

Deep Chand Vs. Jhandoo Singh

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Court : Delhi

Decided On : May-26-1981

Reported in : AIR1982Delhi24; 20(1981)DLT149; 1981(2)DRJ215; 1981RLR76

Judge : Sultan Singh, J.

Acts : [Constitution of India](#) - Article 227

Appeal No. : Civil Miscellaneous (Main) Appeal No. 199 of 1980

Appellant : Deep Chand

Respondent : Jhandoo Singh

Advocate for Pet/Ap. : M. Mohan and; S.R. Yadav, Advs

Judgement :

Sultan Singh, J.

(1) This is a petition under Article 227 of the [Constitution of India](#) for setting aside and quashing the order dated September 19, 1980 of the Third Additional Controller in the eviction case Jhandoo Singh v. Deep c hand. It has arisen in the following circumstances.

(2) On January 8, 1973 Jhandoo Singh, respondent filed an application for eviction of the petitioner on the ground of non-payment of rent, he having failed to pay rent

for the period from September 30, 1969 at Rs. 30.00 per month, in spite of the service of a notice of demand under Section 14(l)(a) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act'). The petitioner in his written statement pleaded that he was not a tenant under him. The Additional Controller by order dated December 15, 1975 held that there existed relationship of landlord and tenant between the parties. He directed the petitioner to deposit rent for a period of three years preceding the date of filing of the eviction application at Rs. 30.00 per month within one month from the date of the order failing which the eviction order was deemed to have been passed. The petitioner filed an appeal against the eviction order and the Rent Control Tribunal stayed the operation subject to deposit of the arrears of rent as already directed by the Additional Controller. The amount deposited was directed not to be paid to the respondent and the Tribunal by order dated May 9, 1979 accepted the petitioner's appeal and remanded the case to the Third Additional Controller for decision after recording fresh evidence. The petitioner thereafter was allowed to amend the written statement pleading that the property in question was not governed by the Rent Act. The Third Additional Controller by order dated February 13, 1980 held that the premises were not governed by the Act and therefore the Controller under the Act had no jurisdiction to entertain the eviction application. He dismissed the eviction application. The petitioner-tenant applied for the refund of rent deposited by him in pursuance of the various orders passed by the Third Additional Controller and the Rent Control Tribunal. The respondent in reply submitted that as the Additional Controller had no jurisdiction to entertain the eviction application, he had no jurisdiction to order refund of the rent deposited. The Third Additional Controller by the impugned order dated September 19, 1980 dismissed his application holding that he ceased to have jurisdiction in the matter.

(3) By this petition under Article 227 of the [Constitution of India](#) the petitioner submits that he is entitled to the restitution of the amount of rent deposited by him. He says that he is entitled to the restitution as the order for deposit of rent is deemed to have been set aside or reversed by the final order dismissing the eviction application. The respondent in reply submits that the Controller has no jurisdiction to order the refund of the rent deposited as the eviction application itself did not lie in his court. The Central Government framed the Delhi Rent

Control Rules, 1959 in exercise of the power conferred by Section 56 of the Act. Rule 23 of the said Rules reads as under:

'RULE 23 : Code of Civil Procedure to be generally followed : In deciding any question relating to procedure not specially provided by the Act and these rules, the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908.'

(4) In view of this Rule the procedure contained in the Code of Civil Procedure, 1908 is applicable to the facts of the present case as no specific procedure is laid down either under the Act or under the Rules. Section 144 of the Code is therefore applicable to the present proceedings for restitution. Section 144 of the Code of Civil Procedure reads as under :

'SECTION 144(1):-Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

(5) Explanation : For the purpose of sub-section (1) the expression

'COURT which passed 'the decree or order' shall be deemed to include- (a) Where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance; (b) Where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order; (c) Where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application

for restitution under this section, would have jurisdiction to try such suit. (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub section (1).

(6) Under this section if an order is reversed or set aside in any subsequent proceedings, the Court which passed the initial order is empowered to cause restitution on an application of the party, entitled to restitution. Sub-section (2) provides that no suit can be filed for the purpose of restitution available under sub-section (1). The objection is that the Additional Controller did not have jurisdiction to entertain the eviction application and therefore he would not have jurisdiction to order the refund of the amount deposited by the petitioner. The Additional Controller had initially directed to deposit all rent failing which it was ordered that the petitioner would be liable to eviction. This order was however set aside by the Rent Control Tribunal and the matter was remanded to the Additional Controller who on an objection by the petitioner tenant came to the conclusion that the suit premises were not governed by the Act. Thus as the order for deposit was passed by the Third Additional Controller, he alone under sub-section (1) of Section 144 of the Code has jurisdiction to pass an order for restitution of the amount deposited by him. The petitioner is not entitled to take independent proceedings for the recovery of the amount deposited by him or for its restitution because a suit is barred under sub-section (2) of Section 144 of the Code. In this case the rent was deposited in the office of the Third Additional Controller but the same has not been paid to the respondent in view of the subsequent order passed by the Rent Control Tribunal and therefore it is only the Third Additional Controller who has jurisdiction to order for repayment of the amount to the petitioner. The words, 'the Court which passed the decree or order' mean the court passing the order irrespective of the fact whether or not the court had jurisdiction to pass the initial order which was subsequently reversed or set aside. For purposes of restitution it is immaterial whether the court passing the initial order had no jurisdiction to entertain the litigation initially. Had it been so the party entitled to restitution would be without any remedy. The Third Additional Controller alone therefore has jurisdiction to 'order repayment of the amount deposited by the petitioner.

(7) The next objection raised by the respondent is that the eviction application has been dismissed but the order requiring the petitioner to deposit the rent has not been set aside by the final order. The initial order for deposit of amount was made to enable the petitioner tenant to seek protection under Section 14(2) of the Act but when the eviction application itself is dismissed, all interlocutory orders passed in the proceedings would be deemed to have been set aside. Thus, when the eviction application was finally dismissed it must be held that the order of the Additional Controller directing the petitioner to deposit rent was also reversed or set aside. When rent is deposited within the meaning of Section 15 of the Act it is paid to the landlord if he succeeds in proving that he was landlord but when he fails the amount deposited by the tenant is liable to be refunded to him.

(8) Lastly, it is submitted by the learned counsel for the respondent that the petitioner should file a suit for recovery of the amount deposited by him, This objection also has no force. In view of sub-section (2) of Section 144 of the Code, filing of a separate suit is barred.

(9) I, therefore, hold that the Third Additional Controller failed to exercise jurisdiction vested in him. He ought to have ordered refund of the amount of rent deposited by the petitioner-tenant in the said eviction proceedings. I, accordingly, set aside the order dated September 19, 1980 in the eviction case Jhandoo Singh v. Deep Chand and direct that the amount deposited by the petitioner-tenant be refunded to him. The petitioner shall also be entitled to costs of these proceedings. Counsel's fee Rs. 100.00 .