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Court : Delhi

Decided On : Jun-01-1979

Reported in : 16(1979)DLT215

Judge : M.L. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1) and 39

Appeal No. : Second Appeal No. 284 of 1977

Appellant : Ram Copal

Respondent : Washeshwar Nath

Judgement :

(1) The respondent Basheshwar Nath filed a suit against the appellant Ram Gopal for eviction of the premises, a portion in house No. 854, Mohalla Haibatpura, Najafgarh, Delhi, on the basis of arrears of rent and bonafide requirement for his own use and the members of his family. Since an order under sub-sec. (1) of sec. 15 of the [Delhi Rent Control Act, 1958](#), (hereafter the Act), was passed and complied with, the ground of non-payment of rent was not available, but eviction was directed on the second ground by the Addl. Rent Controller on August 23, 1973. The tenant lost his appeal before the Rent Control Tribunal on November 18, 1977. Hence, this second appeal.

(2) The first question that has been raised on behalf of the appellant is that the petition for eviction was not maintainable as the respondent-petitioner has failed to allege and prove that he had no other reasonable suitable accommodation available, which is one of the main ingredients of the ground under cl.(e) of the proviso to sub-sec. (1) of sec. 14 of the Act. For this proposition, the learned counsel for the appellant relied upon *Abdul Hamid and another vs. Nur Mohammad*, 1976 R.C.J. 738. According to said cl. (e), three conditions are necessary for obtaining eviction, (i) that the landlord is the owner of the premises in question, (ii) that his requirement of the same for occupation as residence is bonafide, and (iii) that he has no other reasonably suitable residential accommodation. All the three ingredients must be alleged and proved. The learned counsel for the respondent on the other hand, pointed out that the eviction petition has been entitled as one under sec. 14(1)(a) and (e) of the Act. In para 4 thereof, the premises have been described as 'Residential', and in para 18 (a) in the grounds of eviction, it has been stated that the premises which are residential and were let out to the respondent only for residence are required bonafide by the petitioner- landlord for occupation as a residence for himself and for the other members of his family including his sons who are members of the joint Hindu family with him. He has no doubt omitted to say that he had no other reasonably suitable accommodation, but that is implied under cl. (e) aforesaid, under which the petition has been made. This objection was not raised before the Addl. Rent Controller or the Tribunal. Otherwise, the petitioner would have amended his petition and rectified the defect. The respondent has also moved here on February 9, 1978, an application under Order 6, Rule 17, C.P.C., for amendment of the petition. In *Rattan Lal vs. Vardesh Chander and others*, 1976 R.C.R. 355, the Supreme Court observed that the Act contemplates no elaborate pleadings but filling out of particulars in a proforma which takes the place of a plaint. No specific averment of forfeiture and consequent determination of the lease was made in that petition. The Supreme Court held that having regard to the comparative informality of these proceedings and the quasi-judicial nature of the whole process, such an omission cannot be exaggerated into a lethal infirmity. In *Dr. Hans Raj Dawar and another vs. Shyam Kishore*, 1977 (2) R.L R. 253, it was observed that in view of *Rattan Lal's Case* (supra), the weight of the authority of *Abdul Hamid* (supra) had

been shaken. This court in *Smt. Sahabzadi etc. vs. Kaha Ram* 1968 (2) D.H.C. N 169, C.R. 363-D of 1961, decided on May 27, 1968, by 1.D. Dua, C, has held that pleadings had to be construed in a practical and rational way and a matter of form should not be permitted to defeat the cause of justice where the substance clearly brought out the essential facts affecting the rights of the parties. This is all the more so where the parties have not been prejudiced by such a construction of the pleadings. In *Gurdial Nagdev v. Smt. Debi Bai* 1979(1) R. C. R. 119, I had to deal with a similar problem. In that case also, the landlady had failed to aver that she had no other accommodation, but I held that the very fact that the premises in occupation were not sufficient implied that the other accommodation was really not available and there was sufficient compliance with the requirement of sec. 14(1)(e). I had further said that the tenant had sufficient notice of the case set up by the landlady and both the parties knew well the points of controversy between them and no one was taken by surprise. It will be an improper exercise of discretion if the tenants were now permitted to raise such a technical objection. Moreover, failure to plead the ingredients does not necessarily result in dismissal of the petition. If the tenant had raised this objection in his written statement, the mistake could be rectified in time by an amendment of the petition. Though normally all the ingredients require to be alleged and proved but it does not mean that the letter of the law and not the spirit thereof must be complied with. When the petitioner moved the petition under Sec. 14(1)(e), it was implied very much that he had no other reasonably suitable residential accommodation.

(3) The learned counsel for the appellant then drew my attention to a document Ex. R-2, produced by him in the court of the Addl. Rent Controller. It is a statement alleged to have been made by the respondent before the managing officer on January 16, 1959, that he was in possession of plots Nos. 822, 823, 824 and 825, in Najafgarh, jointly with his brother Hari Chand. House No. 854 is also joint with his brother for which rent has been paid. Though this statement was not put to the landlord-petitioner at the time of his examination, but according to *Biswanath Prasad and others v. Dwarka Prasad and others*, : [1974]2SCR124, a party's admission being evidence *proprio vigore* need not be put to him at the time he enters the witness-box and since the admission is a substantive and in certain circumstances conclusive piece of evidence, it was the duty of the petitioner to

explain his admission when the documents were produced along with the written statement. This statement was not denied nor controverted. It proves, it was urged, that the respondent had other accommodation available. It is true that the landlord has not cared to explain the circumstances in which the admission was made several years ago, but the courts below have believed him when he said that he needed accommodation for himself and members of his family, and in the cross-examination, that the plots were not purchased by him but were purchased by his brother and he had no other building in his possession except 3 rooms and a store in the disputed house. Thus, he has proved that he had no other reasonably suitable residential accommodation. therefore, it will not be proper to disturb the concurrent findings arrived at by the courts below in this respect, vide *Naqubai Ammal and others v. B. Shama Rao and others*, : [1956]1SCR451 , and *Nanak and others v. Basanta and others*, : AIR1976 All157 . Now, there is no need to decide the application of the respondent for amendment of his petition so as to include the ingredient that he had no other reasonably suitable residential accommodation; the application is rejected.

(4) The second contention raised by the learned counsel for the appellant is that the respondent is not the owner of the premises. His contention is mainly based upon Sec. 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, according to which it is the managing officer who is authorised to sell the property in the compensation pool. One S. B. Lal, a clerk of the Regional Settlement Commissioner, came and deposed that it was the Assistant Settlement Commissioner who had made the order of transfer of the property to the respondent against the claims of the respondent-petitioner. Certain decisions of the Punjab High Court, vide *Bhiru Mal alias Bhoju Mal and another v. The Financial Commissioner, Revenue, Haryana, Chandigarh*, (1967) 69 P. L. R. 656, and *Mangal Sain v. The Chief Settlement Commissioner, New Delhi*, and others, , were cited in support of this proposition, but I need not go into the facts and discussion of these rulings, as it appears to me quite manifest that Sec. 8 of the Displaced Persons (Compensation and Rehabilitation) Act authorises the Settlement Commissioner to pay compensation amount, inter alia, by sale to the displaced person of any property from the compensation pool and setting off the purchase money against the compensation payable to him. Section 20 of this Act

also provides that subject to any rules, a managing officer may transfer any property out of the compensation pool by allotment of any such property to a displaced person on such valuation as the Settlement Commissioner may determine. Now, what I find is that requirements of both the sections have been proved to have been complied within this case, as the direction to sell the disputed property against the compensation payable to the petitioner was made by the Settlement Commissioner and the managing officer executed the conveyance deed on March 25, 1969, on behalf of the President of India, so as to transfer a good and perfect title to the respondent. That is in strict compliance of the law. In face of these facts, it is useless to examine as to how the landlord came into possession of the property and had it sold out to himself. thereforee, it will not be true to allege that the petitioner was not the owner of the disputed premises.

(5) It was next urged that there is no evidence that the premises were let out for residential purposes and until this is proved, the landlord cannot seek eviction on the ground of bonafide requirement. There is no doubt that in the written statement the tenant appellant said that the premises were residential-cum-commercial. He did not say what commerce he was carrying on in those premises, but at the time of his deposition, he stated towards the end of the examination-in-chief that he carried on the business of buffaloes and vegetables in the premises. His counsel says that what he meant was that he carried on the business of selling milk and vegetables in the premises. Reliance for this purpose was placed upon a decision of this court in Dr. Dip Kaur v. Savitri Devi and another, 1978 (2) R.C.R. 149. It was urged on the basis of this decision that in order to succeed the landlord must show that the premises were exclusively let out for residential purpose. After consideration, I am inclined to think that, so far as this case is concerned, the appellant has admitted that one of the letting purposes, no doubt, was residence. What seems to me is this that the commercial purpose, if at all there was any, was just incidental to residence. According to *Hukumchand Jute Mills Ltd. and another v. Labour Appellate Tribunal and others*, : (1959)ILLJ595Cal , a thing is said to be incidental to another when it appertains to the principal thing. Carrying on of the alleged sales of milk and Vegetables appertain to the principal purpose of residence. There is no averment that the premises were not let out for residential purposes. What was averred is that the premises are residential-cum-commercial

and have been so used since the inception of occupation by the tenant. That confirms that the premises were let out for residence, but subsequently they came to be used, if at all, for some incidental purpose. I may also add that the findings of the courts below in this regard are also findings of fact and these findings cannot be disturbed because they are not unreasonable, arbitrary or perverse.

(6) Lastly, it was urged that the findings of bona fide requirement were such as called for an interference by this court. It has been held in several decisions of the Supreme Court and the various High Courts that the finding whether the requirement of the landlord is bona fide or not is a finding of fact and does not involve any question of law. The two courts have concurrently held that the requirement of the petitioner-landlord was genuine. What is proved is that the landlord had his wife, three sons and three daughters. All are married. No doubt one of the sons is a Deputy Superintendent of Police and is posted outside Delhi, but his family keeps on coming. One other son is a sub-inspector of police without any quarters and has to live with his father-in-law because no accommodation was available to him in his father's house. The third son lives with him and is married, and his daughters also visit him. The learned counsel for the appellant submitted that the question of requirement of the son who is posted outside and of the other son who is living with his father-in-law as a "Ghardamad" cannot be taken into account. These are essentially questions of fact and there is nothing on the basis of which it can be said that the findings are arbitrary or perverse or unreasonable, if accommodation for married daughters who come to visit their parents can be held to be personal requirement of the landlord, then the case of the sons who live outside on account of service is all the more genuine. Sons have to live with the father and they have to come to see the parents more often than the married girls can normally do.

(7) I, therefore, find no force in any of the submissions. This appeal raises no substantial question of law. It is hereby dismissed with costs.