

(2011) 11 DEL CK 0269
In the Delhi High Court
Case No : CM (M) No. 1281 of 2005

Shri Dilip Kumar Jain and Others

APPELLANT

Vs

Shri Om Prakash Gupta and Others

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Delhi Rent Control Act, 1958 — Section 14(1), 39

Citation : (2011) 9 AD 595 : (2011) 184 DLT 66

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sarat Chandra and Mr. Sachin Chandra and Mr. D.K. Jain, Petitioner No. 1, for the Appellant; Naresh Khanna and Mr. Pramod Kumar Singhal, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This petition under Article 227 of the Constitution of India has assailed the order of the Rent Control Tribunal (RCT) dated 06.05.2005 which has confirmed the findings of the Additional Rent Control (ARC) dated 20.02.2001 whereby the eviction petition filed by the landlord namely Dilip Kumar Jain and others (being the legal heirs of J.L. Jain) had been dismissed u/s 14(1)(c) and 14(1)(j) of the Delhi Rent Control Act (DRCA).

2. The suit premises comprised of three shops numbered as shops No. 1205, 1206 & 1207 measuring 9" X 8-1/2", 9" X 9" & 9" X 8" respectively located in ward No. XVI, Pyare Lal Road, Karol Bagh, New Delhi. The rent for shops No. 1205 & 1206 was Rs. 5.05 per month excluding electricity; rent for shops No. 1207 was Rs. 5.06 per month excluding electricity. The tenancy was oral.

3. It is not in dispute that an earlier eviction petition bearing E.P. No. 430/1955 had been filed by the landlord u/s 14(1)(e) of the DRCA which had been compromised on 20.11.1956. The eviction petition had been withdrawn and a decree of Rs. 133.08 as arrears of rent had been passed in favour of the

landlord. Relevant would it be to extract this compromise which had been recorded by the Court of then learned Sub-Judge:-

The above suit for eviction on behalf of the petitioner be dismissed and a decree of Rs. 133.08 for the entire arrears be passed in favour of the petitioner and against the respondent. Regarding standard rent the parties have inquired and the present rent is correct and this is the standard rent. The respondent shall not use shop No. 1205 to 1206 or residential purposes. The total amount deposited be paid to the petitioner.

4. The vehement contention of learned counsel for the petitioner is that in this compromise, there is a mention of shops No. 1205 & 1206 only; there is no mention of shop No. 1207. Contention being that in this compromise EX.AW-1/2 it had been specifically recorded that the tenant will not use shops No. 1205 & 1206 for a residential purpose; meaning thereby that only shop No.1207 could be used for a residential purpose. This is necessarily implied from the compromise recorded on 20.11.1956; however, the entire suit premises is being used for commercial purpose and this amounts to a misuser u/s 14(1)(c) of the DRCA. Learned counsel for the petitioner has also drawn attention of this Court to the survey report (Ex.AW-1/8) dated 01.07.1954 wherein the survey conducted by the municipal body shows that the aforementioned premises i.e. shops No. 1205, 1206 & 1207 were for a residential user; vehement contention of the landlord being that Ex.AW-1/8 has established that the premises were for a residential purpose but the entire premises being used for a commercial purpose amounts to a misuser. The ground of eviction u/s 14(1)(j) was to the effect that a substantial damage has been caused to the premises by the tenant and this had been evidenced in the testimony of RW-1 coupled with the document Ex. AW-2/A (the report of the Architect) showing that the verandah had been covered and wooden doors had been removed. Learned counsel for the appellant has placed reliance upon a judgment of the Punjab and Haryana High Court reported in RCJ 1976 Page 3 titled as Chatter Sain vs. Bishan Lal to substantiate his submission that the ground u/s 14(1)(j) of the Act is clearly made out if the material value or utility of the building is compromised i.e. if the verandah is covered and is included as a part of the home which is a fact in the instant case; thus, finding of the court below that the ground u/s 14(1)(j) has not been made out also suffers from a perversity and is liable to be set aside.

5. Arguments have been rebutted. Learned counsel for the respondent has submitted that this court in sitting in a supervisory jurisdiction under Article 227 of the Constitution of India and unless and until there is manifest error or a patent illegality in the findings of the two courts below, no interference is called for under Article 227 of the Constitution; to substantiate his submission, reliance has been placed upon the judgment of this court reported in 181(2011) DLT 48 titled as Badar Rabbani Qutbi & Ors. Vs. Saiedan. It is pointed out that in the instant case although the ground of 14(1) (j) has been impleaded but no date has been given by the petitioner as to on which date the utility and value of the

building had been impaired; in the absence of which the petition is liable to be dismissed forthwith; to support this submission reliance has been placed upon a judgment of the Punjab and Haryana High Court in Civil Revision No. 1575/1983 reported in 1984 (2) RCR 572 titled as Madal Lal Saggi vs. British Motor Car Company. It is submitted that the purpose of letting has also to be explained by the landlord which is again lacking in this case; petition is liable to be dismissed on this ground alone; to support this submission, reliance has been placed upon the judgment of 1969 RCR 263 titled as I.D. Malik vs. Sh. Duli Chand and Ors. Reliance has also been placed upon Sukhlal Vs. Bhopal Singh and Others, , to support a submission that a wooden frame or a shutter in the building or the entrance is a construction of a nature which may not materially alter the premises entitling the landlord to a ground of eviction; the findings of the two courts below in no manner calls for any interference, the petition is liable to be dismissed.

6. Record has been perused.

7. There are two concurrent findings of fact against the landlord. This Court also has to keep in mind that the provisions of Section 39 of the DRCA have since been repealed; right of second appeal has been lost to the landlord; Article 227 of the Constitution of India is not a substitute for an appellate jurisdiction; even a first appeal u/s 38 of the DRCA is permissible only on a question of law.

8. With this background, the contentions raised by the respective parties have been considered.

9. The eviction petition shows that four grounds have been impleaded i.e. under Sections 14(1)(a), (c), (j) and (k) of the DRCA; the disputed premises are three rooms Nos. 1205, 1206 & 1207; even as per the petitioner his grand-father Bal Mukand Jain had created this tenancy in favour of the respondent in the year 1950; there was no written agreement. The compromise decree Ex. AW1/2 shows that a compromise had been effected between the parties on 20.11.1956 wherein it had been recorded that tenant-respondent will not use Shop Nos. 1205 and 1206 for a residential purpose; petition had been decreed and disposed of in terms of this compromise; this was in a suit for eviction filed by the grand-father of the petitioner namely, Bal Mukand Jain himself. It is not in dispute that suit proceedings in which this compromise decree had been passed was with regard to all the three shops i.e. shop Nos. 1205, 1206 and 1207. It is thus clear that due to an inadvertent mistake shop No. 1207 has been omitted to be mentioned in this compromise decree. Vehement submission of the learned counsel for the petitioner that shop No. 1207 was deliberately excluded and shop No. 1207 alone can be used for residential purpose is not the gist of this compromise recorded on 20.11.1956.

10. In this view of the matter the ground u/s 14(1)(c) was not made out and rightly noted by the fact finding courts below. Both the ARCT and RCT had held that although the premises were being used for commercial purpose; i.e. Shop

No. 1205 and 1206 but this was the purport and intent of this compromise recorded on 20.11.1956. Appellant had permitted the tenant to use these premises for a commercial purpose and the compromise decree had clearly noted that these shops i.e. Shop Nos.1205 and 1206 would not be used for a residential purpose. Relevant would it be to state that this compromise was recorded as far back as in 1956 also making mention of these premises as "shops"; vehement submission of the learned counsel for the petitioner before this court today is that these were not "shops" but only rooms is thus negated by this finding recorded on 20.11.1956.

11. Record also shows that an earlier eviction petition filed by the petitioner u/s 14(1)(e) was disposed of on 28.05.1997 (Ex. RW1/1); it had clearly noted that the purpose of letting of premises No. 1207 was not residential; it was commercial. These facts were noted in the correct perspective by both two courts below. It is also not amiss to mention that a Civil Suit Ex. AW1/2, AW1/3 & AW1/4 was filed by the landlord where there was a mention of premises No.1207. Ex.RW1/1 dated 28.05.1997 had clearly recited that premises No.1207 is not a residential premise; thus this issue that shop no.1207 is not a residential premise cannot again be agitated. Admittedly, order dated 28.05.1997 has since been attained a finality; ground of 14(1)(c) was thus rightly not available to the landlord.

12. The eviction petition had also been dismissed u/s 14(1)(j). Parties had adduced their respective evidence. The architect-Gurmukh Singh had proved his report as Ex. AW2/1; in his cross-examination, he has admitted that he had never visited this premises in dispute prior to 23.05.1993; he had not seen any wooden door fixed at place marked A & B which had been mentioned in the site plan; he has admitted that he had been informed that the wooden door has in fact been removed. In his cross examination, he has further admitted that the platform in front of the premises was in existence in the premises from the beginning i.e. as a part of the original structure and he cannot say when the wall marked CD and EF as shown in the site plan Ex.-AW2/2 and in his report Ex.-AW2/1 was built. This part of the cross-examination of AW2 was not assailed; the witness also did not know whether this construction as alleged by the plaintiff was a part of the original or whether it had been made by the tenant impairing the utility of the building; in fact, AW2 has admitted that he had been informed that this platform was a part of the original tenancy; all this becomes more relevant as there is no pleading in the eviction petition as to when this unauthorized or illegal platform/chabutara has been raised by the petitioner. In the grounds of eviction also, it has been stated that the respondent have caused substantial damages to the premises by fitting new doors by breaking earlier doors, ceiling has also been damaged as also the flooring which has resulted in substantial damage to the building impairing its utility but there is not a whisper of the date when this so called impairment in the utility of the building had been done by the tenant. The testimony of this witness was thus rightly not relied upon. The respondents on the other hand, have come into the witness box as

RW1 and RW2 to substantiate the fact that this suit premises was in fact a commercial tenancy which was being used in the same manner in which it had been tenanted out to the respondent; it was an old construction.

13. Even presuming that the a wooden-door frame had been set up, it did not in any manner amount to a substantial damage to the premises within the meaning of Section 14(1)(j) which premises had been admittedly been let out more than half a century ago. 14. The impugned judgment in no manner calls for any interference as no illegality or manifest error has been pointed out by the petitioner which would enable this court to exercise its supervisory power of superintendence under Article 227 of the Constitution of India.

15. Petition is without any merit; it is dismissed.