(1987) 07 DEL CK 0020

In the Delhi High Court

Case No : Civil Revision Appeal No. 68 of 1984

H.B. Kapoor APPELLANT

Vs

Kehar Surgical and Allied Products (P.) Ltd. RESPONDENT

Date of Decision : 20-07-1987

Acts Referred:
Delhi Rent Control Act, 1958 — Section 14(1)

Citation : (1988) 14 DRJ 113

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : I.S. Mathur, K.K. Wadhera, R.K. Makhija, V.K. Makhija and Anup Bagai, for the Appellant;

Judgement

S.B. Wad, J.

(1) This is landlady''s Revision Petition against the order of the Rent Controller dismissing her eviction petition on 8/11/1983.

(2) The premises in question are the Ground Floor of property No. 254, Greater Kailash, New Delhi. The respondents are the tenant. A lease deed was created in favor of the tenant u/s 21 for three years with , effect from 14-7-1975. After the expiry of this lease, a fresh lease was created in favor of the tenant. The rent was raised from Rs. 1900.00 to Rs. 2300.00 per month. According to the tenant this increase was made as a new lease was created for residential-cum-commercial purposes and the tenant was permitted to have his sales office in the premises. According to the landlady the new lease was only for residential purposes as before.

(3) The landlady is a qualified Doctor by profession and was in Government service. After her retirement from service in 1972 she was residing at Dehradun. She developed severe ArthrIT is in both her knees and spine due to cold and damp climate of Dehradun. She was advised to live at a place where better expert medical advice and facilities were available. That is why she decided to

occupy her own house in Delhi. The tenancy of the tenant was terminated on 15-4-1980 and a petition bonafide requirement u/s 14(1)(e) of the Delhi Rent Control Act was filed. According to the original pleadings the tenant did not contest the landlady''s averment in the application for eviction that the second lease was created with her directly but the tenant later on changed his version and submitted that the second lease was created with Lt. General B.L. Kapoor, the husband of the landlady and the holder of the power of attorney on her behalf. It is an admitted position that the second lease is not a written lease. In order to support his contention that the .second lease was a combined lease for residential-cum-commercial purposes the tenant has produced a latter dated 9-11-1978 purportedly within by Lt. General B.L. Kapoor to the Sales Tax Commissioner slating that he has no objection for the sales office being run under the said premises.

(4) The learned Rent Controller believed the version of the tenant and held that the second lease created in 1978 was a lease for residential-cum-commercial purposes created by Lt. General B.L. Kapoor who had the power of attorney from the landlady. He further held that the power of attorney was in general terms enabling the holder to create the second lease. The learned Rent Controller furl her held that the letter written by B.L. Kapoor as an attorney of the landlady on 9-11-1978 to Sales Tax Commissioner confirms the fact that the second lease was for residential-cum-commercial purposes.

(5) The counsel for the landlady has challenged these findings and to my mind there is merit in his submissions. There is no evaluation of the evidence of the landlady as against that of the tenant by the Rent Controller. The landlady stated that the second lease was entered into directly with her (and that she had created the second lease also). The tenant had not originally controverter this position in the written statement. There is no cogent reason why this evidence of the landlady was to be disbelieved. The power of attorney dated 11-8-1975 itself states that it was a "special power of attorney." Under this power of attorney the holder was entitled "to register the lease deed in the office of the Registrar, and to collect rent; and to lease the house No 254, Greater Kailash, New Delhi, on rent". The Rent Controller has held that the words "to lease the house No. 254" show that the power of attorney is a general power of attorney giving authority to the holder to create subsequent leases as and when required. This is clear misreading of the power of attorney.. Admittedly, this power of attorney is given after the permission u/s 21 of the Delhi Rent Control Act was granted by the Rent Controller. It is also an admitted fact that the said permission was obtained by the landlady direct. The other formalities, such as completion of the lease deed, registration of the lease deed was left by her to her husband through the said power of attorney. She was living at Dehradun and her husband used to visit Delhi . frequently. That perhaps is a reason why the authority to collect the rent was given to the husband. The power of attorney is not a general power of attorney and Lt. General B.L. Kapoor was not entitled in terms of the power of attorney to create the second lease in 1978. The tenant is interested in showing

that the second lease was created by the power of attorney holder Shri B.L. Kapoor because according to the tenant the second lease was for residential-cum-commercial purpose?. A lease u/s 21 of the Delhi Rent Control Act can be made only for residential purposes. The first lease was created u/s 21 of the Delhi Rent Control Act on the advice of the lawyer. When the landlady is so careful as to have the lease u/s 21 of the Delhi Rent Control Act, making it clear that the lease was only for residential purposes, it is unthinkable that she would herself or through her attorney create a lease for the commercial purposes also. By now it is a common knowledge to the landlord''s in Delhi that once a lease is created for commercial purposes it is difficult to get back the possession. The Rent Controller was thus in error in holding that the second lease was for residential-cum-commercial purposes. The purported letter of Lt. General B.L. Kapoor sent to the Sales Tax Commissioner on 9-1 1-1978 hardly supports the tenant in regard to the character of the lease. The tenant has complained that the landlady did not produce Lt. General B.L. Kapoor as a witness. There is no merit in the submission. Her case all along was that she had directly created the lease and, Therefore, there was no necessity for her to produce Lt. General B.L. Kapoor as her witness. Even otherwise she had stated in her cross-examination that he remained sick. In this Revision Petition the land-lady has now filed the affidavit of Lt. General B.L. Kapoor wherein he has stated that he had not sent such a letter to the Sales Tax Commissioner. But even if the letter is genuine letter that does not create a lease for commercial purposes between the landlady and the tenant. Admittedly, the tenant had his office premises in Nehru Place when the present lease was created. There was no board or name plate indicating that one of the bed rooms in premises was being used as a sales office. The landlord''s own version in the cross-examination is that he was using one of the bed rooms for the purpose of residence and also for sales office. The counsel for the petitioner has, with the help of plan .pointed out that the bed room in question had no direct access and that a person is required to go inside the house crossing the kitchen so as to reach the bed room. These facts go to show that neither commercial tenancy was created for running the sales office nor was the tenant actually using of the bed rooms for his sales office.

(6) The learned Rent Controller has also erred in holding that the landlady had the alternate accommodation available in E-16, defense Colony, New Delhi, and she could have stayed with her sons who were staying in that house. The approach of the learned Rent Controller is wrong. The tenant has filed an affidavit in this court stating that the accommodation in E-16, defense Colony on the ground floor and first floor is very large and that there is an additional construction recently made in the said house. The landlady has replied by saying that the house in defense Colony belongs to H.U.F. between her husband and two married sons and that the additional construction was made for the residence of the married daughter. There is no law requiring the mother to stay with sons, particularly when they were married sons living with their families. The court cannot force the landlady to do so. (Smf. Praliva Devi v. T.V. Krishnan, 1987 (12)

D.R.J. 258 Even otherwise the fact of this case would show that the landlady had been all along living independently. She is a qualified medical practitioner and was in Government service staying away from her sons. After her retirement she decided to reside at Dehradun and not at Delhi with the married sons. From the evidence on record the family appears to be quite affluent. If the landlady, who is used to independent living, wants to live separately in her own house, the possession cannot be denied to her on the ground that she can live with her sons in another house.

(7) The age of the landlady is now about 72. With her old age she has severe problem of ArthrIT is affecting her knees and spine. The damp climate of Dehradun is having serious adverse effects on her health is supported by the medical certificate produced by her. She is herself a Doctor and, Therefore, her words in this regard can be relied. There are better medical facilities in Delhi than in Dehradun. Her need of the suit premises is thus bonafide and she is entitled to an order of possession u/s 14(l)(e) of the Delhi Rent Control Act. The petition succeeds. The tenant shall hand over the peaceful and vacant possession to the landlady on or before 20th January, 1988.

(8) For the reasons stated above the impugned order is set aside and the Revision Petition is allowed with costs.

