

**A.R. Ailawadi Vs. Krishna Kohli**

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**Court :** Delhi

**Decided On :** Sep-25-1985

**Reported in :** 29(1986)DLT84

**Judge :** G.R. Luthra, J.

**Acts :** Contempt of Court Act, 1971 - Sections 10 and 12; [Delhi Rent Control Act, 1958](#) - Sections 21

**Appeal No. :** C.C.P. No. 154 of 1985

**Appellant :** A.R. Ailawadi

**Respondent :** Krishna Kohli

**Advocate for Def. :** C.J. Gupta, Adv.

**Advocate for Pet/Ap. :** S.P. Jain, Adv

**Judgement :**

G.R. Luthara, J.

1. The present petition is for proceedings against the respondent Smt. Krishna Kohli under Sections 10 and 12 of the Contempt of Courts Act, 1971 and punishing her.

2. There is no dispute about the relevant facts. The petitioner is owner of a house No. N-34, Kirti Nagar, New Delhi. He let out the first floor of that house to the respondent for a period of two years under Section 21 of the Delhi Rent Control Act, after obtaining on 13th February, 1980 the permission of an Additional Rent Controller, Delhi. The period of tenancy expired on February 13, 1982. But the respondent did not vacate the premises. The petitioner filed an application for issue of warrants of possession in the court of Smt. Aruna Suresh, Additional Rent Controller, Delhi. A warrant of possession was issued but the respondent put in resistance with the result that the possession was not handed over to the petitioner.

3. The proceedings went on and the possession was still with the respondent. On May 14, 1984 an application was filed by the parties praying that the warrant of possession may kindly be deferred till 30th June, 1985. On that application, statement of Smt. Krishna Kohli, respondent was recorded which reads as under.

'I admit the claim of the petitioner, and I have not filed any objections nor I intend to file the same. I undertake to vacate the suit premises on or before 30th June, 1985. I further undertake to pay the rent regularly month by month to the D.H./petitioner. Ex. C-1 is the application for compromise which is signed by me and also signed by the D.H. and the contents of the same is admitted to be correct.

The result was that on account of the aforesaid undertaking given by the respondent the execution application was adjourned sine die and the file was consigned to record room.

4. The respondent however, did not vacate the premises on 30th June, 1985. It is alleged by the petitioner that she has also not paid the rent/ damages for use and occupation of the premises in violation of the undertaking given in the statement dated May 14, 1984. The petitioner, therefore, brought the present petition to the effect that as respondent had committed breach of the undertaking by not vacating the premises on June 30, 1985 and also by not paying rent/damages for use and occupation of the premises, she has committed civil contempt of court. He prayed that the respondent be punished under the contempt of Courts Act and also she be directed to hand over the vacant possession of the premises in dispute and also to pay rent/damages for use and occupation of the premises up to date.

5. The application was contested by the respondent on various grounds. Her main contention is that she was not liable to vacate the premises because it was on the basis of fraud and misrepresentation that the permission under Section 21 of the Delhi Rent Control Act was taken by the petitioner from the court of an Additional Rent Controller, Delhi.

6. On September 9, 1985 some arguments were heard. The learned counsel for the respondent stated that the respondent was ready to vacate the premises but that her objections which she had filed before the Rent Controller be not prejudiced and the petitioner should not transfer the possession of the premises to any one till those objections were decided. The learned counsel for the petitioner was asked to consider over the offer and tell on 10th September, 1985. The counsel for the petitioner did not agree to the said offer. I ordered that before hearing the arguments it was necessary that the respondent should vacate the premises. Counsel for the respondent agreed and it was directed that the possession of the premises shall be handed over by the respondent to the petitioner on 10th September, 1985 itself at 5 p.m. The case was adjourned to 12th September, 1985.

7. On 12th September, 1985 it was admitted by the petitioner that he had received possession of the premises on 10th September, 1985 itself. Arguments were heard. Before starting the arguments, counsel for the respondent offered unconditional apology on behalf of the respondent and told that since possession had been delivered, the apology be accepted and the respondent be not punished.

8. Learned counsel for the petitioner relied upon a judgment of this court (delivered by Sultan Singh J.) in Smt. Mohini Syal v. Shri Kushal Kumar, 1980 DRJ 158 In that judgment following was held :

'In contempt proceedings, it is not necessary to go into the previous history of the case. The court is not concerned with the right or wrong order passed by the court prior to the undertaking given by a litigant. The respondent has been disobeying the undertaking given by him with full Knowledge of its consequences. He has no desire to deliver possession unless compelled to do so. This is willful disobedience of an order of the Additional Rent Controller. The court is not powerless. It has power to enforce an under-taking.'

9. In that case the tenant on account of breach of the undertaking to vacate the premises in 30th June, 1980 was sentenced to undergo simple imprisonment for six months and to fine pay of Rs. 2000/-. It was also directed that a warrant of possession should be issued in favor of the landlord and the possession be delivered to the landlord with the aid of the police. Learned counsel for the petitioner contended that in this case also, it was only after institution of the present application that the respondent had delivered possession and hence she should also be punished in the same way as has been done in the aforesaid case.

10. I do not agree with the learned counsel. In the present case, the respondent herself delivered the possession and also apology has been tendered. When the contempt has been purged by way of delivery of possession and also apology has been tendered, I am of the view that further proceedings be dropped and the respondent should not be punished.

11. Learned counsel for the petitioner then contended that the respondent had also given undertaking that she would go on paying rent damages for use and occupation till the vacating the premises, that she had not paid the same and that, therefore, on account of that breach of the undertaking also, she should be

punished for contempt of court. Counsel for the respondent however replied that the petitioner had already brought suit for recovery of the rent/damages, that the same was pending, that the written statement had been filed, that one of the pleas of the respondent was that payment had been made for a particular period and that remaining payment had not been made because the petitioner had cut off electricity and water supply.

12. I have considered the contentions of both the parties. In view of the fact that there are some disputes as far as payment of rent/damages are concerned, and those disputes are pending adjudication in the court of law, I am of the opinion that it is not in the interest of justice that the respondent should be punished for having committed contempt of court.

13. I, therefore, drop further proceedings and do not award any punishment to the respondent. The delivery of possession of the premises to the petitioner will not prejudice the respective rights of the parties in the objections petition alleged to have been filed by the respondent before the Rent Controller, Delhi. I, however, do not grant any prohibitory order against the petitioner restraining him from transferring the possession of the premises. If so advised, the respondent would be at liberty to file an application before the Rent Controller for obtaining such prohibitory order.

14. Civil Contempt Petition No. 154 of 1985 stands disposed off.

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