

Devi Singh Vs. Chaman Lal Itorora

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Court : Delhi

Decided On : Jul-12-1977

Reported in : ILR1978Delhi782; 1977RLR566

Judge : Rajindar Sachar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 4

Appeal No. : Civil Revision Appeal No. 306 of 1977

Appellant : Devi Singh

Respondent : Chaman Lal Itorora

Advocate for Pet/Ap. : P.D. Ahuja and; S.L. Bhatia, Advs

Judgement :

Rajindar Sachar, J. (Oral)

(1) This is a petition under proviso to sub-section (8) of section

2.

(3) In pursuance of the summons served on the respondent tenant an application was filed in which the various pleas were taken in the affidavit by him. Objection was taken that notice has not been served as required by section 106 of the Transfer of Property Act inasmuch as service was affected on 6-11-1975 while the

respondent was asked to quit on 30-11-1975. Objection was also taken on the ground that the premises in dispute are not residential and the letting was not purely for residential purposes. Affidavit filed by the tenant mentioned that the son of the petitioner was also living in the lower portion of the house and was constructing his own building and if the landlord was moving to the lower portion and providing accommodation for his son in the portion in the first floor occupied by the tenant the same was not bona fide need. On a consideration of various facts, leave to contest the eviction application has been granted. Aggrieved against that the 'petitioner landlord has come up to this court.

(4) Objection has been taken to the maintainability of the petition by the respondent/landlord. Counsel for the respondent/landlord sought to urge that the proviso to sub-section (8) of section 25B permits the High Court to call for the record of the case to satisfy itself that an order made by the Controller under this section is according to law and pass such order in respect thereto as it thinks fit and as the Controller has passed an order under sub-section 25B granting leave to the tenant, the said proviso is applicable. In my view the contention is unsound.

(5) The broad scheme of Chapter 3A of the Act is that on an application being moved, sub-section

(4) of section 25B bars the tenant from contesting the application for eviction unless he obtains leave from the Controller and in default of obtaining such leave the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to order for eviction from the said premises. Thus when the leave is refused, an order of eviction follows under sub-section

(4) of section 25B. Thus the proceedings initiated by the landlord against the tenant stand concluded and the right to move this court is provided in section 25B. Sub-section

(5) provides the circumstances in which leave can be granted to the tenant and sub-section

(6) provides that where leave is granted to the tenant, to contest the application, the hearing shall commence as early as practicable and sub-section

(7) provides that the Controller while holding an enquiry in a proceedings to which this chapter applies follow the practice and procedure of a court of small causes, including the recording of evidence. Sub-section

(8) of section 25B provides that no appeal or second appeal shall lie against an order for recovery of possession of any premises made by the Controller in accordance with the procedure specified in that section. But when a final order is passed under sub-section,

(7) of section 25B after having granted leave the order whether allowing the application for eviction or dismissing the application would be an order contemplated by proviso to sub-section

(8) of section 25B subject, of course, to its limitations. It will be seen that prior to the incorporation of Chapter 3A in the Act first appeal and second appeal was provided. The said right has now been taken away and only the power of revision of the High Court under the provision of proviso to sub-section

(8) has been given. * Mr. Ahuja urges that as the proviso to sub-section

(8) of section 25B provides that no appeal or second appeal shall lie against an order has been made by the Controller, it will necessarily cover an order under sub-section

(5) granting leave as it is an order passed by the Controller under this section (namely section 25B). I am unable to accept this contention which would run counter to the objective which was sought to be achieved by summary trial provided by Chapter 3A.

(6) Legislature is so keen on expeditious disposal that it has taken away the rights of appeal under this chapter. It has only given a limited right of revision under proviso to section 25B(8). No doubt the wording permits the High Court to call for the record of an order passed by the Controller. But the very setting of proviso

suggests that revision would lie only against order allowing or dismissing an application for eviction because it is well settled that proviso is an exception to main part i.e. sub-section (8) which talks of final disposal of application for eviction.

IT would be anomalous to hold that the revision should be against all orders. That would defeat the very object of expeditious disposal. Power of revision would cover only cases under sub-section, (4) not really against the order refusing leave, but because as a consequence of refusal to give leave, the application for eviction is allowed. But it only permits the proceedings to continue, ultimately resulting in subsection (7) in either allowing or dismissing the application for eviction. In either case the matter is finally disposed of by the trial court.

I cannot agree that proviso to sub-section (8) of section 25B can compass interim orders (like the granting of leave) which do not conclude the proceedings. As such the petition has to be dismissed as incompetent and being not maintainable.

(7) That apart even on the assumption that it is possible to invoke the proviso to sub-section (8) of section 25B. I do not see how and in what manner the illegality has been committed by the trial court as to call for the interference in, the limited scope. The trial court has to decide the controversy regarding the issue of notice, bona fide need of the landlord and also letting purpose whether residential or not. If on appreciation of various points raised the trial court has thought it proper to grant leave, it cannot be said it has in any manner acted not according to law or perversely. As such there is no scope for interference with the order of the court below.

(8) The result is that I see no merit and dismiss the revision petition, but with no order as to costs.