Subhash Chander Vs. Rehmat Ullah

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Court : Delhi

Decided On : Feb-15-1973

Reported in : 1973RLR593

Judge : S.N. Shankar, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 144

Appeal No. : Second Appeal No. 150 and 151 of 1971

Appellant : Subhash Chander

Respondent : Rehmat Ullah

Advocate for Pet/Ap. : S.L. Watel and; Ishwar Sahai, Advs

Judgement :

S.N. Shankar, J.

(1) This order will dispose of S.A.OS. 150 of 1971 and 151/71. The facts leading to these appeals are as under :

(2) On August 9, 1967 the appellant Subhash Chander, [hereafter called 'the landlord'] filed an application under section 14 of the Delhi Rent Control Act, 1958 [hereafter called 'the Act'] for eviction of the respondent tenant, Rehmat Ullah Khan on the ground, amongst others, that the premises had been let for residence and that neither the tenant nor any member of his family had been residing therein for a period of six months immediately before the date of filing of the application. Notice of the application was issued to the tenant twice but he was not served. On October 17, 1967, the learned Additional Rent Controller ordered the tenant to be served by substituted service for November 20, 1967. The service was duly effected but no one appeared on the date fixed. On November 20, 1967, the case was adjourned to November 24, 1967 for recording ex-parte evidence. The landlord produced his evidence on this date and the case was fixed for December 1, 1967 for orders. On this date the learned Additional Rent Controller granted an order of eviction in favor of the landlord against the tenant. On December 7, 1967 the landlord applied for warrant of possession in execution of this order which was apparently issued and on December 16, 1967 landlord took physical possession of the premises.

(3) On December 18, 1967, one Manmohan describing himself as the manager of the tenant along with one of the tenant, Kaniz Begum, applied to the Additional Rent Controller for setting aside of the ex-parte order of eviction, On January 5, 1968, this application was rejected on the ground that the applicant did not represent the tenant and as such had no locus standi to make the application. On February 16, 1968, Manmohan filed another application under Order 9 rule 13 on the basis of a power of attorney granted by the tenant in his favor. On February 10, 1970 the ex- partc order of eviction was set aside. By a separate order the main application of the landlord was also dismissed. On February 11, 1970 the tenant applied for restoration of possession of the premises that had been taken in execution of the ex-parte order. The learned Additional

Rent Controller on the same day passed an order directing restoration of possession. On February 12, 1970, warrant for resoration was issued. The landlord applied for stay of the restoration proceedings but by order dated May 6, 1970 the learned Additional Rent Controller dismissed this application.

(4) In the aforesaid circumstances the landlord filed three appeals before the Rent Control Tribunal (1) against the order dismissing the main petition of the landlord; (2) against the order setting aside the ex-parte order of eviction and (3) against the order dated May 6, 1970 refusing to stay the restoration proceedings. All these three appeals have been disposed of by the learned Tribunal by the impugned order dated July 23, 1971 which forms the subject-matter of these two appeals.

(5) The grievance of the landlord against the dismissal of his main application for eviction no longer survives as appeal from this order was accepted by the Tribunal.

(6) The two grievances raised in the present appeals relate to the correctness of the order setting aside the ex-parte order of eviction dated February 10, 1970 and the order directing restoration and dismissing the application for stay of the restoration proceedings. S.A.O. 150 of 1971 relates to the first grievance while the second grievance is covered by S. A. 0. 151 of 1971.

(7) Both these appeals came up before Mr. Justice Deshpande. Amongst others, the points agitated in S.A.O. 150 of 1971 were that the Additional Rent Controller had no inherent powers to set aside the ex-parte order of eviction and that in any view the application for the setting aside of that order had been filed beyond limitation and as such should have been dismissed. Having regard to the importance of the question raised Mr. Justice Deshpande by order dated February 18, 1972 referred the matter for decision by a larger Bench. The matter was thereforee placed before a Division Bench for decision of these points. By order dated September 26, 1972 the Bench held that the Controller had inherent power to set aside the ex-parte order and that the Controller being not a court the provisions of Limitation Act did not apply. Shri Watel arguing the case on behalf of the landlord states that against these findings of the Bench, a special leave petition (S.L.P. 237/72) was filed before the Supreme Court but it has been dismissed in liming on February 8, 1973. The findings of the Bench, thereforee, are conclusive between the parties. Shri Watel very candidly conceded that after the decision, of the Bench, there is nothing that survives in regard to his grievance raised in S.A.O. 150 of 1971 which related to the power of the Additional Rent Controller to set aside the ex-parte order. S.A.O. 150/71 in these circumstances has to be dismissed

(8) In S.A.O. 151 of 1971 the only point urged before me by the learned counsel is that the Additional Rent Controller should have stayed the operation of the order of restoration in view of the special facts of this case. He stated that the evidence which had been placed on the record before the Additional Rent Controller clearly showed that neither the tenant nor any member of his family was actually residing in the premises since a long time before the institution of the application and that they were not there on the date when possession of the premises was taken. He further stated that on the same date when possession of the premises was taken, it was let out by the landlord to another tenant and that it was the new tenant who was in occupation of the premises. On these facts, he submitted, no prejudice will be caused to the tenant if the restoration proceedings are postponed till after the decision of the main application of the landlord. He placed reliance on Hemchand Mahabirprasad Singhania v. Subhkaran Nandlal Bagara : AIR1967Bom361 and Gobardan Ram Bisheshar Ram v. Banarsi Ram and others : AIR1957All805 in support of this submission. In the Bombay case the appellate court, while granting the relief of restoration of possession to the respondent directed that he be restored possession within a week of the order. In revision before the High Court the grievance was that order of immediate restitution of possession was not justified. In the facts of that case the court accepted this submission and postponed the enforcement of the order.

(9) After hearing Shri S.L. Watel and Shri Ishwar Sahai on behalf of the parties, I am of the view thai no indulgence like the one prayed for can be granted to the landlord in the instant case. So far as the issuance of the order of restitution is concerned, there cannot be any two opinions on the point that it was justified. Sub

section (1) of section 144 of the Code of Civil Procedure dealing with the application for restoration reads :(-) Immediately, thereforee, a decree or order of the court is varied or reversed the court of first instance is bound, on the application of any party entitled to any benefit by way of restoration, to grant it. In Binayak Swain v. Ramesh Chandra Panigrahi and another : [1966]3SCR24 this aspect came up for examination before the Supreme Court. It was held :

'THEprinciple of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost. This obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been done under the erroneous decree and the Court in making restitution is bound to restore the parties, so far as they can be restored to the same position they were in at the time when the Court by its erroneous action had displaced them from.'

The same view was taken by this Court in Kharaiti Ram Nayyar v. K.B. Advani 1972 RLR 105.

(10) The next question, thereforee, is whether the execution of the restoration order should be postponed. I see no ground for it. Once the exparte order of eviction was set aside in this case. the landlord was not entitled in law to be allowed to continue to earn profit from the premises, possession of which he had secured in execution of the order that had been set aside. The creation of the alleged tenancy in respect of the premises on the same date when its possession was taken in execution of the ex-parte order also prima facie appears to be designed to create obstacles in the way of the tenant if he succeeded in having the ex- parte order set aside. Besides, the main eviction application is yet at a preliminary stage and there is no likelihood of its being decided in the near forsecable future. It will be inequitable to keep the tenant out of possession of the premises which in law is in his tenancy. The posteponement of the operation of restitution order will create unnecessary hardship to the tenant. With utmost respect, I have not been able to pursuade myself to adopt the view expressed in the Bombay case in the present circumstances.