

Pushpa Devi Vs. Om Perakash

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Court : Delhi

Decided On : May-04-1979

Reported in : 1979RLR441

Judge : S.B. Wad, J.

Acts : Delhi Rent Control Act, 1950 - Sections 14(1)

Appeal No. : Second Appeal No. 219 of 1973

Appellant : Pushpa Devi

Respondent : Om Perakash

Advocate for Pet/Ap. : S.N. Chopra, Adv

Judgement :

S.B. Wad, J.

(1) This is the landlady's second appeal against the order of the Rent Control Tribunal, Delhi dated May 1, 1973.

(2) The original petition for eviction of the tenant was filed by the landlady under section 14(1)(c) and 14(1)(j) of the Delhi Rent Control Act. The landlady lost in the court of the Rent Controller and the Tribunal and hence the present appeal.

(3) From the evidence on the record I find that the landlady has failed to prove that the tenant had caused substantial damage to the suit premises. The Rent Controller and the Tribunal were right in refusing the eviction on this ground. The order of the tribunal on ground 14(1) (j) is therefore, confirmed. [Sec. 14(l)(c) and Section 14(5) of the Delhi Rent Control Act, 1958 are reproduced in para 4 .1.

(4) The material averments regarding the ground of eviction under section 14(l)(c) and section 14(5) in the landlord's application and the tenant's reply are as follows : The suit premises consisting of two rooms; one kitchen, one bath room and a latrine on the ground floor of bouse No 20/45, Shakti Nagar, Delhi-7 were let out to the tenant for the residential purpose by the then landlord Mohan Lal on 1-5-1967. The house in question was purchased by the appellant landlady on 23 -1-1969. That sometimes in early months of 1970 the tenants started the business of assembling the radio and transistors in a part of the suit premises. It was alleged that the tenant started using the court-yard (which was meant for common (use) for stocking his goods It was further averred (hat the stocking of goods and frequent visits of customers caused public nuisance in the residential area in which the suit premises is, detrimental to the interest of the landlady.

(5) In reply the tenant admitted that he had been using the part of the premises for business purpose but contended that the original letting out of the premises was for residential trial-cum-commercial purpose. The tenant stated in his evidence that from 1-5-67 to 1-8-67 he had his office in the residential suit premises. thereafter he shifted his place of business to Paharganj. Kamla Nagar and Prem Nagar. According to he tenant he re-started his business in a part of the suit premises from June, 1970. The tenant denied the landlady's allegations regarding public nuisance, damage and the alleged actions detrimental to the interest of the landlady. The tenant' positive case was that the premises were let out to him for residential-cum-commercial purpose.

(6) It is not necessary to go deeper in the question of the original purpose of letting out because even if it is assumed that the tenant has misused the premises, the landlady's appeal must fail for non-compliance of section 14(5) of the Act.

(7) The words used in section 14(5) of the Act are 'public nuisance' and not 'nuisance'. It is clear that the requirement of the law is that the nuisance falling within the mischief of the section is not private nuisance/common nuisance affecting the neighborhood and the 443 residents of the locality. There are no particulars of public nuisance stated in (he landlady's petition nor is there any independent evidence adduced by the landlady for establishing public nuisance. The counsel for the landlady contends that the very act of stocking goods and frequent visits of customers should be treated as sufficient in law to infer public nuisance. I do not agree. Assembling transistors and selling radios would not in itself result into public nuisance unless there is convincing evidence from the residents of the locality that the noise created disturbs the quietness of the locality or results into annoyance, to the neighborhood. Business in dangerous substances such as cooking gas might on proper evidence be construed as public nuisance. But a radio shop per se does not fall under such a category of business. There is also no evidence led by the landlord to prove that the alleged misuse by the tenant has caused damage to the premises. As regards the remaining clause in section 14(5) of the Act, namely, the misuse 'detrimental to the interest of the landlord, also the landlord must fail as neither there is any positive averment nor evidence to support the allegations. The words detrimental to the interest of the land lord connote that either the property interest or the reputation of the landlady owning the house in the locality is jeopardized. Suppose if a house is constructed on the land taken on lease, from governmental authorities, one of the conditions of which is that it should be used only for residential purposes and not for commercial purpose, and tenant uses the premises for commercial purpose, it would cause detriment to the interest of a landlord as it might result into termination of lease. Since the landlady has failed to satisfy the the Controller by convincing evidence that any of the clauses mentioned in Section 14(5) are satisfied no decree for eviction can be passed.