
(2001) 04 DEL CK 0093
In the Delhi High Court
Case No : CM (M) No. 513 of 1996

Ramesh Chander

APPELLANT

Vs

Smt. Geeta Madhok and another

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Citation : (2001) 5 AD 263 : (2001) 92 DLT 349 : (2001) 59 DRJ 371

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Mr. S.K. Sahni, for the Appellant; Mr. S.N. Gupta, for the Respondent

Judgement

Manmohan Sarin, J.—The petitioner by this petition assails the order dated 1.11.1996, passed by the Rent Control Tribunal, Delhi dismissing the petitioner's appeal bearing RCA No. 176/96. The said appeal had been preferred by the petitioner against the order dated 13.2.1996, passed by the Additional Rent Control dismissing his application under Order VII Rule 7 & 11 CPC read with Section 112 and 113 of Transfer of Property Act and Section 151 CPC, moved for dismissal of the eviction petition.

2. The facts relevant for the disposal of the present writ petition may be briefly noted.

3. Smt. Bimla Rani, the predecessor in interest of the respondents in the present petition, filed an eviction petition u/s 14(1) (a & j) of the Delhi Rent Control Act, 1958. The said eviction petition was being defended by the petitioner on numerous grounds and pleas. During the pendency of the petition the respondents Smt. Geeta Madhok and Mr. Neeraj Madhok moved an application under Order I Rule 10 read with Section 151 CPC dated 3.4.1995 for impleadment. The application was allowed by the Additional Rent Controller, vide an order dated 19.5.1995. The Additional Rent Controller purporting to treat the said application under Order XXII Rule 10 CPC, allowed the substitution of Smt. Geeta Madhok and Mr. Neeraj Madhok in place of Smt. Bimla Rani, holding that

since the property had been purchased by Smt. Geeta Madhok and Mr. Neeraj Madhok, interest had developed upon them. The petitioner challenged the said order of substitution before the Rent Control Tribunal as well as in CM(M) No. 108/96, to which proceedings I shall revert in the later part of this order.

4. As far as the present petition is concerned, the petitioner on the substitution of Smt. Geeta Madhok and Mr. Neeraj Madhok in place of Smt. Bimla Rani moved an application (under order VII Rule 7 read with Order VII Rule 11 CPC) for dismissal of the eviction petition. The petitioner contended that the respondents Mrs. Geeta Madhok and Mr. Neeraj Madhok had through their counsel issued a notice dated 13.9.1995, wherein it was stated interalia:

"That in spite of the fact that the aforesaid fact of my clients having purchased the said property has come to your knowledge, you have failed to pay the monthly rent to my client and as such have defaulted in making payment of rent.

That in view of the aforesaid reasons, my clients do not want to retain you as a tenant in the aforesaid premises and terminate your tenancy with effect from the midnight of 30th October, 1995."

5. The petitioner's application under order VII Rule 7 read with Order VII Rule 11 and Section 151 CPC is based on the plea that the respondents have sought to terminate the tenancy w.e.f. 30.10.1995, thus admitting the subsistence of the tenancy. Therefore the right to sue and prosecute the petition No. E-3/82 instituted by Smt. Bimla Rani did not survive.

6. Learned Additional Rent Controller as noted earlier had dismissed the said application vide order dated 13.2.1996 with costs of Rs. 100/-. The appeal against the order dated 13.2.1996 was also dismissed by the Rent Control Tribunal vide order dated 1.11.1996.

7. Mr. S.K. Sahni, learned counsel for the petitioner urged that with the notice dated 13.9.1995 respondents have accepted the petitioner as a tenant up to 30.10.1995. Therefore, no cause of action or right to sue survives in their favor on the plea of non-compliance of the earlier notice dated 23.10.1981, based on which the eviction petition No. 3/82 was filed. Learned counsel for the petitioner relied on Section 113 of the Transfer of Property Act to submit that there was a waiver of the earlier notice. Reliance is placed on *Tayabali Jaffarbai Tankiwala Vs. Asha and Co. and Another*, to urge that the earlier notice stood waived with admission of subsistence of tenancy up to 30.9.1995 as per the notice dated 13.9.1995.

8. Learned counsel submits that in the instant case by issuance of the notice dated 13.9.1995 the respondents have knowingly and intentionally relinquished their right to continue with the earlier eviction petition. Moreover as regards non-payment of rent, civil suits for recovery were already pending. Learned counsel also urged that on a proper reading of the constitution Bench judgment in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, it would be seen that the said judgment

cannot be seen as completely nullifying the effect of Sections 111(h) and 113 of the Transfer of Property Act while Section 106 of the said Act has been watered down in so far as the premises to which the statutory provisions of Delhi Rent Control Act apply.

9. Having heard the learned counsel for the parties and after perusing the records, I am of the view that the issuance of the second notice dated 13.9.1995 does not amount to waiver of the earlier notice given by the erstwhile owner Smt. Bimla Rani. Smt. Bimla Rani had terminated the tenancy of the petitioner and instituted an eviction petition u/s 14(1)(a) and (j) of the Delhi Rent Control Act. The cause of action had arisen for non-payment of rent as well as for substantial damage to the premises in question. The petition was properly and legally instituted and the petition was being prosecuted. Petition once been instituted on a valid cause of action, the same will not extinguish. Moreover by virtue of the protection under the Delhi Rent Control Act, the tenant would remain a statutory tenant till and order of eviction was passed against him. Therefore the question of waiver, by a subsequent notice of termination of tenancy is of no consequence. The respondents had been prosecuting the petition, and Therefore it cannot be said that any intentional relinquishment has been demonstrated or exhibited by them of the cause of action that had arisen earlier, when the petition was instituted. Most importantly, the ground u/s 14(a) of the DRC Act, does not require termination of tenancy. Its only requirement is with regard to notice of demand for payment of the arrears and the requirement is with regard to the manner prescribed of service being in accordance with Section 106 of the Transfer of Property Act. Besides the observations of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, are relevant. The Supreme Court in the cited case held as under:

" 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 land lord 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 proceedings on the basis of the determination of the lease by issue of notice in accordance with Section 106 of the T.P. Act. On the question of requirement of such a notice u/s 106 T.P. Act the difference in the language of various State Rent Acts does not bring about any distinction. It is not correct to say that Section 106 of the T.P. Act merely providing for termination of a lease either by the Lesser or the lessee by giving the requisite notice is an extra protection against eviction. The purpose of this provision is merely to terminate the contract which the overriding Rent Acts do not permit to be terminated. Even if the lease is determined by forfeiture under the Transfer of Property Act the tenant continues to be a tenant, that is to say, there is not forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted

under the State Rent Act, not otherwise."

10. From the foregoing, it would be seen that the issuance of a notice to quit to a tenant for premises covered by the Delhi Rent Control Act, was a mere surplusage and whether the tenancy had been terminated or not would not make any difference. As regards the contention of the petitioner that the Additional Rent Controller and the Rent Control Tribunal had erred in not following the judgment of the Supreme Court in *Tayabali Jaffarbai Tankiwala Vs. Asha and Co. and Another*, . The said case is clearly distinguishable. In the said case a notice dated 13.6.1956 had been given by the landlord to the tenant calling upon him to pay the arrears of rent w.e.f. 1.7.1953 amounting to Rs. 1826/-. The tenant did not vacate. Therefore, a second notice was sent dated 18.10.1957, wherein the ground of bonafide requirement was also added. In the cited case, the landlord received the amount of arrears, which were due as per the first notice. In other words, the rent had been received up to March 1955 and the tenant made a further tender of the full amount of arrears, but the cheque was returned by the landlord. It was in these circumstances that the Supreme Court held that by issuance of the second notice landlord had waived the first notice.

11. To sum up in the instant case the mere issuance of a second notice terminating the tenancy cannot negate and nullify, the cause of action that had accrued, based on which the erstwhile owner Smt. Bimla Rani had instituted the suit. The issuance of notice of termination was a surplusage and not required as held by the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal*. There was also no intentional relinquishment of the cause of action that had accrued. The order passed by the Additional Rent Controller and the Rent Control Tribunal dismissing the application under Order VII Rule 7 CPC and Order VII Rule 11 CPC cannot Therefore be faulted with. No ground is made out for interference in the exercise of jurisdiction under Article 227 of the Constitution of India.

12. Beside, another significant development, which deserves to be taken note of is that the present petitioner had challenged the order of substitution dated 23.12.1995 before the Rent Control Tribunal in CM (M) No..108/96. Learned Single Judge of this court vide order dated 19.2.1997, allowed the said petition holding that since the prayer of the present respondent under Order 1 Rule 10 CPC was to be imp leaded as a party, the Rent Controller could not have allowed their substitution in place of Smt. Bimla Rani. Learned Single Judge also held that since the dispute as to title between the parties i.e. petitioner and Smt. Bimla Rani was already subjudice before the civil court, the Controller would not proceed with the case. Respondents Mrs. Geeta Madhok and Mr. Neeraj Madhok were also enjoined from creating any third party interest or from encumbering the property till the decision of the civil suit. As of now the legal position is that the order substituting the respondents in place of Smt. Bimla Rani has been set aside.

In these circumstances as of now, the very basis for the application under Order VII Rule 7 and 11 CPC read with Section 151 CPC by the petitioner for rejection

of the eviction petition on the ground of a notice issued by the said respondents is not available. The present petition has even otherwise been held to be without merit. Petition is dismissed, with no orders as to costs.