NaraIn Devi Vs. Vinod Kumar

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Court : Delhi

Decided On : Aug-07-1979

Reported in : 16(1979)DLT258; 1979RLR493

Judge : M.L. Jain, J.

Acts : Delhi Rent Control Act, 1958 - Sections 25B(8); Transfer of Property Act, 1882 - Sections 106; General Clauses Act, 1897 - Sections 27; Evidence Act, 1872 - Sections 114

Appeal No. : Civil Revision Appeal No. 49 of 1979

Appellant : NaraIn Devi

Respondent : Vinod Kumar

Advocate for Pet/Ap. : P.P. Bhandari and; S.P. Manga, Advs

Judgement :

(1) The facts of this revision are that petitioner filed an application in the Court of the Rent Controller Delhi, against respondent U/S 25B of the Delhi Rent Control Act, 1958 seeking his eviction from her house No. D-53 Hauz Khas, New Delhi. The respondent moved an application for leave to defend which was granted to him on 3-4-1978. He filed written statement contesting the petition on several grounds. Controller by his order dt. 1.12.78, dismissed the eviction petition. He held that petitioner is in bonafide requirement of the premises but rejected the

application on the ground that the service of notice U/s 106 Tpa is not proved and that the application related only to a part of the premises. Hence, this revision by the land lady.

(2) The learned counsel for the respondent contended at the very outset that no revision lies against the impugned order. But, this contention cannot be accepted. This court has been of the view that revision contemplated by the proviso of Sec. 25B(8) does not lie against any order rejecting or accepting the prayer for leave to defend the suit, and lies only against an order accepting or rejecting an eviction application, vide Devi Singh v. Chaman Lal, 1977. Raj L.R. 566, Bhagawati Prasad v. Om Prakash, 1979, Raj. L.R. 26, Mahavir Singh V. Kamal Narain, 1979, Raj. L.R. 159 and I.R.K. Parikh v. Uma Verma, l978. Raj. L.R. 592. The present revision has been filed against the order dismissing the application for eviction and it is thereforee maintainable. The first contention is rejected.

(3) The learned counsel for the respondent then wanted to defend the impugned order on the ground that the notice of termination of the tenancy was not served upon the tenant. The case of the petitioner was that two registered notices were sent to the tenant, but they were returned 'refused'. She tendered in evidence only one of the registered envelopes bearing the endorsement 'refused' of March 9,1979. Under the proviso of Sec. 106 T P. Act, a notice of termination of the tenancy can be sent by post. When this is done, as was done in this case, then in virtue of Sec. 27 of General Clauses Act, 1897, unless the contrary is proved the service shall be deemed to have been affected at the time at which the letter would be delivered in the ordinary course of post. According to illustration (f) of Sec. 114, Evidence Act, the court may presume in such a case that the letter was received by the addressee unless it is shown that the usual course of the post was interupted by disturbances. The learned counsel for the respondent submitted that no doubt a presumption is raised against the respondent but this presumption stood rebutted when he deposed that no notice was brought to him by any postman, nor did he refuse any registered letter and, in such a case it was necessary for the petitioner to prove the endorsement of refusal by calling the postal peon or someone to prove his handwriting. He relies upon Parshotam Lal V. Kalyan Singh Air 1971 J.& K. 20 and Jagat Ram v. Battu Moll : AIR1976 Delhi111 .

But om Puwada Rao v. C.V. Ramanan : [1976]3SCR551 , it was observed that when notice sent by registered post is returned with endorsement 'refused' it is not always necessary to produce the postman who tried to effect service. A denial of service by a party may be found to be incorrect from its demonstration of conduct. In M.P. Swami v. Mangaram : AIR1979 Ori11 , it was held that when a notice sent by post in a registered cover is returned by the postman with the endorsement that the addressee refused to receive it and the pasting of notice has been proved, there arises the presumption U/S 114, of Evidence Act that the addressee did refuse to receive it even though the postman has not been produced to prove tender and act of refusal. Undoubtedly the presumption is one of the fact and rebuttable. It can never be regarded as conclusive and can be rebutted by mere denial on oath by the addressee only if such denial is believed by the court. The Court below in the present case has believed the Statement of denial made by the respondent. But the court has not stated why it believed the respondent and not petitioner. It is difficult to hold that out of the two notices sent to the respondent none was delivered to him. He even declined to receive two notices sent by the court. The conduct of the respondent shows that the denial by him of service is correct. The presumption has not been dislodged. I reverse the finding of the lower court on this point.

(4) As to the lone contention on the basis of which the application for eviction was rejected, it is admitted that a single unit of house No. D-53, Hauz Khas was given on rent. In his written statement the respondent has stated that besides the accomodation mentioned in the application of the petitioner, the roof and one small room on the roof were also under the tenancy of the respondent. The application thereforee, was not maintainable. Now, one does not know what the nature of this small room on the roof is. In her application land lady however, stated that the respondent had raised same temporary structure in an unauthorised manner on the terrace, and it will be removed after eviction. She deposed that no rent was separately charged for the room and the upstair construction. Vinod Kumar in his statement deposed that he took the whole house on rent in 1970 including the roof and the room on the first floor. In his cross-examination he deposed that it is incorrect that the room on the first floor did not exist at the time when he took the premises on rent.

(5) Upon this evidence. Controller came to the conclusion that the statement of the petitioner is contradictory and is not trustworthy and relying upon Shori Lal v. Rakha Mal 1971 R.C. J. 424, he held that the application did not cover the entire premises of the tenancy and it had thereforee, to be dismissed. The finding of the court below seems to be wholly uncalled for. The petitioner came with the case that the premises in question were house No. D-53, Hauz Khas. In stating the details of accomodation in para 8 of the application she did not mention anything about the roof and the so called small room on the first floor. The respondent appears to have made an unauthorised construction upon the roof. Even if the room has been constructed by the petitioner, there is no reason to disbelieve her when she said that no rent was being charged for the accomodation on the roof which means it was not within the tenancy. Moreover, it is admitted that the single whole unit was given on rent and what the application seeks is eviction from the whole house. It will not be a case of splitting of the tenancy simply because in the details of accomodation the petitioner omitted to mention roof and the said small room. Whole house was rented and whole house is sought to be recovered. I, thereforee, held that the finding in this regard is not according to law and deserves to be quashed.

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