

Shiv Charan Vs. Deep Chand

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Court : Delhi

Decided On : Feb-01-1997

Reported in : 71(1998)DLT763; 1998(44)DRJ487

Judge : Manmohan Sarin, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1) and 25-B

Appeal No. : Civil Revision No.200 of 1997

Appellant : Shiv Charan

Respondent : Deep Chand

Advocate for Def. : Mr. J.N. Singh, Adv.

Advocate for Pet/Ap. : Mr. O.P.Gupta, Adv

Judgement :

ORDER

Manmohan Sarin, J.

1. The petitioner tenant by this Revision Petition assails an order dated 16.1.1997, passed by Shri H.S. Sharma, Additional Rent Controller, Delhi, directing the petitioner to produce his wife on the next date of hearing failing which an adverse inference would be drawn and it shall be presumed that the complaint dated

26.2.1991, bears the thumb impression of his wife. The physical presence has been directed so that the identity of petitioner's wife who has denied making the complaint could be verified by the Investigation Officer.

2. For an appreciation of the matter in controversy the following facts giving rise to the present Civil Revision Petition may be noticed:

(i) The respondent has filed an eviction petition against the petitioner-tenant under section 25-B, of the [Delhi Rent Control Act, 1958](#) on the grounds of bonafide need, i.e., under section 14(1)(e) of the [Delhi Rent Control Act, 1958](#). The petitioner-tenant has filed his written statement and denied the relationship of landlord and tenant and respondent being the owner of the premises.

(ii) The respondent relies on a complaint dated 26.2.1991, alleged to have been filed by the petitioner's wife. In the said complaint petitioner's wife is alleged to have stated that the respondent had become the owner and had been collecting rent from her. Further that the rent was being regularly paid. Grievance is made in the complaint against threat of dispossession of the petitioner and his wife.

(iii) It appears that the respondent had summoned the said complaint from the police authorities and the same has been proved and given Exhibit No.AW.2/2. Petitioner's wife has also been examined. She denied having made the complaint.

(iv) The respondent at this stage moved an application under section 30 C.P.C. read with section 151 of the Civil Procedure Code for recalling the petitioner's wife Smt. Kaushalya Devi. By this application, the respondent sought directions for the physical presence of Smt. Kaushalya so that he could examine Sub Inspector Surat Singh, who had inquired into the complaint and recorded statement of petitioner's wife. It was claimed that in order to pinpoint the identity of Smt. Kaushalya Devi, wife of the petitioner her physical presence was required for being identified by S.I. Surat Singh. This prayer has been allowed by the Additional Rent Controller, holding that the petitioner should have been fair enough to bring his wife himself to set the controversy at rest that the alleged complaint was not made by his wife. He allowed the application and directed the petitioner to produce Smt. Kaushalya Devi on the next date of hearing and on his

failure to do so adverse inference would be drawn and it would be presumed that the complaint carried the thumb impression of petitioner's wife.

3. I have heard the learned counsel for the petitioner who has assailed this impugned order as being illegal and without jurisdiction. Learned counsel has argued that apart from the fact that the order for physical presence of the witness was not contemplated under section 30 of C.P.C. for the purpose of identification. The purpose of identification sought to be achieved was self defeating in as much as if the petitioner's wife was asked to be present in Court Assistant Sub Inspector Surat Singh, who the petitioner claims is helping the respondent would have no difficulty in identifying her as being the only lady who was to be reexamined as a witness. Learned counsel submits that there was no provision of identification of a witness. Even in case of identification of the accused, the procedure under Criminal Procedure Code is followed where the accused is required to be picked out from a similar number of persons, who have not been seen before. Learned counsel for the petitioner submitted that he would have no objection if an identification parade was to be carried out.

4. In my view it is not necessary to consider the petitioner's suggestion. The procedure followed before the Rent Controller is that of a Small Causes Court. The impugned direction is not contemplated under section 30 C.P.C. Besides recalling a witness under Order 18 Rule 17 C.P.C. is also to enable the Court to put questions and not for purpose of physical identification by another person/witness. The complaint has been produced and exhibited before the Additional Rent Controller Ex. AW-2/2. The petitioner's wife has also appeared and denied having made complaint Ex.AW.2/2. She has been crossexamined. It was for the Respondent to have elicited admissions if any in crossexamination. The Additional Rent Controller on the entire evidence available is to determine the existence of Landlord/tenant relationship. Whether the complaint was executed and lodged by the petitioner's wife or not, would at best be only one piece of evidence for determination of the landlord/tenant relationship. In any case, it was open to the respondent to move the Additional Rent Controller for summoning the original record from the Police Authorities and to have the same sent to CFSL for comparison with the admitted thumb impression of petitioner's wife in support of

his contention that the complaint was lodged by the petitioner's wife. The learned Additional Rent Controller it appears in his zeal and quest for finding out the truth and to do justice between the parties, followed procedure not permissible at law. Even otherwise, execution of a document of 1991 being proved only on the basis of physical identification of the executant by an Assistant Sub Inspector of Police, who receives numerous complaints daily in the normal course of his duties, could hardly be considered a reliable or satisfactory method. The impugned order accordingly suffers from material irregularity and is hereby set aside.

5. The Revision Petition is allowed.

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