

Prem Kumar Vs. Grahpai Singh

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Court : Delhi

Decided On : Aug-02-1974

Reported in : 11(1975)DLT165; 1974RLR542a

Judge : H.L. Anand, J.

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

Appeal No. : Second Appeal No. 119 of 1973

Appellant : Prem Kumar

Respondent : Grahpai Singh

Advocate for Pet/Ap. : K.P. Kapoor and; T.E. Sethi, Advs

Judgement :

H.L. Anand, J.

(1) This Second Appeal under Section 39 of the [Delhi Rent Control Act, 1958](#), hereinafter called the Act', is directed against the order of the Rent Control Tribunal whereby it has upheld the order of the Controller dismissing the objections of the appellant under Section 47, Order 32 Rule 6 and 7 and Section 151 of the Code of Civil Procedure read with Section 25 of the Act to the execution of an order of eviction passed against the appellant, his mother and his brother in respect of the property in dispute and the principle question that it raises is as to

the competence of a deaf and dumb person to protect his interest in legal proceedings and as to the extent of judicial protection in such proceedings

(2) The facts leading to the present appeal are not in dispute and may be briefly stated in so far as they are relevant. The premises in dispute was originally let out to late Sita Ram by respondent Shri Grahpal Singh. In 1963 Sita Ram died leaving behind the widow Smt. Ram Piari respondent No. 2 in the appeal and two sons Prem Kumar the appellant herein and Surinder Kumar. On January 26, 1958, respondent No. 1 herein, claiming to be the owner of the premises in dispute filed an eviction action against the aforesaid three heirs on the ground that the said respondent bona fide required the premises in dispute for the purpose of a residence. Respondent No. 2, Smt. Ram Piari and Prem Kumar, the appellants, resisted the plea for eviction and contended that the respondent No. 1 did not bona fide require the premises for his residence and was living in a very comfortable and spacious house. The relationship of landlord and tenant between the parties and the ownership of the property in dispute was, however, not denied. It was, however, contended that the premises had been taken for residential and commercial purposes. Surinder Kumar, the other son, kept away from the proceedings and was proceeded ex parte. The respondent/landlord closed his entire evidence on December 26, 1968 and when the case was taken up on April 8, 1969 Smt. Ram Piari respondent No. 2 and Shri P. C Bedi, Advocate who has been appearing as counsel for Smt. Ram Piari and the appellants made a statement to the following effect: 'It is admitted that the petitioner bona fide required the premises in dispute for his residence. Compromise has been entered into with the petitioner which is Ex. X-1 which has been filed. therefore, an order for eviction in favor of the petitioner against the respondents be passed but the petitioner would not be entitled to execute the eviction order till April 1, 1972'. 3. The aforesaid statement was signed by Shri P.C Bedi and Smt, Ram Piari, respondent. The landlord accepted the above statement as correct and agreed not to execute the eviction order till April 1, 1972. Ex. Xi was however, signed only by Smt. Ram Piari and appeared to be based on the assumption that Smt. Ram Piari was the exclusive tenant in respect of the property in dispute Ex. X-1 was, however, signed by Smt. Ram Piari for herself and 'as guardian of respondent No. 2' i.e. the appellant, it was neither signed by respondent Prem Kumar nor by the

other brother who was ex-parte. It was also not signed on behalf of appellant by his counsel. In the course of the aforesaid compromise it was made to appear that respondent No. 1 was the owner of the premises and Smt. Ram Piari respondent No. 2 was the tenant of the same and proceeded to state that 'the other respondents are formal respondents. Respondent No. 1 represents respondent No. 2 as her 167 guardian respondent No. 3 was proceeded ex-parte because he never appeared in Court.' In the terms and conditions of the compromise set out in the said document it was clearly made out that respondent Ram Piari had been accepted as the sole tenant; that she had admitted the bona fide requirement of the landlord with regard to the need of the premises for his personal residence; that the said respondent had admitted that no relation or family members of the said respondent had any right or interest whatsoever in the premises; that the respondent Ram Piari would deliver vacant possession of the premises to the landlord on April 1, 1972; and that a consent 'decree may be passed as prayed for in the eviction application. On April 9, 1969 the Controller, who was then seized of the matter made the following order : 'The respondent has admitted the petitioner's claim that he requires the premises for bona fide requirement to occupy the same. So, eviction order is passed under sec. 14(1)(e) of the D.R Control Act. The respondent shall hand over possession after 1.4.1971. The parties shall bear their own costs.'

(3) On March 23, 1971 apparently anticipating the landlord's application for the execution of the eviction order, which was eventually filed on April 2, 1971, following the failure of Smt. Ram Piari to deliver possession of the premises in dispute to the landlord in terms of the aforesaid compromise, Prem Kumar, appellant, filed objections to the execution of the said order under Section 47, order 32 Rule 6 and 7 and Section 151 of the Code of Civil Procedure read with Section 25 of the Act on the ground that the appellant was deaf and dumb by birth; that Smt. Ram Piari, who acted as guardian for the appellant in the proceedings had been negligent in the conduct of it: that the landlord obtained the eviction order as a result of fraud; and that the impugned order, being a consent order, was a nullity. The application was opposed on behalf of the landlord and by an order of December 1, 1972, the Additional Rent Controller, Delhi dismissed the objections on the ground that the impugned order was not merely based on the compromise

and was not a nullity; that Smt. Ram Piari did not act as guardian of the appellant; that the appellant had been duly represented by a counsel and that the plea that the guardian had been negligent had no merit.

(4) Simultaneously with the objections filed by the appellant, Smt. Ram Piari also filed objections to the execution of the order on the ground that she was an illiterate lady; that she did not understand the implications of the impugned order that the impugned order was passed on the basis of compromise and, therefore, was a nullity and that the compromise had been procured by fraud and coercion. This objection was also dismissed by a separate order of the same date.

(5) Aggrieved by the aforesaid orders, the appellant as well as Ram Piari challenged the aforesaid orders by two separate appeals before the Tribunal, who, by a common order of March 3, 1973, dismissed both the appeals and confirmed the orders of the Controller. The Tribunal held that the eviction order was not based on the compromise but on the satisfaction of the Controller that the conditions of Section 14(1)(e) of the Act had been satisfied even though the expression satisfied did not appear in the order and that the order in substance was based on the admission made in the compromise Ex. X-1 and the statement of Smt. Ram Piari, and Shri F.C. Bedi, counsel 168 for Smt. Ram Piari and appellant, and therefore, the order was not a nullity. The Tribunal felt itself fully reinforced in coming to this conclusion by decisions in the case of Seth Muna Lal v. Seth Shiv Rattan G Mehatta 1968 D. L. T. 401 and Jagdish Chander Bhalla and others v. Lakshman Swarup Bhatnagar and others, 1971 (1) I.L.R. (Delhi) 504. The contention of the appellant that the allegations regarding the ownership and letting purpose had in any event not been admitted was repelled with the observation that the ownership of the premises by the landlord had been admitted in the compromise Ex. X-1, and that even though the letting purpose had not been specifically admitted the objections with regard to that would be deemed to have been waived in that the tenant unequivocally agreed to the making of the eviction order. The decision in the case of Ram Rattan Bhanot v. Faqir Chand and another, 1972 A.I.R, C.J. 438, which was relied upon behalf of the appellant was explained away with the observation that the said decision appeared to have laid down that the compromise must fulfill the conditions of the relevant proviso to Section 14(1)

of the Act and that it was nowhere held that the order passed on admission was a nullity. The Tribunal further came to the conclusion that the requirements of clause (e) of proviso to sub-section (1) of Section 14 had been duly satisfied. The contention of the appellant that in view of the terms of the compromise, by which the landlord had accepted Smt. Ram Piari alone as his tenant, no order of eviction could be passed against the sons was repelled on the ground that, according to the appellant's own case, he as well as his brothers were tenants or joint tenants with the mother and that even though in the compromise it had been made out that Smt. Ram Piari was the sole tenant, the compromise sought an eviction order as prayed in the application and the application sought eviction against all the respondents, including the appellant, a plea which was reiterated in the statement made by Shri F. C. Bedi and Smt. Ram Piari the Controller was justified in making the eviction order against all the respondents including the appellant. The Tribunal further came to the conclusion that in any event the eviction order had the effect of terminating the tenancy and all the rights of the appellant had not at all been effected because Prem Kumar appellant, on his own showing, had surrendered the tenancy according to the compromise deed. The contention that the appellant was deaf and dumb and was, therefore, not in a position to contest the proceedings personally was dispelled on the ground that he had filed a written statement in his personal capacity, had appointed a counsel and that in these circumstances the contention that he was deaf and dumb or was insane cannot be accepted'

(6) Aggrieved by the aforesaid order the appellant has come up in Second Appeal although it appears that neither the appellant nor the mother or the other sons challenged the order of eviction in appeal nor Smt. Ram Piari challenged the order of the Tribunal dismissing her objections.

(7) Shri K. P. Kapur, learned counsel for the appellant, raised the following contentions:- (a) The order of eviction was a nullity inasmuch as it was not based on the satisfaction of the Controller that the ingredients of Section 14(1)(a) of the Act had been satisfied. (b) The said order was passed in contravention of the mandatory provisions of Order 32 of the Code of Civil Procedure, inasmuch as the appellant was absolutely deaf and dumb and being unable to protect his

interests, was entitled to judicial protection.

(8) In support of his first, contention, the learned counsel for the appellant urged that an order of eviction under the. Act, which was merely based on the consent of the parties, was a nullity and that the satisfaction of the Controller that the conditions of the relevant clause of the proviso to sub-section (i) of Section 14 of the Act had been complied with was an essential pre-requisite to the making of a valid order of eviction. It was further argued that compromise Ex. X 1 was signed by Smt. Ram Piari alone for herself and as guardian for respondent No. 2, a position which was admittedly untenable, because she was never appointed as guardian and, therefore, was not competent to act for the appellant, that the said compromise was based on the assertion made by the landlord and Smt. Ram Piari and that Smt. Ram Piari was the sole tenant and neither the appellant nor the other brother of the appellant had any right or interest in the premises in dispute, that in any event the statement made by Shri Bedi was pursuant to that compromise and could not possibly bind the appellant because Shri Bedi was also counsel for Smt, Ram Piari and that the statement, therefore, could not go beyond the limit of the compromise, that the order of the Controller did not record its satisfaction of any of the conditions of relevant clause and that in any event there was no reference in statement ordering compromise that the premises had been let out for the purpose of residence, a fact which had been denied by the appellant in the reply to the application.

(9) On the other hand Shri T.N.Sethi, learned counsel for the landlord, sought to justify the order of eviction on the ground that it was not passed on mere consent but on the admission made in the compromise as in the joint statement made in Court by Shrimati Ram Piari and Shri P. C. Bedi, counsel for her and the appellant and that the satisfaction of the Controller as to the requirements of the relevant clause of the proviso, though not express, was implicit in the order and that no exception could be taken to it because neither the appellant nor Shrimati Ram Piari had challenged the order of eviction in appeal which was the proper for them to assail its validity.

(10) Section 14(1) of the Act gives a protection to the tenant against eviction and provides that no order or decree for the recovery of possession of any premises shall be made except on one or more grounds set out in the various clauses to the proviso to the said subsection Clause (e) which was Invoked by the landlord in the present case deals with the need of the owner/landlord for occupation as a residence of premises let for residential purposes and is in the following terms: '(e) the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation; Explanationn,- For the purposes of this clause, 'premises let for residential purposes' include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes. 170

(11) The order for the eviction of the tenant would, therefore, be justified under clause (e) of the proviso to subsection (1) if- (a) the premises were let for residential purposes (b) the landlord is the owner of the premises ; (e) the landlord bona fide requires the same for occupation as a residence for himself or for any member of his family dependent on him and (d) that the landlord has no other reasonably suitable residential accommodation.

(12) It is well settled that unless the requirements of the various sub-clauses are satisfied, the Controller would have no power to order an eviction of a tenant and any order that may be made otherwise than on such satisfaction, whether as a result of a compromise or by way of consent order would be a nullity. It is, however, open to the Controller to make an order of eviction even though the satisfaction is not recorded in express terms but is necessarily implied in it. An order of eviction would, however, not be invalid merely because it is based on a compromise or is in the nature of a consent order if the compromise or the statement of the tenant giving his consent contains admissions or other materials which may be sufficient to justify the conclusion of the Controller that the requirements of the relevant clause have been fully met.

(13) On an application of the aforesaid principle, to the aforesaid facts, it is difficult to confirm the conclusion of the Tribunal that the order of eviction was valid, in that, it was made on the basis of the satisfaction of the Controller that the necessary requirements had been met or that the order was based on an admission of facts made by or on behalf of the appellant which would justify the conclusion as to a satisfaction.

(14) In the first place, of the various requirements of the clause, there is no mention either in the compromise deed Ex. X-1 or in the statement of April 8, 1969 or for that matter in the order of eviction itself that the landlord 'has no other reasonably suitable residential accommodation 'which is one of the important condition's which must be satisfied before an order could be made even though the contention raised on behalf of the respondent may be accepted that the further conditions that the landlord was the owner and that the premises had been let out for the purpose of a residence were to be treated either as implied in the said compromise, statement or the order or could be deemed to have been waived, having regard to the tenor of the statement and the deed of compromise. The bona fide requirement of the landlord of the premises for occupation as a residence and the factum of the non-availability of another suitable residential accommodation and as to the suitability of such alternative accommodation are not synonymous but are two distinct conditions which must go co exist before an order could be legitimately made under clause (e) of the proviso. The satisfaction of the Controller based on the statement of Smt. Ram Piari respondent and counsel for the appellant to the effect that the premises were bona fide required by the landlord for his residence could not be construed as a conclusion that the landlord did not have any other reasonably suitable residential accommodation.' There is, therefore, nothing to indicate that the Controller came to the conclusion either on the basis of the deed of compromise or the statement 171 that the aforesaid condition of the absence of a reasonably suitable residential accommodation had been satisfied, such a satisfaction was admittedly not there in express terms and could on no reckoning be said to be implicit in the order of eviction nor is there any material either in the statement or in the deed of compromise which may amount to an admission either by Smt. Ram Piari or by the appellant or his counsel of the fact that no other reasonably suitable residential

accommodation was available to the landlord for the purpose of his residence or that of the dependent members of his family.

(15) In the second place, neither the statement of April 8, 1969 nor the deed of compromise could provide material which may legitimately form the basis of the satisfaction of the Controller in so far as the appellant is concerned. This is so because the statement made on April 8, 1969 by Shri F. C. Bedi as counsel for appellant refers to the compromise. Exhibit X-1 and invites an order of eviction against all the respondents. Exhibit X-1, however, oddly enough, is neither signed by the appellant or by Shri Bedi as his counsel and merely bears the signature of Shrimati Ram Piari who has taken up the position which is wholly inconsistent with the interest of the appellant in that, the deed of compromise recites that Sarimati Ram Piari the exclusive tenant of the premises, makes some of the admissions referred to above and undertakes to deliver vacant possession of the premises. The impugned order of eviction is consistent with the deed of compromise and is wholly inconsistent with statement of April 8, 1969, in that, the order clearly states that the (respondent) has admitted the claim and that 'the respondent shall hand over possession after 1st April, 1971.' There is no mention in the deed of compromise that the appellant was a co-tenant, had any interest in the property nor is there any eviction order against appellant' or the other brother of the appellant. The description of Shrimati Ram Piari in the deed above her signature as guardian for the appellant further complicates the situation for the respondents because there is nothing on the record to indicate that she was ever appointed a guardian for the appellant or was at any stage in the proceedings acting for him in that capacity and this is significant because it has throughout been the case of the respondent/landlord that the appellant was competent to look after his interest, had filed a separate reply to the eviction application and had been contesting the application through his counsel. The assertion of Shrimati Ram Piari, therefore, that she was acting as the guardian for the appellant would also be untenable because while the respondent/landlord had taken the position that the said lady and her two brothers were co-tenants' and this position was affirmed, inter alia, by the appellant. Shrimati Ram Piari takes up the position in the deed of compromise that she was the tenant to the exclusion of others including the appellant, who according to the deed, had no right or interest in the property. Shrimati Ram Piari

was therefore, taking a position which was wholly inconsistent with the interest of the appellant and that being so, was not competent to represent him as a guardian assuming that the appellant was a person who was not competent by virtue of his being deaf and dumb to protect his own interest and deserved judicial protection provided by Order 32 of the Code of Civil Procedure.

(16) It, therefore, follows that the order of eviction was a nullity, in that, it was not and could not have been based on the satisfaction of the Controller that the requirements of clause (a) of the proviso to section (1) of Section 14 of the Act had been met on the basis of an admission made by or on behalf of the appellant which could have justified such a satisfaction and the same must, therefore, be set aside.

(17) In the view that I have taken of the first contention raised on behalf of the appellant, it is not necessary for me to go into the second question as to whether having regard to the fact that the appellant was deaf and dumb, he could be considered as being competent to protect his own interest or would be entitled to the judicial protection provided by Order 32 of the Code of Civil Procedure and as to the impact of the failure of the Court to invoke Order 32 of the validity of the order of eviction because any observation that may be made by me in that behalf is bound to prejudicially affect the further trial of proceedings in view of the order that I propose to make.

(18) In the circumstances, I accept the appeal, set aside the order of the Tribunal and that of the Controller dismissing the objections of the appellant, set aside the order of eviction and that direct that the proceedings be remanded to the Controller concerned for further proceedings from the stage the landlord closed his evidence after considering the plea of the appellant as to his legal incompetence to protect his own interest, as to the extent of the judicial protection to which he would be entitled in law and as to the directions that may be necessary in that behalf to protect his interest in the subsequent proceedings.

(19) I may, however, add by way of clarification that the impugned order of eviction has not been challenged by Smt. Ram Piari nor has she challenged the order of the Controller or the order of the Tribunal dismissing her objections and the

condusion that the impugned order of eviction is a nullity wou no.t necessarily ensure for the benefit of Smt. Ram Piari and if the question is raised at any state on her behalf the Controller or the Tribunal or any Court seized of the matter would be free to decide that question irrespective of the expression of any opinion expressed by me in the present proceedings.

(20) In the peculiar circumstances of the case, the parties would bear their respective costs of this appeal.

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