

(1999) 11 DEL CK 0108
In the Delhi High Court
Case No : S.A.O. No. 5 of 1999

Amrit Lal and Co.

APPELLANT

Vs

M/s. Ambalal Sarabhai Enterprises Ltd. and Others.

RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1), 3

Citation : (2000) 1 AD 83 : (1999) 82 DLT 868 : (2000) 52 DRJ 174

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

Bench : Single Bench

Advocate : Mr. Rajiv Behl, for the Appellant; Mr. Pradeep Dewan, for the Respondent

Judgement

Vijender Jain, J.—Aggrieved by the order passed by the Additional Rent Control Tribunal, the appellant has filed this appeal. Interesting point canvassed before me by Mr. Pradeep Dewan, learned counsel for the respondent is that after the amendment in the Delhi Rent Control Act, 1988 whereby Section 3(c) was introduced in the said Act withdrawing the protection of that Act to such premises whose rent was Rs. 3,500/- per month, no proceedings could continue.

2. It has been contended before me that the rate of rent was Rs. 8,625/- per month and after the amendment, the protection was withdrawn and Therefore, appellant-landlord having filed an eviction petition in the year 1985 could not have pursued simultaneously two remedies; one under unamended Delhi Rent Control Act and another by filing a suit for possession.

3. In the matter before me eviction petition was filed by the appellant in the year 1985 on the ground of sub-letting as enumerated in Section 14(1)(b) of the Delhi Rent Control Act. After the amendment, the landlord gave a notice terminating the tenancy of the respondent on 9.7.1991 and thereafter filed a suit for possession on 18.11.1991. In the Civil suit an application under Order 7 Rule 11 of the CPC was filed by the tenant who is the respondent before me, inter alia, praying that the plaint be rejected. As the proceedings under Delhi Rent Control

Act were still pending, the Additional District Judge relying upon the ratio of D.C. Bhatia & Others Vs. Union of India & Another 56 (1994) DLT 324, rejected the application of the tenant under Order 7 Rule 11 CPC, holding that the suit was maintainable.

4. In the meanwhile, the tenant moved an application before the Additional Rent Controller u/s 9 read with Section 151 of the CPC, inter alia, praying that the Court of Rent Controller has no jurisdiction to proceed with the matter under the provision of the Delhi Rent Control Act on account of the amendment brought in the year 1988 in the Delhi Rent Control Act. Additional Rent Controller dismissed the application of the respondent who preferred an appeal before the Additional Rent Control Tribunal. The Additional Rent Control Tribunal allowed the appeal and quashed the eviction proceedings. Aggrieved by the dismissal of the eviction petition, the landlord has filed this SAO in this Court.

5. Mr. Dewan, learned counsel for the respondent has contended that in D.C. Bhatia's case (supra) it was left open as to whether on account of amendment being prospective in nature, the proceedings which were instituted prior to amendment could continue or not. Mr. Dewan has contended that the Additional Rent Control Tribunal placed reliance on Paripati Chandrasekharrao and Sons Vs. Alapati Jalaiah, . The Supreme Court while considering D.C. Bhatia's case (Supra) held that the tenant enjoyed statutory protection as long as the statute remained in force and was applicable to him. If the statute ceases to be operative, the tenant cannot claim to continue to have the old statutory protection. In D.C. Bhatia's case (supra) reliance was placed on the following para of Kay Vs. Goodwin (1830) 6 Bing. 576, 582:-

"The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law."

6. Mr. Dewan has vehemently contended that once amendment came into force there was no law on the basis of which the appellant-landlord could have proceeded with the eviction petition. Great reliance has been placed by Mr. Dewan on Paripati Chandrasekharao's case (supra) in this regard.

7. To my mind, there is no inconsistency in the view taken by Supreme Court in Paripati Chandrasekharao's case (supra), which was a decision delivered by two Hon"ble Judges of the Supreme Court. D.C. Bhatia's case was a judgment of three Hon"ble Judges. What has been observed from Kay Vs. Goodwin (supra) is that effect of repelling the statute is to completely obliterate from the statute book as that law was never passed. However, exception has been carved out in the same paragraph which has been relied upon by the learned counsel for the appellant:-

"..... except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law."

8. Therefore, if an eviction petition was filed in the year 1985 before Additional Rent Controller who was otherwise competent and having the jurisdiction because of subsequent amendment in 1988 it cannot be said that eviction petition cannot proceed because of the amendment. To do that would be conferring retrospectivity to the amending Act which was not explicitly provided by the legislature.

9. I find support from a Division Bench decision of this Court rendered in *Mrs. Nirmalji Arora Vs. M/s. Bharat Steel Tubes Ltd.* 1991 (2) RCR 1 while interpreting Section 3(c) of the Amending Act, it was held :

"However, it is not necessary for us to examine this question for the simple reason that we have held that the Section 3(c) being prospective in nature has no effect on the pending actions and proceedings and the pending actions and proceedings shall continue to be governed by the Rent Act, as if Section 3(c) was not on the statute book."

10. In *Sukesh Vohra Vs. Sulekh Chand Jain*, , a learned single Judge of this Court also took the same view.

11. In view of *D.C. Bhatia* (supra) followed by the decisions of Division Bench and a single Judge Bench in *Mrs. Nirmaljit Arora's* case (supra) and *Suresh Vohra's* case (supra) respectively, I set aside the order of the Additional Rent Control Tribunal and restore the order of the Additional Rent Controller.

12. Appeal is allowed.