
(1995) 09 DEL CK 0083
In the Delhi High Court
Case No : S.A.O. 8 of 1993

Balwant Singh and Others

APPELLANT

Vs

Indraprastha Builders Pvt. Limited and Another

RESPONDENT

Date of Decision : 06-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 151
Delhi Rent Control Act, 1958 — Section 14(1)

Citation : (1995) 60 DLT 136

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : Mukul Rohtagi and Arvind K. Nigam, for the Appellant; R.L. Kohli, for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar, J.—The point involved in the present case is in a very narrow compass. It is: Can a plaintiff having withdrawn his suit under Order 23 Rule 1 of the CPC seek revival of the suit through application u/s 151 of the Code? Briefly, the facts are that the appellants filed the petition for eviction of the respondents tenants on the ground contained in Clause (a) to the proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act on the ground of non-payment of rent on 2nd September, 1987. On 9th January, 1991, the learned Counsel for the petitioners (appellants herein) made the following statement before the Additional Rent Controller:

"Present: Counsel for the petitioners. Statement of Shri S.S. Malhotra for petitioners

As the agreed rate of rent is Rs. 30,000/- p.m., the petition be dismissed as withdrawn."

On the basis of the said statement, the Addl. Rent Controller passed the following order on the same day"

In view of the statement of the Counsel for the petitioner, the petition is dismissed as withdrawn. Documents of parties be returned.

The parties are liable to bear their own costs. File be consigned to Record Room."

2. On 29th January, 1991, the appellants filed an application before the Addl. Rent Controller for restoration of the petition u/s 151 of the Code of Civil Procedure. The Addl. Rent Controller dismissed the application on 26th March, 1991 holding that "if petitioners have lost a valuable right to continue the petition, the respondents have gained a valuable right in dismissal of the petition. The application cannot be allowed in equity. It is accordingly dismissed." The appellants filed an appeal against the said order before the Rent Control Tribunal which was dismissed by the Tribunal on 19th September, 1992, essentially taking the view that the petition had been withdrawn unconditionally under Rule 1 of Order 23 C.P.C. and, Therefore, it could not be restored. The present appeal is directed against the said decisions of the authorities.

3. The learned Counsel for the appellant urged that under inherent powers of the Court u/s 151 of the Code of Civil Procedure, the Court can always allow revival of a suit which stands dismissed on account of its withdrawal by the plaintiff. Of course, it is not disputed that it should depend on the facts of each case whether the Court, or the Controller in the present case, should exercise such a power or not. There is no warrant for the proposition that the Court is powerless to restore a suit dismissed as withdrawn on the request of the plaintiff. The circumstances under which the eviction petition was withdrawn are sought to be explained that the Delhi Rent Control Act under which the eviction petition had been filed before the Controller was amended with effect from 1st December, 1988. The effect of the amendment was in cases where the rent of a premises was above Rs. 3,500/- per month, the Act had no application. It was in view of this bona fide understanding of the legal position that the Counsel for the petitioners/appellants made the statement before the Controller on 9th January, 1991, referred to hereinbefore. On 25th January, 1991, a Division Bench of this Court rendered a decision holding that the amendment of the Delhi Rent Control Act is prospective and does not affect pending proceedings which would continue to be governed by law existing before the amendment of the Act. Soon thereafter, the application for revocation of the order of dismissal of the suit as withdrawn was filed on 29th January, 1991 which was dismissed by the Controller. According to the learned Counsel for the appellants, their Counsel who withdrew the eviction petition was under a bona fide belief about the legal position which led him to withdraw the eviction petition. It is further submitted that at the relevant time, there was serious controversy as to whether the amendment of the Act was prospective or it will apply to pending proceedings also. That is why the question was referred by a Single Judge of this Court to a Division Bench and ultimately the judgment of the Division Bench was pronounced holding that the amendment is prospective and will not affect the pending proceedings. In such facts, it was prayed that the appellants ought to have been allowed to have their eviction petition revived by

revocation of the order of dismissal on account of withdrawal thereof. The learned Counsel has relied upon a Division Bench judgment of the Calcutta High Court in this behalf-- Durgapada Jana Vs. Nema Charan Jana and Others, . It has been held in the said judgment that if through a mistake, the plaintiff had withdrawn the suit, the Court would not be powerless to set aside the order of dismissal of the suit and allow the withdrawal of the application for withdrawal of the suit in exercise of its inherent powers, provided there are some justifiable reasons. It was further held that scope of Section 151 is very wide, "Where there is no provision under the CPC prescribing any remedy, Section 151 will apply. Order 23 Rule 1 provides withdrawal of a suit with or without liberty to file a fresh suit. There is no provision for getting an order passed on withdrawal application set aside or praying for withdrawal of an application for withdrawal of the suit. In such circumstances, in our opinion, the Court is not powerless to allow withdrawal of an application for withdrawal of a suit in exercise of its inherent power in a proper and a suitable case."

4. On the other hand, the learned Counsel for the respondent first raised the question of the maintainability of the present appeal. It is submitted that Section 39 of the Delhi Rent Control Act which contained provisions regarding filing second appeal before the High Court stood repealed under the amendment of the Act which came into force w.e.f, 1st December, 1988. The impugned order was passed on 9th January, 1991 by the Controller. The present second appeal is, Therefore, not maintainable. A short answer to this submission is that rights of parties regarding filing of appeal etc. are governed by the law as in force at the time of commencement of the lis. Subsequent amendments do not affect such vested rights of the parties. In the present case, the lis commenced much before the repeal of Section 39 of the Act and, Therefore, the present second appeal is maintainable.

5. Secondly, the learned Counsel for the respondent submitted that the present appeal is not maintainable also for the reason that the impugned order is not an appealable order. It is settled law that all orders which affect rights of the parties are appealable orders. Section 38 of the Delhi Rent Control Act contains a provision to this effect. It provides :

"38. Appeal to the Tribunal.--(1) An appeal shall lie from every order of the Controller made under this Act (only on questions of law) to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by Notification in the Official Gazette:

Provided that no appeal shall lie from an order of the Controller made u/s 21.

(2) An appeal under Sub-section (1) shall be preferred within thirty days from the date of the order made by the Controller:

Provided that the Tribunal may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Tribunal shall have all the powers vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when hearing an appeal.

(4) Without prejudice to the provisions of Sub-section (3), the Tribunal may, on an application made to it or otherwise, by order transfer any proceedings pending before any Controller or Additional Controller to another Controller or Additional Controller and the Controller or Additional Controller to whom the proceeding is so transferred may, subject to any special directions in the order of transfer, dispose of the proceeding.

(5) A person shall not be qualified for appointment to the Tribunal, unless he is, or has been, a District Judge or has for at least ten years held a judicial office in India."

When the appellants had a right to file an appeal before the Tribunal, it follows that they have the right to file the present second appeal also against the order of the Tribunal. Therefore, there is no merit in this objection.

6. Regarding the main issue, the learned Counsel for the respondents submitted that the lis came to an end with the withdrawal of the suit by the appellants and the order of the Controller dismissing the suit as withdrawn passed on 9th January, 1991. The Controller became functus officio. Thereafter, no application for withdrawal of the dismissal of suit could be entertained. Therefore, the application of the appellants was rightly rejected by the Controller according to the learned Counsel. In support of his argument, the learned Counsel for the respondents relied on Smt. Raisa Sultana Begam and Others Vs. Abdul Qadir and Others, . This judgment along with other relevant judgments on the point have been duly considered by the Calcutta High Court in the judgment referred to above and relied upon by the learned Counsel for the appellants. This judgment primarily proceeds on the view that right to withdraw a suit has been expressly conferred by Rule 1 of Order 23 of the Code. There is no provision in the Code conferring the right to revoke the withdrawal and there is no justification for saying that the right to withdraw includes in itself a right to revoke the withdrawal. Agreeing with the Calcutta High Court in Durgapada Jana Vs. Nemai Charan Jana and Others, , I am of the view that the inherent power of the Court u/s 151 should not be curtailed. It should be left to the Court which permitted withdrawal of the suit in the first instance to consider whether there were circumstances justifying revocation of the order of the withdrawal of the suit .There can be various reasons for which a party may seek to have the order of withdrawal of the suit revoked. In the present case, the reason is mistaken view of the law. In another case, the reason may be being misled by the opposite party or being coerced by the other party to take such a course of action. Therefore, it should be left to the discretion of the Court or the authority concerned whether revocation of an order of withdrawal of suit should be permitted or not. I am not in favor of a view which denies such a power to the Court.

7. The learned Counsel for the respondents also relied upon a judgment of this Court in Jaideep Gupta and Others Vs. Inder Chand Jain and Others, . This decision is really of no help for purposes of the controversy involved in the present case because the question dealt with in about withdrawal of an application for withdrawal of a suit before the Court acts upon the application and passes an order thereon permitting withdrawal of the suit. In this case, the statement of the plaintiff on his application for withdrawal of the suit had not been recorded. Before the order of withdrawal of the suit was passed, an application for permission to withdraw the application for withdrawal of the suit had been filed. Thus, the plaintiffs sought to withdraw the application for withdrawal of suit before the disposal of the suit which was permitted by the Court. In the present case the petition stood dismissed as withdrawn and it was sought to be revived. The question is does the Court have power to entertain such an application. I am for upholding such a power for Court to be exercised in appropriate cases for justifiable reasons.

8. I am satisfied about the Explanation of the appellants regarding facts which led the appellant to withdraw its eviction petition before the Controller. The statement regarding withdrawal of the petition was result of a bona fide view about the legal position. That the legal position was unsettled at the relevant time is clear from the fact that a reference had to be made by a Single Judge of this Court to a Division Bench for settling the issue which was ultimately settled by the Division Bench by its judgment dated 25th January, 1991. Therefore, on facts, I find that it was a fit case where the order for withdrawal of the suit could have been allowed to be revoked.

9. The result is that the appeal succeeds. The impugned orders of the authorities below are set aside. The eviction petition filed by the appellants is ordered to be revived and restored to its number. Parties are directed to appear before the concerned Controller on 11th October, 1995 for further proceedings in accordance with law.