

(2007) 01 DEL CK 0176
In the Delhi High Court
Case No : CM (M) 2191 of 2006

Panna Lal Kanojia

APPELLANT

Vs

Rajinder Singh Saini and Another

RESPONDENT

Date of Decision : 02-01-2007

Acts Referred:

Constitution of India, 1950 — Article 227
Delhi Rent Control Act, 1958 — Section 14(1), 14(2)

Citation : (2007) 01 DEL CK 0176

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Pramod Ahuja, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.

CM No. 17797/2006

Allowed subject to just exceptions.

CM(M) No. 2191/2006 and CM No. 17798/2006

1. An eviction petition was filed by respondent No. 1 against respondent No. 2 and the petitioner u/s 14(1)(a), (b), (d) and (h) of the Delhi Rent Control Act, 1958 (herein after referred to as the "said Act") in respect of two rooms and a kitchen of property No. A-82 forming part of the Municipal No 759, Sukhdev Nagar, Kotla Mubarakpur, New Delhi-110003. The premises were stated to have been let out to respondent No. 2 at a monthly rent of Rs 41 excluding electricity and water charges. The purpose of letting was stated to be residential. Respondent No. 2 was alleged not to have paid or tendered arrears of rent despite service of notice. The premises were also stated to have been sublet or assigned or parted with possession to the petitioner herein without the consent and knowledge of respondent No. 1 while respondent No. 2 was alleged to have

shifted to another premises at 1642, Kotla Mubarakpur, New Delhi. Respondent No. 2 and his family were stated not to be residing in the tenanted premises for more than a year and respondent No. 2 even acquired a ration card at the new address. Respondent No. 1 also placed reliance on a compromise decree passed by this Court on 20.08.1991 to claim that he was the owner/landlord of the premises which had fallen to his share.

2. The eviction petition was resisted both by the petitioner and respondent No. 2 who filed a common written statement stating that they were brothers and had been residing in the suit premises. Respondent No. 2 was stated to be the head of the family and thus rent receipts were issued in his name. Both the petitioner and respondent No. 2 claimed to be joint tenants in the suit premises since 1950 and had been paying rent regularly. It is alleged that respondent No. 1 refused to issue the rent receipts and thus the rent was sent through a money order which was also refused. The remaining allegations were denied in respect of subletting. The petitioner is stated to have got married in the tenanted premises and it was not disputed that the petitioner is in legal and physical control of the entire tenanted premises.

3. The parties led their evidence. The Additional Rent Controller ("ARC" for short) found that the service of notice had been proved as though the envelope was returned, it was sent at the correct address. The rents were in arrears and thus the case was made out u/s 14(1)(a) of the said Act for eviction on grounds of non payment of rent as per the order dated 13.10.2004 of the ARC.

4. Insofar as ground of subletting is concerned, the testimony proved that the premises had been let out only to respondent No. 2. The shifting of respondent No. 2 to house no A-1642, Kotla Mubarakpur, New Delhi-110003 was established. The telephone connection was installed in his name on 28.10.1995. The officer from the Election Office proved the electoral roll relating to the property in suit where only four voters were registered in the year 1982 which included the petitioner and three others. In 1999, there were six voters registered. The name of respondent No. 2 and his family members did not appear in the electoral roll. A finding was reached on the conspectus of the evidence that respondent No. 2 was not residing in the suit premises. The petitioner and respondent No. 2 failed to prove by placing any documentary evidence on record that they were joint tenants or that respondent No. 2 was the Karta of the HUF and a finding was reached that the petitioner was never a tenant or a co-tenant in the premises. Since respondent No. 2 had shifted from the premises, it was found that he had totally lost control of the premises and a case of subletting was made out.

5. In view of respondent No. 2 having shifted from the tenanted premises into a new premises which he had acquired, the grounds u/s 14(1)(d) and (h) of the said Act on account of not staying in the tenanted premises for one year and having acquired alternative residential accommodation were also found against respondent No. 2.

6. The petitioner and respondent No. 2 aggrieved by the said order filed an appeal before the Rent Control Tribunal. The appeal has been dismissed in terms of the order dated 09.10.2006. A direction was however passed for the Trial Court to examine the aspect of passing appropriate orders on the ground of benefit u/s 14(2) of the said Act to the tenant as it was the first default in payment of rent. The ARC had not dealt with the issue of whether the benefit u/s 14(2) is or is not available in the given facts of the case.

7. The petitioner and respondent No. 2 as appellants had also filed an application for amendment of the written statement relying upon the some alleged rent receipts issued by late Sh.Jaswant Singh, father of respondent No. 1 herein in the name of Bhagwan Das Panna Lal to prove joint tenancy. The Additional Rent Control Tribunal found that there was no Explanation given in the application as to how the rent receipts were traced out nor any Explanation as to why they were not produced earlier. It was noted that the rent receipts showed a rent of Rs 26 per month while the admitted case of the parties was that the rate of rent is Rs 41 per month. The assertion of rent receipts being issued also went contrary to the earlier assertion that no rent receipts were being issued by the landlord and in fact that is the reason as to why the tenant had stopped paying rent. The said application was rejected.

8. The present proceedings have been filed under Article 227 of the Constitution of India and it is trite to say that this Court does not sit as a Court of appeal but only seeks to ensure that Subordinate Courts and Tribunals function within the domain of their jurisdiction. It is not the function of this Court to re-appreciate or re-appraise the evidence to come to a different conclusion than the one arrived at by the courts below. In the present case there are concurrent findings arrived at by both the courts below on the basis of the evidence adduced by the parties which, in my considered view, do not call for any interference. There is really no patent or jurisdictional error which would call for interference by this Court.

9. The Courts below have found that the demand for arrears of rent was sent to the correct address. The reason for return possibly could be that the tenant had shifted from the premises as found. Be that as it may, the landlord had performed the statutory duty under the said Act of sending the demand notice at the given address. The ARC did not pass any order granting the benefit to the tenant of the first default and on that aspect the Tribunal has already directed the ARC to consider the matter.

10. I am unable to accept the plea of the learned Counsel for the petitioner that the eviction on other grounds should also be kept in abeyance till such time as this question is examined by the ARC. There were four grounds on which eviction had been sought and merely because on one of the grounds the tenant would be entitled to the benefit of first default would not imply that the eviction order on other grounds is not to be given effect to.

11. The main question which arises for consideration is as to whether the

petitioner and respondent No. 2 were co-tenants. The evidence on record has established that respondent No. 2 has shifted from the tenanted premises and that is why the grounds of the premises not being occupied by the tenant for over an year and of having acquired alternative residential accommodation have been held against the tenant insofar as Sections 14(1)(d) and (h) of the said Act are concerned.

12. The aforesaid aspect is also relevant for the ground u/s 14(1)(b) of the said Act. The petitioner had to establish that he was a co-tenant with respondent No. 2 in order to gain the benefit of continuation of occupation as a tenant and rebutting the plea of respondent No. 2 alone being the tenant. The petitioner and respondent No. 2 both failed to discharge this onus. The rent receipts were being issued only in the name of respondent No. 2. It was for the petitioner and respondent No. 2 to establish by production of documents or other evidence of any joint tenancy or that respondent No. 2 was acting as a karta of the HUF. Nothing of this sort was brought on record. It was only at the appellate stage that certain rent receipts were sought to be produced alleging that the same were in the name of both the petitioner and respondent No. 2 and there was no Explanation forthcoming as to from where these rent receipts had been produced or why they could not be produced earlier. These rent receipts were also in the teeth of the allegation of the petitioner and respondent No. 2 that they never defaulted in payment of rent but that payment of rent was stopped as rent receipts were not being issued.

13. Learned Counsel for the petitioner, though not having filed the evidence on record, attempted to read out the evidence from his file to contend that there were parts of cross examination which would show that it was the father of the petitioner and respondent No. 2 who was residing there earlier and thus the petitioner and respondent No. 2 became co-tenants. Firstly, in the present proceedings there is no question of once again trying to re-appreciate the evidence. Secondly, throughout it is only respondent No. 2 who is shown as a tenant and thus it was for the petitioner to show that he was a co-tenant. The learned Counsel for the petitioner again picked up one line from here and there to reach conclusions and seek re-appreciation of evidence by this Court apart from the fact that the petitioner had not even cared to file the evidence sought to be relied upon before this Court. This is not permissible.

14. The last submission sought to be made by learned Counsel for the petitioner is that the case had only been argued on the issue of the application for additional evidence/amendment of the written statement and not the main appeal. This is contrary to the record. A specific query was posed to the learned Counsel for the petitioner whether any application was filed bringing this fact to the notice of the court. Undisputedly, there is no such application filed on record even though the order was passed as far back as on 09.10.2006.

15. There is no merit in the petition.

16. Dismissed.