
(2016) 08 SHI CK 0117
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 197 of 2015

Sumeer Nath

APPELLANT

Vs

Mohan Lal

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Himachal Pradesh Urban Rent Control Act, 1987 — Section 24
Limitation Act, 1963 — Section 5

Citation : (2016) 2 RCRRent 331 : (2016) 3 SimLC 1736

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Suneet Goel, Advocate, for the Petitioner; Y.P. Sood, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan J.—This Civil revision petition under Section 24 of the H.P. Urban Rent Control Act (for short the 'Act') is directed against the order passed by learned Appellate Authority on 30.6.2015, whereby application filed by the respondent for condonation of delay in filing of the appeal came to be allowed.

2. The respondent-tenant suffered an ex parte order of eviction dated 1.12.2008 and later filed an appeal along with an application seeking condonation of 380 days in filing of the same on the ground that daughter in law happened to visit Shimla on 25.12.2009 and came to know that possession of the premises had already been taken by the petitioner on the basis of ex parte order of eviction. It was further pleaded that this fact was not in his knowledge and on enquiring knowledge, certified copies of the eviction orders along with relevant record was applied for and thereafter without any further delay, appeal along with application for condonation of delay was being filed.

3. In reply to application, the petitioner denied that the tenant, through his daughter in law, had acquired knowledge of the eviction order only on

25.12.2009 and should, therefore, be put to strict proof regarding such averments.

4. The learned court below, after holding that there were sufficient grounds for condoning the delay, allowed the application.

5. It is against this order that the petitioner-landlord has approached this court and would contend that the findings recorded by the court below are totally perverse and, therefore, deserve to be set aside.

6. On the other hand, Sh. Y.P. Sood, learned counsel for the tenant has not only supported the order, but would claim that the same is immune from interference in exercise of revisional jurisdiction of this court.

I have heard the learned counsel for the parties and have meticulously gone through the records.

7. In order to appreciate the controversy in issue, it would be relevant to first refer to the pleadings and evidence led by the parties.

8. Coming to the pleadings, it would be noticed that the tenant had sought condonation of 380 days delay by offering explanation as contained in paras 2 and 3 of the application which read.

"2. That the appeal is barred by limitation by 380 days. It is submitted that the appeal could not be filed earlier because the applicant was not having the knowledge about passing of ex parte order of eviction till 25.12.2009 when the daughter in law of the applicant came to Shimla to the tenanted premises and on reaching Shimla she came to know from the neighbours that the possession of the premises has been taken over by non applicant on the basis of ex parte order of eviction passed by this Hon"ble Court. It is submitted that prior to 25.12.2009 the applicant was not aware about the passing of the eviction order. It is submitted that the applicant is not keeping good health and is under treatment at Delhi. Moreover, no legal and valid service was ever effected upon the applicant in accordance with law and he had no opportunity to know about the passing of eviction order.

3. That the daughter in law of the applicant whom the applicant has appointed as his general power of attorney on coming to know about the fact that the possession has been taken over by the non applicant, engaged Sh. Y.P. Sood, Advocate as counsel to verify that factual position from this Hon"ble trial court. The counsel for the applicant made inquiries from this Hon"ble trial court and from the inquiries made it came to his notice that the ex parte order of eviction has been passed on 1.12.2008. The counsel of the applicant, therefore, applied for the certified copies of the eviction order on 26.12.2009 as well as the other relevant record which copies were supplied on 1.1.2010. Thereafter the appeal was got drafted by the applicant and the same is being filed without any delay."

9. The landlord contested the application by filing a reply wherein the contents of

the aforesaid paragraphs were denied in the following manner:

ON MERITS

1.

2. Contents of para 2 of the application are admitted only to the extent that the application is barred by time, however, it is specifically denied that the applicant did not have knowledge of the eviction order till 25.12.2009, when his daughter in law allegedly came to Shimla or came to know from the neighbours as alleged. The averments made lack necessary and better particulars. It is also denied that the applicant is not keeping good health or that he was not served in the eviction proceedings. As submitted above, the averments made are vague and indefinite to the extreme and, thus, liable to be ignored.

3. Contents of para 3 of the application are likewise wrong and hence denied. The applicant has failed to give better particulars of the averments made. It may be submitted that the respondent had been duly served in the eviction proceedings and was aware of the same. The delay in filing the appeal is intentional.

10. Now coming to the evidence led by the tenant, it would be noticed that the General Power of Attorney of the tenant appeared as AW-2 and stated that it was she who on 25.12.2009 acquired knowledge regarding the eviction orders when she found that a different lock have been put on the premises. Upon acquiring knowledge, the relevant papers through the Advocate were applied and the application was thereafter filed without any undue delay.

11. In her cross examination, this witness clearly stated that her father had not visited Shimla for the last 6-7 years and this statement was recorded on 2.5.2011. The witness thereafter admitted that electricity to the premises stand disconnected in the year 2007. But what is more relevant and important is the fact that this witness clearly and unequivocally admitted that the tenant had acquired knowledge about the possession of the premises having been taken over by the landlord on 25.3.2009 and not 25.12.2009 as is averred in the application filed for condonation of delay.

12. It is more than settled that admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous, more particularly, when the same is clear and unambiguous.

13. In Nagubai Ammal & ors v. B. Shama Rao & ors, AIR 1956 SC 593, the Hon'ble Supreme Court held that admission made by a party is admissible and best evidence, unless it is proved that it had been made under a mistaken belief while deciding the said case. Reliance therein was placed upon the judgment in Slatterie v. Pooley, ([1840] 6 M. & W. 664) wherein it has been observed that "what a party himself admits to be true, may reasonably be presumed to be so".

14. Adverting to the facts, it would be noticed that tenant took no steps to withdraw the admission or prove that the same was erroneous and, therefore, the plea set up in the application that the tenant, for the first time, acquired knowledge only on 25.12.2009 stands falsified in teeth of the aforesaid admission.

15. It is also surprising that statement of this witness, which runs in more than nine pages has been rapped up by the learned first appellate authority in a slipshod and cryptic manner, that too by ignoring the most vital admission made by the tenant.

16. It is thus proved on record that tenant had, for the purpose of condonation of delay, offered an explanation which was false. Yet, the tenant would still maintain that the law of limitation has to be liberally construed. What appears to have been conveniently over looked and ignored by the tenant is the fact that filing of false affidavit is an extremely serious matter and amounts to interference with the administration of justice or the due course of judicial proceedings. Swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in its due course, but has also tendency to impede, obstruct and interfere in the same. Filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of party to the litigation.

17. Once it is found and firmly established that a party has approached the court with a false stand, then it is the settled principle in law that such party is not entitled to the relief which is discretionary and equitable.

18. The Hon^{ble} Supreme Court in *Pundlik Jalam Patil (Dead) by L.Rs. v. Executive Engineer, Jalgaon Medium Project & anr*, (2008) 17 SCC 448, has refused to condone the delay mainly because of the reason that while seeking condonation of delay, a false plea was taken with incorrect statement made in the application. It is apt to reproduce para 12 of the judgment which reads thus:

"12. The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the

application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay. [See: Binod Bihari Singh v. Union of India, (1993) 1 SCC 572]."

19. In Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation & anr, (2010) 5 SCC 459, the Hon"ble Supreme Court held that if the explanation offered for condonation of delay appears to be incorrect, false or there being no sufficient cause, the delay should not be condoned.

20. In V. Chandrasekaran & anr v. Administrative Officer & ors, (2012) 12 SCC 133, Hon"ble Supreme Court held that a person is expected to approach courts of equity with clean hands, clean mind and clean heart. Person who seeks equity must do equity. A person cannot be enriched by causing injuries to others. Pleadings must be clear, consistent and devoid of falsehood. It was further held that persons approaching courts with tainted hands are not entitled to any relief whether interim or final. It was also observed that submitting pleadings containing false, misleading or inaccurate statements to achieve ulterior purpose, amounts to abuse of process of court and such person must not be permitted to profit from frivolous litigation. It is apt to reproduce the relevant observation which reads thus:

"44.The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "*Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiore*", means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide: The Ramjas Foundation & Ors. v. Union of India & Ors., AIR 1993 SC 852; Nooruddin v. (Dr.) K.L. Anand, (1995) 1 SCC 242; and Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors., AIR 1997 SC 1236).

48. In Maria Margarida Sequeria Fernandes & Ors. v. Erasmo Jack de Sequeria (dead), (2012) 5 SCC 370), this Court taking note of its earlier judgment in Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249 held:

"False claims and defences are really serious problems with real estate litigation, predominantly because of ever-escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our courts. If pragmatic approach is adopted,

then this problem can be minimised to a large extent."

The Court further observed that wrongdoers must be denied profit from their frivolous litigation, and that they should be prevented from introducing and relying upon, false pleadings and forged or fabricated documents in the records furnished by them to the court."

21. In view of the aforesaid discussion, this court has no hesitation to conclude that the judgment passed by learned first appellate authority is not only cryptic, but is also perverse and cannot, therefore, withstand judicial scrutiny and is accordingly set aside.

22. Since tenant has resorted to falsehood and on the basis of such falsehood has even managed to get an order in his favour, therefore, no leniency is required to be shown to such type of litigant. Equity demands that such litigant, whose aim and object is only to deprive opposite party of the fruits of the order, must be dealt with heavy hands. Accordingly not only the petition is allowed in the aforesaid terms, but the tenant-respondent is also burdened with costs, assessed at Rs. 30,000/- which shall be paid to the landlord within a period of three months from today, failing which landlord shall be at liberty to execute this order before the competent court.

23. Petition is disposed of in the aforesaid terms, so also the pending application(s), if any.