
(2011) 10 DEL CK 0088
In the Delhi High Court
Case No : RC. REV. 286 of 2010

Verma Leather Factory and Tannery Pvt Ltd
Vs

APPELLANT

Gulshan Rai

RESPONDENT

Date of Decision : 14-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Delhi Rent Control Act, 1958 — Section 14(1), 25B, 25B(8)

Citation : (2011) 10 DEL CK 0088

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Pradeep Diwan, with Mr. Dalip Mehra and Ms. Anupam Dhingra, for the Appellant; Amardeep Singh, for the Respondent

Final Decision : Allowed

Judgement

P.K Bhasin, J

1. This petition u/s 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter called "the Act") has been filed by the petitioner against the order passed by the Additional Rent Controller whereby the application for leave to contest the eviction petition filed against it and two others by the respondent u/s 14(1)(e) of the Act in respect of the premises in question was dismissed and consequential eviction order came to be passed against it.

2. The respondent claimed to have let out the premises in question to one Mr. B.N. Verma and after his death the tenancy allegedly devolved upon his two sons who were impleaded in the eviction petition as respondent's no.1 and 2. The petitioner-Company was also impleaded as respondent no. 3 though it was claimed by the respondent that his tenants were respondents no. 1 and 2 only and in some other legal proceedings between the petitioner Company and the respondent it had been held that this Company was not the tenant in respect of the premises in question. It was however pleaded that the petitioner Company was occupying the premises in question for its business and Mr. B.N. Verma,

respondent no.2 in the eviction petition, was claiming to be its Director. The circumstances under which the present petitioner came to be impleaded as a respondent in the eviction petition were narrated in detail in para no.18(a) of the eviction petition and the relevant averments are re-produced below:-

18(a) (1). That the premises shown in red and yellow colors in plan were in the tenancy of Shri. B.N Verma, in his personal capacity. He had set up business in the said premises, in the name of "Varma Leather Factory And Tannery Private Limited" some time after the commencement of his tenancy..... Some time thereafter Shri. Gulshan Rai petitioner became owner of the property by purchase from its previous owner..... Shri B.N. Verma had died and his tenancy rights in respect of premises shown red in the plan were inherited by his widow and two sons namely Shri S.N. Verma and Shri R.N. Verma. At present business is being carried on in the name of Verma leather Factory and Tannery Private Limited in which Shri R.N. Verma, younger son of Shri B.N. Verma is claiming to be director.

M/s Verma Leather Factory and Tannery Private Limited, was and is not a tenant of the premises. This fact is established by order dated 02.08.2005 passed by Shri Daya Parkash Senior Civil Judge, Tis Hazari, Delhi in petition No. 153/2005. On the strength of the said order, Shri M.K. Nagpal, competent authority (Slums) in case No. CA(S) (i) 8506/95 had passed order dated 02.02.2008 at the instance of Verma Leather Factory and Tannery Private Limited, against Shri Gulshan Rai that the relationship of landlord and tenant between the petitioner and the aforesaid company was not established....

After the death of Shri B.N. Verma his widow died and Shri S.N. Verma and Shri R.N. Verma, being sons, became tenants of red portion by inheritance.

In the light of aforesaid facts Shri Gulshan Rai, petitioner is the owner/landlord of premises shown in red color on the plan and Shri S.N. Verma and Shri R.N. Verma, both sons of Shri B.N. Verma, are his tenants in respect of said portion.

3. The learned Additional Rent Controller directed issuance of summons of the eviction petition as prescribed in Schedule III of the Act to all the three respondents impleaded in the eviction petition requiring them to seek leave to contest the eviction petition within a period of fifteen days from the date of receipt of the summons. Respondent no.1 in the eviction petition, Shri S.N. Verma was served on 19.02.2009 but he did not file any leave application within the prescribed period of fifteen days from the date of receipt of summons. Consequently, the averments made in the eviction petition were deemed to have been admitted by him and an eviction order came to be passed against him on 03.12.2009. Shri R.N Verma, impleaded as respondent no.2 in the eviction petition as a joint tenant was served on 20.02.2009 and he filed the leave to contest application within the prescribed period and claimed that he was not the tenant and respondent no.3, petitioner herein was the tenant. However, that application was dismissed by the Additional Rent Controller and while dismissing

the same an order was also passed for the deletion of the name of Mr. R.N. Verma from the eviction petition.

4. The petitioner herein was also served on 20.02.2009 with the summons of the eviction petition but it did not move any application for leave to contest. Instead, it moved an application under Order VII Rule 11 read with Section 151 CPC challenging the maintainability of the eviction petition against it on the ground that since the landlord was not acknowledging it to be his tenant the eviction petition was not maintainable. The said application was dismissed by the trial Court and an eviction order was passed against it also since it had not filed the leave to defend application within the prescribed time.

5. Feeling aggrieved by the eviction order passed by the Additional Rent Controller against it the petitioner Company filed the present revision petition.

6. After having gone through the impugned order and having perused the record, I am of the view that the impugned order is not in accordance with the law and has to be set aside. From the fore-going narration of the facts of the case it becomes clear that it was the categorical case of the respondent-landlord that only Shri S.N. Verma and Shri R.N. Verma, who were impleaded by him in his eviction petition as respondent's no. 1 and 2 respectively, were his tenants. It was also categorically pleaded by him that the present petitioner was not his tenant. However, only in the prayer para it was prayed that if respondent no. 1 and 2 plead that the said Company was the tenant and the Court also comes to the conclusion that it was the tenant, then an eviction order be passed against it. As noticed already, respondent no. 1 in the eviction petition, who according to the respondent's own case was a tenant, had not filed any leave to contest application and consequently an eviction order was passed against him on 3rd December, 2009 and respondent no.2 Shri R.N Verma was ordered to be dropped from the proceedings. With the passing of the eviction order against Shri R.N. Verma nothing more survived in the eviction petition and the proceedings against the present petitioner should have been terminated at that stage itself leaving it to the respondent herein to execute the eviction order against Shri S.N. Verma. The learned Additional Rent Controller had himself observed that the respondent no.1 was deemed to have admitted the averments in the eviction petition, which included the averment that he was a tenant and not the Company(petitioner herein). Thus, no dispute remained to be resolved by the Controller regarding the status of the petitioner Company qua the premises in question. Thereafter, there was no occasion for the Additional Rent Controller to have passed a second eviction order in the same eviction petition and that too against a party who was not being accepted by the landlord to be his tenant. Reference at this stage can also be made to a judgment of this Court in the case of Siri Pal Jain Vs. Brij Ksihore and Others, wherein it had been held by this Court that when in an eviction petition u/s 14(1)(e) of the Act somebody who is not claimed by the landlord to be a tenant is also impleaded then that person need not even apply for leave to defend and, in fact, even the procedure u/s 25-B does not apply to

such a petition. However, since in the present case already an eviction order stands passed against Mr. S.N. Verma and the same has attained finality also and I have also come to the conclusion that with the passing of the eviction order against the person who according to the respondent was his tenant further proceedings in the matter should have been terminated there and then I need not go into the question whether the decision of the Controller to follow the procedure u/s 25-B of the Act from the very beginning was proper or not.

7. This revision petition accordingly succeeds. The impugned eviction order passed against the petitioner-Company by the Additional Rent Controller is set aside. However, it is clarified that in case the respondent would seek the eviction of the petitioner Company also in execution of the eviction order passed against Mr. S.N. Verma it would then be open to it to resist the execution of the eviction order against it in accordance with law and the concerned Court shall deal with its case independently on merits since neither the Additional Rent Controller nor this Court has examined the merits of the petitioner's stand that it was the tenant in the premises in question and not Mr. S.N. Verma and his brother Mr. R.N Verma.