

David Brown Vs. Swjit Singh

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Court : Delhi

Decided On : Jun-19-1971

Reported in : 1971RLR716

Judge : V.S. Deshpande, J.

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

Appeal No. : Second Appeal No. 37 of 1971

Appellant : David Brown

Respondent : Swjit Singh

Advocate for Pet/Ap. : A.K. Kuba and; B.K. Man Singh, Advs

Judgement :

V.S. Deshpande, J.

(1) The sole question for decision in these two connected second appeals (SAO. 37 and 42 of 1971) is whether the orders of eviction passed by the Controller against these two tenants who are the appellants in favor of the common respondent who is the landlord under proviso (e) to sub-section (1) of section 14 of the [Delhi Rent Control Act, 1958](#) were illegal on the ground that the petition for eviction by the landlord were filed in November, 1968 though the actual date of retirement of the landlord was 17th August, 1971.

(2) Learned Counsel for the tenant appellants are on strong ground in urging that the decision must solely rest upon the construction of proviso (e) which is in the following terms :-

'THAT the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.'

They point out the use of the present tense 'are required' by the Legislature showing that the need of the land lord for the premises must have arisen before he can apply for the eviction of the tenant on the ground that the premises are required by the landlord for his own residence. For, after all no suit or petition can be filed unless and until the cause of action for the same has not arisen, is liable to be dismissed as premature. On the other hand, learned counsel for the respondent would urge that the retirement of a Government servant is a certain event even though it may not have actually taken place when the petition was filed. It was not contingent in the sense that it may or may not happen. Retirement is almost as certain as death for a person cannot serve the Government beyond the age fixed for retirement under the rule of law. It is well known that the tenants generally resist a petition for eviction on all possible grounds and landlord has to fight a long drawn litigation with the tenants before he could ultimately get possession of the premises. This of course does not mean that the landlord is as a matter of law entitled to file an eviction petition always ahead of the date of his retirement. The question really is to apply proviso (e) in a pragmatic manner without being too technical for instance, in *A. P. Madhavan v. M.P. Ram Chanderan*, 1970 All India Rent Control Journal 479, the landlord had actually been transferred from Perinthalmanna to Pathiripala but he had not actually and physically taken over at the latter place. He filed a petition for eviction of his tenant residing in the premises at the latter place before he actually shifted to the latter place. It was argued that on the date of the petition, the landlord was still at the former place and not at the latter place and therefore, he had set up only a future and not a present need in his eviction petition and that this was fatal to the

success. This contention was rejected on two grounds. Firstly, it was held that the transfer was reasonably expected and it was not necessary that there should be a current urgent need. It was enough that if it was reasonably likely to arise in the near future. Secondly by the time of the decision of the case, the landlord had actually shifted to Pathiripala and, therefore, the Court was bound to take into account the subsequent event which occurred before the decision of the case.

(3) Proviso (e) of section 14(l) has, therefore, to be reasonably construed. On the one hand, the landlord may file the petition for eviction a short time ahead of the actual date of his retirement if the retirement would definitely take place before the decision of the petition in the trial court itself. For, in such a case the trial Court can be certain on the date of the decision that the landlord has retired and the petition is not premature, if the trial court takes such a view of the case and does not dismiss the petition on the ground that it is premature it would be difficult for the appellate Court to reverse such a decision on the ground that the petition should have been dismissed as premature particularly when the retirement would have taken place before the appeal is decided. On the other hand, the trial Court would be equally acting according to law if it were to construe proviso (e) to mean that the requirement of the landlord must be a present one and not a future one. Of course, what is a present requirement would also have to be decided on the facts of each case. Generally speaking, the requirement would not be regarded as a present one if the landlord were not to retire very soon after the presentation of the petition and at any rate before the decision of the trial Court was expected.

(4) In the present case the landlord filed the petition more than two years ahead of the date of his retirement. The tenants were quick to take the objection that the petition were premature. The Controller would have been well-advised in treating them premature because he would have known that the petitions would be decided long before the actual retirement of the landlord. In *Batoo Malv. Rameshwar Nath and others*, Air 1971 Delhi 91 para 31, it was pointed out that proviso (e) was primarily for the benefit of the landlord without any wrongful act being committed by the tenant. Landlord's own subsequent conduct can, therefore, deprive him of his right to evict the tenant. For instance, if the landlord acquires suitable residential accommodation in some other way then he would not

be able to continue his claim under proviso (e). It is to guard against such eventuality that a petition by landlord should be regarded as premature when his retirement was not expected before the decision of the case by the Controller.

(5) The question before me, however, is not to decide for the first time whether the petition is premature or not. The question is whether the concurrent decisions of the Controller and the Rent Control Tribunal should be set aside on the ground that the mistake committed by them in not rejecting the petition as premature is 'a substantial question of law' within the meaning of section 39(2) of Delhi Control Act. For, these second appeals are maintainable only if they involve a substantial question of law. They certainly involve a substantial question at law in the sense that the Controller was ill-advised in not rejecting the petitions as premature when he knew that he would be deciding them long before the actual retirement of the landlord. But the consideration which now intervenes is that the retirement of the landlord is due very shortly on the 17th of August, 1971. For instance, if these cases were to come up for hearing before me on or after the 17th of August, 1971, the landlord would have already retired. In the event it would be highly technical for this Court to hold that even though the landlord has actually retired, the second appeals should be allowed merely because the Controller acted illegally in entertaining the petitions which should have been dismissed as premature. Subsequent events and substantial justice have both to be taken into account in deciding such an appeal. It would not be possible, therefore, to throw out the petitions now. I have already indicated above my views as to the meaning of proviso (e). But I am also of the view that the present is not the proper case in which full effect should be given to such a construction. After all this is not only a Court of law but also a Court of Justice. Even if the landlord were originally to be blamed for being too hasty in filing the petitions too long before the retirement, he cannot now be penalized if both the Controller and the Rent Control Tribunal took the view that it was reasonable for the landlord to file petitions ahead of time as the long time taken in litigation was bound to delay the ultimate eviction till beyond the date of retirement. In the special circumstances of this case, therefore, I refrain from allowing these appeals even though the decision of the Controller is seen to be wrong. Instead, the appeals are dismissed with the direction that the orders for eviction shall not be executable till after the expiry of four months after

17th of August, 1971 or the actual retirement of the landlord respondent whichever is later. In the circumstances of the case, parties shall bear their own costs.

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