

Ram Kumar Vs. Virender Kumar and ors.

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Court : Delhi

Decided On : Sep-24-1985

Reported in : 1986(1)ARBLR341(Delhi); 29(1986)DLT17

Judge : G.C. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1), 14(2), 15, 15(6), 15(7) and 39

Appeal No. : S.A.O. No. 226 of 1985 and C.M. 1908 of 1985

Appellant : Ram Kumar

Respondent : Virender Kumar and ors.

Advocate for Def. : M.M. Sudan, Adv.

Advocate for Pet/Ap. : B.P. Gupta, Adv

Disposition : Application dismissed

Judgement :

G.C. Jain, J.

1. This is a tenant's appeal from the order of the learned Rent Control Tribunal dated February 18, 1982. It was filed on July 6, 1985. It being barred by time the appellants has also filed an application (CM 1908/85) for condensation of delay.

2. The dispute is in respect of a shop No. WZ 67 (New No. 2252) Raja Park, Shakur Basti, Delhi. It was let out to the appellant by Sohan Lal (since deceased) on June 5, 1964. On December 13, 1976 the landlord brought an application for recovery of the possession of the said shop under Clauses (a) (c), (f) and (j) of the proviso to Sub-section (1) of Section 14 of the [Delhi Rent Control Act, 1958](#) (for short 'the Act').

3. The petition was resisted. In these proceedings an order under Section 15(1) of 'the Act' made on October 26, 1977 directing the tenant to pay or deposit the arrears of rent at the rate of Rs. 35/- per month with effect from July 1, 1974 within one month of the order and also to continue to pay or deposit the figure rent at the said rate month by month by the 15th of each succeeding English calendar month. The tenant was allowed an adjustment of Rs. 230/-. The rent for the month of November, 1977 was deposited in January 1978. The landlord, therefore, moved an application under Section 15(7) of 'the Act' for striking out the defense. The application was dismissed on August 17, 1978. There was again a default. This time there was delay of one day in the deposit of rent for the month of April, 1979. This time also the application moved by the landlord for striking out the defense was dismissed. Ultimately an order for eviction, however, was made under Clause (a) of the proviso to Sub-section (1) of Section 14 of 'the Act'. The appellant was not given the benefit of the provisions contained in Section 14(2) and 15(6) of 'the Act' because of the defaults in depositing the rent for the months of November, 1977 and April, 1979. Relying on the decision of the Supreme Court in *Delhi Cloth and General Mills Pvt. Ltd. v. Hem Chand Jain* : [1978]1SCR241 the Tribunal dismissed the appeal on February 18, 1982.

4. The appellant thereafter moved a review petition on February 23, 1982 before the Tribunal, alleging that the Controller had no jurisdiction to try the application as the Act had not been extended to Raja Park, Shakur Basti, Delhi where the shop was situate. This was dismissed on February 26, 1982. Same objection was raised by him in a petition filed before the Additional Controller on March 3, 1982. It was dismissed on July 19, 1982. Appeal against the said order was dismissed by the Tribunal on July 20, 1982 and second appeal was dismissed by this court on September 14, 1982. Thereafter fresh objections were raised that the tenancy was

in the name of firm Ram Kumar Satish Kumar of which Satish Kumar, (son of the present appellant) was a partner and therefore the order passed against Ram Kumar was not binding on the firm. Stay of execution of the eviction order was not granted. Satish Kumar filed a petition (C.M.(M) 197/82) in this Court. On September 23, 1982 this court directed the Controller to decide the petition within 15 days of the order. The objection petition was dismissed on October 8, 1982 and subsequently and C.M. was also dismissed as withdrawn. The appellant, thereafter filed a civil suit (Suit No. 648/82) seeking a decree for declaration that the order made by the Additional Controller was a nullity as he had no jurisdiction to pass the eviction order. The suit was dismissed on December 14, 1983.

5. Sohan Lal, decree-holder died in the meantime and his L.R.s (the present respondents) were brought on record. The appellant thereafter resisted the execution of the warrants for possession. On January 6, 1984 an application for police aid was moved by the respondents. The appellant thereafter filed objections stating that he had entered into a fresh agreement with Vinod Kumar, one of the respondents. The said objections were dismissed on May 6, 1985.

6. Having failed in these delaying tactics the tenant filed this second appeal on July 6, 1985 under Section 39 of 'the Act'. Sub-section (1) of Section 39 provides a period of 60 days for filing an appeal to the High Court from an order made by the Tribunal. Excluding the period spent in obtaining the certified copy of the order of the Tribunal there was admittedly a delay of more than three years. The appellant consequently moved the present application (CM 1908/85) under Section 5 of the Indian Limitation Act for condoning the delay. It was alleged that at the time of dismissal of his appeal by the Tribunal on February 18, 1982 had been advised by his counsel that according to the law prevalent the delay could not be condoned for the purpose of giving the benefit under Section 14(2) of 'the Act', and, therefore, he did not file any appeal. The Supreme Court however, in *Ram Murti v. Bholanath* : AIR 1984 SC1392 has now held that the delay could be condoned for the purposes of giving the benefit under Section 14(2) of 'the Act'. It was also alleged that a second appeal *C.L. Nagpal v. Dharam Pal Singh* (SAO 275/72) involving similar question was pending disposal in this court and was decided only on January 7, 1985 and therefore the delay should be condoned. It was also

averred that the substantial rights and the livelihood of the appellant was in jeopardy and the delay should not be a hinderance in the way of his getting justice from the court.

7. Strictly speaking Section 5 of the Indian Limitation Act has no application. However it would not make any difference. Proviso to Section 39(1) of 'the Act' empowers the High Court to entertain the appeal after the expiry of the period of 60 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

8. Term 'sufficient cause' has not been defined in 'the Act'. It is difficult to define precisely the scope of the term. Generally it means a cause beyond the control of the party. It means circumstance which may appear to the court to be reasonable looking to all the facts of the case. The term 'sufficient cause' no doubt has to be liberally construed so as to advance substantial justice. At the same time it has to be kept in mind that expiration of the period of limitation for an appeal gives rise to a right in favor of the decree-holder to treat the decree as binding and beyond challenge between the parties. The rules of limitation are founded on sound principles of public policy its aims being to quicken diligence and to prevent oppression. Purpose is to provide a limit to the litigation. On the expiry of time for filing the appeal a valuable right is secured to the successful litigant and the court must thereforee be fully satisfied of the justice of the grounds on which condensation of delay is sought.

9. In the present case the appellant was not prevented from filing the appeal because of any fraud, illness, his negligence or negligence of his agent or counsel, mistake of law or fact, or any other such cause. The appellant in para 5 of the application says that when the Tribunal dismissed his appeal on February 18, 1982 his counsel advised him 'that the law such at the relevant time'. It was not alleged in the application nor urged before me that this advice of the counsel was wrong. The decision of the Tribunal was based on the decision of the Supreme Court in Delhi Cloth Mills' case (supra). The Supreme Court had affirmed the full bench decision of this Court in Delhi Cloth & General Mills Co. Ltd. v. Hem Chand : AIR1972 Delhi275 and ruled that the Controller had no discretion to extend the

time prescribed under Section 15(1) of 'the Act' for the purpose of giving the benefit of the provisions contained in Sections 14(2) and 15(6) of 'the Act'. Thus the appellant was rightly advised not to go in second appeal against the order of the Tribunal.

10. In Ram Murti's case (supra) the Supreme Court took a different view. It held:

'With respect, the observations in Hem Chand's case : AIR1972 Delhi275 expressing the view that the Rent Controller has no power to extend the time prescribed in Section 15(1) cannot be construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under Section 14(1)(a) without anything more due to the failure on his part to comply with the requirements of Section 15(1). The question would still remain as to the course to be adopted by the Rent Controller in such a situation in the context of Section 15(7) which confers on the Rent Controller a discretion not to strike out the defense of the tenant in the event of the contingency occurring, namely, failure on the part of the tenant to meet the requirements of Section 15(1).'

11. Whether this new interpretation of the law by the Supreme Court is a sufficient excuse for condoning the delay of more than three years? In my opinion, the answer must be in the negative. Judicial notice can be taken of the fact that in hundreds of cases eviction orders have been made under Section 14(1)(a) of 'the Act' on the basis of the full bench decision of this court in Delhi Cloth Mill's case (supra) which was made in 1972 and which was affirmed by the Supreme Court on this point in 1977. Many of the decree-holders in those cases must have obtained the possession of the properties by executing the said orders. Some of the premises might have been even re-let or sold. If the delay was condoned on account of this new interpretation by the Supreme Court then the result would be that all those cases may have to be reopened. That, in my view, would lead to chaos and confusion. The rights and titles of not only the parties but stranger would be uncertain and unsecure. A new interpretation of law by the High Court or the Supreme Court may be made after a short time or after even 40/50 years. If it was treated a sufficient cause then there would never be any finality. A new interpretation of law by the Supreme Court, therefore, cannot be considered a

sufficient cause for condoning the delay of more than three years. I find support to this view from *State of Maharashtra v. Chabildas Jamandas Lotawalla Prevention of Food Adulteration Cases 1980 (I) 67*, *V.V. Kudva v. Employees State Insurance Corporation, Bangalore AIR 1972 Mys 204* *Basdeo and Ors. v. Murli Dhar Singh and Ponnamma Pillai v. Velayudhan 1981 Ker L. T 21*

12. The appellant's learned counsel relied on the decision of the Supreme Court in *Harcharan v. State of Haryana : AIR 1983 SC43* . In this case amendment of the grounds of appeal was allowed after the expiry of limitation for filing the appeal. It was nowhere held that new interpretation of law was a sufficient cause for condoning the delay in the filing the appeal.

13. Reliance was also placed on *Jai Singh Jairam Tyagi v. Maman Chand Ratilal Aggarwal and Ors. : [1980]3SCR224* . In that case landlord obtained a decree for recovery of possession and arrears of rent under the provisions of *Bombay Rents, Hotel and Lodging House Rates Control Act, 1947* from a civil court. There was an appeal by the tenant. It resulted in a compromise decree dated July 12, 1967 by which some time was given to the tenant to vacate the premises. As the tenant failed to vacate the premises within the time given to him the landlord took out the execution. On April 29, 1969 in *Indu Bhushan Bose v. Rama Sundari Devi 1970 SC 228* the Supreme Court held that Parliament alone had and the State legislature did not have the necessary competence to make a law in regard to 'the regulation of house accommodation in cantonment areas,' which expression included termination of existing tenancies and eviction of persons in possession of house accommodation etc. To get over the situation created by this decision the Central Government issued a Notification under Section 3 of the *Cantonment (Extension of Rent Control Laws) Act, 1957* extending the provisions of the *Bombay Rents, Hotel and Lodging House Rates Control Act, 1947* to the Kirkee and other Cantonment areas. On June 2, 1972 the Parliament also enacted Act 22 of 1972 amending the *Cantonments (Extension of Rent Control Laws) Act 1957* purporting to enable the Central Government to make the rent control laws in several States applicable to cantonment areas from the dates anterior to the date of notification and further purporting to validate certain pre-existing decrees. During execution proceedings tenants raised several objections. One of the

objection was that the provisions of amending Act 22 of 1972 were not extensive enough to save the decree dated July 2, 1967. The other objection was that the decision in Miscellaneous Application No. 597 of 1970 holding the decree to be a nullity operated as res-judicata between the parties. Both these objections were decided by the Supreme Court against the tenant. The question of condoning the delay on the ground of new interpretation of law by the Supreme Court was not all involved in this case and was not decided. This judgment, therefore, does not help the appellant at all.

14. Reliance was then placed on *Narhari v. Shanker* : [1950]1SCR754 . In that case from a decree of the lower court in favor of the plaintiff two separate appeals were filed by two sets of tenants. The appellate court allowed both the appeals and dismissed the plaintiff's suit by one judgment. The plaintiff filed one appeal within limitation. He filed another appeal which was late by 29 days. It was held that one appeal was competent and in any case the delay should have been condoned because there was conflict of decision whether one appeal was competent or not. This is not the case here. There was no conflict or decisions at the relevant time. The law laid down by the Supreme Court in *Delhi Cloth Mill's case* (supra) was the law of the land.

15. In any case the decision in *Ram Murti's case* (supra) was given by the Supreme Court on May 1, 1984. It was published in *All India Reporter* in 1984 in its August part. There was no Explanation as to why the appeal was not filed soon after this judgment was published. The appeal, as a matter of fact, was filed after about 11 months of the publication of the judgment.

16. Learned counsel for the appellant wanted condensation of the delay on the ground that this court decided similar question in *C.L. Nagpal v. Dharam Pal Singh* 1985 (1) All India R. C.J 580 on January 7, 1985. This court in *Nagpal's case* (supra) simply followed the law laid down by the Supreme Court in *Ram Murti's case* (supra). In future also this Court is bound to decide similar cases following *Ram Murti's case* (supra). Every such decision by this Court would not justify the condensation of the delay up to the date of the decision.

17. For all these reasons I find no merit in the application and dismiss the same. Consequently the appeal is also dismissed being barred by limitation. No orders as to costs.

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