

(1980) 05 DEL CK 0001

In the Delhi High Court

Case No : Criminal Revision Appeal No. 403 of 1980

Phelps and Co.

APPELLANT

Vs

Shalimar Paints, New Delhi Municipal Committee

RESPONDENT

Date of Decision : 12-05-1980

Acts Referred:

Citation : (1980) RLR 646

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : Prem Shanker and S.C. Nigam, for the Appellant;

Judgement

D.K. Kapur, J.

(1) This is a revision directed against the grant of an interim injunction whereby the petitioner before this Court and the New Delhi Municipal Committee have been restrained from interfering with the repairs being carried out by M/s. Shalimar Paints Ltd , respondent No. 1 in the premises situated on the first floor of property No. 9-A, Connaught Place, New Delhi. It appears that the tenancy premises were sought to be repaired by the plaintiff, i.e., the tenant because the roof had deteriorated. The plaintiff had got the roof inspected by an architect, who suggested that the only method of repair was to get the roof renewed. The tenant asked the landlord M/s. Phelps & Co Ltd., to get the suit property repaired in the suggested manner, but the landlord wanted the tenant to be evicted before these repairs could be carried out,

(2) The tenant then instituted the suit for an injunction and prayed for an ad-interim injunction permitting the work of repairs to be carried on. This injunction was refused by the Subordinate Judge but has been granted by the Senior Subordinate Judge.

(3) When this revision came for hearing before me, it became fairly obvious that this was a matter of great urgency because the building is in a state of half disrepair and half repair as a result of partial repairs having been made after the

injunction was issued. I have heard the parties and have come to the conclusion that this was not the type of injunction that a Civil Court should ordinarily have granted.

(4) In a case in which the main prayer is the grant of an injunction to restrain obstruction to the proposed repairs, the granting of the same relief by way of an interim injunction followed by the actual physical carrying on of those repairs would mean that the suit virtually stands fully decided by the interim injunction. From that point of view, I have been compelled to find whether there were some overwhelming factors which weighed in favor of the tenant justifying the grant of an injunction.

(5) I have been taken through the various provisions of law and find that the Delhi Rent Control Act, 1958 has given some rights to get repairs effected through the agency of the landlord. This is provided for by Section 44(1). It seems at first sight that the tenant had this right even earlier u/s 108(l)(f) of the Transfer of Property Act. But that is not so. In that Section it is provided that the lessee can get repairs effected himself if the Lesser neglects to carry out those repairs "which he is bound to make. The repairs which he is bound to make refer to repairs that the Lesser is bound to make under the terms of the lease or under any special statute. Normally, the lessee does not have to make any repairs himself under the T.P.A. Under the Delhi Rent Control Act, the Landlord is bound to keep the premises in good repair. Then it is provided in Section 44(2) of the Delhi Rent Control Act that if the landlord does not make the repairs after getting notice and a reasonable time has passed, then the tenant can get the repairs done himself and deduct one month's rent-this is the maximum amount he can deduct in one year. It is further provided in Sub-Section (3) that if repairs are such without which the premises are not habitable or usable, then the tenant can give the landlord a notice and can apply to the Controller who may after taking into consideration the estimate of the cost of the repairs grant the permission for the repairs to, be made. In such a case, the Controller gives to the tenant the authority to make repairs at the expense of the landlord. Even for such repairs not more than half the yearly rent can be deducted from the landlord. If the estimated cost is more, the Controller may permit the tenant to bear the extra cost over and above the half yearly rent.

(6) The repairs in the present case, such as the proposed replacement of the roof, are almost certainly likely to exceed more than one month's rent, and probably, even more than a year's rent. This is a mere estimate by myself keeping in view the present cost of construction and the other rents in the Connaught Place area. In any case, here the landlord did not carry out the repairs after due notice, so the tenant is entitled to carry out the repairs u/s 44(2). If he does carry on these repairs, he can deduct not more than one month's rent as his expense. He could also apply u/s 44(3) to the Controller and in that case he might have got an order allowing him to deduct six months' rent. It is for the tenant to choose which is the preferable method for effecting the repairs.

(7) If the repairs are really urgent, it would seem that the method of moving the Controller will delay the matter because the decision of the Controller is bound to take time. To my reading, Section 44(2) allows the tenant to make these repairs if the landlord neglects to make repairs. Of course, this does not mean that tenant can make any repairs he likes and change the house by making unauthorised constructions and saying they are repairs. The repairs have to be repairs only, i.e., reconditioning and reconstructing to restore what was there earlier. In other words, repairs is nothing more than reinstatement of the original shape which may have deteriorated through the passage of time and thus decayed. It is not the substitution of something new or construction of anything other than something which existed earlier at the place. Repairs is nothing more or less than re-instatement of the original. It means bringing into being that was already there... it is a renovation and nothing more. It is not for me to decide what is the nature of the repairs which are being carried out under the order, but I feel that in the circumstances of this case, as the landlord refuses to carry out the repairs except after the tenant has vacated the premises, it was not wrong for the Court to grant the injunction payed for. I would not, in any case, interfere with the grant of such an injunction on the revisional side.

(8) I think, I would just make one clarification about the injunction. The effect of the injunction is to restrain the defendants from interfering with the repairs. It does not mean that the repairs will become legally valid in the sense of being approved by the Civil Court. Whatever repairs are carried out will have to correspond to the Municipal Corporation bylaws and the plan of the building as sanctioned originally. Any unauthorised construction under the cover of this injunction will not be considered to be justified merely because an injunction has been granted. With these remarks, I dismiss the present revision. Parties to bear their own costs.