

K.C. Gehani Vs. Parvati Devi

K.C. Gehani Vs. Parvati Devi

SooperKanoon Citation : sooperkanoon.com/686311

Court : Delhi

Decided On : Aug-22-1977

Reported in : 1978RLR68

Judge : Rajindar Sachar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151

Appeal No. : Civil R. Appeal No. 286 of 1977

Appellant : K.C. Gehani

Respondent : Parvati Devi

Advocate for Def. : Mr. Mahendru

Advocate for Pet/Ap. : P.S. Mahendra, Adv

Judgement :

Rajindar Sachar, J.

(1) This order will dispose of C. Rs. 286 and 559 of 1977. An application for eviction was filed by the respondent landlady seeking eviction as the premises were required on the ground of bonafide need. The eviction application was filed on 9-7-1976 under S. 14(1)(e) of the Delhi Rent Control Act (hereinafter to be called the Act). In response to the summons the petitioner tenant filed an

application under Section 25B of the Act seeking leave to defend the eviction application. Along with the application the petitioner filed an affidavit date 1 7-9-1976 giving reasons why leave to defend-should be granted. The said affidavit was verified by the petitioner as true to the best of his knowledge and belief. It is not disputed that the affidavit was filed in time as prescribed under the Act. The respondent landlady in reply to this affidavit look one preliminary objection that the affidavit filed by the petitioner tenant was not verified in accordance with law and in fact is no verification. Order 19 Rule 3 Civil Procedure Code . provides that affidavit shall be confined to such facts as the defendant is able of his own knowledge to prove. Realizing that there was defect in the affidavit the petitioner applied on 15-10-1976 in which it was stated that in order to meet the technical objection of the landlady the court may permit him to amend the impugned affidavit The amendment sought was to delete the word 'best of my belief. One should have thought that this was obviously a sensible course adopted by the petitioner tenant. 1 should have thought that the Rent Controller would have realised that all thai was sought was to 'bring' the affidavit in the form prescribed and that it was obvious that the objection having been taken the verification was apparently defective and if it was permitted to remain the affidavit would have to be ruled out of consideration. The Additional Rent Controller however, instead of treating this as a formal amendment chose to hold by his order dated 16 11-1976 that this amendment can not be allowed because this was not an amendment of the pleading and Order 6 Rule 17 is not applicable because that only empowers the court to permit to amend any defect or error in the pleading and the affidavit is not covered by that. This led to the filing of C.R. 286/77 to this Court. Later on the main application of the landlord came for consideration As the affidavit of the petitioner tenant for leave to contest had already been ruled out by the order of the Rent Controller dated 16.11.1976, the Rent Controller proceeded on the basis that there was no affidavit for leave to contest. The consequence was inevitable because Section 25B(4) of the Act provides that in default of his appearance in pursuance of the summons or his 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 an order for eviction on the ground mentioned. The Rent Controller thereforee by his order dated 22.2.1977 allowed

the eviction application. This led to the filing of second revision petition being 559/77.

(2) Mr. Mahendru learned counsel for the respondent Sought to refer Bhupinder Singh v. state that an affidavit which is verified being 'true to belief is not an affidavit, there can be no difficulty in accepting this and that is why the petitioner tenant had sought to amend the affidavit. The argument that the affidavit was defective because of verification was sought to be met by tenant seeking to remove the defect by amending verification and yet this precisely is not permitted by Rent Controller. The result is that the petitioner tenant's right to have application for leave to contest must be thrown out with out being considered on merits. It was held in Bhikji v. Brij Lal : [1955]2SCR428 that it would be wrong exercise of discretionary power to dismiss an application on the sole ground of absence of date of verification and in such a case the applicants should normally be called upon to remove the lacuna by adding a supplementary verification indicating the date of the original verification and the reason for the earlier omission.

(3) Similarly B. C. Misra, J. in Mohit Lata V. SushilK. Suri, 1976 RLR 70 held that in the case of amendment of verification the court must give an opportunity to the party to give correct verification.

(4) In the present case the petitioner tenant has immediately on the objection being taken by the landlady sought to remove the defect in the verification. The proper course for the Additional Rent Controller was to allow the opportunity to the tenant to remove the defect in the verification. It must be appreciated that the litigation is not a game of cards which the parties play. It is adjudication of serious controversy where the parties are not to be permitted to take advantage on the sly. The least a tenant is entitled to ask is that the limited right given to him for consideration of his leave application should have been allowed. It is not as if the petitioner tenant has not filed any affidavit and thereforee he was Seeking time to file an affidavit after the prescribed period. He had filed an affidavit and the only thing he wanted was to remove the defect, in the verification. In law it must be held that to remove the defect, a 'verification was necessary which the petitioner was

willing to do, but he was denied the opportunity to do so by an illegal order and it is not possible to uphold that order. The result is that the impugned orders dated 16.11.1976 and 22.2.1977 are set aside and the matter is remitted back to the Additional Rent Controller who will take the affidavit with amendment verification of the petitioner-tenant on record and will proceed to decide that matter in accordance with law. As the order of eviction was passed and the proceedings arising in Cr 559/77 arose because the affidavit filed by the petitioner tenant was not . considered on merit while deciding the eviction application. But as now the earlier order not permitting the verification to be amended has been set aside the petitioner's affidavit which was filled would have to be considered on merits by the trial court for the purpose of granting or refusing leave under Section 25B. 1978. Rajdhani Law Reporter. 71

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