
(2001) 04 DEL CK 0009
In the Delhi High Court
Case No : CM (M) 277 of 2001

Shri Suraj Prakash Sharma	Vs	APPELLANT
Smt. Shakuntla Rani Diwan		RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Citation : (2001) 5 AD 73 : (2001) 92 DLT 364 : (2001) 59 DRJ 408

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. P.N. Bhardwaj and Mr. Ashutosh Bhardwaj, for the Appellant;

Judgement

Vikramajit Sen, J.—The premises appear to have been let out to the tenant (who has filed the present petition under Article 227 of the Constitution) in 1982 by Shri Sheetal Prashad Diwan. In 1993 Mr. Sheetal Prashad Diwan entered into an maintenance agreement with his wife Smt. Shakuntla Rani Diwan giving her the right to recover rent from the tenant, who attorney to her without any demur.

2. A Notice dated 26.4.1993 was issued by Smt. Shakuntla Rani Diwan to the tenant complaining of the non-payment of rent. The Notice appears to have been ignored thus necessitating the filing of a petition u/s 14(1)(a) of the Delhi Rent Control Act (hereinafter referred to as "the Act"), on the grounds of non-payment of rent. Two years thereafter an order u/s 15(4) of the Act was passed against the tenant. On non-compliance of this order, on 17.7.1997, the defense of the tenant was struck off. It is the case of the tenant that at this stage he had entered into a purchase Agreement with Shri Sheetal Prashad Diwan and that various documents were executed between them. Significantly, a Sale Deed had admittedly not been executed. The eviction petition was decreed on 25.9.1999, and since compliance of the order had not been made, the benefit of Section 14(2) of the Act was not extended. The tenant appealed against this eviction order and the Appeal was dismissed on 7.1.2000. The tenant again unsuccessfully assailed the said judgment before the High Court and thereafter by a SLP before the Hon''ble supreme Court. In this first stage, Therefore, the

tenant had comprehensively lost.

3. On 13.11.1999 Shri Sheetal Prashad Diwan died. This event is sought to be pressed by the tenant for claiming title under the will. It has been argued that the landlady/widow Smt. Shakuntla Rani Diwan ought to have taken legal action for declaring this will non est. In Pamela Manmohan Singh Vs. State and Others, , I have held that it is to expected that a will should be probated if it was clearly evident that it was likely to be disputed. This finding had been arrived at keeping in view the legal position that in Delhi it was not mandatory for obtaining a probate of wills. Learned counsel appearing on behalf of tenant has been unable to show any direct evidence that the widow had accepted the genuineness of the documents sought to be relied upon by the tenant as proof of ownership.

4. These facts have been pleaded by the tenant for the first time in his objections filed in the execution proceedings. There is absolutely no Explanation as to why the tenant did not disclose the alleged transaction between him and the husband of the landlady in the eviction proceedings before the Additional Rent Controller, during the life time of the deceased husband of the landlady. It cannot be appreciated that having allegedly become the owner of the premises in September 1997 he should have neglected to make a representation to the Additional Rent Controller to the effect that the eviction proceedings were not maintainable any longer. This inactivity casts a very serious doubt on the genuineness of the documents now pressed into service by the tenant in proof of his ownership. This neglect is exacerbated when it is recalled that by the documents the Landlady was being deprived of her right to collect the rent.

5. It is fairly well established that in execution proceedings the Court is not expected to go behind the decree. Learned counsel for the petitioner has substantially relied on a decision of the Hon'ble Supreme Court in Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., . A number of precedents were considered by the Apex Court in that case but in all of them there was an initial lack of jurisdiction. In the present case when the eviction petition was filed there admittedly existed a relationship of landlord and tenant between the Petitioner and the Respondent. Therefore, it was incumbent on the tenant to immediately bring to the notice of the Court, the alleged change in circumstances which in effect, upset the Landlady's apple-cart. Having failed to do so he would be estopped from raising these question in execution proceedings. It was orally contended by learned counsel for the petitioner that the tenant did not get any opportunity to bring these facts to the notice of the Court. On repeated probing, it was finally conceded before me that the question of his having acquired title/ownership over the premises was raised for the first time in the execution proceedings only. None of the decisions mentioned in Sushil Kumar Mehta's case (supra), Therefore, would come to the rescue of the tenant. In Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, , a will was accepted by consent of parties in arbitration proceedings. It was held that the

acceptance of the genuineness of the will by such consent would not preclude a subsequent challenge since the Arbitrator did not have powers to grant a probate.

6. In view of the concurrent findings of the courts below Bother on question of facts and on law, even if I was to favor a different decision, the petition is liable to be rejected. There has been no gross dereliction of duty or flagrant violation of law. Article 227 cannot be sued as an Appellate or Revisional power. None of the findings are perverse. I see no reason to interfere in the petition.

Dismissed.

C.Ms.432-433/20001.

C.Ms 432-433/20001 are also accordingly dismissed.