

Onkar Singh Vs. Shanti Devi

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Court : Delhi

Decided On : Apr-03-1981

Reported in : 19(1981)DLT463; 1981RLR413

Judge : B.N. Kirpal, J.

Acts : Delhi Rent Control Act - Sections 25B; [Code of Civil Procedure \(CPC\), 1908](#) - Order 37, Rule 4

Appeal No. : Civil R. Appeal No. 373 of 1979

Appellant : Onkar Singh

Respondent : Shanti Devi

Advocate for Pet/Ap. : H.L. Sabarwal and; Charanjit Singh, Advs

Judgement :

B.N. Kirpal, J.

(1) In this petition under section 25-B(8) of the Delhi Rent Control Act the challenge is to the order of eviction dated 7th February, 1979 passed by Shri J.M. Malik, 5th Additional Rent Controller, Delhi.

(2) The petitioner is a tenant of a portion of the premises No. B-3/12, , Model Town, Delhi. The respondent-landlady filed an application for eviction of the

petitioner, inter alia, on the ground that she required the premises bona fide for her occupation and for the occupation of members of the family dependent upon her.

(3) The aforesaid order is being challenged in this revision petition. It is contended by Shri Sabharwal that it was incumbent upon the Additional Rent Controller to decide as to whether there was sufficient cause for condoning the delay or not. In the grounds of revision it had been contended that it was not necessary that an application for leave to contest should be filed within 15 days and that it was sufficient if the appearance was put in within 15 days.

(4) It has now been settled with the decision of the Division Bench of this Court in the case of Gurdittamal v. Bal Sar

(5) Following the dictum laid down by the Division Bench in the aforesaid case, I have to be satisfied as to whether there is any case made out which would necessitate the reconsideration of the eviction order by the Controller. It is contended by Shri Sabharwal that the delay should have been condoned, and on this ground the eviction order be set-aside, because the petitioner was misled by the summons which was issued. It is further contended that the Additional Rent Controller did not consider the question of the condensation of delay as such.

(6) The question as to whether the petitioner could have been misled by the mentioning of the date of hearing has been considered by the Additional Rent Controller. In paragraph 10 of his order he has observed that 'in view of the summons clearly mentioning that the respondent was required to appear before the Court within 15 days of the service and obtain leave of the Controller, the mere mentioning of/the date of hearing on the registered envelope was meaningless" In view of this finding of fact can it be contended on behalf of the petitioner that the mentioning of the date of hearing on the envelope containing the summons gave him the impression that he need not apply for leave to contest within 15 days? In support of the averments made in the application for leave to contest no affidavit etc. was filed. Whatever the petitioner wanted to say in support of his contention that the delay should be condoned, he mentioned in the application. In my opinion the summons were very clear and unambiguous. It was specifically mentioned therein that the tenant should enter appearance within 15 days and obtain leave of

the Controller. In the application for leave to contest the petitioner has stated that according to the envelope 'date of appearance' was 8th August, 1978. This is a false statement made in the application. The perusal of the envelope shows that it was not the date of appearance which was given as 8th August, 1978 but it was the date of hearing. It was specifically mentioned in the summons that appearance should be entered within 15 days. It will further be seen that, assuming that the petitioner was under the bona fide impression that he had time till 8th August, 1978, nevertheless in the present case the application for leave to contest was not filed on 8th August but was filed on 10th August, 1978. There is absolutely no Explanation on the record as to why the delay should have been condoned beyond 8th August, 1978. In Jagdish Pershad's case (supra) also similar contention had been raised on behalf of the tenant. While noting that this question had not been raised as a question of fact before the Rent Controller, the Division Bench of this Court nevertheless observed as follows :-

'Aperusal of the summons obviously shows that while the application had to be made on any day suitable to the tenant within 15 days from the service of the summons so far as the Controller was concerned, the case would be taken up on 19th July, 1977. We, therefore, do not find any question of fact raised in this case that the tenant was in fact misled by the present summons and are of the view that on a construction of the summons no question of law about its misleading nature can arise.'

(7) On the aforesaid application being filed, on 26th May, 1978 the Addl. Rent Controller ordered the issue of notice to the petitioner-tenant. The notices were issued in the ordinary process as well as by registered post. Service by ordinary process was effected on the petitioner tenant on 16th June, 1978. By registered post the service was effected on the wife of the petitioner on 5th June, 1978. On the envelope by which the notices were sent under registered post it was stated that the next date of hearing was 8th August, 1978. The summons were issued in accordance with the third schedule to the Rent Control Act. In the summons it was stated that 'you are hereby summoned to appear before the Controller within 15 days of the service thereof and to obtain the leave of the Controller to contest the application for eviction....'

(8) No appearance was put in by the petitioner within 15 days of the receipt of the summons. No application for leave to contest was moved by him within that period. On 8th August, 1978 the petitioner appeared through his counsel. The case was adjourned to 10th August, 1978. On 10th August, 1978 the petitioner filed an application before the Additional Rent Controller seeking leave to contest the application for eviction on the grounds mentioned therein. Being aware of the fact that there was, possibly, a delay in the moving of the said application, it was contended in the application that the summons did not comply with the orders of the Additional Rent Controller. The contention in this behalf was that the order for the issue of summons which was passed on 29th May, 1978 did not require the issue of the notice in the form specified in the third schedule or the simultaneous issue of summons by registered post acknowledgement due. It was further contended that the notice nowhere stated 'that the respondent (petitioner herein) should appear before the 5th Additional Rent Controller within 15 days or to obtain leave of the 5th Additional Rent Controller to contest the application for eviction....' It was also submitted that the petitioner had been misled by the summons as it was mentioned on the envelope sent through registered post that 'the date of appearance is 8.8.1978'. Reply was filed by the respondent- herein to the said application. On 7th February, 1979 the impugned order was passed. It was, inter alia, held in the order that the application for leave to contest was time barred. It was further held that there was no force in the contention that the service was not effected through ordinary process as well as by registered cover. It was observed that service was in fact effected through ordinary process on 16th June, 1978, in addition to the service being effected through registered cover. With regard to the submission of the counsel for the petitioner-herein that the petitioner got an impression that he had only to appear on 8th August, 1978, because this date of hearing was mentioned on the registered cover, the trial court held that the said contention had no merit. He held that as in the summons it was specifically stated that the petitioner should appear before the court within 15 days of the service and obtain the leave of the Controller the mere mentioning of the date of hearing on the registered cover was meaningless. The Additional Rent Controller also held that the use of the word 'Controller' in the summons was not misleading as the name of the Court before whom the case was to be tried was clearly stamped on

the summons. Having rejected the application for leave to contest, the Additional Rent Controller passed an order of eviction. By also applying the ratio of the aforesaid case the only conclusion which is possible in this case also is that the petitioner could not, as a matter of fact, have been misled by the date of hearing being noted on the envelope as 8th August, 1978. To my mind, therefore, no case has been made out by the petitioner which would justify the invocation of the provisions of Order 37 Rule 4 Civil Procedure Code. to the present case for setting-aside the order of eviction.

(9) For the aforesaid reasons the revision petition is dismissed. The parties are, however, left to bear their own costs. Appeal dismissed.

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