

(1995) 09 DEL CK 0078

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No's. 516 and 1981 of 1995

Raj Bahadur Baweja

APPELLANT

Vs

Narender Singh Sahni and Others

RESPONDENT

Date of Decision : 01-09-1995

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(6), 25B(5)

Citation : (1995) 3 AD 887 : (1995) 60 DLT 310 : (1995) RLR 506

Hon'ble Judges : Mohd. Shamim, J

Bench : Single Bench

Advocate : I.S. Mathur, P.K. Rawal and S.S. Sahni, for the Appellant;

Judgement

Mohd. Shamim, J.

(1) The petitioner through the present revision petition has taken exception to an order dated February 6, 1995 passed by the Additional Rent Controller, Delhi, whereby he dismissed the application for leave to defend moved by him u/s 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act for the sake of convenience) and passed an order of eviction in respect of the premises in occupation of the petitioner shown by red colour in the site plan Ex. Ca annexed with the petition.

(2) Brief facts which gave rise to the present petition are being stated in order to facilitate the disposal of the present revision petition. The respondent herein i.e. Shri Narinder Singh Sahni brought forward a petition for eviction before the Rent Controller, Delhi against the petitioner and respondent No. 2 on the following grounds: that he was owner and landlord of the premises bearing No. 267/2, Street No. 2, Joshi Road, Karol Bagh, Delhi. A portion of the said premises, the details whereof have been given in para 8 of the eviction petition, is in occupation of the petitioner/tenant (hereinafter referred to as the petitioner for the sake of brevity) on a monthly rent of Rs. 28.00 excluding water and electricity charges. The respondent/landlord required the tenanted

accommodation (hereinafter referred to as the disputed premises in order to facilitate the reference) for his own use and occupation bonafide and that of his family members.

(3) The petitioner thereupon moved an application u/s 25B(5) of the Act for grant of leave to contest the said petition for eviction supported by an affidavit. The learned lower Court after hearing Counsel for both the parties and after examining the facts as disclosed through the said affidavit came to the conclusion that the petitioner failed to make out a case u/s 25B of the Act. Hence he rejected the said application for leave to defend and passed an order for eviction from the disputed premises.

(4) Aggrieved and dissatisfied with the said judgment and order the petitioner has approached this Court.

(5) It has been urged for and on behalf of the petitioner by Mr. Ishwar Sahai, Senior Advocate, that the learned Additional Rent Controller fell into a grave error by coming to the conclusion that the petitioner did not raise such pleas in his affidavit before the lower Court which would have disentitled the respondent No. 1 /landlord from obtaining an order for recovery of possession over the disputed premises. According to the learned Counsel the petitioner in his application u/s 25B took various pleas which, if he was allowed to prove by evidence, would have disentitled the respondent No. I from obtaining an order of eviction in respect of the premises in dispute. The learned Counsel contends that the respondent No. 1 is neither the owner nor the landlord of the disputed premises. The disputed premises were let out for residential-cum-commercial purposes. The respondent No. 1 did not require the disputed premises-bona fide for his own use and occupation and that of his family members. This fact is fully manifest from the notice dated September 13,1993 served on the petitioner wherein there is no mention that the respondent No. 1 required the disputed premises for his use and occupation. The respondent No. 1 has got sufficient accommodation to meet his requirement and that of his family members. In fact, he has got enough accommodation in his possession and even to spare.

(6) Learned Counsel for the respondent Mr. S.S. Sahni has urged to the contrary.

(7) Since the fate of the present revision petition hinges on an interpretation of Section 25B(5) of the Act, the provisions of the said Section can be adverted to with profit. It is in the following words:-

"25B (5) -THE Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in Clause (e) of the Proviso to Sub-section (1) of Section 14, or u/s 14A".

(8) It is crystal clear from above that leave to contest the eviction petition can be granted only in those discerning few cases when the affidavit filed by the tenant

discloses such facts as would disentitle the landlord to an order for recovery of possession over the tenanted accommodation. Thus, each and every plea raised by the tenant in his affidavit would not ipso facto entitle him for leave to defend. The pleas raised by the tenant must have some substance and should not be vague. Frivolous pleas which are raised by a tenant in order to forestall and preempt the passing of an eviction order would fall outside the domain of Section 25B and would not entitle a tenant for leave to defend. However, at the same time the Court is not required to look for a defense which is bound to succeed eventually at the time of the final disposal of the eviction petition. It is just possible that the tenant may eventually fail. I am tempted here to cite a few lines from the observations of their Lordships of the Supreme Court in Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal, . " It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under Sub-section (4) and reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by the landlord the Controller has to pose to himself the only question, "Does the affidavit dispose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in Clause (e) of the proviso to Section 14(1) ?" The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits against the other set of affidavits..... The jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit. It is distinctly possible that a tenant may fail to make good the defense raised by him. Plausibility of the defense raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown".

(9) With the above background let us now see as to whether the petitioner in the instant case has raised such type of pleas and defense in his affidavit which would disentitle the respondent No. 1/landlord from recovering possession over the disputed premises.

(10) Learned Counsel for the petitioner Mr. Ishwar Sahai, Senior Advocate, has vehemently contended that the petitioner in the instant case does not require the premises for his own use and occupation. and that of his family members. The learned Counsel in order to substantiate his argument has led me through a copy of the notice dated September 13, 1993 wherein there is no mention that the disputed premises are required bonafide for his own use and occupation and that of his family members (vide para 4 of the affidavit). The learned Counsel thus contends that the omission of the factum of the bona fide requirement from the above-said notice is an intentional one because the respondent No.1 did not need the disputed premises for his own use and occupation. Had there been any such

necessity that would have found a mention in the notice. Curiously enough the petitioner in the said notice has confined himself to recovery of arrears of rent only. According to the learned Counsel the said notice was the foundation whereon the respondent No. 1 was to raise the subsequent structure of his case. Thus if the foundation is missing the entire edifice of the case of the respondent landlord raised by him falls to the ground. In any case, according to the learned Counsel, it gives rise to a triable issue as to whether the respondent/landlord needs the disputed premises bonafide for his own use and occupation and for the members of his family. The learned Counsel in support of his contention has cited the observations of a Division Bench of the Hon"ble Supreme Court as reported in K.S. Sundararaju Chettiar Vs. M.R. Ramachandra Naidu, ,"Non-mention of a reasonable ground for eviction in the notice for eviction on the basis of which a claim for eviction is later on founded usually raises a suspicion about the existence of such ground but such non-mention by itself cannot disentitle a landlord to claim eviction on such ground. If a claim for eviction founded on such ground in the petition for eviction is proved to be well-founded and the same is consistent with the grounds on which eviction is permissible in law, the landlord will be entitled to a decree for eviction notwithstanding the fact that such ground was not mentioned in the notice for eviction."

(11) Learned Counsel for the respondent/landlord, on the other hand, has contended that a notice u/s 106 of the Transfer of Property Act is not required in order to secure a decree for eviction against a tenant under the Rent Control Act. The learned Counsel in support of his argument has led me through the observations of Their Lordships of the Supreme Court as reported in V. Dhanapal Chettiar Vs. Yesodai Ammal, ."In order to get a decree or order for eviction against a tenant under any State Rent Control Act it is not necessary to give notice u/s 106 T.P. Act. Determination of a lease in accordance with the Transfer. of Property Act is unnecessary and a mere surplusage because the landlord cannot get eviction of the tenant even after such determination. The tenant continues to be so even thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself is sufficient and it is not obligatory to found the proceeding on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the T.P. Act."

(12) There is no dispute with the above proposition of law and this fact has been conceded even by the learned Counsel for the petitioner Mr. Ishwar Sahai. However, as I have observed above, the non-mention of the factum of bona fide requirement in the notice casts suspicion with regard to the fact as to whether in fact the premises are required bonafide for use and occupation by the respondent No. 1. It is abundantly clear from the authorities cited above that at this stage a tenant is not required to prove his case. That stage is yet to come and it comes only when permission is granted to contest at the time of trial. A tenant at this stage is simply required to show that he has got such defense which if he is allowed to substantiate would disentitle the landlord from securing an order of eviction.

(13) The next contention raised by the learned Counsel for the petitioner is that the respondent/landlord is neither the owner nor the landlord of the disputed premises. The petitioner has stated in his application for leave to defend supported by an affidavit that respondent No. 1 is neither the owner nor the landlord of the disputed premises (vide paras 5 & 10 of the affidavit). It has further been stated by him that Shri Gurdev Singh, brother of the respondent No. 1, is the owner and landlord of the disputed premises. The father of the respondent No. 1 Shri Prem Singh expired on September 25, 1965. He came to know of this fact from his brother Shri Gurdev Singh through his letter dated April 20, 1983. He has further stated therein that he had become the exclusive owner of the disputed premises in occupation of the petitioner (vide para 6 of the affidavit). The petitioner has further stated in his affidavit (vide para 7) that Shri Gurdev Singh also claimed in his letter that his father Shri Prem Singh executed a Will in his favor and by virtue of the said Will he had become the owner of the disputed premises. Shri Gurdev Singh is further reported to have informed him through his letter dated July 19, 1992 that he had filed a suit for partition of the suit property which was pending decision before the Court of Shri Ravi Kumar. It has further been stated by the petitioner in his affidavit that the petitioner received a notice from Shri Gurdev Singh dated May 18, 1983, photocopy whereof has been placed on record, where through the rent was demanded from him and he started paying rent to the said Shri Gurdev Singh and in fact paid the rent for the period from June 1, 1983 to December 31, 1983. The petitioner further paid the rent to the said Gurdev Singh for the period ending December 31, 1987. Subsequently he also paid the rent on receipt of a call from Shri Gurdev Singh for the period ending December 31, 1991. Later on Shri Gurdev Singh failed to collect the rent from the petitioner and as such a cheque bearing No. 58679 dated September 10, 1993 drawn on the Central Bank of India, Karol Bagh, New Delhi, covering the rent for the period from January 1, 1992 to September 30, 1993 was sent and the said cheque was encased by Shri Gurdev Singh and a receipt dated October 11, 1993 was sent, photocopy whereof has been placed on record (vide para 7 of the affidavit).

(14) The respondent in his counter affidavit has not denied the factum of the execution of the Will by Shri Prem Singh in favor of Shri Gurdev Singh. He has simply contented himself by stating in para 7 of his counter affidavit that it is wrong and denied that Shri Gurdev Singh has inherited the disputed premises on the basis of the Will. Thus, the factum of the execution of the Will has not been challenged. Rather this fact has been admitted by the respondent No. 1 in the partition Suit No. 218/86, Gurdev Singh v. Narender Singh (vide para 3 of the written statement). Though he has stated that the said Will is a forged one.

(15) It has been urged for and on behalf of the respondent No. 1 that the disputed premises fell to the share of the petitioner vide judgment and decree dated March 14, 1993 passed in the suit alluded to above. The learned Counsel has in this connection led me through the statement of Shri Gurdev Singh wherein he has admitted that he has received a sum of Rs. 1,20,001.00 in full

and final settlement of his claim in respect of the disputed property. The learned Counsel thus contends that the respondent No. 1 is the owner and the landlord of the disputed premises.

(16) Surprisingly enough there is neither any mention with regard to the said compromise decree in the petition for eviction dated March 23, 1994 nor in the counter affidavit dated October 26, 1994 filed in reply to the application for leave to defend. Admittedly, the compromise decree is dated March 11, 1993. Hence this Court feels that the respondent No. 1 should have mentioned this fact in his petition for eviction as well as in his counter affidavit which were filed subsequently to the passing of the alleged compromise decree. The petitioner has also placed on record a photocopy of the rent receipt issued by Shri Gurdev Singh where through he received a sum of Rs. 588.00 i.e., the rent for the period from January 1, 1992 to September 30, 1993 vide receipt dated October 11, 1993. It implies there by that Shri Gurdev Singh was receiving the rent in respect of the disputed premises even after the passing of the compromise decree. Thus the petitioner has raised a question as to who is the landlord of the disputed premises which requires to be gone into and which can be adjudicated upon after the parties have led their evidence in full and it would be premature to adjudicate upon the rights of the parties at this stage.

(17) It has next been contended by the learned Counsel for the petitioner that assuming argue do the respondent No. 1 acquired the ownership right in respect of the disputed property by virtue of the compromise decree dated March 11, 1993, in that eventuality the petition on the ground of bonafide requirement would not be maintainable and the same would be hit by Section 14(6) of the Act inasmuch as the same was filed much before the expiry of the statutory period of five years after the passing of the compromise decree. This according to the learned Counsel is again a triable issue.

(18) Learned Counsel for respondent No. 1 in reply to the above contention has urged that the respondent No. 1 was only a co-sharer with his other brothers in the disputed property. If he has acquired the ownership right on the basis of a compromise decree, then such type of the acquisition of the property would not be tantamount to the fresh transfer of the property and as such the provisions of Section 14(6) of the Act would not be attracted to the present case. The learned Counsel in this connection has led me through an authority as reported in V.N. Sarin Vs. Ajit Kumar Poplai, . "The object of Section 14(6) is to prevent transfers by landlords as a device to enable the purchasers to evict the tenants from the premises let out to them. Where the right to evict a tenant could not be claimed by a landlord u/s 14(1)(e), the Legislature thought that the landlord should not be permitted to create such a right by adopting the device of transferring the premises to a purchaser who may be able to prove his own individual case u/s 14(1)(e).

(19) Having regard to the object intended to be achieved by Section 14(6), it cannot be held that a person who acquired property by partition can fall within

the scope of its provision. In cases falling u/s 14(6), a person who had no title to the premises" and in that sense, was a stranger, becomes a landlord by virtue of the transfer. The position is entirely different in the case of a partition, it cannot, Therefore, be held that allotment of one parcel of property to an individual coparcener as a result of partition is an acquisition of property by transfer by the coparcener within the meaning of Section 14(6)".

(20) There is no dispute with the above said proposition of law. But the question which arises for determination in the instant case is as to whether the compromise decree in the instant case would be a transfer from one coparcener to another or a purchase of the property simplicities by one brother from the other brother. This also again is a matter which is to be gone into after the parties have led their evidence in full.

(21) Besides the above points raised by the petitioner in his affidavit, he has also set up certain other pleas by way of defense such as, the premises were let out for residential-cum-commercial purposes. The learned Counsel for the respondent in order to countervail the said contention has placed on record photocopy of the written statement filed by the petitioner in a petition for fixation of standard rent under Sections 6 & 9 of the Act. It has been urged on the basis of the said written statement that the petitioner had admitted therein (vide paras 4 & 5 of the written statement) that the premises in dispute were let out for residential purposes. Hence the petitioner cannot be allowed to eat his own words and to allege to the contrary. Curiously enough the said documents were not filed before the Controller and were placed only on the record of this Court. Thus the petitioner could not get any opportunity to rebut the same. Hence I am not inclined to place any reliance on the same at this stage. Consequently this point will also need evidence for the purposes of adjudication.

(22) In the circumstances stated above the petitioner is entitled to succeed. The revision petition is allowed. The impugned order dated February 6, 1995 passed by the learned Additional Rent Controller, Delhi, is set aside. Consequently, the application u/s 25B of the Delhi Rent Control Act for leave to defend the eviction petition is allowed. The case is remanded to the Trial Court for trial afresh in accordance with law; The parties are left to bear their own costs.