

(2017) 11 DEL CK 0462

In the Delhi High Court

Case No : RC.REV. No. 517 Of 2017

Deendayal Daga, Director M/S. Assam Timber Products Pvt.
Ltd. & Anr

APPELLANT

Vs

Sneh Sharma

RESPONDENT

Date of Decision : 14-11-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 23 Rule 3
Delhi Rent Control Act, 1958 — Section 14(1), 14(1)(e), 25B(8), 56
Maharashtra Rent Control Act, 1999 — Section 56
Indian Contract Act, 1872 — Section 23
Transfer of Property Act, 1882 — Section 106, 107, 108, 109, 110, 111, 112, 113,
114, 115, 116, 117

Citation : (2017) 11 DEL CK 0462

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

CM No.41139/2017 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

RC.REV. 517/2017, CM No.41137/2017 (for stay) & CM No.41138/2017 (for condonation of 12 days delay in filing the petition)

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 25th July, 2017 in E

No.288/2017, Unique ID No.338/2017 of the Pilot Court, District Central, Tis Hazari Courts, Delhi] dismissing the application filed by the petitioner for

leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by

the respondent and the consequent order of eviction of the petitioner from First Floor of property No.8928/1, Multani Dhanda, Pahar Ganj, New Delhi.

4. The counsel for the petitioners has been heard and the copies of the Trial Court record annexed to the petition have been perused.

5. Need to detail out herein below the pleas on which the petition for eviction was filed and the pleas on which leave to defend was sought is not felt

owing to the nature of the arguments of the counsel for the petitioners.

6. The first argument of the counsel for the petitioners is that the premises were let out to the petitioner no.1 vide Rent Agreement dated 1st

December, 1982 and Clause 9 of the said Rent Agreement is as under:

â??9. That the landlord shall have no right to ask for vacation of the said premises and also shall not ask to increase the rent of the said premises.â??

7. It is argued that the premises having been let out to the petitioner no.1 in perpetuity vide Clause aforesaid, the respondent is not entitled to file a

petition for eviction under Section 14(1)(e) of the Act.

8. Yet another argument which can be joined with this argument, though not argued chronologically, is by drawing attention to paragraph 4(d) of the

memorandum of this petition and which is as under:

â??(d) That the Revision Petitioners / Tenants while on execution of Rent Agreement dated 01.12.1982 have paid valuable consideration price of

Rs.75,000/- as Pugri for the said commercial premises with the understanding to retain the possession permanently and in that aspects have made the

provisions in the Rent Agreement dated 01.12.1982 owing to the reasons the commercial property was not covered by the Rent Control Act and there

was no alternate arrangement for registration of part portion of the Commercial Property / Building. Further, the amount paid as Pagdi has been

legalised by Section 56 of Rent Control Act, 1999, but the Ld. ARC while dealings with the case has ignored to the said paid amount and not cared to

give any reasoning on the same.â??

9. The aforesaid arguments are contrary to the language of the Rent Act, Section 14(1)(e) of which is as under:

â??14. Protection of tenant against eviction. -- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree

for the recovery of possession of any premises shall be made by any court or

Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the

premises on one or more of the following grounds only, namely:-

(a)

(b)

(c)

(d)

(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of

his family dependent 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.â??

10. It would thus be seen that the provision under which the petition for eviction, from which this petition arises, was filed, commences with a non-

obstante clause and is notwithstanding anything to the contrary contained not only in any other law but also in any other â??contract?.

11. The question for consideration is, whether a landlord who is conferred a right under the Rent Act to evict the tenant on the grounds specified

therein is entitled to waive the said rights statutorily vested in him.

12. The general principle is that everyone has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and

protection of the individual. However, if there is any express prohibition against contracting out of a Statute, then no question can arise of anyone

entering into a contract which is so prohibited (See Lachoo Mal Vs. Radhey Shyam 1971 (1) SCC 619). Section 23 of the Contract Act, 1872 also

makes unlawful the consideration or object of an Agreement which is forbidden by law or an Agreement which is of a nature that if permitted would

defeat the provisions of any law or an Agreement which is opposed to public policy and declares such an Agreement to be void.

13. Section 14(1) supra prohibits the making of an order or decree for recovery of possession of any premises in favour of a landlord against a tenant,

notwithstanding anything to the contrary contained in any other contract. Thus, even if a tenant has agreed with the landlord to vacate the premises on

expiry of the term of the lease, Section 14(1) prohibits the Court from passing an order of eviction in favour of the landlord and against the tenant on the ground of such an Agreement. The proviso to Section 14(1) supra however entitles the Rent Controller to pass an order for recovery of possession on the grounds specified therein. Question has arisen from time to time, whether an Agreement of the tenant with the landlord that such a ground has accrued to the landlord, would entitle the Rent Controller to pass an order of eviction on such a ground. It has been held that such an Agreement cannot form the basis for an order of eviction. Supreme Court in *Nagindas Ramdas Vs. Dalpatram Ichharam* (1974) 1 SCC 242 held that the broad policy of rent legislations in different States of the country is to protect tenants against their landlords in respect of the rents, evictions and repairs; with the said beneficent end in view, the Rent Acts interfere with contractual tenancies and make provisions; that there is no escape from the conclusion that the Rent Court under the Rent Act is not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is de hors the Act or ultra vires the Act; the existence of one of the statutory grounds mentioned in the Rent Act is a sine qua non to the exercise of jurisdiction by the Rent Court under the Rent Act and even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do. It was further held that the mere fact that Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (CPC) is applicable to the proceedings before the Rent Court, does not remove that fetter on the Rent Court or empower it to make a decree for eviction de hors the statute; the Rent Court, before ordering that the compromise be recorded, is required to satisfy itself about the lawfulness of the Agreement "such lawfulness or otherwise of the Agreement is to be judged, also on the ground whether the terms of the compromise are consistent with the provisions of the Rent Act.

14. In the same vein, in *Murlidhar Aggarwal Vs. State of Uttar Pradesh* (1974) 2 SCC 472, it was held that Rent Acts are based on public policy and are primarily intended for protection of tenants only, and the tenant cannot waive the benefit of the provision.

15. Supreme Court, in *Shalimar Tar Products Ltd. Vs. H.C. Sharma* (1988) 1 SCC 70, finding that the tenant had sublet a portion of the premises

without consent of the landlord and that the landlord was entitled to eviction decree, held that question of waiver by the landlord would not arise in

view of the statutory requirement.

16. I was in order dated 10th August, 2017 in RC Rev. No.167/2015 titled Joginder Singh Vs. Harminder Singh Chowdhary also concerned with the

question, whether the landlord could have waived the right to evict the tenant and had made the tenancy permanent. It was held that the Rent Control

Statutes are a matter of public policy and the rights therein cannot be waived; though in the era when the rent legislations were being enacted, the

landlords took the stand of the tenants having waived their rights under the Act and which plea was negated, similarly, the tenants cannot be heard to

contend that the landlord has waived the right of eviction under the Act.

17. I find the High Court of Karnataka also to have in Bharat Petroleum Corporation Ltd. Vs. Mohammed Haneef Choohey AIR 1986 Kar 191

relying on V. Dhanapal Chettiar Vs. Yesodai Ammal (1979) 4 SCC 214, held that when the landlord seeks to enforce his right under the Rent Act, the

contract to the contrary cannot be set-up as a defence, because to that extent the contract stands eclipsed by the Statute.

18. Not only so, for a perpetual lease or for that matter a lease for any period can be created only by a registered document. The document to which

attention is drawn is a bilateral document and is not a unilateral Rent Note executed by the tenant alone. The same is not registered. In the absence of

a registered document, per Section 106 of the Transfer of Property Act, 1882, the lease is renewed month by month when the rent for that month is

tendered and accepted and is terminable by a 15 days? notice in writing, which even, in Nopany Investment (P) Ltd. Vs. Santokh Singh (HUF) (2008)

2 SCC 728, has been held to be not relevant if the proceedings for eviction have been pending for over 15 days.

19. Not knowing of any Rent Control Act of the year 1999, mentioned in Para 4(d) of the memorandum of this petition reproduced above, I have

enquired about the same from the counsel for the petitioners.

20. The counsel for the petitioners states that it may be a clerical error.

21. I have next enquired from the counsel for the petitioners as to how Section 56 of the Delhi Rent Control Act, 1958 legalises pagri, as also claimed

in the paragraph reproduced above.

22. The counsel for the petitioners states that he will have to see in the text book and procure the notification.

23. It is not understood how, without reading the text book and without having the notification, averment has been made in the petition.

24. The next argument of the counsel for the petitioners is by drawing attention to para 4(e) of the petition and for the novelty of the argument, it is deemed necessary to reproduce the said paragraph as well:

(e) That in clause 2 of the Rent Agreement dated 01.12.1982 specifically stated that premises is let out for commercial purposes.. The

tenanted premises being for commercial activities is not covered by the provisions of Rent Control Act and may be seen in context of the reported

judgment of the Hon'ble Supreme Court titled Satyawati Sharma (Dead) by LR's through U.O.I. passed by Sh. B.N. Aggarwal, G.S. Singhvi in

Appeal (Civil) 1897 of 2003 dated 16.04.2008. According to which the applicability of the provisions in Section 14(1)(e) of the Delhi Rent Control Act

relating to the commercial property have been strike down and since thereafter recourse for eviction of the tenant in commercial property cannot

taken under the Rent Control Act. Same can only be dealt with under the provisions of Chapter-V Sections 105 to 117 of the Transfer of Property

Act and other civil laws. Accordingly the Rent Controller has no jurisdiction to deal with such kind of claims under the Delhi Rent Control Act.

(emphasis added).

25. I am afraid the aforesaid argument is also on a totally misunderstood interpretation of the dicta cited of the Supreme Court. In any case, as per the

petitioners, the petitioners do not enjoy the protection from eviction afforded to the tenants under the Rent Act. In the absence of such protection, the

petitioners would in any case have no right to continue in possession of the premises and would be liable to vacate the same. Once the petitioners /

tenants themselves say that they do not enjoy the protection from eviction, it does not lie in their mouths to, at the same time, avail of the protection or

to resist their eviction from the premises.

26. The next argument urged is that the name of the son of the respondent, pleading whose requirement the petition for eviction has been filed, is

Ashish Parashar while the name of the respondent is Sneh

27. It is significantly not argued that the respondent has no son by the name of

Ashish. Merely because the son of the respondent, instead of writing his surname as 'Sharma', has chosen to write 'Parashar' and which as per my understanding is the 'Gotra', would not defeat the requirement or entitle the petitioners to leave to defend.

28. The only other argument of the counsel for the petitioners is that the respondent in the petition for eviction was required to state as to what the initial 'J.C.' in the name of her husband meant, what was the date of death of the husband of the respondent; and, that who else were the heirs of the husband of the respondent.

29. I am afraid the aforesaid have no bearing on the aspect of requirement.

30. All the arguments urged are found to be preposterous.

31. There is no merit in the petition.

32. Dismissed. No costs.