

Bhim Saln Vs. Raj Devi

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Court : Delhi

Decided On : Aug-29-1973

Reported in : 1973RLR627

Judge : Rajindar Sachar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11

Appeal No. : Second Appeal No. 320 of 1972

Appellant : Bhim Sain

Respondent : Raj Devi

Advocate for Pet/Ap. : L.C. Vatsa and; Sultan Singh, Advs

Judgement :

Rajindar Sachar, J.

(1) This is an appeal by the tenant against the order of the Rent Control Tribunal dated 13.10.72 by which he set aside the order of the Additional Rent Controller dated 7-10-1969 and directed eviction of the appellant.

(2) The respondent landlady on April 17, 1965 filed an application under clause (g) of Proviso to sub-section (1) of Section 14 of the [Delhi Rent Control Act, 1958](#)

(hereinafter called the Act) on the ground that the premises in dispute were required bonafide by the landlady for the purpose of re-building and such re-building could not be carried out without the premises being vacated. It was also alleged that the proposed reconstruction would not radically alter the purpose for which the premises were let and that the premises in dispute were in a dilapidated condition and it was in the public interest that the premises be reconstructed. It was further alleged that the reconstruction was necessary to meet the requirement of the petitioner and her family.

(3) The appellant who is a tenant on a monthly rent of Rs.75 countered the allegations. In return it was pleaded that the premises were in good condition and did not require the reconstruction. A plea of resjudicata was also raised alleging that the previous application of the landlady for eviction of the respondent on the ground of personal need under Clause (e) of Proviso to Section 14(1) was dismissed on 5.11. 1964 and, therefore, the present application was barred by rest judicata. The Additional Rent Controller who heard the matter in the first instance held that the present application moved by the landlady on 17.4.1965 was barred by the principle of rest judicata as she had not included this ground in the application which was moved by her previously in 1963 and which was dismissed on 5-12-1964. The court also held that keeping in view all the surrounding circumstances the application was not bona fide one but was only as a means of getting the premises vacated somehow, and that the claim of the landlady for rebuilding is not bona fide and, therefore, the application of the landlady was liable to be rejected on this ground also. He thus dismissed the application.

(4) An appeal was filed by the landlady and the Rent Control Tribunal has set aside the finding of the Additional Rent Controller and has held that the present application was not barred on the principle of rest judicata because the present ground for eviction under clause (g) of Proviso to Section 14(1) was not available to the landlady when she moved the earlier application under clause (e) of Proviso to Section 14(1). He had also set aside the finding on the second point and has held that it cannot be said that the landlady had no bona fide desire to rebuild the house. On this finding the appeal was allowed and the eviction of the

tenant was ordered. It is against this order that the present appeal has been filed.

(5) Admittedly the respondent landlady moved the previous application on 10-12-63 under clause (e) of Proviso to Section 14(1) of the Act seeking eviction of the appellant on the ground that the premises in dispute were let for residential purposes and that they were required bona fide for the landlady and the members of her family. The application was rejected by Shri F.S. Gill, Rent Controller by his order dated 5.12.1964. Shri F.S. Gill held that the premises were not let for residential purposes and the ground of personal requirement was, therefore not open to the landlady under Clause (e) of Proviso to Section 14(1) of the Act. He also further held that from the facts of the case the claim of the landlady of personal requirement was not bonafide and that she was not entitled to evict the tenant on that ground. No appeal was filed against the order of Shri F.S. Gill dated 5.12.1964. However, the present application under Clause (g) of Proviso to Section 14(1) of the Act was filed on 17.4.1965, and the question that arises is whether the present application is barred by principle of rest judicata.

(6) It was not disputed by the counsel for the respondent Mr. Sultan Singh and indeed it could not be that the principle of rest judicata is applicable to the Proceedings under the Act. It has been held in a series of authorities that the principles of rest judicata would apply to the proceedings before the Rent Controller under the Rent Act vide *Manmohan Lal V. B.D.Gupta* 1964 P.L.R. 1005, *Yogineer Pal V. Competent Authority* 1969 R.C.R. 1073 and *Raj Kishan Jain V. Master Hoshier Singh* 1971 R.C.R. 364. But before the present application be held to be barred by the principle of constructive rest judicata, it is necessary to find that when the respondent landlady moved earlier application in 1963 under clause (e) of Proviso to Section 14(1) of the Act the present ground of eviction under Clause (g) of Proviso to Section 14(1) of the Act was also available to her. Now what are the facts found in the present case. The trial court found that the landlady admitted that the financial position with respect to the availability of the funds has been the same for the last 10 years. The landlady further admitted that the premises in dispute are in some dilapidated condition as these were at the time when she purchased the premises before the filing of the previous petition in 1963. She also admitted that she has been in possession of over Rs. 20,000.00 for the

last ten years, the amount which is expected to be spent on reconstruction. The lower appellate court, however, without referring to these findings took the view that it cannot be said that the present ground for eviction was available to her for the reason that this ground contains an element of requirement and this ground, therefore, will only come into existence when the landlady requires or desires to rebuild the house and that even if the house was in dilapidated condition when the previous application was moved in December, 1963, the landlady may still never require or desire to rebuild the house. I am unable to appreciate this reason, as this assumes as if the requirement of clause (g) of proviso to Section 14(1) only requires ipsi dixit or the mere whim of the landlady to maintain such an application. On the contrary the requirement of clause (g) of Proviso to Section 14(1) postulates that the premises are required bona fide by the landlord for the purpose of rebuilding and, therefore, it is not enough to say that he requires it for rebuilding to succeed in his application as the court is required to find out whether the requirement is bona fide as held in *M/s Panchamal Narayan Shenoy V. Basthi Venkatesha Shenoy* (1970 R.C.R. 307).

(7) SUB-SECTION (8) of section 14 of the Act lays down the circumstances under which no order for recovery of possession of any Premises shall be made. One test therefore to find out whether the ground in clause (g) of Proviso to S. 14(1) was not available to the respondent landlady when she moved the previous application in December, 1963, is to examine whether any any of the requirement mentioned in sub-section (8) was not in existence at that time. Now the requirements mentioned in sub-section (8) requires the Controller to be satisfied (a) that the proposed reconstruction will not radically alter the purpose for which the premises were let or that such radical alteration is in public interest (b) and that the plans and estimates of such reconstruction have been properly prepared (c) that the necessary funds for the purpose are available with the landlord. Of these requirements item (a) is a limitation on the type of reconstruction that can be made by the landlady and must exist at every point of time and there is no suggestion that this requirement can be altered any time; (c) that necessary funds are available with the landlady. According to the landlady herself at the time of moving the previous application and as a matter of fact year before the funds existed with her. This requirement therefore was complied with at the time of the previous

application. (b) the requirement that the plans and estimates have been properly prepared has been relied upon by the Rent Control Tribunal for its finding that this requirement was not there, as according to him the plan was sanctioned only on January 3, 1965. it could not be considered that the ground under clause (g) of proviso to Section 14(1) was available to the landlady when the previous application was filed.

(8) I am unable to subscribe to this reasoning. This is because this reasoning assumes that even if the existence of the ground at the time when the previous application was moved was dependent on the sole volition of the landlord and there was no outside prohibition, yet it is open to the landlord to avoid a bar of rest judicata subsequently by pleading that he can take this very ground when the second application is moved even though in reality there was no bar on him to include that very ground in the first application excepting his own volition. Now in the present case it is not suggested that when the previous application was moved in 1963 there was any ban on reconstruction and for that reason it was not open to the landlady to include the ground of clause (g) of proviso in Section 14(1) of the Act at that time; nor is her case that she had applied for sanction of the Municipal Corporation but the same had been refused and, therefore, this ground was not available to her then. Under the Delhi Municipal Corporation Act no doubt the permission to rebuild is necessary and all that the landlady had to do was to apply in the prescribed terms. If by not applying herself she does not fulfill one of the conditions mentioned in sub-section (8) of Section 14 she could not on that ground be said to have not available to her this ground of eviction at the time of moving the previous application. In order to avoid the applicability of bar of rest judicata the landlady has to prove that the requirement of that ground was not available to her because of the action of any outside agency and that she could not have invoked that ground by doing some other act herself.

(8a) In this connection reference was made to Manmohan Lal V.B.D. Gupta 1964 P.L.R. 1005. In that case the landlord had filed a suit under Section 13(l)(k) of the Delhi and Ajmer Rent Control Act of 1952 on the ground that the tenant had after the commencement of the Act used the premises in a manner contrary to the conditions imposed by the landlord. Previous to that a suit had been filed under

Section 9(1)(b)(1) of the Delhi and Ajmer (Mewar) Rent Control Act 1947, on the ground that the premises were leased to the tenant for residential purpose and that he had used them for another purpose by using them in connection with his business. Objection was taken by the tenant that the second suit was barred on the principle of rest judicata because this ground of Section 13(1)(k) of the Delhi and Ajmer Rent Control Act, 1952, was not included when the previous suit was filed. In answer to that it is contended on behalf of the landlord that he could not have at that time based his previous suit on the second ground because he had not given a notice to the tenant to desist from using the premises for business and the serving of a notice was a necessary preliminary to a suit based on that ground. It was thus contended that the suit was filed after he had given a notice and thus the previous suit could not have been based on this ground and the question of rest judicata did not arise. Rejecting this contention the Division Bench observed ,

'...WHEN two grounds for the ejectment of a tenant based on the same set of facts are open to a landlord and he chooses to bring a suit based only on one of the grounds, he cannot bring a second suit based on the other ground merely on the plea that that ground was not open to him in the first suit by reason of the omission on his part to perform some formal act like serving a notice and I am, thereforee of the opinion that the landlord's suit was barred by the Fourth Explanationn in Section 11, Civil Procedure Code.

(9) This authority is a precedent for the proposition that the landlord cannot by omitting to do anything which it is under his own volition to do so to avoid the rigour of rest judicata. In the present ease the reasoning of the lower appellate court that as it is a desire or requirement of tbr landlord under clause (g) of Proviso to Section 14(1) it cannot be sustained because this requirement existed in 1963 requirement was within the volition of the lady and it was open to her to include this plea in the application which was filed in 1963. If this plea was to be accepted it will reduce this clause to the mere whim or caprice of a landlord for the same reason the fact that sanction was not obtained, uptil 11 January, 1965 cannot be available to the landlady, because there is nothing to suggest that though sanction was sought for in 1963 it was refused and, thereforee, this ground could not have been included. Here the landlady deliberately chose to split up the grounds for

eviction even when it was available and did not include the present ground of clause (g) of Proviso to Section 14(1) in her previous application. On what principles can it then be said that the present application was not barred on the principle of constructive res judicata.

(10) Mr. Sultan Singh who appears for the respondent sought to contend that clause (e) of Proviso to Section 14(1) of the Act could not have been included in the application which was moved in 1963 because pleas of clause (e) of Proviso to Section 14(1) are mutually destructive of each other and would lead to confusion and cannot be continued in the same proceedings. In this connection reference was made to a number of authorities for the proposition that in order that a plea might be barred under Section 11 of the Code of Civil Procedure it might and ought to have been made a ground of attack in the former suit and that if raising such a plea would lead to confusion it ought not to have been raised and therefore principle of res judicata will not apply : Kameshwar Prasad v. Rajkumari Rattan Koor and others 20 Calcutta (PC) 79, Shah Jawahar Lal v. Shah Chaganlal and others , Abdul Wahab and others v. Mustafa Khan and others A.I.R. 1935 Lah 735, Periva Kelo Nair vs. Kariyappau : AIR1963 Ker313 , Sir Ganga Ram Trust Society Lahore V. Mehta Sundarlal and another A.I.R. 1940 Lah 27, Labh Singh v. Court of Ward Estate of S. Buta Singh through Manager and other A.I.R. 1945 Lah (210), Narayanan Nair Govindan Nair v. Narayanan Nair and other A.I.R. 1956 Trav Co. 266 and Kokila and another v.. KM. Rajabather and another : AIR1957 Mad470 . It is not necessary to discuss these authorities separately because it was laid down in Kameshwar Prasad case it depends upon the facts of each case whether a matter ought to have been raised in the previous application. Now let us see whether the plea under clause (g) of Proviso to Section 14(1) could not have been included when the previous application was filed under clause (e) of Proviso to Section 14(1). I am not able to understand how the pleas under both clauses would be destructive of each other. In the previous application plea was that the landlady required the premises bonafide for occupation as a residence for herself. In the present case also in her application filed on 7.4.1965 (in the column on the ground on which eviction of tenant is sought) it was pleaded that they are required bona fide by the petitioner for the purposes of rebuilding and such rebuilding cannot be carried on without the premises being vacated and that

the reconstruction is necessary to meet the requirements of the petitioner and her family. It will thus be seen that one of the reasons in order to show bonafide of the landlady that has been mentioned by her for reconstruction is the need for herself and her family which was also the ground in previous application. I also do not see how it would have been improper or destructive other rights to combine this alternative claims under clause (e) and (g) of Proviso to Section 14(1) when she moved application in 1963. Plea under clause (e) of Proviso to Section 14(1) that the landlady requires the premises bona fide for occupation as a residence for herself and the requirement in clause (g) of Proviso to Section 14(1) that the premises are required bona fide by her for the purpose of rebuilding cannot be said to be mutually destructive of each other in the manner that these two pleas could not have been combined together. The whole principle behind constructive rest judicata is that all the grounds of attack (even independent of each other) must be taken in the alternative excepting in cases where the matters are such that it may lead to confusion or would be destructive to each other. Both these clauses (e) and (g) are alternative grounds on which the eviction of a tenant can be sought for by the landlady. thereforee when the previous application was moved in 1963 by the landlady it was not only open to her but was incumbent on her to include in it the alternative claim under clause (g). To combine the please in clauses (e) and (g) do not in any way conflict with each other because (g) does not require the landlord to show under this clause that the condition of the building is such that it requires immediate demolition vide M/s Panchamal Narayan Shenoy V. Basthi Venkatesha Shenoy 1970 R.C.R. 307. There was thus no reason or justification in law in not having included the ground in clause (g) when the previous application was filed under clause (e) of Proviso to Section 14(1) of the Act, and thereforee, the present application was barred on principle of rest judicata. The findings of the Rent Control Tribunal to the contrary is hereby set aside.

(11) Second ground on which the Rent Controller found against the landlady and which has been reversed by the appellate court is that the requirement of the premises by the landlady was not bonafide. Here also the lower appellate court seems to have proceeded on the basis that clause (g) only requires the court to find that the landlord has the desire to rebuild and the moment this desire was

expressed this must per se necessarily mean that the premises are required bona fide for the purpose of rebuilding. No doubt the requirement of this clause does not have reference to the condition of the building, but nevertheless as has been held by the Supreme Court in Panchamal's case while interpreting a somewhat analogous provision under Mysore Rent Control Act, 1961 what is necessary under that clause is that landlord must satisfy the court that he reasonably and bona fide requires the premises for the immediate purpose of demolishing it and the demolition is for the purpose of erecting a new building in the place of the old one. No doubt as to whether the landlord's requirement is reasonable and bona fide has to be judged by the surrounding circumstances, which will include his means for reconstruction of the building, and other steps taken by him in that regard. Now the previous application was dismissed on 5-12-1964 and immediately within a period of four months the present application under clause (g) was moved. Having failed to get the premises vacated on the ground of personal need, she again put forward this ground as the reason for rebuilding it. All the necessary requirements of financial liquidity, the condition of the building which existed previously were the same at the time when she moved this present application. Now, therefore when within four months of the dismissal of her previous application on the ground of personal need she again moves another application on the ground that she requires it for rebuilding and that reconstruction is necessary to meet the requirement of the landlady and her family, it is apparent as held by the Rent Controller that the claim of rebuilding is not bona fide one but is only a cloak for getting the premises vacated by any means, The Additional Rent Controller has referred to the evidence of PWs 1 and 2 who have deposed that the landlady had asked the appellant to increase the rent from Rs. 75 to Rs. 150.00 but he did not agree to do so. He has accepted this evidence as further support to his conclusion that the claim of the landlady for rebuilding of the premises was malafide. The lower appellate court has not referred to this part of the evidence at all. The Additional Rent Controller had also found that even the requirement of the rebuilding by the landlady did not require the premises to be vacated by the appellant. The lower appellate court has not referred to this aspect also. All the circumstances mentioned by the Additional Rent Controller in my view, clearly support his finding that the requirement of the respondent for

rebuilding the premises was not bona fide. I would, therefore, reverse the finding of the Rent Control Tribunal on the second ground also.

(12) I may mention that during the course of hearing counsel for the appellant had offered as a measure of compromise (without conceding the right of the respondent) to allow reconstruction by the landlady if she genuinely wanted to do so even now, provided the respondent agreed that either the possession of the premises be allowed to remain with the receiver appointed by the court during reconstruction so that when the rebuilding is completed further hindrance may not be placed in the way of putting the appellant back in possession when proceedings are started under Section 20 of the Act. He even suggested that in the alternative the respondent should either agree to pay him compensation and damages at an agreed amount (which should be exemplary) for every month that the appellant is kept out of occupation of the premises after the time given to the respondent for completing the reconstruction given by the court expires. Both these suggestions of the appellant were, however, not agreed to by the respondent and his counsel expressed his inability in accepting these and it was therefore unnecessary to pursue it. (Makhan Lal Verma Adv.