The eviction order was, therefore, set aside and the new landlords were left free to file another application for eviction based on their own *bonafide* requirements.

7. These two decisions are distinguishable in the present case inasmuch as the requirements of *Anil Kumar* in one and the requirements of the successors of the landlord in the other had not been determined by the Controller. On the other hand, in the present case the eviction petition was based on the requirements of the landlord and his wife. The learned Tribunal has found the requirements of both of them to be *bonafide*. Therefore, even on the death of the landlord, the requirements of his widow and the present landlord have already been found to be *bonafide* and there is no need, therefore, either for a remand or for a fresh petition by the widow for eviction. She is entitled to the benefit of the finding in her favor in this very appeal.

#### *Question No. 2*

8. On the merits of the case, the finding of the Controller was that the landlord and his wife did not require the premises for their residence inasmuch as the learned Controller could not believe that the landlord actually wanted to come to live in Delhi as he was getting a small pension only and his sons were at Ludhiana. But the learned Tribunal disagreed with this view of the evidence and took the view that there was no reason to disbelieve the evidence of the landlord that he in fact wanted to come to live in Delhi with his wife. The argument of the Controller about the small amount of the pension by the landlord was met by the Tribunal by observing that the landlord could supplement his income by doing some other work while residing in Delhi. But the question whether the pension was small or large was not in itself relevant. It was relevant even according to the Controller only for the ascertainment of the intention of the landlord to come to live in Delhi. The learned Tribunal seems to have considered this irrelevant. On the other hand, the Tribunal has believed the evidence of the landlord that he wanted to come to live in Delhi with his wife as sufficient for passing

an order of eviction under proviso (e) to section 14(l).

9. The question is whether the finding of the Tribunal is valid even after the death of the landlord and in favor of his widow. If it was required *bonafide* for the residence of the landlord himself and his wife as found by the Tribunal it cannot be said that the premises were not required *bonafide* by his widow alone. Learned counsel for the respondents has invited my attention to the affidavit filed by Shri Jagdish Miller Puri, one of the respondents showing that he (a son of the landlord) had come to live in Delhi along with the widow of the landlord. Learned counsel for the appellant says that I am not entitled to rely on this affidavit. The subsequent events can be taken into account only for the purpose of moulding the appropriate relief under Order 6I rule 7 and Order 41 rule 33 Civil Procedure Code. It is not necessary for me to rely on the affidavit filed by Shri Jagdish Miller Puri inasmuch as in my view, the finding given by the Tribunal that, it was necessary for the landlord and his wife to get the premises from the tenant is not affected by the death of the landlord and is available to his widow. It is only if any doubt is sought to be cast on the coming of the widow to live in Delhi on the ground that she could not be expected to live here alone that the affidavit filed by her son Shri Jagdish Mitter Puri would be relevant to show that her son also was living in Delhi and, therefore, the finding given by the Tribunal still continues to be valid. The widow would not be living alone when she comes to live in Delhi.

10. In view of the above reasons, the appeal is dismissed but I without any order as to costs.

Appeal dismissed.

Cases Referred.

1. 1969 RCR 992,
2. 1970 RCR 757