Deep Chand Vs. Saroopi Devi

Deep Chand Vs. Saroopi Devi

SooperKanoon Citation : sooperkanoon.com/692359

Court : Delhi

Decided On : Feb-22-1980

Reported in : 17(1980)DLT486; 1980RLR338

Judge : M.L. Jain, J.

Acts : Delhi Rent Control Act, 1958 - Sections 15(7)

Appeal No. : Second Appeal No. 335 of 1973

Appellant : Deep Chand

Respondent : Saroopi Devi

Advocate for Pet/Ap. : D.P. Gupta and; Vijay Kishan, Advs

Judgement :

M.L. Jain, J.

(1) The facts of this appeal are that the landlady Smt. Saroopi Devi filed an elction petition against the appellant on November 24, 1972, on the ground of default in payment of rent due from February 1972 in spite of notice of demand dated September 1, 1972. The tenant appellant denied the title of the landlady and also that he was her tenant. He claimed that he was the tenant of her son Ram Chander and had paid rent to him up to July 31,1972. The statement of the tenant was recorded on February 22, 1973, when he admitted that Saroopi Devi was the

owner of the property. But he still maintained that he was taken the premises on lease from her son. The Addl. Rent Controller passed an order on March 21, 1973, under S. 15(l) of the Delhi Rent Control Act, 1958 (hereinafter the Act), directing the appellant to deposit within one month the arrears of rent at the rate of Rs. 16.00 per month with effect from July 1, 1972, up to the end of the tenancy month proceeding the date of the deposit and also to deposit future rent month by month by the 15th of each succeeding month. No appeal was filed against this order. Thereafter, the respondent examined two witnesses on August 13,1973, and the case was adjourned to September 5, 1973, for remaining evidence.

(2) On August 24, 1973, however, the landlady filed an application under Sub-section (7) of Section 15 of the Act for striking out the defense of the tenant on the ground that he had not complied with the order dated March 21, 1973. Notice of this application was issued to the counsel but instead of being addressed to Mr. M.L. Chibba, it was addressed to Mr. M.L. Chibber who declined to accept notice I he Addl. Rent Controller thereforee directed further notice to the tenant for October 8,1973. The process server reported that he found the tenant/appellant at his shop but he refused to accept notice. On October 9, 1973, the Addl. Rent Controller struck out the defense as he came to the conclusion that the notice was duly served and that there had been default in compliance with the order under S. 15(l) of the Act. The learned Addl. Rent Controller then proceeded to record the statement of Ram Chander, son of the landlady, and held that the tenant was guilty of non-payment of rent and that the premises were required bona fide by the landlady. He then passed the order of eviction. The appeals were filed before the Rent Control Tribunal; one against the order made under S. 15(7) on October 9, 1973, striking out the defense and the other against the order of eviction made on October 1 1, 1973. Both these appeals were dismissed by the learned Tribunal by its order dated December 15,1973. The Tribunal agreed with the Addl. Rent G3ntroller and als3 added that he was justified in striking out of the defense because the defaults were contumacious and willful. This second appeal is directed against this order. It was admitted on January 2, 1974. Meanwhile, possession was obtained by the landlady in execution proceedings on December 19, 1973.

(3) Since the appeal was not accompanied by certified copies of the documents, the appellant was allowed to file them soon after they were made available. These certified copies were filed on October 23, 1978, by C. M. 2294/78. The ground for delay was stated like this. The counsel for the appellant after obtaining the certified copies gave them to his clerk for filing in the High Court. Later on, the clerk left his service. The whereabouts of the clerk could not be ascertained. The counsel himself remained in jail during the emergency for some time and his chamber was demolished. The record belonging to the certified copies is no more available. The counsel remained under the impression that the copies has been filed. The appellant changed his counsel meanwhile. When the file was recently inspected, it was noticed that the certified copies were not on record. The appellant immediately applied for fresh copies and filed the same. The ommission to file copies earlier was not intentional and if he is not permitted to file the copies, he will suffer irreparable injury. Delay was sought to be condoned. This application was granted subject to just exceptions. I have heard the learned counsel for the parties and examined the record. The copies were filed after about 5 years. The Explanationn given in the application is not at all convincing. Though the party should not suffer on account of the mistake of the clerk or the counsel but the circumstances do not disclose that it was really so. I am unable to believe that the party or his counsel remained under wrong impression for 5 years and even after the emergency was lifted, that copies have been filed. In the absence of data, it is even doubtful that copies were ever obtained in the first instance. The party had to deal with the file in 1977 & 1978 when it moved some applications but nothing was done to check up the matter. The application is hereby rejected, and that makes the appeal, as filed, incompetent, vide Shiv Dutt Skarma v. Prem Kumar Bhatia 1969 D.L.T. 394.

(4) As to merits, it was urged by the learned counsel for the appellant that the finding that the notice was served upon the appellant before striking out the defense was erroneous and since no notice was served before the defense was struck out, the order of October 9, 1973) is had in law. The finding whether a notice has been served or not is a finding of fact. It is confirmed by the circumstance that the appellant did not say a word in his appeal before the Tribunal to challenge the alleged refusal of the service of notice on him. It raises

no question of law.

(5) The learned counsel then submitted that there were no circumstances for striking out of the defense. The discretion to do so has been exercised erroneously. Moreover, after the defense was struck out, the learned Addl. Rent Controller should not have proceeded to record the evidence of the landlady and to direct eviction. When a defense is struck out under Sub-section (7) of S. 15 of the Act, then the other defenses taken under the general law such as denial of tenancy etc. do not automatically get struck out. Moreover, when defense is struck out, the tenant is entitled to cross-examine the witnesses of the petitioner and address arguments. Reliance was placed upon Ariana Afghan Airlines v. Cycle Equipment 1978 R.L.R. 427; Bhanwer Lal v. Panna Lal 1970 A.I.R.G.J. (M.P.) 123; Mahabir Ram v. Shiva Shanker Prasad and others, : AIR1968 Pat415 ; and Smt. Krishnabai Babulal Mishra v. 8mt. Laxmibai, : AIR 1970 MP280 . I have examined this point. No authority of this Court could be placed before me to show that defenses other than those available under the Act were open to the tenant even after an order under Sub-section (7) of S. 15(l) of the Act is made. Rather, the decisions of this Court are to the contrary, vide Krishan Chand v. Ramesh Chander and others 1969 A.I.R.G.J. (Del.) 839 and L.T. Thadani v. Yogeshwar Dayal (1971) P. L. R. (Del.) 217. The learned counsel, however, relied upon a decision of the Supreme Court in M/s. Paradise Industrial Coporration v. Mis. Kiln Plastics Products 1976. R.C.R. 194. It was observed in this case that the words stricking out the defense are not unknown in the sphere of law. These words have been used in Order Xi, Rule 21, C.P.G. When a defense is struck off, the defendant is entitled to appeal, cross-examine the plaintiff's witnesses and submit that even on the basis of the evidence of the plaintiff a decree cannot be passed against him. It was urged that the learned Controller committed a serious error in examining the remaining evidence of the landlady on October 9, 1973, while the scheduled date for examination of the witnesses was September 5, 1973. The grievance is that the whole proceedings took place behind the back of the tenant. This contention is not sound because the opportunity to cross-examine the witnesses and to address arguments was denied to himself by the tenant by not appearing in response to the notice served on him. That apart, in Hem Chand v. The Delhi Cloth & General Mills Co. Ltd. and another, : [1978]1SCR241 , it has

been observed that in the event of tenant failing to comply with the order under S. 15(l), the application will have to be heard giving an opportunity to the tenant if his defense is not struck out under S. 15(7) and without hearing the tenant if his defense is struck out. Since, in the case before us, the defense had been struck out, the eviction application could be decided without hearing the tenant. thereforee, what the court has to decide is whether the order striking out the defense was right or not. Now, as discussed earlier, I do not find any fault with the order by which the defense was struck out. What was urged was this that the circumstances did not warrant order exercising the discretion under S. 15(7) against the appellant. The learned Tribunal has found that the tenant committep several defaults which were contumacious and willful. The tenant did not care to appear and provide any Explanationn for the defaults. I agree with these findings and hold that the discretion has been exercised in a judicious manner. Facing this difficulty in his way, the learned . counsel for the appellant lastly sought to urge that the order made under S. 15(7) was itself bad because the quantum of arrears was not decided and whatever the tenant admitted was directed to be paid. This contention is wholly against facts because the order was made after examination of the appellant himself and besides, as correctly observed by the Tribunal, that order had become final as no appeal was filed against it and cannot be allowed to be questioned over here.

(6) I, thereforee, find no force in this appeal. It is consequently dismissed with costs.