
(2009) 02 DEL CK 0022

In the Delhi High Court

Case No : CM (M) 197 of 2007 and CM No"s. 1939 of 2007 and 6563 of 2007

Shri Rakesh Rishi

APPELLANT

Vs

Smt. Chetan Vats

RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0022

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : Munish Tyagi and Kamlesh Uniyal, for the Appellant; P.D. Gupta, Kamal Gupta, Abhishek Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—The brief facts giving rise to the filing of present petition under Article 227 of the Constitution are that the petitioner (defendant in court below), was a tenant of premises bearing No. 95, Third Floor, Type-II, MIG Flat, Deluxe Apartment, B-5, Vasundhara Enclave, Delhi-110096 for a period of 11 months at a monthly rent of Rs. 1,500/-, exclusive of water and electricity charges. An agreement to this effect was entered into between parties on 18.10.1994. Rent of the premises was enhanced to Rs. 1,600/- per month from 6.8.1995, exclusive of water and electricity charges.

2. A suit was filed by the respondent i.e. landlady in the court below for recovery of possession of tenanted premises and for mesne profits in the court of Civil Judge at Delhi. During the pendency of that suit, an application was filed by respondent (plaintiff) under Order 39 Rule 10 CPC praying for fixation of interim rent @ Rs. 5,500/- per month in respect of the said premises and the petitioner (defendant) may be directed to pay the same to the respondent (plaintiff) each month with a further direction of enhancement of above rent @ 25% per year over and above the above amount of Rs. 5,500/- per month during the pendency of the case. Ld. Civil Judge decided the said application of respondent vide order dated 22.11.2000 thereby directing petitioner i.e. tenant to deposit mesne profits

for use and occupation charges @ Rs. 4,300/- per month w.e.f. 1.12.1999 and to continue to deposit the said amount every month from date of the said order. Petitioner (i.e. tenant) was further directed to deposit arrears within one month subject to adjustment of rent already paid by him to respondent/landlady. Petitioner (defendant) challenged the said order by filing a Civil Revision No. 19/2002 before this Court. Vide order dated 27.11.2003 this Court set aside the said order and directed the petitioner/tenant to pay rent/use and occupation charges @ Rs. 1,600/- per month till the disposal of suit. It is submitted that during the pendency of the said suit, in order to buy peace, parties moved an application under Order 23 Rule 3 CPC dated 7.7.2004. The parties also made statement on oath before Civil Judge to remain bound by the terms of compromise. The said application was allowed by the Ld. Civil Judge vide its order dated 7.7.2004 and a decree in terms of compromise between the parties was passed. The written memorandum of compromise between the parties reads as under:

3. That the defendant undertakes that shall vacate the suit premises and handover its vacant and peaceful possession to the plaintiff on or before 31.07.2006.

4. That the defendant shall pay rent @ Rs. 2,000/- per month starting from 1st day of August, 2004.

5. That the defendant shall not sub-let, part with or otherwise put into possession to any third person into the suit premises and shall not create any interest of any third party in the suit premises.

6. That in case the defendant commits three consecutive defaults in the payment of rent, then the defendant shall be liable to vacate the premises immediately and shall also be liable to pay the rent @ as claimed in the plaint.

7. That the defendant shall send rent by way of crossed cheques latest by the tenth of each English Calendar Month to the plaintiff by registered A.D. post.

8. That the plaintiff has agreed to the above settlement.

3. In February, 2005, the respondent/landlady filed an application for execution of decree. The case of the respondent/landlady as disclosed in the execution application is that the petitioner/defendant did not pay the arrears of rent as per directions of the Hon'ble High Court of Delhi and as per undertaking given in the court. A registered letter was written to him on 14.9.2004 informing him to clear his past arrears. The petitioner/tenant (JD) has not paid rent for 4 months for the year 1999, 9 months for the year 2000, 8 months for the year 2001 and 3 months for the year 2003. His cheque No. 283999 dated 6.12.2004 of Rs. 2,000/- drawn on Indian Overseas Bank, purported to be rent from 6.12.2004 to 5.1.2005 as stated by him, also got dishonoured by the Bank on presentation with the remarks 'funds insufficient'. The petitioner/tenant was informed about the above consecutive defaults by UPC and registered A.D. post on 24.12.2004

by the respondent/landlady and was called upon to rectify the mistake within 7 days. Despite that, he sent a false reply. It was further alleged in the execution application that the petitioner/tenant has breached the undertaking given in the court and has disobeyed the directions of the Ld. Single Judge as well as of High Court of Delhi, as such, the respondent/landlady was entitled to execution of decree forthwith.

4. In response to that, petitioner/tenant moved two applications. One under Order XXIII Rule 3 read with Section 151 of CPC read with Sections 73 & 74 of Indian Contract Act filed on 13.7.2006 for striking the consent decree dated 7.7.2004 and other under Order 47 Rule 1, read with Order 23 Rule 1 of CPC read with Section 23 of Indian Contract Act read with Section 151 of CPC filed on 27.7.2006 for reopening of the suit and allowing the petitioner/defendant therein to contest the suit on merits by alleging that the same involves the issue of jurisdiction.

5. Respondent/landlady also filed two applications. One u/s 12 of Contempt of Court Act on 4.8.2006 and other u/s 151 CPC for issuance of warrants of possession of the suit premises on 4.8.2006. All these four applications were disposed of by the Ld. Civil Judge vide impugned order dated 12.12.2006. The Ld. Civil Judge was of the opinion that the Clause relating to payment of Rs. 2,000/- per month and in the event of three consecutive defaults paying the claimed rent of Rs. 5,500/- per month did not constitute a Penal Clause and compromise was not liable to be set aside. Ld. Civil Judge also held that as the petitioner/defendant had not paid the rent for the year 1999 (4 months), 2000 (9 months), 2001 (8 months), 2003 (3 months), petitioner/defendant was deemed to have made the requisite defaults. Taking note of the fact that in any event, the time granted to the petitioner/defendant to vacate the premises stood expired, the Civil Judge issued warrant of possession of the suit premises.

6. Aggrieved by order dated 12.12.2006, the petitioner/defendant filed the present petition under Article 227 of the Constitution of India.

7. It is contended by Ld. counsel for petitioner/tenant that compromise dated 7.7.2004 was silent as to the arrears of rent prior to the date of compromise decree and thus must be deemed to have been waived by the respondent/landlady and in any event, the same could not have been said to conclude that there has been breach of settlement between the parties. It is thus contended that Civil Judge erred in entertaining the execution petition as the same was premature. It is also contended that as the rent of the premises was admittedly less than Rs. 3,500/- per month, the relationship between the parties was subject to Delhi Rent Control Act and accordingly Civil Judge had no jurisdiction to pass the decree or proceed to pass the decree which was nullity in law.

8. Respondent/landlady in response filed an application being CM No. 6563/2007 wherein she has stated that without prejudice to her rights and contentions and in order to secure the possession of her own flat of which she is only getting Rs.

2,000/- per month, as user charges, she herself is living in a rented accommodation paying Rs. 5,000/- as rent, she is prepared to forego the arrears of rent, for which petitioner/tenant has made grievances in the past.

9. Heard counsel of parties and perused the record.

10. During the submissions, counsel for petitioner/tenant has placed reliance on the judgment *Sunder Dass Vs. Ram Prakash, & Sarwan Kumar and Another Vs. Madan Lal Aggarwal*, .

11. In so far as second submission is concerned, it is to be noted that the case of the respondent/landlady in her plaint was that the premises in question was constructed as a new construction and the provisional completion-cum-occupancy certificate was issued to the Society (referred to above) by DDA vide Reference No. F.23 (104) 84/84 BLDG. dated 7.3.1994. The possession of the premises was handed over to respondent/landlady on 1.6.1994 by the Society. The premises being a newly constructed premises and as per Section 3(d) of the Delhi Control Act, 1958, the provisions of the said Act do not apply to the premises for a period of 10 years. In the written statement, the petitioner/tenant had disputed this fact. The controversy between the parties needed recording of evidence. However, the parties including the petitioner/tenant opted to compromise the suit. An adverse finding in the suit may have entailed immediate eviction and liability to pay the mesne profits. Having taken advantage of the compromise, the defendant now undertakes to re-agitate the same controversy.

12. It is relevant to reproduce Order 23 Rule 3 CPC which reads as under:

3. Compromise of suit. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

13. The contents of Order 23 clearly shows that it is open to the parties to arrive at a compromise/settlement even in respect of issues which are not the subject matter of the suit. Petitioner/tenant has given a solemn undertaking before the trial court on 7.7.2004 wherein he has agreed to vacate the premises by 31.7.2006. Petitioner has utilized the said time and thereafter he has taken the plea that the consent decree was without jurisdiction. After fully utilizing the time

granted by the consent decree, the petitioner/tenant has not shown any case for setting aside the decree on this ground. The finding of the learned trial court are justified by the mandate of Order 23 Rule 3 CPC.

14. The view which I have taken is supported by the judgment of this court in Gajender Solanki Vs. Banso Devi, . It is pointed out by the counsel for respondent/landlady that the SLP against the judgment in Gajender Solanki's case was dismissed in limine by the Hon'ble Supreme Court on 21.10.2005.

15. The judgment in Sunder Dass Vs. Ram Prakash, & Sarwan Kumar and Another Vs. Madan Lal Aggarwal, relied upon on behalf of petitioner/tenant does not deal with the case of compromise and thus do not help the case set up by petitioner/tenant in any manner.

16. Coming to the first submission, I find force in the contention of petitioner/tenant that as the compromise dated 7.7.2004 did not refer to the amount payable towards arrears, that could not have been the ground to hold that the petitioner/tenant had breached the terms of compromise. However, I need not dilate on this issue as respondent/landlady herself has stated that she is ready to forego the arrears of rent. Thus though there may be force in the submission of petitioner/tenant that execution court was not justified in issuing the warrants of possession due to dispute about payment of arrears, however, the fact remains that the execution court also took note of the fact that the period of compromise had already expired and petitioner/tenant was under the obligation to hand over the premises to respondent/landlady. In the facts and circumstances of the case, I am of the opinion that the learned execution court was justified in taking note of undisputed subsequent event of expiry of period of compromise on 31.7.2006 and passed the order of issuance of warrant of possession. No case for interference is shown in exercise of discretion by this court in the petition under Article 227 of the Constitution of India.

17. The petitioner has remained in possession by virtue of the stay granted by this court. In the facts and circumstances, it is directed that the petitioner/tenant shall be liable to pay a sum of Rs. 2,000/- per month till the date of vacation of the premises w.e.f. the date the stay was granted by this court.

18. Petition stands dismissed. No order as to costs.