
(1995) 08 DEL CK 0066

In the Delhi High Court

Case No : Civil Revision Appeal No. 514 of 1995

Rajshri Pictures Pvt. Limited

APPELLANT

Vs

Hem Chand and Others

RESPONDENT

Date of Decision : 01-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1995) 59 DLT 667

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Vinod Kumar and A.P. Aggarwal, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) Mr. A.P. Aggarwal, Advocate appears for the respondents and place his power of attorney on record.

(2) This is a revision petition filed by the petitioner u/s 115 of CPC assailing the order dated 12.1.1995 passed by Shri Sunil Kumar Aggarwal dismissing the application filed under Order XIV Rule 5 of CPC . for addition/deletion of issues framed by the Court in the suit.

(3) The respondent filed a suit for recovery of possession and damages for premises that had been let out to the petitioner at a rental of Rs. 4500.00 per month. It is the respondent's case that the monthly tenancy was terminated by a valid notice but the petitioner did not vacate the premises. Hence the suit. The petitioner filed his written statement raising a number of pleas. The Trial Court framed the following issues: "1. Whether suit has been valued properly for the purposes of Court fees and jurisdiction? Opd 2. Whether defendant is a perpetual lessee? Opd 3. Whether suit is for partial eviction of tenancy premises? If so, its effect? 4. Whether the suit is barred u/s 50 of Drc Act? Opd 5. Whether tenancy of defendant was legally and validly terminated? Opd 6. Whether plaintiffs are entitled to decree of possession in respect of suit property? Opd 7. Whether

plaintiffs are entitled to damages. If so at what rate and for which period? Opd 8. Relief.

(4) Counsel for the petitioner Mr. Vinod Kumar has been heard in support of the petition. Mr. Kumar urges that the following issues ought to be framed in addition to the issues already framed by the Court:- "1. Whether the suit is not maintainable as per the preliminary objection No. 4 in the written statement. If so, its effect? OPD. 2. Whether the defendant is a tenant under a decree passed by the Court of competent jurisdiction. If so, its effect? OPD. 3. Whether the suit is for partial eviction? If so, its effect? OPD. 4. Whether the defendant sought extension of the agreement of lease after the expiry of the period of five years and the plaintiffs granted extension thereof? If so, its effect? OPD"

(5) It is further urged by Mr. Vinod Kumar that issue No. 2 as framed by the Trial Court viz. "whether defendant is a perpetual lessee?" does not arise from the pleadings and is liable to be deleted. The plea of petitioner being a perpetual lessee was not taken in the written statement filed by the petitioner. (i) The Trial Court in the impugned order has correctly held that the proposed issue No. 1 is covered by issue No. 5 as already framed as both relate to the question of validity of the termination of the tenancy. The proposed issue is a surplusage. (ii) As regards proposed issue No. 2, Mr. Kumar submits that the issue is necessary to enable petitioner to produce on record the judgment/ order of the Additional Rent Controller who passed the compromise decree in terms of which the tenancy came into being. For producing the said compromise decree, it is not necessary to frame an issue as proposed by the petitioner. It would be open for the petitioner to produce the documents which prove the creation of his tenancy including the compromise decree referred to as permissible at Law. Counsel for the respondent accepts the said position. (iii) Proposed issue No. 3 is already covered by the issue No. 3 as already framed. (iv) As regards proposed issue No. 4, the stand of the petitioner is that the petitioner/defendant had exercised the option to renew the lease (para 3 of written statement). The effect of the renewal of the lease is that the tenancy stands extended for a further period of five years as provided in the agreement. The petitioner Therefore contends that issue No. 4 should be framed so that he can lead evidence with regard to the renewal of lease/tenancy. It is, however, not necessary to frame separate issue in this regard as the same would be covered under issue No. 6. In case the lease/tenancy has been validly extended, the respondent would not be entitled to possession. It would be open for the petitioner to lead evidence and prove documents as admissible under law with regard to the alleged renewal as claimed, as falling within issue No. 6. Counsel for the respondent also accepts this position. (v) The Trial Court, however, erred in framing issue No. 2 i.e. whether defendant is a perpetual lessee? The petitioner is correct in stating that it was not their plea that petitioner is a perpetual lessee. The petitioner's plea for whatever it is worth was that the petitioner having occupied the premises pursuant to a compromise decree of Court, cannot be evicted under the suit (refer preliminary para 2 of objections). The said issue does not arise from

pleadings and is deleted. The impugned order is sustained, except to the extent that issue No. 2 as framed is deleted. The petition is disposed of with the directions/clarifications as given regarding leading of evidence and production of documents.