
(2014) 07 DEL CK 0170
In the Delhi High Court
Case No : RC. Rev. 280/2011

Yash Pal

APPELLANT

Vs

Gopal Singh Nim

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Delhi Rent Control Act, 1958 — Section 25-B(8)
Evidence Act, 1872 — Section 115
Limitation Act, 1963 — Section 5
Transfer of Property Act, 1882 — Section 111(f)

Citation : (2014) 07 DEL CK 0170

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Gyan Prakash and Neeraj, Advocate for the Appellant; R.K. Arora, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.—This rent control revision petition is filed u/s 25-B(8) of the Delhi Rent Control Act, 1958 impugning the judgment of the Additional Rent Controller dated 14.2.2011 by which the Additional Rent Controller has dismissed the application for leave to defend and passed on order of eviction. It needs to be noted that only a period of six months time is granted to vacate the suit premises after eviction order is passed, however, after more than three and half years of passing of the impugned judgment, petitioner continues to stay in the suit premises in view of the interim order passed by a learned single Judge of this Court on 1.8.2011.

2. The subject petition for bona fide necessity was filed by the respondent against the petitioner with respect to one shop having private no. 5(87-A/5) of premises 87-A, Kundan Nagar, Street No. 1, Delhi-110092. The respondent-landlord claimed the suit premises for the reason that he is an Advocate and needed the tenanted premises to open his office in the suit premises which is right below the respondent's residence which is at the first floor of the property. Earlier, the respondent-landlord was carrying on his professional work from the

garage, but, now respondent is using the garage for parking his car.

3. The petitioner/tenant contested the petition by filing leave to defend application and following grounds were urged before this Court for setting aside of the impugned order:-

(i) Ownership of the respondent-landlord of the suit premises is denied.

(ii) The respondent-landlord is alleged not to be a practicing Advocate and that he has not filed any Vakalatnama in any case, and therefore, since the respondent-landlord has no practice, he therefore does not require the tenanted shop.

(iii) The respondent-landlord has an alternative accommodation because he has been allotted a chamber in the Karkardooma Courts.

(iv) The respondent-landlord has concealed the fact that he owns property no. 6602, Gali No. 3 & 4, Block No. 9, Dev Nagar, Karol Bagh, Delhi and which premises is an alternative suitable accommodation.

(v) Lastly, it is urged that the petitioner-tenant was a co-tenant along with his father, and the eviction petition was bad for non-joinder of the legal heirs of the deceased father.

4. So far as the first argument that the respondent-landlord is not an owner is concerned, the argument is wholly frivolous because it is not disputed even before this Court that the respondent is the landlord of the suit premises. Once the respondent is admitted to be the landlord of the suit premises, then the petitioner-tenant is estopped from challenging the ownership of respondent-landlord in view of Section 115 of the Indian Evidence Act, 1872.

5. Even the second argument urged that the respondent is not a practicing Advocate is totally without any substance for various reasons. Firstly, the respondent has filed in the Court his membership number of the Shahdara Bar Association. It is only because of this that the respondent stands allotted chamber no. E-705 in the Karkardooma Courts. In fact, the petitioner-tenant is guilty of blowing hot and cold by stating that the respondent is not a practicing Advocate allegedly although it is simultaneously stated that he has been allotted a chamber in the Karkardooma Courts. Also, the petitioner-tenant cannot insist that a person who wants to practice as an Advocate should not have a office, that too at a place just below his residence, on the ground that he is not practicing because if this argument is accepted then a new Advocate who is not practicing will not be allowed to evict the tenant so that he would have a practice or for increasing his practice. In my opinion, for being a successful Advocate or being a practicing Advocate, having many cases is not a pre-condition for seeking eviction of a tenant from a shop from where the respondent-landlord as an Advocate wants to commence/carry on his professional work, and which shop/tenanted premises is situated just below the premises of the respondent-landlord. The second argument urged on behalf of the petitioner is also rejected.

6. The third argument which is urged on behalf of the petitioner is that the respondent-landlord has a chamber in Karkardooma Courts which should be taken as an alternative accommodation, however, the argument is misplaced because chambers in courts are only very small areas. Also, merely because an Advocate has a chamber in court cannot mean that he is not entitled to have an office which is just below his residence to carry out his professional work and which premises would also be used when the landlord is not in the court or in late hours or early hours; as also on holidays. Therefore, in my opinion, the third argument is also misconceived and merely because the respondent-landlord has a chamber in Karkardooma Courts, the same would not amount of having an alternative accommodation for dismissing the eviction petition.

7. So far as the ground that the respondent-landlord owns a house in Dev Nagar is concerned, the respondent-landlord in reply to the leave to defend application had stated that the said property is an ancestral property which is not in his possession but in the possession of the other co-owners. Therefore, the Dev Nagar, Karol Bagh property is not available to the respondent-landlord. In any case, the Dev Nagar, Karol Bagh premises is about 20 kilometers from the residence of the respondent/landlord above the tenanted shop, and therefore, no tenant can plead that the landlord must go 20 kilometers from his residence for having an office premises. This argument urged is also without merit and rejected.

8. (i) The last argument which was urged was that the petitioner was not a sole tenant but he was a co-tenant with his father and in the absence of the legal heirs of the deceased father, the eviction petition cannot be decreed. This argument is liable to be rejected for various reasons. Firstly, this defence is not taken in the leave to defend application and the Supreme Court has now held in the case of Prithipal Singh Vs. Satpal Singh (Dead) through LRs., that whatever has to be stated for grant of leave to defend application has necessarily to be stated only within 15 days statutory period provided for filing of the leave to defend application and that there cannot be condonation of even one day's delay in filing of the leave to defend application. Supreme Court has held the statutory period of 15 days for filing of the leave to defend application as inflexible and sacrosanct which cannot be extended by resort to either the provisions of Section 5 of the Limitation Act, 1963 or the provisions of CPC, 1908. Once, only 15 days period is provided for filing of a leave to defend application, and everything has necessarily to be stated within 15 days in the leave to defend application, then, the tenant cannot on his convenience keep on filing additional affidavits or additional grounds or additional documents after the period of 15 days because if that is permitted the same will destroy the sanctity of 15 days which is mandatory and inflexible as held by the Supreme Court in the case of Prithipal Singh (supra).

(ii) Even for the sake of argument this aspect is considered on merits, this argument does not have any basis because Supreme Court has held in the case

of Pushpa Rani and Others Vs. Bhagwanti Devi and Another, that on the death of the original tenant if certain legal heirs do not exercise their tenancy rights, they would have impliedly surrendered their tenancy rights. For exercising the tenancy rights, the tenant would have to perform the reciprocal obligation of paying rent in whole or part. In the present case, once the other legal heirs have not paid any rent to the respondent-landlord and also are not in any manner found to be connected with or showing interest in the tenanted shop, they no longer remained as co-tenants and they would have been deemed to have impliedly surrendered their tenancy; implied surrender being one method of cessation of tenancy in view of Section 111(f) of the Transfer of Property Act, 1882.

9. In view of the above, it is clear that the petitioner/tenant is obdurately and maliciously continuing to stay in the tenanted premises although respondent-landlord has a bona fide need of premises for his office purposes as an Advocate. As already stated above, petitioner ought to have vacated within six months of passing of the impugned judgment on 14.2.2011 but he has not vacated the suit premises. In view of the judgment of the Supreme Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., that after passing of the eviction order, the tenant is liable to pay mesne profits and not the earlier contractual rent, therefore, this petition is dismissed with costs of Rs. 1 lakh and which amount be appropriately adjusted by the respondent-landlord towards his claim of mesne profits for the illegal stay of the petitioner in the suit premises beyond six months of passing of the impugned judgment dated 14.2.2011.