

(2013) 03 DEL CK 0286
In the Delhi High Court
Case No : Rc. S.A. No. 25 of 1982

Ajit Rai Rehal (Since Deceased) and Others
Vs

APPELLANT

Mangal Dass and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : (2014) 1 RCR(Rent) 13

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a regular second appeal which has been pending in this court since 1982. The regular second appeal is permissible only when a substantial question of law is involved. During all these years, that is, for the last 31 years, no sincere efforts seem to have been made by any of the party to address the court with regard to the formulation of substantial question of law. I have heard Mr. Pramod Ahuja, the learned counsel for the appellants on the formulation of substantial question of law. It has been stated by him that substantial question of law which is purported to be arising from the present appeal is as under:-

That the Government of India vide Notification of the DDA dated 7.9.2006 has permitted user of residential premises for 115 household trades which includes repair of radio and tape recorders, which was being carried out by the appellants and, therefore, in the light of this fresh notification, could the eviction of the appellants" be ordered?

2. In order to appreciate as to whether the aforesaid question arises from the present appeal and as to whether it needs any consideration to be given by this court, it will be pertinent to mention the brief background of the case. Respondent No. 1 herein, Mangal Dass s/o Mukand Lal (since deceased) now represented by his LRs filed an eviction petition u/s 14(1)(k) of the Delhi Rent

Control Act, 1958 (in short "the Act") against the appellants. The aforesaid Section of the Act envisages that in case the leasehold property is used by a tenant in contravention of the superior lease granted to the landlord by the lessor then the tenant would be liable to eviction, in case after receipt of a notice from the landlord to stop the said misuse, he persists with the same. The relevant clause of the Act reads as under:-

Section 14(1)(k)

that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate.

3. Along with Section 14(1)(k), Section 14(11) of the Act lays down certain preconditions for initiating the eviction proceedings, one of which I have reproduced hereinabove, that is, with regard to issuance of a notice in writing by the landlord and the second condition is that in case, the breach, which is complained of, is capable of being condoned or compromised then a notice has to be issued to the lessor to indicate the terms and conditions of the same. The relevant sub-section 11 of Section 14 of the Act, reads as under:-

11. No order for the recovery of possession of any premises shall be made on the ground specified in clause (k) of the proviso to sub-section (1), if the tenant, within such time as may be specified in this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.

4. The eviction petition filed by the respondent No. 1 here in against the present appellant was dismissed by the Additional Rent Controller vide order dated 15.2.1978. The respondent went in appeal before the Rent Control Tribunal which set aside the order of dismissal of eviction petition and held that a case of eviction is made out on account of violation by the appellant and the matter was remanded back to the Additional Rent Controller with the direction that appropriate notice be sent to the DDA so as to ensure compliance of Section 14(11) of the Act. Pursuant to this, an order was passed by virtue of which the Additional Rent Controller issued notice to the DDA. The DDA filed its reply on 15.3.1980. In the said reply, the DDA stated that it was not inclined to condone the non-conforming user and, therefore, the tenant was required to stop the non-conforming user. In response to the said reply of the DDA, vide order dated 22.3.1980, the appellant herein was given two month's time to stop the misuser failing which an order of eviction was deemed to have been passed against him in respect of the tenanted premises.

5. Feeling aggrieved, the appellant preferred an appeal bearing R.C.A. No. 460/1980 before the Rent Control Tribunal. Vide order dated 17.10.1981, the Tribunal upheld the order of the Additional Rent Controller. The Tribunal came to

a finding that there was no specific policy of the DDA to condone the non-conforming user permanently and till the time such a policy was formulated, the appellant was directed to pay the misuser charges on temporary basis and the appeal to that extent was accepted. It was also directed that if at any stage DDA informs the landlord, namely, the respondent herein that it is not willing to condone the misuser even on temporary basis then within one month of the receipt of the intimation, the appellant herein shall stop the misuser and in default thereof, he shall be liable to be evicted.

6. The appellant/tenant feeling dissatisfied has preferred the present regular second appeal against the said judgment of the Rent Control Tribunal which is pending for the last three decades.

7. In the meantime, new developments have taken place. As stated by Mr. Ahuja, these developments are that on account of continued non-conforming user by the appellant and some of the other alleged occupants of the building, the DDA had issued an order of termination of lease deed of the original lessee that is the landlord of the appellant. After the order of termination of lease, the matter was handed over to the Estate Officer for the purpose of retrieval of possession of the building in question. I have been informed by the learned counsel for the respondents that the Estate Officer, after conducting the proceedings, passed an order dated 16.6.2008 for eviction of the appellant from portion of the premises bearing No. 12-A/20 WEA, Karol Bagh, New Delhi and other occupants from their respective portions of the building in question. The proceedings before the Estate Officer were conducted u/s 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The appellant is purported to have challenged the said order of eviction before the learned District Judge, however, the learned District Judge also dismissed the appeal of the appellant vide order dated 26.5.2011.

8. Aggrieved from the same, the appellant preferred writ petition bearing W.P. (C) No. 4236/2011 before the High Court wherein the appellant confined the challenge to the non-consideration of Circular/Notification dated 7.9.2006 of DDA by the learned District Judge. The said writ petition was disposed of vide order dated 6.6.2011 and the matter was remanded back to the learned District Judge for consideration of the said plea of the appellant. Upon remand, the learned District Judge vide order dated 3.10.2011 dismissed the appeal holding since entire property was being misused, the Circular/Notification did not come to the rescue of the appellant.

9. Still feeling dissatisfied, the appellant again filed a fresh writ petition bearing No. 7854/2011 before this court against the rejection of his appeal by the learned District Judge. This writ petition was dismissed in limine vide order dated 4.11.2011.

10. The appellant feeling aggrieved, preferred the Letters Patent Appeal bearing No. 965/2011 against the order of the learned Single Judge dated 4.11.2011 dismissing his writ petition in limine. The Division Bench also did not find any

merit in the submissions made before it and dismissed the appeal on 21.11.2011. One of the submissions which was urged before the Division Bench was to the same effect which has been urged before this court that after passing of the Notification dated 7.9.2006 by the Central Government has permitted 115 household trades in residential premises including repair of radio and tape recorder, the eviction of the appellant could not have been ordered on the ground of non-conforming user. It has also been stated by Mr. Ahuja that Notification which was purportedly issued by the Central Government regularizing the non-conforming user so far as 115 household trades are concerned, that was in fact issued by the Government of India pursuant to the directions passed by the Supreme Court in M.C. Mehta Vs. Union of India (UOI) and Others, and it is contended that once this non-conforming user in residential premises is regularized, there is no question of violation of the terms and conditions of the lease deed and, therefore, eviction order deserves to be set aside.

11. I have carefully considered the submissions made by the learned counsel for the appellant. Admittedly, the appellant is a tenant in respect of the portion of the said property. It is also not in dispute that in the year 1977-1978, when the eviction proceedings were started against him, the property in question was being used for the purposes other than those for which the lease was given to the respondent by the superior lessor, namely, the DDA. It is also not in dispute that an eviction order was suffered by the appellant before the court of Additional Rent Controller which was upheld by the Rent Control Tribunal subject to the compliance of conditions u/s 14(11) of the Act envisaging that the non-conforming user has either to be removed or alternatively if it is condonable and it can be regularized then the terms and conditions of the same must be specified by the DDA. It has also come on record that before the Tribunal, the DDA has stated that it is not inclined to regularize non-conforming user by the appellant. But all these points of non-conforming user or its regularization are redundant as on date for the simple reason that an eviction order has been passed after the property was vested back in the lessor after the determination of the lease. The proceedings having been initiated against all the occupants of the suit property u/s 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, has culminated into an eviction order having been passed and the same has been upheld by three courts, namely, the first appellate court, the court of the Single Judge dismissing the writ petition in limine and the Division Bench rejecting the LPA of the appellant. Now it does not lie in the mouth of the appellant to contend that despite his eviction order by the Estate officer having sealed his fate, conclusively still the question of regularization of non-conforming user of the suit premises because of which a separate eviction order was passed under Delhi Rent Control Act should still be treated as a substantial question of law as to whether the non-conforming user as envisaged by the Notification issued by the Government of India, can be permitted or not. This in my view cannot be done being in violation of Section 11 of the CPC but also because of the fact that the second appeal is only permissible when a

question of law, which is substantial in nature arises, only then appeal is entertainable. In view of the aforesaid reasons, I feel that there is no substantial question of law arising from the present appeal and accordingly, the appeal does not require any further entertainment. Hence, the appeal is dismissed.