

(2009) 12 DEL CK 0316
In the Delhi High Court
Case No : R.C.R. No. 122 of 2009

Shri Badal Rudra

APPELLANT

Vs

Smt. Padma Rani Paul and Another

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Delhi Rent Control Act, 1958 — Section 14(1), 25B(8)

Citation : (2009) 12 DEL CK 0316

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ashok Bhasin and Jinu Merlyn Abraham, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This petition u/s 25B(8) of the Delhi Rent Act, 1958 has been preferred by the tenant against the order of the Rent Controller dismissing the application of the petitioner/tenant for leave to defend the petition for eviction filed by the respondent No. 1 landlady u/s 14(1)(e) of the Act. Consequently an order for eviction has been passed in favour of the respondent No. 1 landlady and against the petitioner.

2. The respondent No. 1 landlady instituted the petition for eviction inter alia stating that she had let out the entire ground floor excluding one room of her house No. H-1477 Chitranjan Park, New Delhi in the year 1978 to the company (respondent No. 2 herein) for a period of two years only; that the petitioner herein occupied the said house as Regional Manager of the respondent No. 2 company; that subsequently the respondent No. 2 company was also permitted to construct one bedroom, one toilet and connected corridor on the first floor at its own cost and to be adjusted in the rent payable to the respondent No. 1 landlady; that the husband of the respondent No. 1 landlady was employed with CGHS and was in the last phase of his employment posted abroad; that

thereafter the respondent No. 1 landlady and her husband remained abroad with their son but a few years prior to the institution of the petition, wanting to live in India returned to Delhi but since their own house was not available they took accommodation on rent on the second floor of house No. I-1720, Chitranjan Park, New Delhi at a rent double than what they were realizing with respect to their own house; that upon returning to India they also realized that their goods which were lying in the portion of the ground floor in their occupation had been shifted to the one room constructed on the first floor and the petitioner herein was using the entire ground floor; that the petitioner had also filed a suit for permanent injunction against the respondent No. 1 landlady claiming himself to be a tenant with respect to the entire ground floor under the respondent No. 1 landlady; that the respondent No. 2 company had never surrendered the tenancy and the respondent No. 1 landlady had never accepted the petitioner as her tenant; but however since the petitioner was in occupation of the premises, the petition for eviction was filed against him also and in the column in the petition for eviction requiring the name of the tenant to be mentioned, the name of both the petitioner and the respondent No. 2 was mentioned.

3. Upon summons of the petition for eviction being issued, the respondent No. 2 company did not file any application for leave to defend; it filed an application under Order 1 Rule 10 of the CPC for deletion of its name contending that it was not a tenant in the premises and that the petitioner had represented to it that the respondent No. 1 landlady had accepted him as a tenant directly under the respondent No. 1 landlady.

4. The petitioner however applied for leave to defend the petition for eviction inter alia on the following grounds:

- a) That the respondent No. 2 company was not the tenant and he had been accepted as a tenant by virtue of an oral agreement with the respondent No. 1 landlady;
- b) That the respondent No. 1 landlady was suing for eviction from the entire ground floor though averring the tenancy to have been created with respect to the entire ground floor except one room; it was contended that the petition for eviction was not so maintainable;
- c) That the petition for eviction was from part of the premises because as per the respondent No. 1 landlady the tenancy was created with respect to the first floor also;
- d) That the respondent No. 1 landlady is also the owner of second floor of I-1720 Chitranjan Park, New Delhi and has sufficient accommodation available to her over there for her occasional visits to India;
- e) That the respondent No. 1 landlady had not shifted to India and was residing in USA and did not require the premises; that the actual purpose was to sell the premises and to earn a huge amount of money;

f) That the requirement of the respondent No. 1 landlady was not bonafide; Though several other pleas were also taken, but the same were vague and without any factual basis.

5. The respondent No. 1 landlady filed a reply to the application for leave to defend. It is inter alia stated therein that the petitioner herein in the suit for injunction filed by him had stated himself to be a tenant in possession of the entire ground floor of the property; it was denied that the petition was for eviction from part of the premises; it was stated that the room on the first floor was not in control and possession of the petitioner herein nor had the petitioner herein claimed to be in control or possession thereof and the same was in possession of the respondent No. 1 landlady; it was denied that the respondent No. 1 landlady was the owner of the second floor of I-1720, Chitranjan Park, New Delhi; rent receipts with respect thereto were annexed to the reply; it was further contended that the respondent No. 1 landlady was living in India since 20th November, 2005 and had permanently shifted back to India and had visited USA only once since then.

6. The petitioner filed a rejoinder in which, though the plea of the respondent No. 1 landlady that she had been residing in India since 20th November, 2005 and had since then visited USA only once was generally denied but it was not stated that the respondent No. 1 landlady had visited USA more than once or had been in U.S.A. only since 2005.

7. The trial court in the impugned order has held that though the petitioner/tenant had vaguely alleged that the respondent No. 1 landlady was the owner of second floor of I-1720, Chitranjan Park, New Delhi but neither any document was filed nor was the basis of the said averment disclosed; on the contrary the respondent No. 1 landlady had filed sale deed showing the said property to be owned by one Shri Swapan Chakrabarti, Sh Sushanta Kumar Deb and Shri Ashish Raj pal and also filed the rent receipts issued to her with respect to the said accommodation. It was further held relying upon various dictas of this Court and of the Supreme Court that the defences raised by the petitioner/tenant were not plausible and/or such which would disentitle the respondent No. 1 landlady from an order of eviction u/s 14(1)(e) of the Act. Accordingly, the application for leave to defend was dismissed and order of eviction passed.

8. The main thrust of the senior counsel for the petitioner is two fold. Firstly, it is contended that since the respondent No. 1 landlady had not accepted the petitioner as a tenant, the petitioner could not be evicted in pursuance to an order of eviction u/s 14(1)(e) of the Act. Secondly, it is contended that the petition for eviction was not maintainable on the averments therein. It is urged that the respondent No. 1 landlady had filed three site plans before the Addl. Rent Controller, as Annexure "A", "B" & "C". Copies of the said site plans were handed over in the court. It was urged that Annexure "A" showed the portion of the ground floor which according to the respondent No. 1 landlady had been let out and which did not include one bedroom, toilet and lobby; Annexure "B"

showed the accommodation constructed on the terrace above the ground floor; Annexure "C" showed the entire ground floor. The contention is that the controller has passed the order of eviction with respect to the entire ground floor as shown in Annexure "C" when according to the respondent No. 1 landlady what was let out was the accommodation as shown in Annexure "A" & Annexure "B".

9. Both the aforesaid contentions are not found such owing whereto the order of eviction is liable to be set aside.

10. Though the respondent No. 1 landlady approached with a case that she had let out the premises to the respondent No. 2 company of which the petitioner was the Regional Manager but the respondent No. 1 landlady nevertheless impleaded the petitioner herein also as a party to the petition for eviction and as aforesaid, in the column 3 B of the petition for eviction where the name of the tenant is to be disclosed, also mentioned the name of the petitioner besides that of the respondent No. 2 company. Further the respondent No. 1 landlady sought order of eviction not only against the respondent No. 2 company but against the petitioner also.

11. A petition before the Rent Controller lies only between a landlord and a tenant. A person who is not a tenant cannot be evicted by the order of the controller. The factum of the respondent No. 1 landlady as aforesaid impleading the petitioner also as a party to the petition for eviction and mentioning the name of the petitioner as a tenant in the petition and seeking the order of eviction against the petitioner also abundantly shows that the plea of the respondent No. 1 landlady of having let out the premises to the respondent No. 2 company is only by way of narration of facts and that the respondent No. 1 landlady filed the petition for eviction treating the petitioner also to be a tenant in the premises. Again the petitioner/tenant chose to apply for leave to defend the petition for eviction and which a tenant alone can do. The said application was also considered by the controller without any objection from the respondent No. 1 landlady. In fact a perusal of the application for leave to defend does not show the said defence in the manner argued before this Court to have been taken by the petitioner before the controller. In the application for leave to defend the petitioner controverted the averments of the respondent No. 1 landlady that she never accepted the petitioner as a tenant and reiterated that by a oral agreement he had been subsequently accepted as a tenant. It is significant that the respondent No. 2 company also in its application for deletion of its name admitted that originally it had taken the premises from the respondent No. 1 landlady and it was only subsequently that the petitioner represented that the respondent No. 1 landlady had accepted him as tenant. In the facts of the case, of the respondent No. 1 landlady owing to the employment of her husband abroad with CGHS, being not available in India and the rent being deposited in her bank account, the version of the respondent No. 1 landlady is not unbelievable. However, the fact remains that the same does not fall for adjudication in the present petition in as much as the respondent No. 1 landlady

notwithstanding her averment of the respondent No. 2 company having been inducted and having never agreed to change the tenancy in favour of the petitioner, nevertheless impleaded the petitioner also as a party before the Rent Controller and sought the order of eviction against the petitioner also. The petitioner cannot be permitted to blow hot and cold and approbate and reprobate. The petitioner on the one hand contends that he is the tenant. That was his case in the suit for injunction filed by him prior to the institution of the petition for eviction also. He cannot on the other hand, when impleaded by the respondent No. 1 landlady as a tenant contend that the controller could not have passed an order of eviction against him. Thus the first contention of the petitioner/tenant is found to be meritless.

12. As far as the second contention is concerned, in the form of a petition for eviction prescribed under the rules framed under the rent act, in para 8 thereof the tenancy premises are required to be described. The respondent No. 1 landlady in the petition for eviction has mentioned site plan Annexure "C" also there. In the prayer paragraph also, the order of eviction is claimed with respect to the premises as shown in site plan Annexure "C". It is not in dispute that only accommodation as shown in site plan Annexure "C" is actually in possession of the petitioner. The senior counsel for the petitioner during arguments agreed that the petitioner/tenant is not in occupation of rooms on the first floor which were permitted to be constructed and let out. In the circumstances, it cannot be said that the order of eviction has been passed with respect to any portion of the premises not in the tenancy and/or that the order of eviction is from part of the tenancy premises. Admittedly, the first floor was as on the date of institution of petition for eviction not part of the tenancy premises. According to the petitioner/tenant the room on the ground floor which was earlier not let out now forms part of the tenancy premises. That being the position, the same does not constitute a ground for depriving the respondent No. 1 landlady from an order of eviction.

13. Though not seriously, but the senior counsel for the petitioner so as not to concede also urged that since the respondent No. 1 landlady was admittedly residing abroad earlier, a case for grant of leave to defend was made out. However, that is not the position in law. This Court in *Saroj Khemka Vs. Indu Sharma and Another*, relied upon by the controller also has held that even where the landlord is settled abroad and only visits India, she can still have her own house back for her usual stays in India. In that case also the leave to defend was refused. The same view was taken in *Shri S.P. Kapoor Vs. Sh. Kamal Mahavir Prasad Murarka and Others*, . It was held that even if a landlord/owner is permanently settled outside Delhi, a petition for eviction u/s 14(1)(e) lies. Leave to defend was refused in that case also. It is significant that in the present case that it is not in dispute that the respondent No. 1 landlady has since 2005 taken accommodation on the second floor of the another house in the same colony. The same establishes the requirement of the respondent No. 1 landlady for the premises. Though a contention was raised before the controller that the said accommodation belongs to the respondent No. 1 landlady but the same was not

pressed before this court. Thus the present is not even a case where the respondent No. 1 landlady is only temporarily visiting India. She is admittedly very much residing in the same colony in a tenanted premises and paying double the rent than what the petitioner is paying. A landlord cannot be compelled to keep the tenant at her own discomfiture. The respondent No. 1 landlady and her husband are of old age and having their own house comprising of a ground floor and first floor cannot be compelled to live in tenanted premises on the second floor for the sake of accommodating the tenant.

14. Lastly, at the fag end of the hearing, it was urged that the respondent No. 1 landlady wants to reconstruct the house in a modern fashion and retain the ground floor for herself and sell the other floors. Though, there is no basis for the said submission in the application for leave to defend but the said argument, in the opinion of this Court also supports the case of the respondent No. 1 landlady and shows the requirement of the respondent No. 1 landlady. The house is admittedly very old. If the respondent No. 1 landlady wants to modernize the same, she cannot be blamed and the eviction of tenant cannot be stalled for this reason.

15. The test laid down by the Supreme Court in Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, for interference by this Court in orders of the controller, is only to satisfy itself that the order is "according to law". The said expression has been held to mean that the order should not be perverse and should not be such which no reasonable person acting with objectivity could have reached. The same is not found to be the position here. In fact the controller has referred to a large number of judgments and on the basis whereof it has been held that as per the law laid down, no case for grant of leave to defend is made out.

16. The order impugned having been found to be in accordance with law, this petition consequently fails. It may be indicated that the senior counsel was heard on 30th November, 2009 and 2nd December, 2009 and the petition was ordered to be dismissed with reasons to follow.