

(1998) 02 DEL CK 0058

In the Delhi High Court

Case No : Civil Revision (Rent) No. 753 of 1997

Mohd. Shamim Ahmed @ Mohd. Shamim

APPELLANT

Vs

Smt. Naseeban

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3

Delhi Rent Control Act, 1958 — Section 14(1), 25B(1), 25B(4), 25B(5), 25B(8)

Citation : (1998) 74 DLT 247 : (1998) RLR 219

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : S.K. Bhalla, for the Appellant; Amarjit Singh, for the Respondent

Final Decision : Dismissed

Judgement

N.G. Nandi, J.—The order dated 16.9.1997, dismissing CR 753/97 u/s 25-B(8) of the Delhi Rent Control Act (hereinafter referred to as "the Act"), which was directed against the order refusing leave to contest u/s 25-B(4) and (5) of the Act in the proceedings u/s 14(1)(e) of the Act, is sought to be reviewed under Order 47, Rule 1, CPC by the applicant tenant.

2. The main plank of the submission advanced by the learned Counsel for the applicant/tenant seeking review of order dated 16.9.1997 is that the dismissal of revision application u/s 25-B(8) of the Act vide order dated 16.9.1997 is by following the minority view in the case of Precision Steel Engineering Works and Anr. v. Premdeva Niranjandeva Tayal 1982(3) SCR 270 that as per the majority view in the aforesaid decision for the purpose of deciding leave to contest application u/s 25-B(4) & (5) of the Act it would be the affidavit filed by the tenant seeking leave to contest should only be taken into consideration and considering the affidavit filed by the tenant seeking leave to contest, the question whether leave to contest should be granted or not should be decided and that the affidavit in reply filed by the landlord should not be taken into consideration for the purpose of deciding application u/s 25-B(4) & (5) of the

Act. It is further contended that the law laid down by the Court is binding on every one and if there is any infraction of the action in violation of the law laid down by the Supreme Court appropriate remedy is to have it corrected by judicial review. In this regard, reliance is placed in the decision in the case of Packraft (India) Pvt. Ltd. through its Director V.S. Mann Vs. U.P.F.C. through its M.D. R.M. Sethi and Others, . There can be no disagreement with this proposition of law.

3. In the case of Precision Steel & Engineering Works and Anr. v. Premdeva Niranjandeva Tayal (supra) it has been, per majority, held :

"Section 25-B(5) is a mandatory provision indicating a positive approach and not a negative inhibition. It casts a statutory duty on the Controller to give to the tenant leave to contest the landlord's application for recovery of possession of the affidavit filed by the tenant prima facie, and not on contest, discloses such facts which if proved would disentitle me plaintiff from seeking possession. The tenant's affidavit alone at that stage is the relevant document while examining the question whether there was a proper case for granting the leave. The scheme of Section 25B does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by Sub-section (4) of Section 25-B and any attempt at investigating the facts whether they appear to be proved or disproved is beyond the scope of Sub-section (5). While examining the affidavit of the tenant u/s 25-B(4), the rules of natural justice must permit the landlord to be heard and to contest the affidavit by controverting the same by a reply affidavit. If the tenant's averments are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible. It is a stage of judging the plausibility of the defense, the stage of proof is later. Mere disclosure of facts, not a substantial defense is the sine qua non."

4. Thus, it will be seen from the above that it has been held that while examining the affidavit of the tenant u/s 25-B(4) of the Act, the rules of natural justice must permit the landlord to be heard and to contest the affidavit by controverting the same by a reply affidavit. Thus it is required by the principles and rules of natural justice that while examining the affidavit of the tenant u/s 25-B(4), the landlord must not only be heard but must be permitted to contest the affidavit by controverting the same by a reply affidavit. If the tenant's averments are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible.

5. In the instant case, in the order dated 16.9.1997, it has been observed that "it was contended on behalf of the petitioner/tenant that in the eviction petition, the landlady did not disclose the factum of she having property bearing No. 153. The tenant filed affidavit seeking leave to contest/defend contending that there is a

property bearing No. 153 and that the said premises is available for the landlady for her residence. The landlady filed counter-affidavit controverting the say of any portion of property bearing No. 153 available to her for her residence giving the names of the tenants sitting therein. There is no rejoinder filed by the tenant refuting what has been stated in the affidavit in reply. Under the circumstances, it cannot be said that the petitioner/tenant is able to raise triable issue suggesting facts, if proved, would entail dismissal of the petition u/s 14D of the Act....." Thus, as per the order dated 16.9.1996, the landlady is alleged to have suppressed the fact of portion of property bearing No. 153 was available with her for her residence, which fact was denied by the landlady by filing affidavit in reply and there was no rejoinder from the tenant refuting what was stated in affidavit in reply by the landlady.

6. On behalf of the opponent/respondent reliance has been placed on the decision in the case of Col. Surinder Pal Singh Bhattai (Retd.) v. Rakesh Kumar Jain 1996(1) RCR 549. In the case before the Supreme Court, the Rent Controller Chandigarh rejected leave to defend to the tenant in eviction proceedings initiated by the landlord u/s 18A(4) of the East Punjab Urban Rent Restriction Act, 1949. The High Court set aside the order dated 30.9.1995 passed by the Rent Controller, Chandigarh rejecting leave to defend and granted leave to defend the eviction proceedings to the tenant, which order was carried to the Supreme Court by the landlord and in the appeal, relying on the judgment in the case of Precision Steel Engineering Works & Anr. v. Premdeva Niranjandeva Tayal, (supra) reproduced following observations: "On a combined readings of Section 14(1) Proviso (e) with Section 25-B(1) and (4) the legal position that emerges is that on a proper application being made in the prescribed manner which is required to be supported by an affidavit, unless the tenant obtains leave to defend as contemplated by Sub-sections (4) and (5) of Section 25B, the tenant is deemed to have admitted all the averments made in the petition filed by the landlord. The effect of these provisions is that the Controller would act on the admission of the tenant and there is no better proof of fact as admission, ordinarily because facts which are admitted need not be proved. But what happens if the tenant appears pursuant to the summons issued under Subsection (2) of Section 25B, files an affidavit stating the grounds on which he seeks to contest the application. As a corollary it would transpire that the facts pleaded by the landlord are disputed and controverted. How is the Controller thereafter to proceed in the matter? It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evolution of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under Sub-section (4) and the reply, if any. On perusal of the affidavit filed by the tenant and the reply, if any, filed by landlord the Controller has to pose to himself the only question. "Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in Clause (e) of the proviso to Section

14(1)"? The Controller is not to record a finding on disputed questions of fact or his preference of one set of affidavit. That is not the jurisdiction conferred on the Controller by Sub-section (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under Sub-section(4) by the tenant and the same is being examined for the purpose of Sub-section (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that becomes manifestly clear from the language of Sub-section (5) that the Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from recovering possession etc. The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which if ultimately proved to the satisfaction of the Court would disentitle the landlord from recovering possession that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defense raised by him. Plausibility of the defense raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at this stage when plausibility has to be shown. A speedy trial not conforming to the well-recognised principle of arriving at truth by testing evidence on the touchstone of cross-examination, should not be easily read into the provision at a stage not contemplated by the provision unless the statute positively by a specific provision introduces the same. The scheme of Section 25-B does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by Sub-section (4) of Section 25-B. In this connection it cannot be said that the scope for granting leave under Sub-section (5) of Section 25-B is narrower than the one under Order 37, Rule 3 of Civil P.C. nor can It be said that the jurisdiction u/s 25-B(5) is very very limited" and observed in paragraph 8 that "a further affidavit has been filed by the appellant-landlord as indicated above wherein he has specifically stated on oath that he never entered into the alleged agreement for sale and he does not intend to transfer the house in question and that the same is required bona fide by him for his residence and that of his family. In these facts and circumstances no case for grant of leave to contest the eviction petition is made out in favor of the respondent-tenant and his application for grant of leave to contest the eviction petition was rightly rejected by the Rent Controller".

7. Supreme Court, while allowing the appeal of the landlord saddled the tenant with costs, which was quantified at Rs. 2,500/- and the order of the High Court was set aside and the order of the Rent Controller refusing leave to contest was

restored.

8. The majority view of the Supreme Court in the case of Precision Steel & Engineering Works and Another v. Premdeva Niranjandeva Tayal, (supra), being as above which is also followed in the case of Col. Surinder Pal Singh Bhattai (Retd.) v. Rakesh Kumar Jain, (supra), I am of the view that no case for review of the order dated 16.9.1997 is made out and the application being devoid of substance, is liable to be dismissed.