Madan Lal Seth Vs. Amar Singh Bhalla

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Court : Delhi

Decided On : Aug-06-1980

Reported in : 18(1980)DLT427; 1980(1)DRJ72; 1980RLR693

Judge : Sultan Singh, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14(1); Evidence Act, 1872 - Sections 114; General Clauses Act, 1897 - Sections 27

Appeal No. : Second Appeal No. 115 of 1978

Appellant : Madan Lal Seth

Respondent : Amar Singh Bhalla

Advocate for Pet/Ap. : V.B. Andley,; Rajinder Mathur,; Daya Kishan and;

Judgement :

Sultan Singh, J.

(1) This is a tenant's appeal under Section 39 of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') against the Judgment and order of the Rent Control Tribunal dated March 10, 1978 which dismissed the appeal from the Additional Controller's order dated 18th May, 1977. The respondent-landlord let out portions of first floor and second floor of House No. 1/2, West Patel Nagar, New Delhi at the monthly rent of Rs. 225.00 besides electricity and water charges to the

appellant in 1956. On 13th July, 1971 he filed a petition for eviction on ground of non-payment of rent. An order under Section 15(1) of the Act was passed by the Controller on 20th October, 1971 requiring the tenant to pay arrears of rent and future rent. An appeal filed by the tenant was dismissed by Rent Control Tribunal. The tenant deposited the rents complying with the order under Section 15(1) of the Act with the result the eviction petition was dismissed on 25th August, 1973 holding that the tenant has availed the benefit of Section 14(2) of the Act. The landlord thereafter on 5th June, 1974 filed another petition on the ground of non-payment of rent but it was dismissed being premature.

(2) On 4th October, 1976 the landlord served a notice of demand upon the tenant requiring him to pay the arrears of rent from 1st March, 1976. The tenant did not comply with the notice. The eviction petition under Section 14(1)(a) of the Act was filed on 5th January, 1977. No order under Section 15(1) of the Act was passed. The additional Rent Controller passed an order of eviction on 18th May, 1977, on the ground that the tenant has already availed the benefit under Section 14(2) of the Act and that he had defaulted in payment of rent for three consecutive months. The appeal filed by the tenant was dismissed by the Tribunal on 10th March, 1978. Hence this second appeal under Section 39 of the Act.

(3) The principal contention of the appellant-tenant is that notice of demand dated 4th October, 1976 was never served upon him and thereforee the eviction petition was liable to be dismissed. The other contention is that passing of an order under Section 15(1) of the Act is mandatory in proceedings for recovery of possession specified insection 14(1)(a) of the Act and that no order having been passed by the Controller, the entire proceedings are had and no eviction order can be passed.

(4) The notice of demand dated 4th October, 1976 Ex. A/1 was sent to the tenant under Registered acknowledgement due as per Postal Receipt Ex. A/2 dated 5th October, 1976. Another copy of the said notice was sent under the Certificate of Posting Ex. A/4 dated 5th October, 1976. The address on the two letters is as under :

'SHRIMadan Lal Seth, 1/2, West Patel Nagar, New Delhi-110008'. The acknowledgement receipt is Ex. A. 3. It purports to have been signed by one 'Om' 'for M.L. Sethi.' It appears to have been delivered on 6th October, 1976. The landlord in the eviction petition pleads that the notice of demand was sent by Registered A, post as well as by Certificate of Posting. The tenant in the written statement denies the receipt of any notice sent by registered post or by certificate of posting. The landlord in the reaplication alleges that notice sent under registered cover was received by the tenant's son Shri Om Parkash known as 'Om' and the A.D. receipt was duly signed by the said '0m' who lives in the premises Along with the tenant and other members of the family. The landlord further pleads that the notice sent under certificate of posting was duly received by the tenant as the same was never received back by him. The landlord appeared as A.W. 1. He deposes :

"The respondent has not paid rent since 1.3.76 in respect of the suit premises. I sent a notice whose copy is Ex. A/I to the respondent demanding rent and terminating the tenancy. This notice was sent under registered cover as well as under certificate of posting. I myself posted the notice. Ex. A/2 is the postal receipt. Ex. A/3 is the Ad receipt in respect of the said notice. Ex. A/4 is the postal certificate. The A.D. Ex. A/3 is signed by Om Parkash who is the son of the respondent. I am in a position to identify his signature as I have been seeing him writing and signing.'

(5) The tenant appeared as R.W.1. He deposes that be did not receive notice Ex. A/1 dated 4th October, 1976. Ex. A/3 is not signed by him and that it is also not signed by his son Om Parkash. The evidence of the landlord and the tenant was recorded on 10th May, 1977 and arguments were also heard on that very day. It appears that the tenant made an application dated 10th May, 1977 before the Controller for permission to examine Om Parkash, his son as a witness. This application was dismissed by the Controller on 18th May, 1977 as no case was made out under Order 18 rule 17A of the Code of Civil Procedure. An order of eviction was also passed by the Controller on 18th May, 1977. The contention of the learned counsel for the tenant is that he was not given an opportunity to produce his son Om Parkash in spite of his application dated 10th May, 1977. He

further contends that the Controller and the Tribunal have drawn presumption against him on the ground that he did not produce his son Om Parkash to rebut presumption who is alleged to have received the registered notice. He says that the Controller and the Tribunal ought not to have drawn presumptions against him on account of non-production of Om Parkash. His further contention is that he did his best to produce Om Parkash by making the application. Under these circumstances he Says that the Controller and the .Tribunal were not justified in drawing adverse presumption against the tenant, by not producing the son Om Parkash. The tenant also filed an application before the Tribunal during the pendency of the appeal for the production of his son as a witness besides a handwriting expert. The Tribunal also dismissed the application. The Controller and the Tribunal in the exercise of the discretion dismissed the tenant's application for production of additional evidence in the form of statement of the son of the tenant and the handwriting expert. Learned counsel prays that be may now be allowed to produce this witness. This cannot be done at this stage. This is an appeal under Section 39 of the Act. The short question thereforee is whether the rejection of the application for additional evidence by the Controller and the Tribunal in the exercise of their discretion Involves a substantial question of law. Any question of law affecting the rights of parties substantially would not by itself be a substantial question of law. An important or difficult question would of course be a substantial question; but even if a question is not important or difficult, if there is room for reasonable doubt or difference of opinion on the question, then it would be a substantial question of law. Inference in the exercise of discretion by the Controller and the Tribunal is not a substantial question of law. It is a more question of discretion being exercised by the Controller and the Tribunal. It is a discretion which I think has been reasonably exercised. In second appeal this court cannot inference with the exercise of discretion by the Controller or the Tribunal.

(6) On the evidence on record consisting of the statements of the landlord and the tenant one has to determine whether the notice Ex. A/I w duly served. Section 14(a)(1) of the Act requires that the notice of demand be served in the manner provided in Section 106 of the Transfer of Property Act, 1882. The relevant portion of Section 106 of the Transfer of Property Act, 1882 is as under:

'SECTION 106..... Every notice under this section must be inwriting, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property'.

(7) Under this Section the requirement is that the notice must be in writing, it must be signed by the person giving it, it may be sent by post, or be tendered or delivered personally or to one of his family members or his servant at his residence and if such tender and delivery is not practicable the notice may be affixed to a conspicuous part of the property. In this case notice who sent by post addressed to the tenant. It was sent by registered post as well as by certificate of posting. Under Section 114 Illustration (f) of the Indian Evidence Act, the court may presume that the common course of the business has been followed in particular cases. In other words if the question is whether the letter was received, it may be shown to have been posted and in the common course of business the letter will be deemed to have been delivered to the addressee. This raises a presumption of fact which is however rebutable. In the present case, notice has been sent in a cover containing correct address of the tenant. So it is presumed to have been delivered to the tenant addressee. In other words, the court is justified to presume the delivery of the letter to the addressee-tenant unless this presumption is rebutted by the tenant. The tenant has merely denied the receipt of the notice and be has denied the signatures of his son on acknowledgement receipt. The presumption of fact about the service of notice sent by post is a strong one although it is rebutable. The question for determination is whether the tenant has succeeded in rebutting the presumption. More denied by the tenant does not rebut the presumption raised under Section 114 Illustration (f) of the Indian Evidence Act, The tenant must have produced some other evidence to show that the usual course othe post was interrupted by disturbances. He must have proved other circumstances to show that the notice never reached the addressee. There is no evidence except the bare statement of the tenant. In Om Parkash Bahal vs. A.K. Shroff 1972 R. C. R. 960, V. B. Deshpande, J. (as he then was) held that notice sent under a certificate of posting is presumed to have been served and tenant's denial has no value unless he proves some extraordinary happening or

event which prevented the following of usual course of business. Section 27 of the General Clauses Act, 1897 is as under : 'S. 27 : Meaning of service by post-Where any (Central Act) or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.' Under this provision the service shall be deemed to have been effected by properly addressing, prepay ing. and posting by registered post, a letter containing the document. It further provides that unless the contrary is proved, it shall be deemed to have been delivered in the ordinary course of post. In the present case, notice was sent to the tenant by registered post containing his proper address and paying the postal charges. It is presumption of law and the onus shifts on the addressee-tenant to prove that the registered notice was not delivered to him. Again mere denial by the tenant is nothing. It does not discharge the onus. The onus is to prove that he did not receive it which he has failed to do.

(8) In Harihar Banerji and others vs. Ramshastri Roy and others, Air 1918 Privy Council 102, Lord Atkinson observed as follows :

'IFa letter properly directed, containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would appear to their Lordships to apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself'.

(9) From this statement of law it conclusively stands proved in the case that the notice is served upon the tenant both by registered post as well as under certificate of posting. The acknowledgement receipt is signed by the son of the

addressee and thereforee according to the law laid down in this judgment the presumption of service is strengthened. The acknowledgement receipt bearing the signatures of some person other than the addressee himself has been produced by the landlord. The presumption does not stand rebutted. I am. thereforee, of the view that notice of demand sent by landlord to the tenant has been duly proved. The presumption of fact under Section 114(f) and the presumption of law under Section 27 of the General Clauses Act have not been rebutted by the appellant-tenant.

(10) The next question is whether the Controller ought to have passed an order under Section 15(1) of the Act and if he has not passed such an order, what is its effect on the eviction petition Section 15(1) of the Act is as under :

'S.15(1): In every proceeding for the recovery of possession of any premises on the ground specified in clause (a) of the proviso to sub-section (1) of section 14, the Controller shall, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate'.

(11) The Controller is required to pass an order requiring the tenant to pay or deposit the rents after giving the parties an opportunity of being heard. The Controller is to pass such an order on the prima facie view of the case, whether there is a relationship of landlord and tenant, whether there are arrears of rent; If so and for what period (Section Ram Narain Khanna vs. S. Ishwar Singh and others, 1977(2) R. C. J. 657. The passing of an order requiring the tenant to deposit rent under Section 15(1) is mandatory, in cases where the ground of eviction is non-payment of rent. It is admitted that in the present case the Controller did not pass the order as there was plea of payment of rent for the period in suit. In spite of this plea, the Controller had jurisdiction to pass such an

order under Section 15(1) of the Act. When an order under Section 15(1) is passed it is for the benefit of the tenant to give him a further opportunity to comply with such an order and protect himself against eviction under Section 14(2) of the Act. But in cases where the tenant once enjoys the benefit under Section 15(1) of the Act the order under Section 15(7) of the Act will not be for the benefit of the tenant but it will be for the benefit of the landlord. Even in cases where the tenant enjoys the benefit once under Section 14(2) of the Act and eviction petition is filed for the second time on the ground of non-payment of rent on the allegation that there has been a default for three consecutive months, an order is to be passed under Section 15(1) of the Act and it would be for the benefit of the landlord in the sense that if the tenant commits default in complying with such an order the landlord may apply for striking of the defense under section 15(7) of the Act and if the defense is struck of by the Controller, the landlord may claim an order of eviction which may be passed by the Controller after taking into consideration other circumstances of the case. Thus if an order is passed under Section 15(1) in cases of second default, as it is usually known the same would be for the benefit of the landlord who may be entitled to obtain an order for striking of the defense of the tenant. It thus appears that even in cases of second default the Controller is required to pass an order under Section 15(1) of the Act. In Punjab National Bank vs. Rent Controller 1974 R. L. R. 435 it has been held that even if tenant has enjoyed benefit of Section 14(2), once and has again committed three consecutive defaults within proviso to Section 14(2), still order under Section 15(1) of the Act should be passed. Thus I am of the view that the Controller ought to have passed anorder under section 15(1) of the Act in this Case.

(12) Consequently, the question is : What is the effect of not passing an order under Section 15(1) of the Act by the Controller in the present case. As already observed, the tenant has enjoyed the benefit of Section 14(2) of the Act when the previous eviction petition against him was dismissed on 20th August, 1973 holding that the tenant has enjoyed the benefit of Section 14(2) of the Act. No prejudice is caused to the tenant as he cannot enjoy any benefit even if an order had been passed and he had deposited the rents in compliance with such an order. In M/s. Pruthi Brothers & others vs. Smt. Mangla Wati, 1971 R.C.R. 854 it has been held that the benefit of Sub-Section (2) of Section 14 of the Act is not available to

tenant if having enjoyed it once he again makes a default in payment of rent for any three consecutive months. I am, thereforee, of the opinion that the failure to pass an order under Section 15(1) of the Act in cases of second default is of no consequence. Thus I hold that notice of demand in this case was served upon the tenant-appellant and the failure to pass an order under Section 15(1) of the Act is of no consequence in the present case as the tenant-appellant had once enjoyed the benefit of Section 14(2) of the Act.

(13) There is no merit in the appeal and, thereforee, the same is dismissed with costs. Counsel fee Rs. 200.00 .