

(2015) 02 DEL CK 0418

In the Delhi High Court

Case No : CM(M) 62/2013 and CM No. 934/2013, CM(M) 65/2013 and CM No. 1001 of 2013

Surjeet Singh Kalra and Others

APPELLANT

Vs

Darshan Lal and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 144, 151
Delhi Rent Control Act, 1958 — Section 14(1)(b)

Citation : (2015) 5 AD 230

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; Ankit Jain and Sarvesh Rai, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J—The present petitions arise from a common impugned judgment dated 30th November, 2012 whereby two appeals of the Respondent being RCT No. 40/2009 and RCT No. 67/2011 were decided in favour of the Respondent and the order dated 20th August, 2011 dismissing the application under Order IX Rule 13 CPC and eviction order dated 20th November, 2008 were set aside subject to payment of cost of Rs. 15,000/- by the Respondent. The Respondent was granted one single opportunity to cross-examine the witnesses of the Petitioners on a date to be fixed by the learned ARC and to complete its evidence, two opportunities were granted and the matter was directed to be decided within two months. As regards the prayer of the Respondent with regard to the restitution of the suit premises, no order was passed however, the Petitioners herein were directed not to create any third party interest in the suit premises till the disposal of the case if not already done. A brief exposition of the facts leading to the filing of the present petitions is that an eviction petition under Section 14(1)(b) of the Delhi Rent Control Act, 1958 (in short "the DRC Act") was filed by the father of Petitioner Nos. 1 to 4 against the Respondents

Darshan Lal and Sheikh Babloo @ Lamboo on the allegation that Shop No. 2 in Property No. 3000, Gali No. 38, Beadonpura, Kard Bagh, New Delhi-110005 was let out to the Respondent No. 1 for non-residential purposes on monthly rent of Rs. 100/- w.e.f 1st August, 1978 vide rent agreement, however, the Respondent No. 1 without permission of the father of the Petitioner Nos. 1 to 4 sub-let the shop to the Respondent No. 2 contrary to the terms of agreement. Though the father of the Petitioner Nos. 1 to 4 served legal notice on the Respondents however, no reply was received. Respondent No. 1 filed written statement denying sub-letting to the Respondent No. 2 and stated that he was in possession and control of the suit premises and had no knowledge who was Respondent No. 2. Respondent No. 2 was served by way of publication in newspaper. Since he failed to appear he was proceeded ex-parte. In the replication father of Petitioners No. 1 to 4 controverted the facts stated in the written statement. During the pendency of the eviction petition the original Petitioner Sunder Singh died and thus his LRs i.e. the Petitioners No. 1 to 4 were brought on record. The Petitioner Nos. 1 and Petitioner No. 4 Surjeet Singh Kalra and Tirlochan Singh were examined as PW-1 and PW-2 respectively however, Respondent did not appear, thus the respondent's right to cross-examine was dosed and vide order dated 20th November, 2008 an eviction order was passed in favour of the Petitioners. In execution petition possession of the suit premises was handed over to the Petitioners.

2. An application under Order 9 Rule 13 CPC read with Sections 144 and 151 CPC was filed by the Respondents for setting aside the ex-parte order and it was stated that the Respondent's counsel Mr. Rajnish Vats, Advocate was looking after the proceedings who asked the Respondents not to appear on each date and as and when the matter is listed for their evidence he would inform them. The matter was fixed for 12th May, 2008 when the examination-in-chief of PW-1 and PW-2 was recorded and their cross-examination was deferred to 1st September, 2008. Inadvertently, the counsel for the Respondent did not note the date of 1st September, 2008 in the diary. Further Shri Rajnish Vats, Advocate who was residing at Premises No. 14, New Rohtak Road, New Delhi along with his family and was maintaining his office from that premises had to vacate the said premises on 31st August, 2008 pursuant to the eviction petition filed by the landlord and thus all the files and the diary were packed in various cartons which were shifted to the godown situated at Ashram belonging to a friend of Mr. Ranjnish Vats, Advocate. Thereafter the counsel shifted to Ananda Apartments and for this reason the Respondents could not appear. As neither the Respondents appeared nor their counsel, on 1st September, 2008 Respondents were proceeded ex-parte and the eviction order was passed on 20th November, 2008.

3. On 19th March, 2009 the Respondent received a telephonic call from the neighbours that some persons were breaking open the locks of their shop. The bailiff of the Court was found breaking the locks in execution of the eviction order. The bailiff handed over the goods lying in the shop including the

motorcycle of his son. Thus the Respondent filed an application for setting aside order dated 1st September, 2008 proceeding them ex-parte and the ex-parte eviction order dated 20th November, 2008 and for recovery of possession. The learned ARC vide order dated 13th October, 2009 fixed the matter for evidence of the Respondents on the application. Feeling aggrieved, the Respondent filed an appeal which was dismissed. Thereafter on the application of the Respondents under Order 9 Rule 13 CPC the Respondent examined himself as AW-1, his counsel Shri Rajnish Vats as AW-2 and Shri Murari Singh Yadav, bailiff as AW-3. The Petitioners did not lead any evidence on the said application. Vide order dated 20th August, 2011 the application of the Respondent under Order 9 Rule 13 CPC was dismissed. Thus the Respondent preferred two appeals before the learned Rent Control Tribunal being RCT No. 40/2009 against the ex-parte eviction order dated 20th November, 2008 and RCT No. 67/2011 against the order dated 20th August, 2011 whereby his application under Order 9 Rule 13 CPC was dismissed. Both the appeals were heard together and as noted above the same were allowed granting one opportunity to the Respondent to cross-examine the Petitioners' witnesses and two opportunities to lead his evidence. Aggrieved by the impugned order dated 30th November, 2012 the Petitioners have preferred the present petitions.

4. Learned counsel for the Petitioners contends that the explanation of the Respondent in the application under Order 9 Rule 13 CPC is not plausible and the order proceeding the Respondent ex-parte could not be set aside. Further even though the Respondent came to know of the order on 19th March, 2009 he filed the application under Order 9 Rule 13 CPC belatedly on 13th April, 2009.

5. As noted above for deciding an application under Order 9 Rule 13 CPC the learned ARC examined the Respondent, his counsel and the bailiff as witnesses. Mr. Rajnish Vats, Advocate who appeared before the Court as AW-2 stated the facts noted above and that he had to vacate his residence and office and all files of the various cases including the diary and other office articles were packed in cartons and thus he was unable to appear after 31st August, 2008. Moreover, further dates were also not noted in the diary. He produced his original diary of the year 2008 which contained the pages of relevant dates. He also stated that in majority of the old matter he also could not appear from 31st August, 2008 to 9th April, 2009. He further stated about the eviction order which was passed by this Court on the settlement between the parties relating to the house in which Shri Rajnish Vats along with his family was residing. In view of the evidence of Mr. Rajnish Vats, Advocate before the learned Trial Court it cannot be said that the Respondent failed to show sufficient cause and the learned Rent Control Tribunal committed any illegality in allowing the appeals. By examining the bailiff AW-3 the Respondent also proved that he came to know of the order proceeding him ex-parte on 19th March, 2009 and thus within 30 days of the knowledge of the order he filed an application seeking setting aside of the ex-parte order dated 1st September, 2008. Consequently, there being no merits in the present petitions and the applications, the same are dismissed.