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Raj Kumar Vs. Vijay Singh

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Court : Delhi

Decided On : Mar-26-1979

Reported in : AIR1980Delhi215; 15(1979)DLT284; 1979RLR439

Judge : Rajinder Sachar, J.

Acts : Delhi Rent Control Act, 1958 - Sections 25

Appeal No. : Civil Revision Appeal No. 868 of 1978

Appellant : Raj Kumar

Respondent : Vijay Singh

Advocate for Pet/Ap. : S.K. Luthra and; S.L. Bhatia, Advs

Judgement :

Rajender Sachar, J.

(1) This petition for revision is directed against the refusal to grant leave to the petitioner/tenant to defend the eviction petition brought against him.

(2) The petitioner/tenant had in seeking the leave given various facts and grounds for the same. One of the ground was that notice of termination of tenancy was not served upon him much less legal and valid notice. In the ap- plication for eviction it had been mentioned that notice dated 2nd June, 1978 sent through U.P.C. and

registered A.D. had come back undelivered and that the second notice dated 3rd July, 1978 sent through U.P.C. and registered A.D. and service was effected by pasting through notary public. There was a specific allegation in the reply denying this averment and maintaining that no service was effected by pasting through notary public. Evidently, the present notice was sent and the same came back unserved, now in what circumstances the service by pasting was effected are not matters which could just be brushed aside in this summary manner as has been done by the Rent Controller by saying that nothing in notice has been pointed out by the tenant about its invalidity. In order to prove the service of the notice the landlord would have to show the circumstances which justifies the pasting of the notice rather than the notice of service in the usual manner. This requires evidence. It is certainly not a case where the defense raised by the petitioner/tenant could be said to be groundless or a mere denial for the sake of denial. The petitioner had also given out the names of the tenants who had been let out the other accomodation. This plea could not be just knocked away by saying that no sight plan was filed by the petitioner/tenant. I do not see how the filing of additional site plan would have been of greater credibility if the affidavit of the petitioner/tenant has been brushed aside the way it has been put. No doubt the legislature requires an expeditious and a summary manner of the disposal of the petition brought under clause (e) of sub-section (1) of Sect ion 14 of the Act. No doubt, further leave may not be granted as a matter of course, and that, before the same can be granted, there must be facts disclosed as would disentitle the landlord in obtaining the eviction order but this does not mean that the facts disclosed in the leave application must prove the case to the hilt. It is certainly not the stage at which complete and final findings are to be given by the Rent Controller. If the Rent Controller finds as indeed the situation in the present case is that certain facts have been mentioned on which finding cannot be given without taking evidence, then such question of dispute having been raised, it is evidently a matter where the leave should have been granted. These proceedings should not be considered as an easy way out for the landlord to recover possession by making any kind of allegations, howsoever unsupportable in evidence. On such disputed allegations by the landlord, the tenant cannot be denied the elementary right of even defending the eviction petition. As to what ultimately would happen is

a separate matter. Grant of leave to contest the application does not necessarily mean that the landlords application would have to be dismissed at the end. All that it means is that tenant has raised fairly arguable and strong facts which require closer scrutiny, and which cannot be decided without giving an opportunity to the parties to lead evidence, after contest. I am, thus, satisfied that the Rent Controller has committed a serious illegality and misconstrued the provisions of law in refusing to the tenant leave to contest the application. I would, thereforee, allow the revision petition, set aside the order of the Rent Controller and grant the tenant leave to contest the eviction application on the grounds sought by the petitioner/tenant. Parties through counsel have been directed to appear before the Rent Controller on 20th April 1979 who will proceed to determine the matter according to law, and merits. There will be no order as to costs.

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