
(2012) 02 DEL CK 0262

In the Delhi High Court

Case No : Regular First Appeal No. 874 of 2003

Prof. (Dr.) S.K. Kacker

APPELLANT

Vs

AIIMS

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2012) 02 DEL CK 0262

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : C. Hari Shankar with Mr. C.M. Jaya Kumar and Mr. Pushkar Kumar Singh, for the Appellant; Rajat Katyal with Ms. Prarthna Kedia for AIIMS, for the Respondent

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 1.8.2003 dismissing the suit filed by the appellant/plaintiff, an ex-Director of All India Institute of Medical Sciences, for recovery of an amount of Rs.4,23,914/-.

2. The Trial Court dismissed the suit on account of the fact that the claim of the appellant/plaintiff was adjusted against the claims of the respondent/defendant towards penal rent for occupation of Director's Bungalow, recovery towards car loan and the fact that the appellant/plaintiff was paid salary for the period he did not work.

3. Learned counsel for the appellant/plaintiff very fairly confines the relief claimed in the appeal only to disputing the claim of the respondent/defendant for penal rent for the period from 19.7.1996 to 31.10.1996 inasmuch as during this period the appellant/plaintiff continued in the premises by virtue of an undertaking given by the counsel for the respondent/defendant/AIIMS in a Writ Petition filed in this Court. The appellant/plaintiff ultimately retired on 31st October, 1996. Learned counsel for the appellant/plaintiff has relied upon the

judgment in the case of Ram Dayal Rai Vs. Jharkhand State Electricity Board and Others, wherein the Supreme Court in para 16 has held that when a person stays in a government accommodation pursuant to orders passed by the Court, then, it cannot be said to be totally unauthorized occupation. It was held that, no doubt, recovery can be made, for occupation of the premises, of more than the normal rate of rent, however, there cannot be disproportionate reduction from the pensionary benefits of a retired employee. In the facts of the case before the Supreme Court since the admitted rent was Rs.25 /- per month, the Supreme Court directed the payment of Rs.500/- per month for the period of unauthorized occupation which was from 1.11.1999 to 6.1.2000. The Supreme Court, in fact, did not allow the Government to make deductions during the period for which the employee had stayed pursuant to the orders passed by the Courts. Paras 16 and 17 of the judgment in the case of Ram Dayal Rai (supra) read as under:-

16. In the instant case, the appellant vacated the quarter in question within the period specified by the High Court and he informed the respondents about the vacation of the quarters and even after this information the appellant was penalized. The punishment of 5% cut in pensionary benefits, in our opinion, is disproportionate to the misconduct alleged against the appellant. The appellant vacated the Board's quarters on 6.1.2000 whereas he ought to have vacated the same on 1.11.1999 as per order dated 4.10.1999 of the High Court. The High Court, on various occasions, ordered extension of period on humanitarian grounds. Therefore, extension of time granted by the High Court and the occupation of the quarters during that period as per the orders of the Court cannot be treated as or construed as an unauthorized occupation. The continuance thereof in the quarters in question can, therefore, be treated only as litigious possession. But the fact remains that he had not vacated the quarters on 1.11.1999 but in fact vacated only on 6.1.2000.

17. We are, therefore, of the opinion that the impugned order does call for interference by this Court and modification of the same in order to meet the ends of justice. The occupation of the quarters after 1.11.1999 is illegal. When a question was put, the learned counsel appearing for the appellant submitted that he was paying the monthly rent of Rs. 25. Justice would be amply met if we direct the appellant to pay a sum of Rs. 5000 per month for the entire period of illegal occupation (from 1.11.1999 to 6.1.2000). The balance of convenience and the prima facie case is also in favour of the appellant. If the pensioner's benefit is cut at 5% out of the total amount of pension payable to the appellant, the appellant will suffer an irreparable loss and injury since, after retirement, the pensionary benefit is the only amount available to take out a livelihood for the retired employees of the Government.

4. In the facts of the present case, the appellant/plaintiff admittedly continued to stay in the premises of respondent/defendant/AIIMS for the duration of the Writ Petition on account of the statement given by counsel for the respondent/defendant/AIIMS in the Writ Petition which was filed by the appellant/plaintiff.

Therefore, in terms of the ratio of the judgment of the Supreme Court in the case of Ram Dayal Rai (supra), the possession of the appellant/plaintiff cannot be said to be unauthorized occupation entitling the respondent/defendant/AIIMS to claim penal charges for the said period. The respondent/defendant/AIIMS, therefore, cannot claim the penal charges, except the admitted rent for the period during which the Writ Petition of the appellant/plaintiff remained pending in this Court. Thereafter, however, the respondent/defendant is entitled to claim a reasonable amount for the period from 19.7.1996 to 31.10.1996 - the period of unauthorized occupation, by deduction from the retiral benefit of the appellant/plaintiff.

5. Accordingly, this appeal is disposed of by dismissing the appeal so far as the claims other than the claims being the unauthorized deductions made by the respondent/defendant/AIIMS for the period for which the appellant/plaintiff stayed in the Director's Bungalow of AIIMS. It is clarified that the appellant/plaintiff will not be liable to pay any penal charges for the period during which the Writ Petition remained pending before this Court and which period ended on 19.7.1996. The respondent/defendant/AIIMS can for the period from 19.7.1996 to 31.10.1996, claim reasonable charges in accordance with the aforesaid ratio of the Supreme Court's judgment in the case of Ram Dayal Rai (Supra).

6. Accordingly, let the respondent/defendant/AIIMS pass an appropriate speaking order qua the claim of a reasonable amount for occupation by the appellant/plaintiff of the Director's Bungalow of the respondent/defendant/AIIMS from 19.7.1996 to 31.10.1996, and, such claim can thereafter be adjusted against the monies which the respondent/defendant/AIIMS has of the appellant/plaintiff. Any amount in excess, thereafter available with the respondent/defendant, be refunded back to the appellant/plaintiff within a period of 4 weeks of passing of the order.

7. Parties are left to bear their own costs. Appeal is disposed of accordingly in terms of the aforesaid observations.