
(1999) 05 DEL CK 0048
In the Delhi High Court
Case No : S.A.O. No. 12 of 1999

National Insurance Co. Ltd.	Vs	APPELLANT
Shri P.K. Walia		RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1)(k), 14(11)

Citation : (1999) 5 AD 626 : (1999) 81 DLT 692 : (1999) RLR 529

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mr. P.P. Malhotra and Mr. Vineet Malhotra, for the Appellant; Mr. R.P. Bansal and Mr. P.D. Gupta, for the Respondent

Judgement

1. Aggrieved by the order passed by the Rent Control Tribunal the appellant has preferred the second appeal. Mr. Malhotra , learned counsel for the appellant has contended that the misuse was stopped when the order of the Additional Rent Controller dated 12.2.91 was passed. He has further contended that no notice of re-entry has been issued to the respondent and, Therefore the finding of the Tribunal as well as Additional Rent Controller be set aside. He has further contended that the finding of the Rent Control Tribunal that still commercial activity was going on in the premises was based on wrong premises.
2. Before dealing with the submission of the learned counsel for the appellant I would like to say few words on the conduct of the appellant.
3. The matter was argued at the time of admission on 5.4.99 when court did not find any merit in the submission of the learned counsel for the appellant. Mr. Malhotra has sought time to seek instructions as to whether on grant of some reasonable time the matter could be settled between the parties. At his request, the matter was adjourned to 14.4.99. Again at the request of the learned counsel for the appellant the matter was again adjourned to 15.4.99. The matter was listed on 15.4.99 and again at the request of the counsel for the appellant it was adjourned to 3.5.99. Again on 3.5.99 adjournment was sought by the appellant

on the ground that the matter has been referred to higher authorities and one week's adjournment may be granted to the appellant. At his request, the matter was again adjourned and was taken up on 10.5.99, on which date again Mr. Malhotra stated that he had no instructions from the appellant.

4. At the instance of the appellant one more opportunity was granted to the appellant to seek instructions and the matter was again renotified for 21.5.99.

5. Now let me deal with the submissions of the learned counsel for the appellant.

As a matter of fact in this case on 22.4.89 the Additional Rent Controller had disposed of the eviction case of the respondent holding that part of the suit premises was being misused for non-residential premises contrary to the terms of the lease deed granted in favor of the landlord by the paramount lessor. In Para 6 of the said judgment it was recorded as below:-

"The petitioner himself appeared as AW 2. He proved lease deed Ex. AW 1/2 and site plan of the suit property Ex. AW 2/1. The petitioner deposed that after 7/8 months of the respondent had been inducted as a tenant, they started using the premises for commercial purposes and raised some unauthorised constructions. He stated that he received letter Ex. AW 1/1 from the L&DO. He served notice Ex. AW 2/2 upon the respondent to stop the misuses. He further proved postal receipt Ex. AW 2/3 and A.D. Card Ex. AW 2/4. He testified that the respondent has not stopped the misuse despite service of the said notice. respondent however, have not produced any evidence."

6. Thereafter, the Additional Rent Controller held that necessary ingredients of Section 14(1)(k) of the Act has been established and notice was issued to the Land & Development Office u/s 14(11) of the D.R.C. Act to show cause whether there is any policy of the Govt. of India for not allowing the misuse beyond any particular date and whether the Land & Development Office is prepared to condone the user of the premises contrary to the terms of the lease deed on temporary basis from time to time or on permanent basis on payment of misuse charges or not or on any other terms. Thereafter, the matter was finally disposed of by the Additional Rent Controller on 12.2.91. The Land & Development Officer refused to regularise/condone the misuse permanently. It was contended by the respondent that the National Insurance Company be asked to stop the misuse within the particular time and in spite of the grant of such time the petitioner does not stop the misuser, the eviction order be passed against the respondent. Accordingly, the Additional Rent Controller in its order on 12.2.91 recorded as follows :-

"Accordingly, the respondent/tenant M/s. National Insurance Company is directed to stop the misuse in the premises bearing plot No. 3/1 Block No. 60A, Rani Jhansi Road, Delhi (previously known as M.M. Road) within a period of six months from the passing of the order from today and in default, an order of recovery of possession u/s 14(1)(k) of the Delhi Rent Control Act would be deemed to have been passed against the respondent and the petitioner/landlord

would be entitled to recover the possession of the premises in suit i.e. entire House No. 3/1, Rani Jhansi Road, New Delhi comprising of 6 rooms, 2 bath rooms, one verandah, front open courtyard and side open courtyard on the ground floor, 4 mezzanines, one room and one bath room and terrace on the first floor, more clearly shown as red in the site plan Ex. PW 2/1."

7. After the said order when the respondent took out execution as misuse has not stopped within the time prescribed, the petitioner filed objection before the Additional Rent Controller. The said objections were allowed by the Additional Rent Controller on the basis of the report of the Local Commissioner which was appointed by the Additional Rent Controller after the objection was filed to the execution application. Respondent preferred an appeal before the Rent Control Tribunal. The Tribunal allowed the appeal of the landlord/respondent and remanded the case for fresh adjudication within a period of five months. On 16.11.98 the Additional Rent Controller dismissed the objections and allowed the execution. The Additional Rent Controller who was the Executing Court relied upon the report of the Local Commissioner which was appointed by the consent of both the parties, which was to the following effect:-

"That I also found receipt books, cheque books, bank deposit books, vouchers on the table lying in the premises, some of the entries were found to be of 13.3.92, an inspection of the record and also found a telephone bills in the name of National Insurance Co-op. Thrift and Credit Society Ltd. bearing address of 3/1, Rani Jhansi Road, New Delhi for the period of 16.12.1991 15.2.1992.

A perusal of the aforesaid paragraph clearly goes to show that the Office of the Thrift and Credit Society of the employees of the JD was still working when learned Local Commissioner had conducted the local investigation on 13.2.92 and that is why some of the entries were found to be made on 13.2.92. This portion of the report tallied with the portion of the deposition of JDW1 referred to above by me. This clinches the whole issue. I have no hesitation in holding that respondent/JD failed to stop the misuse in question before 11.8.1991 and the premises in question were being still used for a purpose other than residential even as late as 13.3.92."

8. In these terms the objection filed by the petitioner before Additional Rent Controller was dismissed.

9. Aggrieved by the said order the Appellant before me filed appeal before the Rent Controller Tribunal. Paragraph 5 of the impugned judgment is relevant.

"5. The facts alleged in the reply dated 6.9.91 and the deposi corporation by Smt. Indu Sharma are inter se inconsistent and contradictory and I find the statement of Smt. Sharma unworthy of credence. I am of the considered opinion that the trial court was fully justified in dismissing the objections of the appellant. The appellant in its reply dated 6.9.91 had claimed that the misuse had stopped w.e.f. 12.8.91 as the tenant has temporarily shifted its office to Asaf Ali Road. However, Smt. Indu Sharma in er examination-inchief took a contrary

stand by claiming that after a month or so of passing of the order for stoppage of misuse in Feb., 91 the tenant/company had shifted its office from the suit premises to 30-31A, Asaf Ali Road, New Delhi where another divisional office of the tenant/company was already functional. If the office had shifted within a month or so from 12.2.91 the appellant could not have taken a stand in the reply dated 6.9.91 that the misuse had stopped w.e.f. 12.8.91. In the reply dated 6.9.91 it was claimed that the suit premises were lying vacant and they shall be used only for residential purpose but Smt. Indu Sharma falsified this stand. In her examination-in-chief it was claimed that at 30-31A, Asaf Ali Road, Division No. 15 which was functioning from the suit premises was provided only small space in the stationery section on the ground floor and some space was also available in the basement. It was then claimed that from January/February, 92 Division No. 15 was shifted to Haimalya House, Connaught Place to which office she also shifted from Asaf Ali Road Office. However, in cross-examination she admitted that some damaged vehicles and other damaged articles (salvage of insurance) and vehicles insured by the tenant/appellant were lying stocked in the compound of the suit premises. She also admitted that when she joined this office in the suit premises such articles were already lying and they continued to be lying when the office according to her had shifted from the suit premises. The Insurance Co. is engaged in the job of insuring vehicles and accidented vehicles is the salvage returned by the insurer. It is part of office stock and if this stock continued to be stocked in the suit premises the misuse did not stop as required by the final order dated 12.2.91. Smt. Sharma in cross-examination also admitted that only such record which was required for day to day working was removed from the suit premises to Asaf Ali Road Office and the remaining record continued to be stored in the suit premises. Where according to her only 3/4 security guards remained deployed. This again is contrary to the directions of the final judgment dated 12.2.91 and goes to show that the misuse has not stopped. Smt. Sharma then admitted that a separate room in the suit premises had been provided to the National Insurance Co-operative Thrift & Credit Society Ltd. being run by the employees of the Insurance Co. having separate telephone. The Local Commissioner had found receipt books, cheque books, bank deposit books, vouchers lying on the table containing entries up to the date of visit on 13.3.92 Along with telephone bills of this society for the period 16.12.91 to 15.2.92. This conclusively established that the suit premises was still being misused for commercial purpose/official purpose contrary to residential use even 7 months after the dead line of six months had expired on 11.8.91."

The Rent Control Tribunal held that the misuse had not stopped by the appellant up to 13.3.92 though the misuse ought to have been stopped up to 11.8.91 and dismissed the appeal of the appellant.

10. In view of the concurrent finding of facts by the Additional Rent Controller as well as the Rent Control Tribunal, this Court while exercising its jurisdiction of hearing second appeal will not interfere with the concurrent finding of the fact. No question of law is agitated in the appeal.

Dismissed.