

(1970) 05 DEL CK 0018
In the Delhi High Court
Case No : Second Appeal No. 28 of 1970

Rai and Sons (P). Limited

APPELLANT

Vs

Phelps and Co. (P). Limited and Others

RESPONDENT

Date of Decision : 11-05-1970

Acts Referred:

Citation : (1970) 6 DLT 523

Hon'ble Judges : P.N. Khanna, J

Bench : Single Bench

Advocate : S.B. Singh and R.M. Lal, for the Appellant;

Judgement

P.N. Khanna, J.

(1) This is an appeal u/s 39 of the Delhi Rent Control Act, 1958, herein called-the Act" by M/s Rai & Sons Pvt. Ltd. a company which is alleged to be the tenant in a portion of the building known as Phelps Building, in Con- naught Mace, New Delhi, against the order dated March 18, 1970, of the Rent Control Tribunal, Delhi, who dismissing its appeal, confirmed the order dated January 12, 1970 of the learned Additional Controller, Delhi directing the appellant u/s 15(2) of the Act to deposit the arrears of rent at the rate of Rs 1,940,-per month with effect from January 1, 1969 up to date within one month of the order and also to deposit further rent month by month by the 15th day of the next following month at the same rate.

(2) During the pendency of the application for eviction of the appellant and respondents No. 2 to 5 on the ground that the appellant had sublet, assigned or otherwise parted with possession of portions of the tenancy premises in favor of respondents Nos. 2 to 5 without the landlord"s consent, an application u/s 15(2) of the Act was made by the respondent No. 1 for directions against the appellant to pay arrears of rent and the future rent.. The appellant company contested the claim of respondent No. 1. It contended that the eviction petition was filed on the basis of a tenancy which admittedly was created in the year 1955. This tenancy

was in favor of one Rai Ranjit Rai in his personal capacity with a right to use the premises for the purposes of the business of the companies with which he was associated. Although the rent was paid by the appellant during the past few years, this, the appellant contended, was being done for and on behalf of Rai Ranjit Rai, who never surrendered his tenancy and continues to be the tenant up to this date. The rate of rent was also disputed. The appellant's averments were, however, denied by respondent No 1, the landlord.

(3) The Additional Controller held that prima facie the relationship of landlord and tenant existed between the parties; and that the appellant had prima facie agreed to pay Rs. 1940 per month as rent. The appellant was, Therefore, directed to pay the arrears of rent and future, as stated above. The learned Rent Control Tribunal in appeal, concurred in this finding, dismissed the appeal and confirmed the said order of the learned Additional Controller. The appellant has come up to this court in second appeal against the said order.

(4) At the outset, the learned counsel for the appellant, Mr. Ved Vyas, referred to three alternatives which were offered by the appellant-Company to respondent No. 1 during the course of arguments before the learned Rent Control Tribunal and which offer was repeated in this court, i.e. (a) Mr. Ranjit Rai shall deposit the entire amount of rent up to date and shall go on depositing rent from month to month without prejudice to the contentions of the respondent landlord; (b) The appellant company shall furnish bank guarantee for the total amount and rent due up to date and shall augment this guarantee periodically to safeguard all legitimate right of the landlord; or (c) The appellant company shall pay the entire amount of rent up to date and shall make further commitments monthly, under protest without prejudice to the contentions of the parties. Mr. Radha Mohan Lal, the learned counsel for respondent No. 1 however, insisted that none of the aforesaid alternatives was acceptable to his client as none was in accordance with law. Offer (c) could be accepted by his client only if the payment was made unconditionally. The landlord, according to him, was and not entitled to the arrears of rent of the premises and the question of attaching conditions did not arise which were neither warranted by law nor acceptable to the client. Respondent No. 1, the landlord, would be within his rights to receive the rent, he urged; and in case the relationship of landlord and tenant was not established ultimately, the appellant could file a civil suit to recover the amount paid by him.

(5) Mr. Ved Vyas then contended that an order for deposit of rent u/s 15(2) of the Act could be passed only if the relationship of landlord and tenant, which has been denied by the appellant in this case, was established. There was no provision in the Act for making an interim order on the basis of some so-called prima facie evidence of the relationship of landlord and tenant, when the person proceeded against as a tenant asserts that he is not a tenant. The reference by the learned Tribunal, submitted Mr. Ved Vyas, to the judgment of the Calcutta High Court in *Jamini Khan v. Dharendra Math Jundu* where a learned single Judge observed that the section must be given a workable meaning, was of little

relevance in view of the judgment of Division Bench of that Court in (7. R. Gellatly v. J. R. W. Caanon where the appellant conceded that he was a tenant, and on the basis necessary orders were passed. But, in his written statement he had taken up the plea that he was not a tenant. Dealing with that plea, the Division Bench observed that "the Rent Act can apply only to tenants. In fact, section 14(4) itself says that an order under that section will be made if the "tenant" contests the suit. If the person, sued as a tenant, pleads that he is not a tenant, then till that question is decided against him there can be no question of proceeding against him there as tenant or applying to him section 14(4) or any other provision of the Rent Act" The learned counsel, submitted that unless it was firmly established that the appellant was a tenant and a finding to that effect was given, order u/s 15(2) could not be passed on the basis of a so-called summary investigation.

(6) A reading of section 15, makes it clear that in every proceeding for the recovery of possession of any premises on the ground that the tenant inspire of two months notice of demand has neither paid nor tendered the whole of the arrears of rent legally recoverable from him, the Controller, after hearing the parties, has to make an order directing the tenant to pay to the landlord or deposit with the Controller within one month, the arrears of rent; and to continue to pay or deposit, month by month, by the fifteenth day of each succeeding month, the monthly rent. In proceedings for eviction on any ground other than the non-payment of rent, the Controller, on an application from the landlord for the purposes ,can-like wise make a similar. order. The section contemplates two situations, where either the amount or rate of rent is in dispute, or there is any dispute as to the person or persons to whom the rent is payable. In both such cases, the Control .ler has the power to resolve the dispute. It is also provided mat pending the final decision by the Controller in each of the said two cases, interim order have to be passed by the Controller, In one case interim rant is fixed while in the other case the tenant is directed to deposit with the Controller the amount of rent, which cannot be withdrawn by any party till the dispute is finally decided by the controller and order for payment is made by him No specific provision has been made in the Act for the case where the person proceeded against as a tenant denies that he is a tenant.

(7) Mr. Radha Mohan La!, the learned counsel for respondent No. I, contended that the Additional Controller had the jurisdiction to determine whether the appellant was a tenant or not; and was bound to pass an order u/s 15(2) of the Act, where the application was made to him for the purpose, by respondent No. 1 He relied on Om Purkash Gupta v. Dr . Rattan Singh, where the Supreme Court observed: -

"If the relationships denied, the authorities under the Act have to determine that question also, because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the Act. True they are tribunals of limited jurisdiction, the scope of their power and authority being limited by the

provisions of the Statute. But, a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act because the simplest thing in the world would be for the party interested to block: the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creature of the Statute have limited jurisdiction and have to function within the four corners of the Statute creating them. But, within the provisions of the Act. they are tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceeding like a separate suit or application in execution proceeding. In our opinion, Therefore, there is no substance in the contention that as, soon as the appellant denied the relationship of landlord and tenant, the jurisdiction of the authorities under the Act was completely ousted."

In the case before the Supreme Court, the appellant had denied that he was a tenant and had asserted that he was a licensee under the tenant. The Additional Controller, however, passed an order directing the appellant to deposit the arrears of rent and future rent as and when it became due. The Respondent 1n the said case then made an application under sub-section 15(7) of the Act for striking out his defense against eviction on the ground that the appellant had failed to make the payment or deposit. The appellant denied that he had made any default in the regular payments and asserted that if there was a default, it was not intentional and was the result of miscalculation. This was his attempt to enjoy the benefits under the Act as a tenant. The Controller. however ,struck out his defense. It "-as under these circumstances, that the Supreme Court observed "Such an Order can be passed by the Controller, for the benefit of the tenant, only if the Controller decides that the person against whom the proceedings for eviction had been initiated was in the position of a tenant. Thus, any order passed by the Controller either under action 15 or other provisions of the Act, assumes that the Controller has the jurisdiction to make the order, i. e. to determine the issue of relationship case, when the Controller made the order for deposit of arrears of rent due u/s 15(1) and on default of that made an order under sub-section (7) of section 15, striking out the defense, the controller must be deemed to have decided that the appellant was a tenant."

(8) Thus, it is manifest that though no specific provision is made in the Act, authorizing the Controller to decide whether the person proceeded against is a tenant or not the Supreme Court has settled that the jurisdiction of the Controller to decide this controversy is not ousted by the denial of the exigency of the relationship of landlord and tenant by one of the parties. The power to grant a relief would normally include the power to grant that relief on a provisional basis also, in appropriate cases, by an interim order. The jurisdiction to decide to relationship between the parties, Therefore, it eludes the authority to make interim order in this respect, in appropriate cases,. This is a matter in the discretion of the Controller, which has to be exercised keeping in view all the circumstances of the case. A situation may arise when after going into full evidence led by the parties, the Controller may come to the conclusion that the

person proceeded against as a tenant is not a tenant; and some other person is a tenant. In such a case, the landlord may become entitled to recover rent from that person, who may ultimately be adjudged to be the tenant. If the landlord has in the meanwhile recovered rent, under an interim order, from a person who, though proceeded against as a tenant, has ultimately been held not to be tenant, then the landlord may be able to recover "the same rent twice over from two different persons. The person proceeded against as a tenant, though wrongly, may then have to experience difficulties and face proceedings to recover the amount, which he may have paid in compliance with the interim order of the Controller. Such and other complications have to be avoided and the Controller, Therefore, has to exercise his discretion, in suitable cases in a proper manner only after examining all the facts involved in the case.

(9) In the present case, the Rent Control Tribunal was left with an impression, after examining certain letters on record that the premises in dispute were let out to Raj Ranjit Rai in his individual capacity and not to The appellant company. The learned Tribunal after referring to certain other letters then formed an impression that Rai Ranjit Rai surrendered the tenancy in favor of the appellant company sometimes in 1957, although this was not the case set up by the landlord. Rai Ranjit Rai is the Managing Director of the appellant company. One of the alternatives offered on behalf to the appellant was that the appellant company would pay the entire amount of rent up to date and shall make further commitments monthly under protest without prejudice to the contentions raised by them. The Appellant-Company is thus prepared to pay the rent provided that the company's interest is safeguarded in case it is finally held that the appellant is not the tenant. The order of the learned Rent Control Tribunal confirming the order of the Additional Controller directing the appellant to deposit the entire arrears of rent with effect from 1. 1. 1969 up to date at Rs. 1940-per month can, therefore, be allowed to stand with the clarification that the amount deposited by the appellant will remain deposited with the Controller and none of the parties will be entitled to withdraw the same, without the order of the Controller in this connection after the question whether the appellant is the tenant or not is finally decided. As the time allowed in the original order for payment, has already run out, further time has also to be given to the appellant to comply with the orders.

(10) The appellant is accordingly directed u/s 15(2) of the Act to deposit with the Controller within one month of the date of this order an amount calculated at the rate of Rs. 19401-per month with effect from January, up to the end of the month previous to that in the which deposit is made and continue to deposit month by the 15th day of each succeeding month a sum equivalent to the rent at the said rate. No person shall be entitled to withdraw the amount so deposited, until the Additional Controller decides the relationship of landlord and tenant between the parties and makes an order for payment of The same. This order is of an interim nature and will not prejudice the respective claims of the parties. In case, respondent No.1 fails to establish that the appellant is a tenant, the

amount lying in deposit with the Controller as a result of this order shall be refunded to the appellant.

(11) The order of the Rent Control Tribunal is accordingly upheld with the aforesaid modifications. The appeal is thus partially allowed to that extent. There shall be no order as to costs.