

Ram Gopal Kejriwal Vs. Devki Rani

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Court : Delhi

Decided On : Mar-17-1983

Reported in : 23(1983)DLT419

Judge : N.N. Goswamy, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : S.A.O. No. 141 of 1978

Appellant : Ram Gopal Kejriwal

Respondent : Devki Rani

Advocate for Def. : R.K. Makhija, ; K.C. Dua, ; Alakh Kumar and ;

Advocate for Pet/Ap. : L.R. Gupta and; J.N. Aggarwal, Advs

Disposition : Appeal dismissed

Judgement :

N.N. Goswamy, J.

1. This second appeal by the tenant is directed against the judgment dated April 15, 1978 passed by the Rent Control Tribunal, Delhi, whereby his appeal against the eviction order was dismissed.

2. The respondent-landlord filed a petition for eviction against the appellant on the grounds covered by Clauses (a), (b), (d) and (h) of the proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act. In paragraph 18(a) of the Eviction Petition, it was alleged :

'(i) That the respondent has neither paid nor tendered whole of the arrears of rent with effect from 20th August, 1968 and a sum of Rs. 4960.00 is due upto 31st January, 1972 which the respondent has not paid in spite of notice of demand dated the 17th April, 1971 duly served on 24th April, 1971.

(ii) That the respondent has after the 9th day of June, 1952 sublet, assigned or otherwise parted with the possession of the premises to other persons without obtaining the consent in writing of the petitioner or her predecessor in interest.

(iii) That the premises was let out for residence and neither the respondent nor his member of his family is residing therein for more than six months immediately before the filing of this petition.

(iv) That the respondent has acquired vacant possession of a residence and has shifted there along with his family.'

3. The petition was contested by the appellant. In the written statement, it was pleaded that the appellant never residing in the premises in dispute and has all along been residing at No. 1, Jaipuria. Building since much prior to the hiring/commencement of tenancy of the premises in dispute. Ever since the commencement of tenancy, the appellant had the authority, sanction, consent and was well within his rights to sub let, assign or otherwise part with the possession of the premises in dispute and in fact had been doing so ever since the commencement of tenancy, i.e., since the year 1943 when the building in question had just been built and let to the appellant. The relationship of landlord and tenant was also denied. It was also pleaded that the appellant had deposited the arrears of amounting to Rs. 4,800/- at the rate of Rs. 120/- per month w.e.f. December, 1958 to March, 1972 with the Rent Controller, Delhi to be paid to the respondent against proof of her claim or to the rightful claimant. Several other pleas were raised, but we are not concerned with those pleas for the purposes of this appeal.

4. The Addl. Rent Controller allowed the eviction petition on the grounds covered by Clauses (b) and (d) of the proviso to Sub-section (1) of Section 14 of the Act, namely, on the grounds of sub-letting and non-user of the premises for a period of six months.

5. Dissatisfied with the aforesaid judgment and order of the Additional Rent Controller, the appellant filed an appeal before the Rent Control Tribunal which met with the same fact and the appeal was dismissed.

6. In the present appeal before me, the main contention of the learned counsel for the appellant was that he was a tenant of the premises since 1943 while the premises in dispute were purchased by the present respondent only in 1968. In accordance with the Rent Note executed by the appellant in favor of the predecessor-in-interest of the respondent he had the right to sub-let the premises and as such, he had exercised that right. It was not disputed that two of the Sub-tenants, namely, Shri H.S. Narula and Shri S.R. Aggarwal were inducted in the premises somewhere in 1963 and 1964, i.e., after the 9th day of June, 1952. The Rent Note on which reliance has been placed is Exhibit R.W. 3/1. I have carefully considered the said alleged Rent Note. This, in my opinion, cannot be interpreted to be an agreement between the parties as it is in the nature of a memorandum executed by the appellant-tenant. It is not drafted in the manner an agreement is drafted and there is no mention of the second party, i.e., the landlord being a party to the agreement. It is admittedly not signed by the respondent-landlord. It starts with : 'I, Ram Gopal K. Wala son of late Ganesh Parsad, caste Vaish Aggarwal, a business-man, residing in Subzi Mandi, am taking a house on the following terms and condition.' Thereafter certain terms and conditions are described and it is stated that 'on my behalf, I shall be authorised to put other persons in possession of the property in dispute.' There is no indication that this offer was ever accepted by the landlord as the document is admittedly not signed by the landlord and there is no indication in the document that the terms and conditions were ever accepted by the landlord. The period of tenancy as described in the document is 11 months. In this situation, this document cannot possibly be construed as a permission in writing from the landlord to sub-let the premises in dispute.

7. In any case, even if the document is taken to be an agreement between the parties and it is presumed that the previous landlord had permitted the appellant to sub-let the premises, the said permission would expire on the expiry of the tenancy period, i.e., 11th months from 1943. This was so held by Their Lordships of the Supreme Court in the case of 'Anand Niwas Private Limited v. The Anandji Kalyanji' reported as : [1964]4SCR892 and was followed by the Punjab and Haryana High Court in Shri Kedar Nath v. Smt. Kartar Kaur, reported as 1969 PLR 186.

8. Though in view of my findings that the landlord cannot be presumed to have given his consent to the document, Ex. R.W. 3/1, no further question arises, but in any case, in similar circumstances, this Court has taken a consistent view that even if the Rent Note incorporating the clause of sub-letting was orally accepted by the landlord, the same does not amount to a consent in writing of the landlord within the meaning of Section 14(1)(b) of the Delhi Rent Control Act.

9. Deshpande, J., (as his Lordship then was) had an occasion to consider this question in M/s. Ambey Perahad Ram Nath v. Devki Nandan and Sons, (S.A.O. No. 481 of 1968 decided on April 30, 1969). The question was whether the consent in writing of the landlord was obtained by the tenant to the sub tenant within the meaning of proviso (b) of Sub-section (1) of Section 14 of the Act. The finding in that case was that when a rent note was executed by the tenant, the terms of the rent-note could only be that the tenant should have the right to sub-let the premises, i.e., there was an offer by the tenant to take up the premises on lease with the right of sub-letting and the offer was accepted by the landlady orally. It was observed :

'Under proviso (c) to Sub-section (1) of Section 13 of the Delhi and Ajmer Rent Control Act, 1952 which preceded the present Act, it was sufficient to legalise the subletting the premises. It was then not necessary that such consent should have been in writing. In proviso (b) to Sub-section (1) of Section 14 of the present Act, however, a deliberate change has been made by the Legislature in this respect in requiring that henceforth the consent of the landlord must be in writing. The reason for this change is not for to seek. Experience had shown that false pleas used to

be set up by tenants to make profit by Sub-letting the premises and to justify the Sub-letting by fair means or foul. Perjury could not be ruled out when the tenants ostensibly tried to prove that the landlord had consented to the Subletting. This was apparently regarded as an un-satisfactory state of affairs by the Legislature. It was to remedy the situation that the provisions of proviso (b) to Sub-section (1) of Section 14 were made stricter by the insistence that the consent must be in writing. In considering the word 'consent in writing' therefore, regard has to be paid to the reason for the Legislative change and an attempt has been made to effectuate the new legislative policy. It is this background that we have to consider the words : 'consent in writing.'

The Legislature apparently intended that it is the consent itself which must be in writing. By consent is understood an act of the landlord. It is for the landlord to say that he permits the tenant to sub-let the premises or he consents to or accepts the offer of the tenant to take the premises on lease with the right of sub-letting. If the emphasis is placed on the consent :

'in writing'.

It would appear that it is the consent of the landlord which must be in writing. As the landlord is not a party to a rent note, it would appear that the landlord's consent can never be embodied in the rent note. For whatever is said by the rent-note in writing, could be attributable only to the tenant who signs the rent-note. The consent of the landlord therefore cannot be in writing when he does not execute the rent-note.

The expression 'consent in writing' used in proviso (b) to Sub-section (1) of Section 14 is, however, used with a different purpose as stated above. The emphasis is that it is the consent of the landlord, which must be in writing. It cannot, therefore, be construed loosely with a view to vittle down the emphasis on the authorship of the consent being that of the landlord. Such authorship may be proved either by the writing being in the hand of the landlord or being signed by the landlord. It is not necessary for the purpose of this case to decide whether the authorship of the consent of the landlord in writing can be proved in some other way. It is sufficient for the purpose of this case to observe that a mere written offer

by the tenant by way of rent-note, which was accepted orally by the landlord cannot amount to a consent in writing of the landlord.'

10. The aforesaid case was followed by S.S. Ghadha, J., in *Raja Ram Goyal v. Ashok Kumar*, reported as 1976 DLT 34.

11. I am in respectful agreement with the aforesaid two decisions of this Court and as such I have no option but to affirm the decision of the Rent Control Tribunal on this point. As regards the Clause (d) of the proviso to Sub-section 14, it was not disputed by the learned counsel for the appellant that the appellant was not in possession of the premises and in fact, it stands admitted in the written statement itself that the appellant is not residing in the premises in dispute since the very inception of the tenancy. In view of this, the judgment of the Tribunal on this score has also to be affirmed.

12. For the reasons recorded above, I do not find any merit in this appeal which is dismissed. However, in the circumstances of the case, the parties are left to bear their own costs.