
(2006) 08 DEL CK 0236

In the Delhi High Court

Case No : CM (M) No. 1920 of 2005 and CM No. 12123 of 2005

Sada Singh

APPELLANT

Vs

Vishwa Mitter Anand

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 4
Delhi Rent Control Act, 1958 — Section 14(1), 14(11), 38

Citation : (2006) 08 DEL CK 0236

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Rajat Aneja, for the Appellant; M.M. Hashmi, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioner is the perpetual lessee of property bearing No. 100-A Ramesh Nagar, New Delhi in pursuance to an allotment made by the Rehabilitation Department. A perpetual lease was executed on 22.07.1964. One room on the ground floor of the suit property was let out to Smt. Shanti Devi, predecessor in interest of the respondent for commercial purposes. This was despite the fact that as per the perpetual lease the property could be used only for residential purposes. The letting out is stated to have been done some time in the year 1973. On account of misuse both the petitioner and Smt. Shanti Devi were prosecuted by the DDA, the perpetual Lesser, and were both convicted in the year 1984.

2. The petitioner filed eviction proceeding sunder Section 14(1)(k) of the Delhi Rent Control Act, 1958 (herein-after referred to as the said Act) on 13.02.1986. The said petition was however dismissed on 06.03.1995 by the Additional Rent Controller for certain technical reasons but the appeal filed before the Additional Rent Control Tribunal was allowed by the order dated 07.01.2002. In terms of the order in appeal, it was found that since the premises were meant for residence and were being used for commercial purposes, the requirements of the

conditions u/s 14(1)(k) of the said Act were fulfilled and the only question to be considered is in respect of an enquiry u/s 14(11) of the said Act for which purpose notice was directed to be issued by the ARC to the L and DO as well as the DDA. It may be noticed that the respondent filed a second appeal against the said order but no interim stay was granted the second appeal came to be dismissed by the order dated 12.02.2004 of this Court. However, in the mean time an enquiry started u/s 14(11) of the said Act and the Additional Rent Controller passed an order on 26.05.2003.

3. The Additional Rent Controller found that the respondent could use the premises for ironing of clothes (which was the offending commercial business) with the consent of the owner/lessee and this would imply the consent of the petitioner or the paramount Lesser i.e. LandDO. The petitioner clearly stated that he was not ready to give consent to the respondent and as per the DDA the said activity of ironing of the clothes had to be stopped as the same did not conform to the Master Plan/ Zonal Plan. A direction was thus issued to the respondent to stop the misuse and to use the premises as per the requirement of law and the terms and conditions of the lease which can be for residential purposes or with the consent of L and DO and DDA to be used for ironing of the clothes. The respondent was also called upon to file an affidavit in this regard within fifteen days of the date of the order and regarding past misuse the respondent was directed to deposit the amount of Rs 57,000 with the L and DO apart from furnishing an undertaking on stamp paper within fifteen days from the date of the order. In case of compliance the respondent would escape the eviction order failing which the eviction order was liable to be passed.

4. The respondent aggrieved by the said order preferred an appeal before the Additional Rent Control Tribunal and in terms of the interim order dated 05.06.2003 notice was issued to the petitioner herein and the respondent was directed to comply with the impugned order not to carry on any business or dry-cleaning but to deposit the amount of compensation/misuse charges of Rs 57,000 in the court by way of fixed deposit by receipt of the bank in the name of the respondent with notice to the bank that the receipt was not to be transacted until further orders received from the bank. The appeal came to be finally dismissed by the order dated 13.05.2004

5. The petitioner thereafter on 17.05.2004 filed an application before the Additional Rent Controller for passing an eviction order against the respondents therein. It may be noticed that the original respondent in the eviction petition had in the mean time passed away and even the appeal filed before the Tribunal was decided on the impleadment of the legal heirs. In the application it was averred that the respondents had not complied with the order passed on 26.05.2003 and thus an order of eviction is deemed to have been passed. This application was decided by the Additional Rent Controller in terms of the order dated 06.05.2005. It may be noticed that the application was contested and in the reply filed thereto it had been stated that the said orders had been complied

with except to the extent that as per the interim orders in appeal dated 05.06.2003 the amount of Rs 57,000 was not deposited with the perpetual Lesser but the fixed deposit receipt was deposited in court. The undertakings are also stated to have been filed in pursuance to the order of the Additional Rent Controller.

6. The plea advanced before the Additional Rent Controller on behalf of the petitioner was that the undertaking had been filed belatedly on 08.05.2004 by only one of the legal heirs while the remaining legal heirs who had been joined as party in the appeal had not filed the undertaking. It was also asked why the amount of Rs 57,000 had not been got released from the court and deposited with the LandDO. It was thus urged that it was for the respondent to have got the amount released from the court and deposited with the LandDO. The stand of the respondent was that it was he alone who was occupying the premises and as such undertaking was not required from the remaining legal representatives and so far as the deposit of Rs 57,000 was concerned, the same was lying in the court and the same could be got released and deposited with the LandDO.

7. The Additional Rent Controller considered the effect of the provisions of Section 14(11) of the said Act:

No order for recovery of possession of any premises shall be made on the ground specified in Clause (k) of the provision to Sub-section (1), if the tenant, within such time as may be specified in this behalf by the controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.

8. The Additional Rent Controller found that the respondent ought to have made a prayer at the time of disposal of the appeal for release of the amount and deposit of the same with the LandDO. Insofar as the plea of only the respondent filing the undertaking is concerned, it was observed that technically it can be said that the respondents have not complied with the order. In view thereof an eviction order was passed on account of non compliance with the order of the Additional Rent Controller dated 26.05.2003. The respondent aggrieved by the same filed an appeal before the Additional rent Control tribunal which was allowed by the order dated 16.08.2005.

9. The appellate court took note of the fact that the appeal was filed by all the representatives though only one of them (respondent herein) is in actual occupation. The plea of the respondent that there was willful non compliance of the order dated 26.05.2003 was considered and it was found that the other legal representatives could have possibly been joined as proforma respondents but in any case no relief was claimed against any of those remaining legal representatives since they were not occupying the tenanted premises. Thus in view of Provisions of Order 41 Rule 4 of the Code the court could proceed to the merit of the appeal by one of the legal representatives on ground common to

them. Such a technicality was held not to come in the way of the entertainment of the appeal. The appellate court found that FDR was part of the trial court record and had been furnished in terms of the orders passed by the Additional Rent Control Tribunal. The direction could have been passed thereafter for the FDR to be encased and the amount to be deposited with the LandDO. Such a direction was passed by the Tribunal granting three months time to do so. The tribunal also directed affidavits of the remaining legal representatives to be filed within three months from the date of the order. It was also noticed that there was no format of undertaking by which the same had to be filed and since the misuse had been stopped an affidavit and undertaking of one of the LRs who were in occupation had been filed, there was compliance of the orders. The petitioner aggrieved by the aforesaid order of the additional Rent Control Tribunal has filed the present proceedings.

10. Learned Counsel for the petitioner initially seeks to contend that there is no stoppage of misuser. However a bare reading of the impugned order shows that apparently no such ground is pressed. In fact before the Tribunal it is a finding arrived that the misuse had already stopped. The real issue urged was only on three aspects:

- (1) The format of the appeal and whether all the legal heirs should join in the same;
- (2) The failure of filing undertakings on behalf of other legal representatives; and
- (3) Failure of the respondent to seek directions for discharge of the FDR for depositing the amount with the L and DO.

11. In my considered view the the appellate tribunal has rightly held that the person who is really in occupation and claiming right in the tenanted premises was pressing for relief and though other legal representatives could been joined as formal parties, the said legal representative could prosecute the appeal. I am unable to accept the plea of the learned Counsel for the petitioner that the appeal could not have been entertained on account of non joinder in view of the judgment of the apex court in Ch. Surat Singh (Dead) and Others Vs. Manohar Lal and Others, . It has to be appreciated that the present case involves right of a tenancy and the other legal heirs were not claiming any right or interest in the suit property. For the same reason though technically the other legal representatives may have been required to file an undertaking the concerned legal representative in occupation had filed the undertaking. Be that as it may, the impugned order of the Tribunal takes care of that requirement.

12. Insofar as the question of release of the FDR and deposit with the LandDO is concerned, it must be appreciated that the appeal was dismissed on 13.05.2004 and the application was filed on 17.05.2004, four days later. The FDR was on record of the trial court. The trial court could have easily directed that the release of the FDR and for the amount to be deposited with the LandDO. This was not so done but has been directed by the tribunal.

13. The object of the provisions of Section 14(1)(k) r/w Section 14(1) of the said Act is that where such misuse takes place the same should be brought to an end and in case the tenant continues to default the eviction order to follow. The misuse was brought to an end and even the amount of damages deposited in court as per the interim orders of the tribunal. I am thus of the considered view that the impugned order does not suffer from any patent error or erroneous exercise of jurisdiction. No doubt the jurisdiction of the tribunal u/s 38 of the said Act is restricted to a question of law. The legal question which arose was whether the Additional Rent Controller had failed to exercise jurisdiction vested in it by law where the misuse itself had stopped and the orders of the appellate court for damages had been complied with leaving only the formal orders to be passed by the Additional Rent Controller for release of the FDR to be deposited with LandDO.

14. I do not find any merit in the petition. The same is dismissed leaving the parties to bear their own costs.