

Hgrilal Vs. Tek Chand

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Court : Delhi

Decided On : Jan-02-1967

Reported in : 3(1967)DLT649

Judge : I.D. Dua, a.C.J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 15(7); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 104

Appeal No. : Second Appeal No. 27 of 1964

Appellant : Hgrilal

Respondent : Tek Chand

Advocate for Pet/Ap. : P.S. Safeer and; B.K. Nayyar, Advs

Judgement :

I.D. Dua, Act. C.J.

(1) Shri Hori Lal has approached the Court on second appeal under section 39 of the Delhi Rent Control Act No. 59 of 1958 from the order of the Rent Control Tribunal dated 20th August 1964 dismissing the appellant's appeal from the order of the Rent Controller dated 20th January 1964 granting to Tek Chand (respondent in this Court) his prayer for recovery of possession of the premises in dispute against the appellant.

(2) It is necessary at this stage to go back to 19th September 1963 when in Tek Chand's petition for ejectment of Hori Lal it was observed by the Rent Controller that admittedly Hori Lal was in possession of these premises. In the order, the Rent Controller then proceeded to observe as follows :-

'It is stated that at first the premises were sold in his favor by the Rehabilitation Department but has failed to pay the full price, the sale was cancelled and the present petitioner has purchased this property and a sale deed has been issued in his favor. Hori Lal respondent was a tenant of the Custodian and now he has become the tenant of Tek Chand petitioner. The landlord claimed rent at Rs 20.00 but the tenant states that he was paying rent at Rs. 10.00 p. m. to the Custodian. A receipt has been shown to me. As there is a dispute about the rate of rent between the parties, I fix the interim rent at Rs. 10.00 p. m. under S. 15(1) of the [Delhi Rent Control Act, 1958](#), I pass an order that the respondent tenant should deposit in this Court arrears of rent from 23rd July 1961 up to date @ Rs. 10.00 p. m. within one month from today and future rent at the same rate by the 15th of each following month.'

(3) From this order an appeal was preferred by Hori Lal and the Rent Control Tribunal by an order dated 17th December 1963 affirmed the Rent Controller's order, but in view of the time fixed for depositing the rent having elapsed, directed the appellant-tenant to deposit the arrears of rent from 23rd July 1961 up to date at the interim rate of Rs. 10.00 p. m. within one month from 17th December 1963 and also to deposit future rent month by month at the same rate by the 15th of each following month. In the course of the order, it was observed :-

'It is admitted that this house belonged to the Government of India. The premises in dispute were allotted to the appellant in the year 1953 and he was paying Rs. 10.00 p. m. to the Rehabilitation Department. It is alleged that it was offered for sale to him by the Ministry of Rehabilitation on payment of the price and he paid Rs. 700.00 as the first installment of the price. It appeared that the property was not sold to him. Later on the property was sold to the Respondent in whose favor sale certificate has been issued. In his replication the landlord has pleaded that after the sale of this house in his favor he filed a civil suit for recovery of arrears of

rent against the appellant-tenant which was decreed by Shri Amar Nath Aggarwal. Additional Judge, Small cause Courts, and that decision was final between the parties. A separate suit was filed by the appellant to have that decree set aside but the same was dismissed. therefore, *frima facia* it is established that the Respondent 1s the purcha- ser of these premises. Consequently, by oparation of law, the appellant became a tenant under him.'

(4) When the cause was again taken up by the Rent Controller after the appellate order just mentioned, Hori Lal did nto deposit the arrears of rent as directed by the Tribunal. An application was made on his behalf that he was a poor man and time may be extended for making the necessary deposit. The learned Rent Controller felt helpless, observing that there was no provision of law under which he could grant extension of the time granted by the learned Appellate Court for deposit of the arrears of rent. In these circumstances, he struck out Hori Lal's defense against eviction under section 15(7) of the Rent Control Act. After striking out the defense, he directed that Tek Chand's evidence be recorded. Tck Chand himself appeared as A.W. 1 in which he deposed that the respondent before the Rent Controller was his tenant and that ntoice of demand was served on him as per Exhibit A/2 of which the acknowledgment receipt was Exhibit A/4 and the postal receipt Exhibit A/3. He also deposed about the failure on the part of Hori Lal to pay rent and to deposit the amount due in spite of the order of the Rent Controller dated 19th September, 1963, against which the appeal had also failed. After this evidence, the Rent Controller on the same day i.e. 20th January, 1984, passed an order for Hori Lal's eviction. Against this order an appeal was preferred in the Rent Control Tribunal in which, of course, it was prayed in the end that the order of the Controller dated 20th January, 1934 striking, out the defense and the final order of eviction dated 20th January, ^964 be set aside. In ground No. 6, it was pjeaded that it was nto imperative on the Controller to strike out Hori Lal's defense but it required exercise of discretion on the part of the Controller and when the very relationship of landlord and tenant between the parties was in dispute, the defense should nto have been struck out but the case should have been proceeded with to trial on merits requiring Tek Chand to establish such relationship between the parties. The learned Tribunal in its order on appeal observed that the tenant had nto filed any appeal against the order of the Rent Controller striking out his

defense under section 15(7) of the Rent Control Act, with the result that the said order had become final in view of the provisions of section 43 of the said Act. On the merits, the Tribunal felt that the order of eviction had been rightly made on the facts and circumstances of this case. Section 14(1)(a) of the Rent Control Act was held fully applicable to Justify the order of ejection.

(5) On second appeal in this Court, Shri P.S Safeer learned counsel for Hori Lal, has read out to me the impugned order as well as the earlier orders, of the Rent Controller dated 19th September, 1963 and of the Tribunal dated 17th December, 1963. He has also read out to me the final orders of the Rent Controller dated 20th January, 1964 as also of the statement of Tek Chand of the same date. After going through this part of the record, the learned counsel has submitted that without coming to a positive finding that the relationship of landlord and tenant existed between the parties, the Rent Controller or the Appellate Tribunal had no jurisdiction to make the order of deposit, and still less were they Justified in making an order striking out the defense of the present appellant and of making an order of his eviction.

(6) The argument seems to me to be difficult to sustain. The order of the Rent Controller dated 19th September, 1963 quite clearly shows that a finding was given to the effect that Hori Lal was a tenant of the Custodian and later became a tenant of Tek Chand petitioner. This finding was affirmed on appeal by the Rent Controller Tribunal. For reasons best known to Hori Lal, he did not choose to challenge the order of the Rent Control Tribunal dated 17th December, 1963 in the higher Court. On the basis of those findings, the Rent Controller then proceeded on the assumption that prima facie the relationship of landlord and tenant subsisted between the parties. When Hori Lal declined to make the requisite deposit under the terms of the order of the Tribunal, the Rent Controller was fully justified in striking out the defense against eviction and to proceed with the hearing of Tek Chand's petition.

(7) It has however, been very strongly complained by Shri Safeer that that order dated 20th January, 1964 by means of which Hori Lal's defense was struck out by the Rent Controller, was open to appeal and, therefore, without waiting for Hori

Lal to appeal against- that order.to proceed forthwith with the hearing of Tek Chand's applications is unjust and illegal because it virtually amounts to a negation of Hori Lal's statutory right of appeal. I do not find it possible to agree with this submission. Section 15(7) of the Rent Act in express terms provides that: if a tenant fails to make payment or deposit as required by this section, the Controller may order the defense against eviction to be struck out and proceed with the hearing of the application. The language is quite clear and it does not impose any obligation on the Rent Controller after striking out the tenant's defense against eviction to wait till he is able to challenge that order before the Appellate Tribunal and to proceed to hear the ejectment application only after the tenant has tried his luck on appeal. In so far as the contention, that it would have been better exercise of discretion not to proceed forthwith with the hearing of the application. is concerned, I must point out that the course suggested would in my view be placing premium on the tenant's indifference or deliberate failure to comply with the order of payment or deposit made under section 15. If deposit is made in time, then the application would be heard forthwith, but by declining to comply with the order, the tenant would certainly gain much longer time to stick to the premises and to prolong the disposal of the application for eviction. This obviously could not be the legislative intention as disclosed on the language used in section 15(7).

(8) The learned counsel next argued that when Hori Lal's defense was struck out by the Rent Controller, was open to appeal and, therefore without waiting for Hori Lal to appeal against that order to proceed forthwith with the hearing of Tek Chand's application is unjust and illegal because it virtually amounts to a negation of Hori Lal's statutory right of appeal. I do not find it possible to agree with this submission. Section 15(7) of the Rent Act in express terms provides that if a tenant fails to make payment or deposit as required by this section, the Controller may order the defense against eviction to be struck out and proceed with the hearing of the application. The language is quite clear and it does not impose any obligation on the Rent Controller after striking out the tenant's defense against eviction to wait till he is able to challenge that order before the Appellate Tribunal and to proceed to hear the ejectment application only after the tenant has tried his luck on appeal. In so far as the contention, that it would have been better exercise of discretion, not to proceed forthwith with the hearing of the

application is concerned, I must point out that the course 'suggested would in my view be placing premium on the tenant's indifference or deliberate failure to comply with the order of payment or deposit made under section 15. If deposit is made in time, then the application would be heard forthwith, but by declining to comply with the order, the tenant would certainly gain much longer time to stick to the premises and to prolong the disposal of the application for eviction. This obviously could not be the legislative intent as disclosed on the language used in section 15(7).

(9) The learned counsel next argued that when Hori Lal went up in appeal before the Tribunal, although he had not attached with the memorandum of appeal a copy of the order dated 20th January, 1964 striking out his defense, he had nevertheless made a prayer that the said order should also be quashed being unjustified. It is complained that the learned Tribunal was wrong in holding that the order striking out the defense had not been appealed against and had, therefore, become final. Relying on the analogy of section 105, Code of Civil Procedure, Shri Safeer has very eloquently argued that this order was also open to challenge on appeal against the final order of eviction made on 20th January, 1964. Section 105, however, does not afford any assistance. Reading sections 104 and 105, of the order together, it is obvious that section 105 excludes appeals from orders made by a Court except where there is an express provision to that effect. Section 104 is one of those provisions. After excluding an implied right of appeal, section 105 proceeds to lay down that in spite of there being no appeal provided from other orders, when a decree is appealed from, it is open to the aggrieved party to set forth as a ground of objection in the memorandum of appeal any error, defect or irregularity in any order affecting the decision of the case. This obviously does not mean that even in an appealable order against which no appeal has been filed in accordance with law, it would be open to a party as of right after a long lapse of time to challenge it when the final decree in the case is appealed from. The argument canvassed by Shri Safeer equates appealable and nonappealable orders, but I am unable to find any cogent ground for sustaining this contention and imputing to the Legislature an intent to so equate these two categories of orders under the Delhi Rent Act. Reliance is placed by Shri Safeer on a Single Bench decision of the Rajasthan High Court in *Amar Singh v. Chaturbhuj* and assistance has particularly been sought from paragraph 11 at page

371 of the report. Some observations made in that judgment do seem to lend support to Shri Safeer. Those observations were sought to be justified on the basis of a decision by the Privy Council in *Maharaja Moheshur Singh v. The Bengal Government*'. I am unable, if I may say 'so with respect, to find any support from the observations of the Judicial Committee for upholding Shri Safeer's contention. Those observations must be read on their own context intended to meet the argument urged on the facts and circumstances of that case, and so read, they lend no assistance in the construction of section 105 of the Code. I, however, need say nothing more on this point because I have myself permitted Shri Safeer to address me against the order of the Rent Controller striking out his client's defense. The learned counsel has not been able to point out infirmity or any other cogent ground justifying disagreement with the view taken by the learned Rent Controller on this aspect of the case. The challenge to the order of the Appellate Tribunal and the Rent Controller on this basis, therefore, fails and is repelled.

(10) It has then been contended that the appellant was a poor man and, therefore, time should have been granted to him to deposit the amount even after the expiry of the period allowed by the learned Appellate Tribunal. Here again, it is difficult to uphold the submission. In my view, the Rent Controller was not far wrong in observing that he had no power to extend the time fixed by the appellate Tribunal because the contrary view would virtually mean the Rent Controller sitting on appeal against the order of the Appellate Authority and modifying that order. On the facts and circumstances of this case, however, I am also inclined to take the view that refusal to extend time was a proper exercise of discretion in the matter. It must not be forgotten that the appellant has not paid any rent during the last several years and has, without paying anything, stuck to the property in question. I do not understand how discretion could have judiciously been exercised in favor of the appellant in face of his persistent and deliberate refusal to pay any rent to Tek Chand who is on all hands, the owner of the property in question. Although I have come to the foregoing conclusion on the scheme of the statute itself, considering the matter to be *res integra*, the learned counsel for the respondent states that the ratio of the decision of the Punjab High Court in *Shri Durga Swaroop v. Murari Lal*, also controverts all the submissions advanced on behalf of the appellant in the present case.

(11) Before concluding, I must express dissatisfaction with the delay which the disposal of this appeal has been subject to in this Court. It was admitted by the Majority Bench on 25th September, 1964 and notice was issued for 5th November, 1964. Eviction was stayed only till then. Several applications had since been made on behalf of Tek Chand for early hearing of the appeal, and indeed more than once specific orders have been made by learned Judges directing early hearing sometime fixing the outside limit within which it should be disposed of, but for one reason or the other, this appeal has not been heard and disposed of till today. Delays of this type, in my view, do not promote the cause of justice.

(12) For the foregoing reasons, this appeal fails and is dismissed with costs.

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