

Satish Chander Vs. Shiv Dutt and

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Court : Delhi

Decided On : Mar-15-1982

Reported in : 21(1982)DLT64; 1982RLR354

Judge : Yogeshwar Dayal, J.

Acts : Delhi Rent Control Act - Sections 14(1)

Appeal No. : Civil R. No. 482 of 1980

Appellant : Satish Chander

Respondent : Shiv Dutt and ;prem Nath

Advocate for Pet/Ap. : R.K. Makhija,; Alakh Kumar and; K.K. Chaudhry, Advs

Judgement :

Yogeshwar Dayal, J.

(1) Respondents own suit premises. It was let out to petitioner in Sep., 69. At that time Shiv Dutt was a clerk in Cpwd, N. Delhi while Prem Nath was in Madhya Pradesh. Former was occupying Govt. accommodation. Within 2 years the tenant sued him for fixation of Standard rent. Soon after respdts. sued him for eviction which case dragged on till 1976 when respdts. withdrew the same with permission to file afresh. They then filed the instant case on 23.7.77 alleging that they had bought the premises from the Min. of Rehabilitation. It was residential and was in a

residential area and was let out to the tenant for residential purposes only; that Respdt. 1 had been transferred to Nepal and lost Govt. accommodation and on return has been refused Govt. accommodation as he owns tenanted premises and is living with a relation and badly needs tenanted premises. Tenant was granted leave to defend contending that premises were let to him for office-cum- residential purposes and he had been using portion of the same for his office; that the landlords do not require premises and they have filed case for enhancement of rent and that they also wish to sell the same and had even offered the same to him. Additional Rent Controller (ARC) allowed the eviction petition and tenant filed revision in the High Court on 2 points ; that the petition is mala fide and that the premises were let for office-cum- residence purposes and in fact major portion of same was used for office purposes.] (After giving above facts judgment proceeds).

(2) Coming to 1st point it is true that premises was let out on 7.9 69 thru' an advertisement. Both parties have not produced the advertisement. It is also true that the letting was oral. It is also in evidence that earlier Shri K.C. Hazarika had been let out the premises who was a Government employee at the rent of Rs. 225.00 per month and after he vacated the property in dispute, it was let out to the petitioner on a monthly rent of Rs. 200.00 per month.

(3) It may be noticed that it was the petitioner who filed an application for fixation of standard rent within two years of the letting out of the premises that means he must have filed the application before the expiry of two years and it was in 1972 when the first eviction petition was filed by the landlord for eviction on the ground of non-payment of rent and on the ground of bona fide personal requirement of the landlords but the same was permitted to be withdrawn by the Additional Rent Controller with permission to file a fresh petition for the same cause of action subject to the payment of costs to the opposite party. The tenant refused to accept the costs and the landlords had deposited the same on 21.12.76.

(4) Again the present petition was filed on the aforesaid allegations only on 23.7.1977. There is no denying the fact that the landlords have no house whatsoever to live in Delhi in their own right and when the petition was filed he was living as a guest of Shri Sat Pal (AW. 7) in his House at 1401, Laxmi Bai

Nagar, New Delhi.

(5) In the written statement the plea of mala fide was two folds. First, lust for higher rent and second that the landlords want to sell the house and had already sold another bouse earlier. It has come in evidence that another property was sold as far back as in 1965 by landlords in order to meet the expenses for the marriage of their sisters.

(6) Regarding the plea for the sale of the house, it will be noticed that there was no such plea in the application for leave to defend which was filed on or about 17.8.1977. It was in the written statement that we come across with this plea. Again it will not be out of place to mention that the petitioner filed couple of drafts of alleged agreement to sell but none of the drafts is even signed either by the wife of the petitioner or on behalf of the landlords. It is true that one of the drafts contains some corrections by Shri T.N. Bhatnagar, Advocate (R.W. 10) who was produced by the tenant as his witness. Shri T.N. Bhatnagar, however, deposed that the draft contains corrections in his hand but these corrections were due to the reason that Shri Shiv Dutt Chawla told him that Shri Anandbir Kalra, Advocate for the tenant, had approached him thrice at his place and wanted to compromise and accordingly Shri Kalra and the tenant came to his office along with Shri Shiv Dutt Chawla and brought a draft already typed. They had brought this draft already to his chamber twice but as tenant backed out this agreement was never executed. He also admitted that a second draft agreement to sell was produced before him and he had made certain corrections. He further stated that the tenant had backed out as he had admitted that the claim of the landlords was bona fide and the tenant had to pay Rs. 49,000.00 in cash so that the landlords could purchase immediately a D.D.A. flat on cash down basis as he has no other accommodation in Delhi. So the landlords had agreed to buy a D.D.A. flat for Rs. 49,000.00 provided the tenant pays the amount. As I have stated earlier this plea of the tenant had come for the first time in the written statement after filing of the application for leave to appear and defend the ejectment application. The Court below has accepted the Explanationn of the landlords. It appears to me that the Explanationn of the landlords was correct.

(7) Shri Shiv Dutt Chawla, respondent No. 1 who was really looking after the property on behalf of the co-owner i.e., Shri Prem Nath Chawla, is a simple clerk. He was in a predicament. He had lost his Government accommodation in view of his transfer to Nepal and was without any accommodation when he came back from Nepal. He naturally requested the petitioner to vacate the premises. The landlords had already undergone a lengthy litigation which the landlords had to withdraw on a technical objection and the Arc granted permission to withdraw with liberty to file afresh petition. It was in this predicament that he filed the second petition eight months after the dismissal of his first petition and made several attempts to serve the notice of termination of tenancy which he could not personally serve on the tenant. One of the envelopes which was sent by registered post (Ext. AW. 4/1) was received back with the report of refusal by tenant. He also attempted to have another notice served by post. However, nothing need be said further since Supreme Court in its latest judgment has held that it is not necessary to determine the contractual tenancy of a tenant in Delhi before filing an ejectment application. All this time was spent in view of the earlier law which contemplated such a notice being served and tenancy being determined. Even at the stage of application for leave to defend, there was no such plea.

(8) After the grant of application for leave to appear and defend the ejectment application, the w/s was filed only on or about 31.1.78 and all these drafts agreement were drafted on or about 29.8.77. In the absence of any accommodation available to the landlords and being pitted against a tenant who is also a lawyer, he may have suggested to the tenant that if he is prepared to pay the price in cash, so that he can buy another house from the D.D.A., he might be able to sell the house to him. But all this was in a negotiating stage and even the agreement to sell did not materialise. It can be stated as a fact that the tenant was a relation of the landlord. But instead of appreciating the difficulties of the landlords he is trying to make out capital out of inchoate and incomplete agreement to sell. The circumstances in which this agreement was being sought to be entered with the wife of the tenant shows that the landlords were aware of the fact that his petition failed due to technical reason after four years of contest and it is possible, which has really proved correct, that the second petition will take somewhat similar time and in that situation he could have offered to the tenant to purchase the

house provided he was prepared to pay cash down so that he can purchase another property. But looking at the conduct of the tenant he did not feel confidence in his bona fides and felt it proper not to enter with such contract to involve himself in another litigation without getting the consideration of the property at the proper time. It can be stated as a fact that the landlord is a petty clerk. He had no other fund by which he could have purchased other property unless he received the full consideration of this house. In any case nothing need be said further as it was totally incomplete document which did not result even in the agreement to sell. In the circumstances there is no merit in the submission of learned counsel for the tenant that the requirement of the landlords is not bona fide. I would, accordingly, affirm the finding of the Arc in this behalf.

(9) The real contesting point was the second point, namely the purpose of letting. It will be noticed that this property was purchased by the landlords from the Ministry of Rehabilitation and the conveyance deed and lease deed specifically require that the property can be used only for residential purposes. The conveyance deed also mentions that the property situate in a residential locality. It is also in evidence that the property was also in a tenancy of Mr. Hazarika who was Government servant and the premises were let out to him for residence. It was only when he vacated the premises the same was let out to the petitioner. It was also in evidence that when the premises were let out the tenant already had an office at C-189, Narak Chand Basti, Kotla Mubarakpur. He took up the plea and led evidence to the effect that since he took the premises in dispute for the office purposes, the office at Kotla Mubarakpur was not in his use and was in fact lying locked. Unfortunately the tenant examined Shri K N. Suxena from the Telephone department as RW. 11 and it came out in his evidence that the tenant had applied on 15.12.70 for a telephone being installed at the aforesaid premises in Kotla Mubarakpur. He also got a telephone installed in the premises in dispute. But the very fact that he got installed the telephone in the premises at Kotla Mubarakpur shows that the office was not lying locked or not being used, otherwise there was no occasion for the petitioner to get a telephone installed there. Another fact which shows that the office was in use is the report of refusal on the envelope (Ext. AW. 4/1). The particular postman who sought to deliver the registered notice to the tenant at his office address has appeared in the witness box and had stated that

he attempted to serve the registered letter on the tenant at his office in Kotla Mubarakpur several times but he refused which also shows that in any case the petitioner-tenant was using his office at Kotla Mubarakpur. The petitioner examined some of his clients who may have sought consultation from him at his residence but the evidence of the witnesses have been carefully considered by the learned trial Court and discarded. I may mention that when a professional person has a regular office it is not that his clients may not visit him at his residence. For professional people like lawyers and doctors the visit of their clients to their residence is not uncommon. The evidence that some of the clients visited the residence of the lawyer is really no evidence for the finding out the purpose of letting, particularly when a lawyer before taking the premises in dispute had a separate established office in different premises. Even receipt of correspondence by the professional man at his residence does not also show that the premises were let to him for commercial purposes as well. In the present case what do we find is that at the time when the tenant took the premises in dispute he was staying with his father in a nearby colony and at that time also he was having his office at Kotla Mubarakpur. He then took the premises in dispute and according to him he has three sign boards outside his residence showing that he is an advocate. He took, if I may say, an incorrect plea that his office at Kotla Mubarakpur was closed by him. That fact that the plea is wrong is clear from the fact that he applied for installation of a telephone connection in the office premises on 15.12.70 i.e. after he had taken the premises in dispute. If he had closed the office there was no occasion to even apply for telephone at that place. The learned Arc in these circumstances accepted the case of the landlords that the premises were let for residential purposes.

(10) Mr. Makhija, however, submitted that the professional man may have two offices. There is no denial to this bald proposition. But the question is as for what purposes the present premises were taken. In the W/s as I have noticed earlier, the plea was taken that the premises was taken for business purposes. Nothing has come on record to show that the petitioner's practice was of such a high order that he could have two offices and that too close by. Kotla Mubarakpur is very close to Jangpura Extension. The tenant did not lead any evidence to show the necessity for having his second office or that his work was of such a nature that he

requires a second office. There is no evidence that any books which are necessary *pari materia* for professional lawyer or any files were being kept in the premises in dispute.

(11) The landlords had also placed on record the visiting card of the petitioner which shows his residence in the premises in dispute and office at the premises in Kotla Mubarakpur. The tenant had admitted this visiting card.

(12) Mr. Makhija, however, sought to rely on two rent receipts Exh. R. 1 and R. 2 which do not mention the purpose of letting but according to Mr. Makhija the landlords had written the words 'residential premises' in these two receipts where the words 'residential' had been cut off and initialled by the landlord and this shows that the premises was not let for residential purposes only.

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