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

Avinash Chander Vs. Rama Devi

Avinash Chander Vs. Rama Devi

SooperKanoon Citation : sooperkanoon.com/686350

Court : Delhi

Decided On : Aug-08-1978

Reported in : 15(1979)DLT114; 1979RLR98

Judge : Avadh Behari Rohatgi, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1)

Appeal No. : Civil Revision Appeal No. 329 of 1978

Appellant : Avinash Chander

Respondent : Rama Devi

Advocate for Pet/Ap. : Vinod Srivastava and; Sultan Singh, Advs

Judgement :

Avadh Behari Rohatgi, J.

(1) This is a tenant's revision petition against the order of the Rent Controller dated 29th November, 1977.

(2) Shrimati Rama Devi, the landlady, made an application to the Controller for the eviction of her tenant Avinash Chander on the ground of bona fide requirement specified in clause (e) of the proviso to sub.-s. (1) s. 14 of the Delhi Rent Control Act (the Act). The application was tried in a summary fashion under the procedure

specified in s. 25B of Chapter Iiia of the Act. As required by sub-s. (2) of s. 25B the Controller issued summons in the form specified in the Third Schedule. The tenant was served on 18th of October, 1977. He did not obtain leave from the Controller to contest the application for eviction within 15 days of the service of the summons on him. On 28th November, 1977, the tenant appeared through his counsel before the Controller as that was the date fixed in the case. Finding that the tenant had not applied for leave to contest the application for eviction the Controller passed an order of eviction against the tenant.

(3) On 16th January, 1978 the tenant moved an application for review under s. 25B(9) of the Act. In this application, he did not state any reason why he did not ask for leave to contest the eviction application. What he said was that the landlady's application was defective because the notice served by her was illegal, that she had not alleged that she had no other suitable accommodation with her and in any case the court ought to have followed the decision of D. K. Kapur J. in Dr. Mukhtar Ahmed v. Smt. Masha Allah Begum 1977(2) R.C.J. 620. On these grounds the tenant sought a review of the order of eviction.

(4) Before this application for review could be heard and decided the tenant filed a revision petition in this court on 19th April, 1978. When the review application came up for hearing before the Controller it was pointed out to him that since the tenant had gone in revision to the High Court, the review application was incompetent in view of s. 25B(9). The Controller accepted this submission. He dismissed the review application on 2nd June, 1978.

(5) Mr. Vinod Srivastava, appearing for the tenant, in support. of' the revision petition has taken two points. In the first place he contends that the impugned order of the Controller dated 28th November, 1977, is had because it was based on the assumption that (he tenant was obliged to seek leave to contest the eviction application within 15 days from the date of service of the summons on him. Couscl submits that for this assumption there is no basis as s. 25B nowhere prescribes the period of 15 days within which a tenant must apply for leave to contest the application for eviction. For this submission he relies upon the judgment of D. K. Kapur J. in Dr. mukhtar Ahmed's case (supra). The learned judge no doubt seems

to have taken a view which supports the petitioner. But from the judgent it appears that it was an undefended case and the court did not have the benefit of arguments of both sides. Truth is best discovered when we hear both sides. Secondly, the eviction petition of the landlady in that ease was premature as she had brought the petition before the expiry of five years. Holding that the period of five years must elapse from the date of the acquisition of premises- before an application for eviction can be made on the ground specified in clause (e) of the proviso to sub-s. (1) of s. 14 of the Act, the learned judge came to the conclusion that the landlady's petition was not maintainable as five vears on her own showing had not expired. It is on this ground mainiy that he rested his decision. Ordinarily I would have referred this case to a division bench but for these two considerations which I have pointed out above.

(6) Counsel says that the period of 15 days within which a tenant is required to obtain leave of the Controller to contest the application for eviction has nowhere been laid down in section 25B. This is true. But we find that the period of 15,days has been laid down in the form of summons set out in the Third Schedule. First in the summons in the prescribed form the tenant is informed that Mr. so and so has filed , application for his eviction on the ground specified in clause (e) of the proviso to sub-s. (1) of s. 14. Then it goes on to command :

'YOUare hereby summoned to appear before the Controller within fifteen days of the service hereof and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid; in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said premises.'

(7) This form of summons set out in the third schedule is apuexed to s. 25B. The section specifically refers to the form of summons specified in the third schedule. This is done at two places in s. 25B. In sub-s. (2) the Controller is directed to issue summons 'in the form specified in the Third Schedule'. Next sub-s. (4) lays down that the tenant on whelm the summons is duly served 'in the form specified in the Third Schedule' shall not contest the prayer for eviction unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and

obtains leave from the Controller. 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 of eviction on the ground of bona fide requirement. This sub-section makes it quite clear that the tenant is required to appear 'in pursuance of the summons' and in pursuance of the summons he is required to obtain leave within 15 days from the Controller. On this the form of summons is quite explicit. A combined reading of sub-sections (2) and (4) yield the result that the form of summons set out in the third schedule is a part and parcel of s. 25B.

(8) It is true that the legislature has prescribed 15 days in the form of summons set out in the third schedule and not in the body of the section. But that hardly makes any difference. The legislature may prescribe limitation in the Limitation Act as was done in case of O. 37 of the Code of Civil Procedure, 1908. Or it may adopt any other legislative model. There are various models of excellence of legislative drafting. The draftsman may follow any one of them to convey the message of the legislature. Fashions in legislative draftsmanship are not unchanging. It was open to the legislature to have incorporated 15 days period in the section itself or elsewhere and then to annex it to the section by making a reference to it as has been done in the present case. I thereforee do not agree that s. 25B does not prescribe a limitation of time for obtaining leave from the Controller.

(9) The form of summons in the third schedule is a statutory form. It is as much a part of s. 25B as any other statutory provision. A statute is the will of the legislature. The prescribed form of summons is also the enacted word. The parliamentary draftsman has expressed himself in clear and unequivocal language and conveyed to us the intentions of Parliament. The Controller has to follow the form set out in the third schedule scrupulously in issuing summons. The tenant has to obey it in terms. If he does not the penalty is provided in sub-s. (4) of s. 25B. An order of eviction will follow against him. This shows that the form of summons is backed by legislative sanction. I would thereforee hold that the section read with the third schedule to which it refers us prescribes the period of 15 days within which leave has to be obtained from the Controller to contest the

eviction application on the ground of bona fide requirement.

(10) Counsel next submitted that the tenant was not served with notice under s. 106 of the Transfer of Property Act and the Controller ought to have dismissed the application on this ground. I find no merit in this objection. In the application for eviction the landlady had clearly stated that she had issued two notices under s. 106 of the Transfer of Property Act. The notice dated, 13th February, 1977 was sent by registered post to two known addresses of the respondent. The respondent refused to take delivery with the result that the notice was returned to the landlady's counsel. She issued another notice dated 1st March, 1977. This was sent by registered post as well as under certificate of posting. Again the tenant avoided to take delivery of the notice sent by registered post. The notice under certificate of posting was, however, delivered. The landlady also took the precaution of serving the tenant by affixing a copy of the notice on a conspicuous part of the premises in the presence of witnesses. In my opinion this was sufficient service. As the tenant had failed to obtain leave to contest the application for eviction the Controller was right in holding that the statements made by the landlady in the application for eviction are admitted by the tenant by reason of the deeming fiction and that she was entitled to an order of eviction.

(11) For these reasons I dismiss the revision petition, but make no order as to costs.

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