

Paramjit Singh Vs. Parkash Kaur

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Court : Delhi

Decided On : Dec-14-1976

Reported in : 13(1977)DLT73; 1977RLR236

Judge : B.C. Misra, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14A

Appeal No. : Civil Revision Appeal No. 628 of 1976

Appellant : Paramjit Singh

Respondent : Parkash Kaur

Advocate for Pet/Ap. : P.N. Talwar and; H.S. Sethi, Advs

Judgement :

B.C. Misra, J.

(1) This revision petition has been filed under the proviso to sub-section (8) of section 25B of the Delhi Rent Control Act, 59 of 1958 (hereinafter referred to as 'the Act'), as amended by Act No. 18 of 1976 with effect from 1/12/1975.

(2) The material facts of the case are that the respondent landlady is the owner and landlord in respect of the premises in dispute, which consists of the first floor of the house No. B-3/4, Ramesh Nagar, New Delhi. It was let out to the petitioner at

the rate of Rs. 75.00 per month. The respondent had instituted a petition on 27/01/1976 for eviction of the petitioner on the grounds of bona fide personal necessity, the tenant not living in the premises for more than one year, and unlawful subletting being the grounds mentioned in clauses (e), (d) and (b) of the provisos to sub-section(1) of section 14 and 14A(1) of the Act. Notice of this petition was issued and served on the petitioner, who filed a written statement to the same. While this petition has been contested, the respondent landlady stated before the Controller that she pressed only the ground mentioned under section 14A of the Act as amended and no other ground. The Controller therefore, served the summons according to the amended procedure, on the petitioner on 8/03/1976. The petitioner thereafter made an application for permission to appear and contest the petition and he raised various pleas. The Controller below found that there was no substance in the contentions of the petitioner tenant, in particular against the bona fides of the claim of the respondent owner and the sufficiency of the accommodation available with her and as such he refused the application for leave to contest, and in accordance with the provisions of law passed an order for eviction allowing the petitioner two months time to vacate the premises. This order has been passed on 6/09/1976 and has been assailed in this revision by the petitioner tenant.

(3) The respondent landlady is also owner of the ground floor of property bearing No. B-3/3, Ramesh Nagar, and she instituted a petition for eviction against another tenant, named R. K. Sharma, on 26/04/1976 claiming eviction under section 14A of the Act, on the allegations that she was a Government servant, and her allotment of Government accommodation had been cancelled and she had no other residence available to her and so she claimed eviction of the tenant. This petition was registered and was tried in the summary manner provided by section 25B of the Act. The Controller by order dated 5/05/1976 rejected the application of the other tenant, R. K. Sharma, for leave to defend the petition. As a result, an order for eviction of that tenant was passed. The aforesaid order for eviction has become final and binding upon the parties. It may, however, be stated that the rate of rent in that case was Rs. 150.00 per month while the accommodation is the same.

(4) The petitioner before me brought to the notice of the Controller by an application that the respondent landlady had obtained an order for eviction against R. K. Sharma, and as such she was not entitled to proceed with the petition, which has given rise to this revision. The respondent landlady on 7/07/1976 stated thus:

'UNDER the proviso to section 14A(1) of the amended Rent Act, 1976, the petitioner elects to get possession of the suit premises and not that of Ground Floor for which an order for eviction has already been passed'

Here, it is significant to mention that the stand of the respondent was not that the ground floor and the first floor constituted one dwelling house and so she was entitled to the possession of both. Her case was that she was interested in obtaining possession of the premises in dispute from the petitioner. The Controller found that the question of sufficiency or otherwise of the accommodation with the landlord was of little consequence. So he repelled the contention based on the order for eviction passed in the other petition and consequently refused leave to the present petitioner and passed an order as noticed above.

(5) Mr. Talwar has assailed the said order in this revision and has contended that the respondent landlady is not entitled to have an eviction order in respect of the premises in dispute in the instant case, since she has already obtained an order for eviction against another tenant. The scope of section 14A and the proviso of section 25B were, inter alia, considered by me in *Smt. V. L. Kashyap v. R. P. Puri*, Cr 369 of 1976, decided on 22/09/1976(1). In this decision, I have held that where a petition is pending under clause (e) of the proviso to sub-section (1) of section 14 of the Act, the same will continue to be governed by the procedure existing prior to the amendment, unless and until that petition be withdrawn with liberty to file another, or if there is a new cause of action, the new petition could be filed. I have also indicated that the procedure prescribed by section 25B could by its very nature not be adopted in the pending petition, as this section requires issuing of summons in a prescribed form and the application by the tenant for permission to appear and contest the petition for eviction. This will not be an appropriate procedure if the petition for eviction is already pending and a written statement has already been filed. Nothing has been brought out to show that this observation of

mine in the said case is incorrect. I hold that the view expressed by me therein is correct and the petition for eviction filed by the respondent in the instant case giving rise to this revision is not maintainable and must be dismissed.

(6) The second ground raised by Mr. Talwar is still more important. The proviso to section 14A provides that nothing contained (in sub-section (1)) 'shall be construed as conferring a right on the landlord.....of two or more dwelling houses.....to recover the possession of more than one dwelling house and it shall be lawful for such landlord to indicate the dwelling house, the possession of which he intends to recover.' In the judgment mentioned above, I had occasion to consider this aspect of the matter also. (My apprehensions expressed in that case have turned out to be true by what has happened in the instant case). In the said judgment, I had observed that the right of the landlord under section 14A to recover possession of the house was confined only to one dwelling house and the landlord was not entitled to recover possession of more than one dwelling house under section 14A; in case the landlord owning two or more dwelling houses seeks to recover possession of one of them, he must specify all the houses owned by him or his wife or dependent child and indicate in the petition the one of which he elects to recover the possession.

(7) After hearing the arguments by the counsel for the parties, it appears that my observations in the said judgment are correct and do not require reconsideration. In my opinion, the election mentioned in the proviso to section 14A must be made by the landlord at the time of the filing of the first petition and in the petition itself. It is not open to him to file two or more petitions and postpone the making of the election until the final decision of the petitions. Mr. Seth submits that he has made an election to the effect that he wants possession of the house in dispute in the instant case only and not the other house, which obviously was fetching double the rent in respect of substantially the same accommodation.

(8) On the construction advanced by him, supposing a landlord owns four houses and he qualifies to obtain possession of one under section 14A, then he becomes entitled to institute the petition for eviction in respect of all the four houses and having obtained order for their eviction, then choose to take possession of only one

of them in execution of that order. This result cannot be said to be envisaged by the Parliament when it amended the law. The word 'tenant' is defined by clause (1) of section 2 of the Act as meaning any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be payable and includes.....but not a person against whom an order or decree for eviction has been made (except where such decree or order for eviction is liable to be reopened)..... In my opinion, as soon as the order for eviction has been passed against the tenants of the four houses, those tenants cease to be tenants enjoying the protection of the Rent Act and the landlord would, if he could have his way, throw all of them out. This position will throw all the tenants at the mercy of the landlord, which is intolerable. As a result, I am of the view that the election of the landlord must be made in the petition for eviction itself and if he has at any time obtained an order for eviction in respect of any other dwelling house, he is certainly debarred under section 14A from presenting or prosecuting another petition or obtaining an order for eviction in respect of the premises. But special right conferred upon the landlord by section 14A to recover possession of only one dwelling house is exhausted as soon as the landlord has made his election and obtained an order for eviction in respect of one house. The proviso to the section bars the second petition for possession of another house and the landlord cannot present or prosecute the same and obtain another order for eviction. The question of sufficiency of accommodation, which arises in eviction petition on the grounds mentioned in clause (e) of the proviso is not relevant for the purpose of proceedings under section 14A of the Act. Consequently, the impugned order is contrary to law and is reversed.

(9) I also wish to point out that it is not the case of the landlady that both the houses constitute one dwelling house. The contention of the landlady, therefore, need not detain us any further.

(10) Hence, the revision is allowed, the order of 'the Controller below for eviction of the petitioner from the premises in dispute is reversed and the petition of the respondent is dismissed. The parties are left to bear their respective costs.