
(1973) 09 DEL CK 0024

In the Delhi High Court

Case No : Second Appeal No. 508 of 1968

Hakumat Rai

APPELLANT

Vs

Jagdish Chander Ahuja

RESPONDENT

Date of Decision : 05-09-1973

Acts Referred:

Citation : (1973) ILR Delhi 795 : (1974) RLR 395

Hon'ble Judges : S.N. Shankar, J; Narain Andley, J

Bench : Division Bench

Advocate : D.L. Malhotra, Swantantar Kumar and B.T. Singh, for the Appellant;

Judgement

S.N. Andley, J.

(1) The exact question which falls for determination in this appeal is whether if at the time of the letting a sum of money is paid to the landlord by the tenant to serve as security for rent, it would amount to consideration in addition to the rent within the meaning of clause (a) of sub-section (2) of section 5 of the Delhi Rent Control Act, 1958, hereinafter referred to as "the Act".

(2) The respondent Jagdish Chander Ahuja, is a tenant in half portion of the ground floor of House No. 2460 comprising of two rooms, a store, a kitchen, latrine, with a common bathroom court-yard and lawn. The said house belonged to Smt. Amrit Rani wife of Hakumat Rai, appellant. The respondent filed an application u/s 13 of the Act for directing refund of Rs. 3,300. The direction was sought against (1) aforesaid Smt. Amrit Rani, (2) Hakumat Rai, appellant and (3) R. S. Bhalla, respondent No. 2 who had been described as respondents. The case made out for the aforesaid direction of refund was that the aforesaid premises had been let on June 9, 1964 and "in connection with the said letting, petitioner was wrongfully made to pay Rs. 3,300 in addition to rent". In the additional statement to this application, the respondent stated that Smt. Amrit Rani was the owner of the house, Hakumat Rai was her husband and R. S. Bhalla, a brother of Smt. Amrit Rani was a property broker. It was alleged that the

respondent being in need of residential accommodation approached R. S. Bhalla and explained his needs and Bhalla introduced him to Hakumat Rai. The respondent was informed later that the tenancy premises "could be let and possession thereof delivered to him he was prepared to pay Rs. 75 per mensem as monthly rent and, Along with it make a deposit of Rs. 3,300 to serve as security for rent". The respondent alleged that he paid Rs. 400 as advance to Bhalla on June 6, 1964 against his receipt stating that the balance would be paid by Tuesday next which fell on June 9, 1964 when rent note would be, executed and possession of the premises delivered. The respondent is alleged to have made arrangements for payment of the balance amount and on June 9, 1964. met Hakumat Rai and Bhalla and paid Rs. 2,900 to the former who was acting for and on behalf of Smt. Amrit Rani who was stated to be away to Rohtak on a short visit. The respondent alleged that in addition he paid Rs. 55 being the advance rent for the remaining days of June, 1964 and vacant possession was given to the respondent and a rent deed on stamped paper was executed. He further alleged that in spite of demand he was not furnished the receipt for Rs. 2,900. On October 20, 1964, the respondent filed the application for refund of Rs. 3,300. Apart from other pleas taken in their written statement, Smt. Amrit Rani and Hakumat Rai denied the receipt of Rs. 3,300 and asserted that only an amount of Rs. 55 had been received by them on June 9, 1964 as being the rent for the remaining days of June.

(3) The parties led oral and documentary evidence before the 1st Additional Rent Controller who was dealing with the matter and by his order dated November 27, 1967 he directed Hakumat Rai, appellant and his wife Smt. Amrit Rani to refund Rs. 3,300 to the respondent.

(4) Smt. Amrit Rani and Hakumat Rai, appellant, filed an appeal against this order before the Rent Control Tribunal. During the pendency of this appeal, Smt. Amrit Rani died and Hakumat Rai appellant being already on the record as an appellant, was also brought on the record as a legal representative of Smt. Amrit Rani. The Tribunal by its order dated December 4, 1968 dismissed the appeal. It also came to the conclusion on an appreciation of evidence that the respondent had paid Rs. 3.300 to the appellant on June 9, 1964.

(5) The 1st Additional Rent Controller came to the conclusion that the aforesaid payment of Rs. 3,300 paid as security for rent had been received by the appellant in violation of clause (a) of sub-section (2) of section 5 of the Act while the Tribunal held it to be a payment in violation of clause (b) of the aforesaid sub-section and was, Therefore, refundable to the respondent. Hakumat Rai has filed this second appeal. R. S. Bhalla is respondent No. 2 in this appeal but he is merely a formal party. The appeal had come up for hearing before one of us (Andley, C. J.) on January 5, 1973 when the appellant cited the judgment dated February 17, 1972 of Dalip Kapur, J. in S.A.O. No. 124 of 1971 in Babu Ram Verma v. Smt. Sohan Devi and reliance was placed on the following observation in this judgment:-

"IT is submitted by the appellant that this security is not permitted to be retained because of Section 5 of the Act. I find that there is no bar in that Section concerning an agreement concerning security. The bar in the section relates to the payment of a premium in addition to rent. There is a bar also to receive advance rent for more than one month, but security is something different. It is an amount which is kept in suspense and it is a matter of contract between the parties Whether a particular amount is to be retained as security or not."

In view of this observation, the case was directed to be placed before a Division Bench and that is how it has come to be dealt with by us.

(6) Mr. D. L. Malhotra, learned counsel for the appellant, has first of all contended that the finding of fact given by the Tribunal is not based on any evidence and, Therefore, it should have held that there was no proof of the payment of Rs. 3,300 by the respondent to the appellant as alleged. We do not think that the finding of the Tribunal can be assailed on this ground. We may only mention that a second appeal under the Act is not competent unless it involves some substantial question of law. A finding of fact of the Tribunal, is, Therefore, not assailable in Second Appeal. If, however, the finding of fact is based on no evidence, a question of law may arise. But even then the question of law must be a substantial question of law. Now, in giving this finding, the Tribunal has considered the evidence of Bhalla and has held that he had passed a receipt for Rs. 400 to the respondent on June, 6, 1964. Bhalla disputed the alleged receipt but the Tribunal after rejecting the testimony of the respective handwriting experts of the parties, found on a comparison of the admitted signatures with the disputed signatures that the receipt was executed by Bhalla. He has then taken into consideration the fact that the tenancy premises had been lying vacant for a period of six months before they were let to the respondent the evidence of Sukh Raj Chadha, another broker, who was to find a tenant for these premises and according to whom the appellant was demanding a security of Rs. 4,000, the letter written by the appellant to Sukh Raj Chadha asking for an offer, the letter of the respondent to Satish Chander Sharma asking him to be present on June 9, 1964 when Rs. 2,900 were to be paid and the withdrawal of Rs. 3,000 by the respondent from his wife's bank account with the Punjab National Bank, Ltd., on June 9, 1964 which was the date of alleged payment. The Tribunal accepted this evidence and came to the aforesaid conclusion. Counsel for the appellant has also taken us through the evidence of some of the witnesses but we have not been pointed out anything which can persuade us to say that the finding of the Tribunal is based on no evidence. Therefore, it must be held that the respondent had paid Rs. 3,300 to the appellant as security for rent of the tenancy premises.

(7) "PREMISES" is defined by section 2(i) of the Act as follows:-

"(I)"premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes:- (i) the garden, ground and outhouses, if any appertaining to such building or part of the building; (ii) any furniture supplied

by the landlord for use in such building or part of the building but does not include a room in a hotel or lodging house."

Sub-sections (1) and (2) of section 5 of the Act which alone are material for the purposes of this appeal are:-

"(1) Subject to the provisions of this Act, no person shall claim or receive any rent in excess of the standard rent, not with standing any agreement to the contrary. (2) No person shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any premises,- (a) claim or receive the payment of any sum as premium or puggree or claim or receive any consideration what so ever in cash or in land, in addition to the rent; or (b) except with the previous permission of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance."

Then section 13 of the Act says:-

" WHERE any sum or other consideration has been paid, whether before or after the commencement of this Act, by or on behalf of a tenant to a landlord, in contravention of any of the provisions of this Act or of the Delhi and Ajmer Rent Control Act, 1952, the Controller may, on an application made to him within a period of one year from the date of such payment, order the landlord to refund such sum or the value of such consideration to the tenant or order adjustment of such sum or the value of such consideration against the rent, payable by the tenant."

While section 13 of the Act gives a right to the tenant to claim a refund etc. sub-section (1) of section 48 of the Act makes the contravention of the provisions of section 5 of the Act to be punishable.

(8) The Tribunal was obviously in error in treating the aforesaid payment of Rs. 3,300 to be a payment covered by clause (b) of sub-section (2) of section 5 of the Act. This clause (b) contains a prohibition against claiming or receiving the payment of any sum exceeding one month's rent of the tenancy premises as rent in advance. It is nobody's case that the said amount of Rs. 3,300 was paid as advance rent. The respondent's case is that it was paid as security for rent. Clause (b) of sub-section (2) of section 5 of the Act will, Therefore, not apply. The 1st Additional Rent Controller correctly dealt with the case in considering whether payment of the aforesaid sum of Rs. 3,300 as security for rent was within the prohibition in clause (a) of sub-section (2) of section 5 of the Act.

(9) Now, the expression "rent" is not defined by the Act. Therefore, the concept of rent will be as in the Transfer of Property Act, 1882. Section 105 of this Act defines lease as "the transfer of a right to enjoy such property..... . in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee. " The price paid or promised is called

the premium and the money, share, service or other thing to be so rendered is called the rent. Rent can, Therefore, be in terms of money or in kind or in terms of service. It would follow that rent may comprise partly of money and partly of the share, service or other thing to be rendered. This concept of rent has been incorporated in the Act also as will appear from the words used in section 5(2)(a) and section 13 of the Act. Section 5 of the Act contains a prohibition against the receipt of rent or of advance rent in contravention of this section and attempts to cover cases where rent or any consideration that may be included in rent is payable. Sub-section (1) of section 5 contains a prohibition against the landlord claiming or receiving any rent in excess of the standard rent, notwithstanding any agreement to the contrary. Now, standard rent means, the standard rent referred to in section 6 or section 7 of the Act. These two sections talk of standard rent in terms of money. Therefore, sub-section (1) of section 5 takes care of cases where standard rent of the premises has been fixed in which case the claiming or receiving of any rent in excess of such standard rent will be a contravention of this sub-section. The word "rent" in this sub-section would mean "rent" in the sense of section 105 of the Transfer of Property Act. To illustrate: it will be a contravention of this sub-section if in addition to the standard rent, which is in terms of money, rent in the shape or guise of rent, money, a share of crops, service or any other thing of value is claimed or received.

(10) Then we find that sub-section (2) does not use the expression "standard rent" but the expression "rent". Sub-section (2) also contains a prohibition. The prohibition under clause (a) is to claim or receive the payment of any sum as premium or pegree or claim or receive any consideration whatsoever in cash or in kind, in addition to the rent. So far as clause (a) is concerned, the rent may be in cash or in kind which will include service. When one goes to clause (b) of sub-section (2), one finds that it prohibits claiming or receiving the payment of any sum exceeding , month's rent of such premises as rent in advance. In clause (b) the prohibition is against a sum which means an amount in terms of money.

(11) In this background, the receipt of Rs. 3,300 by the appellant can not be a contravention of clause (b) of sub-section (2) of section 5 of the Act because it is the respondent's case that this sum was not paid as rent in advance but only as security for rent.

(12) The question then is whether payment of Rs. 3,300 as security for rent was in contravention of clause (a) of sub-section (2) of section 5 of the Act, It is nobody's case that this sum of Rs. 3.300 was a premium or pegree within the meaning of this clause and the short question is whether the payment Of this sum of Rs. 3,300 as security for rent can be said to be in consideration of the grant of the lease in this case claimed or received by the appellant as such consideration in cash. Claiming or receiving must be such that the consideration, in cash or in kind, becomes the property of the landlord to do with it what he likes without any right whatsoever being left therein in the tenant. For example, if the landlord receives a bag of wheat in addition to the rent from the tenant for

his own use, there will be a contravention of clause (a) Similarly, there will be a contravention of clause (a) if in addition to the rent, the tenant renders service periodically or on specified occasions to the landlord. Again it will be a contravention of clause (a) if in addition to the rent any other thing of value, is claimed or received by the landlord to become his own.

(13) We do not think that the furnishing of security for rent even though the amount of security may be in terms of money can be said to be a contravention of clause (a) on the ground that the landlord has claimed or received a consideration in cash in addition to the rent because the amount secured does not become the property of the landlord. It is in the nature of trust property to be retained by the landlord to be adjusted towards the rent in case of default, by the tenant in the payment of the rent. Take for instance a case where the landlord in addition to the rent claims or receives a bank guarantee furnished by the tenant to be drawn upon in case of a default in payment of rent by the tenant. In our opinion, such a bank guarantee will not be in contravention of clause (a) There may be a case where the tenant, in addition to the rent, pays a certain sum of money to the landlord as security for rent and proves that either there was a contract where under the landlord had liberty to invest it and to keep with himself the interest or usufruct of it or it is proved as a fact that even without such a contract the landlord has invested such amount and earned interest or usufruct there from and has kept it with himself while the principal remains as security to be availed of in case of default by the tenant in the payment of rent. In such a case there will be a contravention of clause (a) because the landlord is receiving in addition to the rent, the interest or usufruct accruing upon the amount of security, another instance may be where a gold brick or any other thing of value is given by the tenant to the landlord as security for the payment of rent in addition to the rent. If the gold brick or such other thing of value is to be returned to the tenant on the termination of the tenancy and/or is to be utilized only in default in the payment of rent, there cannot be any contravention of clause (a). In another case, the premises may have valuable furniture or works of art or fittings which are also let Along with the building and while letting, the landlord may obtain security from the tenant for any damage to these articles. Such security will not be in contravention of clause (a). Instances can be multiplied. This interpretation receives support from the language of section 13 which provides for the valuation of the "other consideration" and the refund or adjustment of such value to the tenant on an application made under this section.

(14) Applying these principles, there does not appear to us to be any contravention of clause (a) of sub-section (2) of section 5 of the Act in the present case where the respondent-tenant has neither alleged nor proved that the amount of Rs. 3,300 given as security for rent was invested by the landlord earning interest or usufruct thereon. Nor has it been alleged or proved in this case that the said amount given as security for rent was for the use of the landlord for any purpose other than for utilizing it in the event of default in the

payment of rent. If the respondent in this case had alleged and proved that this amount of Rs. 3,300 was to be invested or was in fact invested in the name of the landlord and interest or usufruct thereon was retained by the landlord, a case of contravention could have been made out. But on the bare averment that the amount of Rs. 3,300 was to be security for the rent without anything more, we do not find any contravention of clause (a) of sub-section (2) of section 5 of the Act.

(15) This appeal is Therefore, allowed, the orders of the Tribunal and of the 1st Additional Rent Controller are set aside and the application filed by the respondent u/s 13 of the Act is ordered to be dismissed. The respondent will pay the costs of this appeal. Counsel's fee Rs. 150.