

Nishchint Bagga Vs. Goliath Detectives Pvt. Ltd. and anr.

Nishchint Bagga Vs. Goliath Detectives Pvt. Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/691385

Court : Delhi

Decided On : Feb-17-1999

Reported in : 1999IIAD(Delhi)513; 78(1999)DLT432; (1999)122PLR9

Judge : Dalveer Bhandari, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order XII, Rule 6; [Delhi Rent Control Act, 1958](#) - Sections 6-A and 8

Appeal No. : I.A.No. 605/98 in Suit No. 981/94

Appellant : Nishchint Bagga

Respondent : Goliath Detectives Pvt. Ltd. and anr.

Advocate for Def. : Mr. Yogesh Kalra, Adv.

Advocate for Pet/Ap. : Mr. S.P. Kalra, Adv

Judgement :

ORDER

Dalveer Bhandari, J.

1. The plaintiff filed a suit for possession and recovery of rent of the license fees/rent/damages for use and occupation of the premises known as 19-E Vasant Lok, New Delhi.

2. The suit was registered by this Court and after the service of summons on the defendants, the written statement was filed. During the pendency of the suit the plaintiff moved an application under Order 12, Rule 6 read with Section 151 of the Code of Civil Procedure.

3. In the application it is mentioned that defendant No.1 was a licensee since 1979 in respect of the suit premises. Initially, the monthly license fees/rent was Rs. 3000/- which was later on enhanced by the consent of parties to Rs. 3,500/- per month.

4. The plaintiff did not agree to renew the license with effect from April, 1991. Defendant No. 1 claims tenancy right in the said suit premises and according to defendant No.1 the license executed between the parties was a camouflage and in fact the defendant was a tenant.

5. The plaintiff submitted that assuming that defendant No.1 was a tenant (and not a licensee) at a monthly rent of Rs. 3,500/- even then it makes no difference as far as this application is concerned. The said rent was sought to be enhanced by the plaintiff by serving a notice dated 7.2.1992 under Section 6A and 8 of the Delhi Rent Control Act 1958 on the defendants. The enhanced rent became Rs.3,850/- and consequently, the premises in question fell outside the purview of the [Delhi Rent Control Act, 1958](#).

6. Receipt of notice dated 7.2.1992 is admitted by the defendants. The tenancy of defendant No. 1 was terminated by a notice under Section 106 of the Transfer of Property Act dated 7.2.1994. The receipt whereof is admitted by the defendant. According to the plaintiff, the defendant was liable to ejectment besides being liable to pay damages at the rate of Rs. 2,500/- per day. In the application, it is mentioned that the case of the defendant taken at best (and which is pleaded in the written statement) is a claim to tenancy right in the suit premises. The last paid rent at the rate of Rs. 3,500/- per month is not in dispute. The relevant portion of the reply reads as under :

'The defendant No.1 is in settled possession as a tenant till date. The documents on similar lines were executed on 27.10.1980 and 22.9.1981. On 12.11.1982 two

separate agreements were executed between the parties and the rent was increased to Rs. 3,500/- per month.'

The receipt of the notice dated 7.2.1994 calling upon the defendant to increase the rent by 10% in terms of Section 6A and 8 of the [Delhi Rent Control Act, 1958](#) also cannot be disputed.

7. thereforee, after receipt of the notice under Section 6A and 8 of the act, the rent became more than Rs. 3,500/- per month and consequently the tenant lost the protection of the Delhi Rent Control Act. Section 6A and Section 8 reads as under:-

'6-A. Revision of rent- Notwithstanding anything contained in this Act, the standard rent, or where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.'

'8. Notice of increase of rent- (1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882).'

8. The receipt of notice dated 7.4.1994 calling upon defendant No.1 to increase the rent at the rate of 10% per annum in terms of Section 6A and 8 of the Delhi Rent Control Act 1958 is admitted. The increase of 10% in the last paid rent makes it Rs. 3,850/- per month which excludes applicability of the [Delhi Rent Control Act, 1958](#) to the suit premises. In other words, the defendants cannot claim any protection of the Delhi Rent Control Act when the rent is beyond Rs. 3,500/- per month.

9. In view of the aforesaid facts the plaintiff prays that an order of recovery of possession of the suit premises be passed forthwith in favor of the plaintiff and against the defendants leaving the question of damages payable by the defendants to be decided at the later stage.

10. Mr. S.P. Kalra, the learned counsel for the plaintiff placed reliance on the judgment in the case of Samir Mukherjee Vs . Davinder Kumar Bajaj & Ors. : 71(1998)DLT477 . in support of his submission. In this case the Division Bench of this Court has laid down that under Order 12, Rule 6 of the Code of Civil Procedure, a decree for possession was liable to be passed on admission of the defendant. These observations of the division bench were made in a rent case.

11. Mr. Kalra also placed reliance on : 71(1998)DLT581 ; K. Kishore & Construction (HUF) v. Allahabad Bank. In this case the learned Single Judge while relying on the settled law, has taken the view that where the relationship of landlord and tenant is admitted and the rent is more than Rs. 3,500/- per month and the tenancy has come to an end by efflux of time, then the landlord is entitled for possession of the premises. The Court held that :

'A plaintiff may move for judgment under this provision at any stage. This can obviously be availed even after he has joined issues on the defense. The admission may be made either in plead- ings or otherwise which means that the admissions contained in documents written or executed between the parties before the action is brought are also sufficient for the purpose of this rule.'

12. In view of the settled position of law the application filed by the plaintiff under Order 12, Rule 6 has to be allowed. The plaintiff is entitled to get possession of the premises and consequently I direct the de-fendant to hand over the possession of the premises in question to the plaintiff forthwith. The application is accordingly allowed and disposed of.

13. Let the suit be listed for appropriate directions on 23rd March, 1999 before J.R.