
(2012) 03 DEL CK 0674

In the Delhi High Court

Case No : CM (M) 91 of 2011 and CM No. 3834 of 2008

General Transporters

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Delhi Rent Control Act, 1958 — Section 14(1), 14(2)

Citation : (2012) 10 AD 370

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : B.P. Gupta, for the Appellant; P.S. Bindra, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—The impugned judgment is dated 15.01.2008 which was the judgment passed by the Additional Rent Control Tribunal (ARCT). The ARCT had endorsed the judgment of the Additional Rent Controller (ARC) dated 25.08.2007 whereby the eviction petition filed by the landlord (Punjab & Sind Bank) u/s 14 (1)(a) & (k) of the Delhi Rent Control Act (DRCA) against the tenant i.e. (M/s General Transporter) had been decreed.

2. Briefly stated the facts as revealed from the record are that the present petition has been filed by the landlord bank against the respondent firm; premises in dispute are a part of property bearing No. 5/1, Desh Bandhu Gupta Road, Pahar Gang, New Delhi. Contention of the landlord is that the tenant without the permission of the landlord is using the premises contrary to the condition imposed upon the predecessor in interest of the petitioner i.e. Delhi Development Authority (DDA); the DDA had leased out this property to the landlord; the user of the premises by the tenant was contrary to the terms of the lease which had been granted by the DDA in favour of the landlord; the DDA had temporarily condoned the misuse on payment of penalty of Rs.36,357.33 which amount also the tenant is liable to pay; the tenant is a regular defaulter in

payment of rent and has not paid the amount from November, 1983 to February, 1986; this was inspite of notice of demand dated 28.02.1986 served upon the tenant. On the date of filing of the petition, the tenant was in arrears of rent w.e.f. November, 1983 to August, 1986.

3. Written statement filed disputing these contentions. It was denied that there was misuse of the premises by the tenant; contention is that the entire area is commercial and no contravention of the terms of the original lease has been committed by the tenant firm; moreover the landlord himself is using the other portion of the premises for his own commercial purpose; ground u/s 14 (1)(k) of the DRCA is not made out. It was also denied that the tenant is in arrears of rent; contention was that the rent has been paid w.e.f. November, 1983 to March, 1985 to the DDA and after receipt of the letter dated 21.07.1986, the entire rent from April, 1985 has been tendered to the landlord but he has refused to accept the same. Rent was paid to the DDA in view of the notice received from the DDA dated 29.10.1983 directing the tenant to remit the entire arrears of rent to the DDA directly. Ground u/s 14 (1)(a) of the DRCA is also not made out.

4. Record has been perused.

5. Five witnesses have been examined on behalf of the landlord and one witness has been examined on behalf of the tenant.

6. The dispute is short. Legal notice is dated 28.2.1986 (Ex. AW-1/3). In this legal notice a demand had been made by the landlord for arrears of rent from the tenant w.e.f. 1.11.1983 up to 29.02.1986; the tenant had denied the receipt of the legal notice. In the course of the evidence the fact finding courts have returned a positive fact finding that this legal notice had been served upon the tenant. This is evident from the admission made by RW-1 in his cross-examination wherein he had admitted that in the letters Ex. RW-1/4 and Ex. RW-1/5 (admittedly the communication received by the tenant) were at the same address which was mentioned in the legal notice; a specific question had been put to the tenant that the address mentioned in the legal notice is the correct address to which there was no denial. Presumption of service had been drawn in favour of the landlord as the notice had been correctly addressed, pre-paid and the postal receipts and the A.D. card had led the court to draw this presumption. This fact finding arrived at by the ARC was endorsed by the RCT; it does not call for any interference.

7. In this legal notice demand for arrears of rent (as noted supra) w.e.f. November, 1983 up to March 1986 was made; even as per the case of the tenant he had rent to the superior lessor (DDA) w.e.f. November, 1983 up to April, 1985. Admittedly from April 1985 and up to March 1986 no rent had been paid by the tenant. Submission of the tenant on this count that he had all along been recognizing the DDA as his superior lesser ;his contention that he has been informed by a letter dated 29.10.1983 (Ex. AW-3/R-1) from the DDA asking him to pay rent to the DDA directly and as such from November, 1983 the tenant had

been tendering the rent to the DDA. Further submission of the tenant/petitioner was that vide a second communication dated 21.7.1986 (Ex.AW-3/R-2) the DDA had informed him that the lease of the landlord (the Punjab & Sind Bank) has since been restored and the tenant can now pay rent directly to the PSB. Submission being that there was a cloud over the title and the tenant was confused as to who was his lessor i.e. whether it was DDA or whether it was PSB; PSB had never informed him that the lease has been restored.

8. Record shows that admittedly the tenant had paid rent w.e.f. November, 1983 up to April 1985 to its so-called superior lessor i.e. DDA but after April 1985 rent has not been paid by the tenant either to the DDA or to the PSB. The whole thrust of the arguments of the petitioner is that he was not sure as to whom the rent is to be paid. Contention being that he was not sure that whether the PSB continued to retain the title of his lessor or whether it was the DDA. This submission now urged was never a part of the defence of the tenant in his written statement; no such plea was raised in the written statement. This arguments now urged before this court which in fact is the only argument does not have any basis; it does not emanate from the pleadings of the tenant. This argument besides being irrelevant for the afore noted reasons; even otherwise has to be ignored; admittedly even as per the case of the tenant after April, 1985 he was sitting in the premises but has not paid rent to any person; if he was not sure of the title of the PSB nothing prevented him from continuing to pay rent to the DDA; that has also not been done.

9. In that background the RCT had endorsed the finding the ARC and had noted that the case u/s 14(1)(a) of the DRCA has been fully proved. This was admittedly a case of second default.

10. The RCT has answered this finding herein as under:

To my mind, in the present case where the relationship of landlord and tenant were governed between the parties under the provisions of Delhi Rent Control Act which provided non payment of rent as a ground of eviction the appellant who stopped making payment of rent to the respondent on account of receiving a notice from DDA did not make payment of rent either to DDA or to the respondent even for the period starting from April, 1985. Despite a notice issued by the respondent calling upon the appellant to pay or deposit the arrears of rent within a period of two months, was obliged to pay the rent to the respondent. He had no business to await for any clarification for DDA once he stopped making payment to DDA also. Thus, he committed a default in payment or depositing the rent which was legally recoverable either to DDA or to the respondent the period covered by the notice at least w.e.f. April 1995 and therefore, made himself liable for eviction u/s 14(1)(a) of the Delhi Rent Control Act. Accordingly, I do not find any good reason to interfere in the judgment of the trial court u/s 14(1)(a) of the Delhi Rent Control Act more particularly, because the trial court has taken note of the provision of Section 14(2) of the Delhi Rent Control Act being a case of first default and kept the matter pending for passing an appropriate order.

11. This finding is based on the correct appreciation of the factual as also legal position. It, in no manner calls, for any interference.

12. This Court is also conscious of the fact that the right of second appeal has since been abrogated. The powers of this Court under Article 227 of the Constitution of India is not a substitute for an appellate forum; interference is called for only if there is a manifest illegality or miscarriage of justice perpetrated to a party; which is not so in the instant case.

13. Reliance by the learned counsel for the petitioner upon the judgments Smt. Ram Rati (dead) by L.Rs. Vs. Shri Niwas, ; J. Jermons Vs. Aliammal and Others, is misplaced. In the case of Ram Rati (supra) the notice of demand did not disclose the title of the landlord. In these circumstances the court had noted that there is no default in payment of rent; facts are wholly inapplicable. In this case the tenant had earlier been recognizing the PSB as its landlord; thereafter for an intervening period the DDA was recognized as the landlord and thereafter without any change in the circumstances the tenant stopped paying rent even to the DDA; it had not paid rent to anyone. The judgment of J. Jermons (supra) is also inapplicable; in this case the court had noted that a simplicitor default does not constitute a willful default. Facts are again inapplicable. In this case no rent had been paid at all from April 1985 till March, 1986.

14. Petition is wholly without any merit. Dismissed.