

S.K. Aggarwal Vs. Abdul Aziz

S.K. Aggarwal Vs. Abdul Aziz

SooperKanoon Citation : sooperkanoon.com/685541

Court : Delhi

Decided On : Aug-09-1999

Reported in : 1999VAD(Delhi)295; 81(1999)DLT278; 1999(51)DRJ75; 1999RLR569

Judge : Vijender Jain, J.

Acts : [Constitution of India](#) - Article 227; [Delhi Rent Control Act, 1958](#) - Sections 38; [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Civil Misc. (Main) No.2/99

Appellant : S.K. Aggarwal

Respondent : Abdul Aziz

Advocate for Def. : Mr.R.K. Saini, Adv.

Advocate for Pet/Ap. : Mr.Sandeep Sethi, Adv

Judgement :

ORDER

Vijender Jain, J.

1. Mr. Sethi, learned counsel for the petitioner has contended that the petition filed by the petitioner under Article 227 of the [Constitution of India](#) is maintainable. On

the other hand, Mr. Saini, learned counsel for the respondent has contended that the matter is appealable and this petition is not maintainable. Mr. Sethi in support of his contention has cited Smt. Bhagwati Devi & Ors. v. Haji S.M. Sayeed 1979 (2) RCR 142. On the other hand, Mr.Saini has cited in his favor Sita Ram Talwar v. Jai Deva Sharma 1972 RCJ 562 and Kishan Chand v. Ramesh Chander & Ors. 1969 RCJ 839. The law is well settled with regard to the orders which are appealable under Section 38 of the Delhi Rent Control Act. Any order which affects or determines the right of the parties is appealable. For that one has to go to the facts and circumstances of each case whether the amendment sought for results into withdrawal of an admission and whether the amendment sought for changes the nature of the cause of action. However, I find force in the argument of Mr.Sethi that in the present case as amendment sought for was dismissed, therefore, he could not have filed an appeal. Learned counsel for the petitioner has relied upon Sita Ram Talwar & Anr. v. Jai Dev Sharma 1972 (2) 2nd Delhi 769 in support of his contention.

2. I am bound by the ration of Sita Ram Talwar's case (supra) and I hold the same view.

3. Now coming to the merit of the case. Mr.Sethi has contended that the amendment was in the nature of clarification and no fresh cause of action was introduced nor any admission was withdrawn. The amendment was more of a clarificatory nature. Let us have a look at the original preliminary objection No.3 as raised by the petitioner. The same is as follows :

'Initially the Petitioner has falsely represented to the Answering Respondent that he is the owner of the plot comprising the subject property and premises. On the basis of said representation the Respondent paid to him in May, 1983 a sum of Rs.300/- for which the Petitioner issued a receipt. On the said plot of land the Answering Respondent himself erected a single storeyed structure from which he has been running a Chemist shop.'

4. By virtue of the amendment application, the petitioner now wants to mend paragraph 3 of the preliminary objection to the following effect :

'No rent was paid by the respondent to the petitioner. Solitary Rent receipt was issued only for obtaining license for the Chemist shop. On the said plot of land the answering respondent himself erected single storey structure in 1990 from which he was running his shop till October 7, 1996 when the DDA officials demolished the same.'

5. From the bare perusal of the proposed amendment it would be seen that the element that respondent was the owner of the plot on the basis of respondent falsely representing to the petitioner, the petitioner has paid in May, 1983 a sum of Rs.300/- for which a receipt was issued, has been deliberately deleted from the proposed amendment. That deletion amounts to deletion of an admission made by the petitioner. I do not find any infirmity with the order passed by the Addl. Rent Controller.

6. Petition is dismissed.

7. Date fixed for 23.8.1999 is cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com