
(2011) 03 DEL CK 0425

In the Delhi High Court

Case No : RC. Rev. No. 298 of 2010 and C.M. No. 22037 of 2010

Shri Anil Jain

APPELLANT

Vs

Sh. Niwas Aggarwal and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Delhi Rent Control Act, 1958 — Section 13B, 14(1), 18A(2), 25B, 25B(8)
Limitation Act, 1963 — Section 5

Citation : (2011) 163 PLR 2 : (2011) 1 RCR(Rent) 381

Hon'ble Judges : S.L. Bhayana, J

Bench : Single Bench

Advocate : C.S. Rathore, for the Appellant; Ashish Pandey and Praveen Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—The present revision petition u/s 25B(8) of Delhi Rent Control Act, 1958 (for short as "the Act") has been filed by the Petitioner against the order dated 20.10.2010 passed by Additional Rent Controller (for short as "the Controller") Delhi, vide which leave to defend/contest the eviction petition has been dismissed and an eviction order is passed u/s 14(1)(e) read with Section 25(B) of Act against the Petitioner in respect of suit premises.

2. The facts necessary to be highlighted in the present petition as alleged by the Petitioner/tenant are that the Petitioner/tenant is in physical possession of a ground floor bearing No. G-2, of House Property C-16 (Part), West Old Arjun Nagar, Delhi -51, from May/June, 2006 onwards which was initially let out by verbal rent agreement by Shri Gyan Chand Jangra i.e. father of Respondent herein @ Rs. 2700/- per month excluding electricity and water charges, hereinafter referred to as "suit premises".

3. Thereafter, the monthly rent was increased to Rs. 3,000/- sometime in the year 2007 to 2009. Again the monthly rent was increased in January 2010 to Rs. 3,300/- excluding water and electricity charges. The rent was collected either by

the father or by the Respondent himself mostly through cash and the Petitioner did not insist for issuing rent receipts, therefore the receipts were not issued by the Respondent or his father as at that time both the Respondent and the Petitioner were having cordial relations.

4. That, after making payment of past arrears of rent by the Petitioner and other charges qua the suit premises, an unregistered written rent agreement initially for further period of 2 years in respect to the suit premises was entered into between the Petitioner and the Respondent signed and notarized on 6.1.2010. But the Respondent fraudulently mentioned the commencement of the period of tenancy from 1.12.2008 to 31.12.2010 and obtained the signatures of the Petitioner thereupon without disclosing the said dates by taking an undue advantage of the illiteracy of the Petitioner. The copy of the said rent agreement was never provided to the Petitioner by the Respondent despite request.

5. Later on the Respondent delivered a rent receipt of payment of earlier period but it did show up-to-date payment of rent made by the Petitioner. However, the Respondent permitted the Petitioner to furnish the suit premises at his own expenses and the Petitioner made required renovation inside the suit premises as per his family's requirement, which was also lying unfurnished since 2006. As such the Petitioner spent about Rs. one lakh on furnishing of the suit premises and the said fact is well within the knowledge of the Respondent and his father.

6. The Petitioner received a legal notice dated 28/30.4.2010 for the first time in the month of May 2010.

7. The Respondent has received the rent and other charges up to the month of July 2010 including cheque No. 322782 dated 8.5.2010 drawn on PNB in the name of the Respondent for a sum of Rs. Rs. 3,300/- and another cheque No. 322787 dated 27.6.2010 for a sum of Rs. 7,900/- drawn on PNB, Delhi, has been paid by the Petitioner towards electricity bills to the BSESY Ltd. and the same has been cleared from the bank account of the Petitioner.

8. Despite the payment of electricity charges made by the Petitioner the Respondent and his father have withheld the electricity and water supply of suit premises with malafide intention to evict the Petitioner.

9. Thereafter, the Respondent filed an eviction petition and summons of the petition were served upon the wife of the Petitioner on 7/8/ June,2010. When the Petitioner tried to enquire about the case from the record of the Additional Rent Controller's, Court he came to know that the courts are closed for summer vacations from 7th June to 30th June and will re-open on 1st July, 2010 and any application regarding the case can be filed only in the concerned court after re-opening on or after 1.7.2010.

10. The Petitioner was on complete bed rest till 26.6.2010 and being an illiterate person he could not file the leave to contest application within the statutory period of 15 days. The Petitioner has filed application for leave to defend/contest

application before the Additional Rent Controller on 3.7.2010, along with the application u/s 5 of Limitation Act, therefore, there was delay of 10 days. But the Additional Rent Controller has rejected the application of the Petitioner herein on 20.10.2010 which was filed u/s 5 of the Limitation Act and consequently dismissed his leave to defend application on the ground that the Rent Controller does not have a power to condone the delay in filing leave to defend/contest application u/s 14(1)(e) read with Section 25B, of Delhi Rent Control Act.

11. I have heard the arguments advanced by the learned Counsel for the parties and perused the record carefully. I find that the contention of the counsel for the Petitioner is that the eviction petition has been filed by the Respondent herein and the summons was served upon the wife of the Petitioner on 7/8/6.2010. Thereafter, the Petitioner came to know that that the courts are closed for summer vacations from 7.6.2010 to 30.6.2010 and the court will re-open on 1.7.2010.

12. The Petitioner is an illiterate person therefore, he could not file application for leave to defend/contest within the statutory period of 15 days and he has filed it only on 3.7.2010. Therefore, his application for leave to defend/contest has been dismissed by the learned ARC on the ground that the leave to defend application has been filed beyond the period of limitation.

13. Learned Counsel for the Respondent has asserted that there was a delay of more than 10 days, which has not be condoned by the Controller as the Rent Controller has no power to condone the delay in filing leave to defend application u/s 14(1)(e) read with Section 25B of the DRC Act.

14. In Om Prakash Vs. Ashwani Kumar Bassi, , the Supreme Court while deciding the question of condo nation of delay in filing the leave to defend application has held that the Rent Controller has no power to condone the delay. The Hon"ble Supreme Court has laid down the law as under:

Section 13B is a power given to a Non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of any one ordinarily living with the dependent on him or her. The right has been limited to one application only during the life time of the owner. Section 18A(2) of the aforesaid Act provides that after an application u/s 13B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, entertain an application u/s 5 of the Limitation Act for condo nation of delay since the statute does not vest him with such power.

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In such case, neither the Rent Controller nor the High Court had committed any error of law in rejecting the Petitioner's application for seeking leave to contest the suit, since the same had been filed beyond the period prescribed in the form in Schedule II of the Act referred to in Section 18A (2) thereof.

15. Keeping in view the law laid down by the Hon'ble Supreme Court, I am of the opinion that Section 25B of the Delhi Rent Control Act is a complete Code by itself and other provisions could not, therefore, be brought into play in such proceedings. In the instant case, the same principle would apply having regard to the fact that the Rent Controller had not been conferred with power to condone the delay even for one day.

16. For the aforesaid reasons the Rent Controller has dismissed the leave to defend application being barred by limitation and has held that the Rent Controller has no power to condone the delay in filing the application for leave to defend by the Petitioner.

17. Thus, the Trial Court has given a detailed and reasoned order which does not call for any interference nor the same suffers from any infirmity or erroneous exercise of jurisdiction.

18. The present petition is hereby dismissed accordingly. However, there will be no order as to costs.