Hindustan Computers Ltd. and ors. Vs. Kaushlaya Rani

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Court : Delhi

Decided On : Sep-06-1985

Reported in : 29(1986)DLT56; 1985(9)DRJ211; 1985RLR579

Judge : J.D. Jain, J.

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

Appeal No. : Second Appeal No. 371 of 1985

Appellant : Hindustan Computers Ltd. and ors.

Respondent : Kaushlaya Rani

Advocate for Pet/Ap. : V.N. Kalra and; M.M. Sudan, Advs

Judgement :

J.D. Jain, J.

(1) The controversy between the parties in this second appeal which is directed against order dated t7th November 1984 of the Rent Control Tribunal lies in a narrow compass. The facts germane to the decision of this appeal in brief are that a commercial flat bearing No. 601, Siddhartha Building, 96-Nehru place, New Delhi, was let to appellant No. 1 by M/s. Bathia Motors (P) Limited sometime in November 1978 at Rs. 3.500.00 per mensem. The facility of using two telephones installed in the premises was also made available to the tenant. Subsequently, the

landlord M/s Bathia Motors (P) Ltd. transferred their rights and interest in the premises in question to the respondent Smt. Kaushalya Rani sometime in January 1979 and thereupon the appellant attorney to the respondent. On 17th February 1983 the respondent moved an application for eviction of the appellants from the premises in question, inter alia, on the ground of non-payment of rent. It was averred that appellant No. 1 was in arrears of rent with effect from 1st July 1982 and he had neither paid nor tendered the same despite repeated demands and service of notice of demand dated 3rd September, 1982. The said application was resisted by the appellants.

(2) During the course of eviction proceedings, the respondent moved an application for an order under Section 15(1) of the Delhi Rent Control Act (.hereinafter referred to as 'the Act'). The said application was resisted by the appellants on the ground that under the agreement of lease the monthly rent payable for the premises in question was Rs. 2,500.00 only because the balance amount of Rs. l,000.00 was payable for (a) Rs. 500.00 for fixtures and fittings, and (b) Rs. 500.00 for the facility of telephones. Subsequently, however, the rent was enhanced by appellant No. 1 by l0% and he stared paying a total of Rs. 3,850.00 per mensem with effect from May 1981. Howevel, the two telephones were disconnected in January 1982 and thus the total rent stood reduced by Rs. 500.00 per mensem to Rs. 3,350.00 per mensem with effect from January 1982. It was further contended that the respondent-M/s Bathia Motors (P) Ltd. had agreed that in the event of the facility of the two telephones being withdrawn both M/s. Bathia Motors (P) Ltd. and the respondent would jointly and severally be liable to refund the security deposit of Rs. 10,500.00 to appellant No. 1. Subsequently also the respondent confirmed that in the event of the two telephones being disconnected for any reason; appellant No. 1 would be at liberty to adjust the security amount of Rs. 10,500.00 from the rent of the premises.

(3) The respondent-landlady controverter this plea saying that the contention of the appellants regarding disconnection of the telephones was without any basis because the charges for the telephones had to be paid by the tenant and if the same were not paid and the telephones were disconnected as a sequel thereto the appellants could not take advantage thereof She also denied the averment of the

tenant that Rs. 500.00 were payable per mensem for user of the telephones. She asserted that their contention about fixtures and fittings too was irrelevant. She pointed out that in view of the admission of the appellants that the rent was being paid at Rs. 3,850..00 per mensem from May 1981 onwards, there was no question of the appellants being not liable to pay rent at the rate at which the same was last paid. She characterised as baseless the contention of the appellants that on disconnection of the telephones the rent stood reduced automatically by Rs 500.00 per mensem.

(4) After hearing the parties, the learned Rent Controller passed an order on 20th September 1984 under Section 15(1) of the Act directing the appellants to pay or deposit the arrears of rent with effect from 1st July 1982 uptil date at the rate of Rs. 3,350.00 per mensem after adjusting a sum of Rs. 10,500.00 within one month from the date of the said order. This order was obviously made on the finding that on the disconnection of the telephones installed at the premises in question appellant No. 1 was entitled to adjust the security amount of Rs. 10,500.00 towards rent and further that it was not liable to pay Rs. 500.00 per mensem towards telephones charges with effect from January 1982.

(5) Feeling dis-satisfied with the said order, the respondent-landlady went in appeal to the Rent Control Tribunal who vide impugned order dated 17th November 1984 confirmed the finding of the Rent Controller about refund ability of the security deposit of Rs. 10,500.00 but reversed his finding with regard to suspension of telephone charges at the rate of Rs. 500.00 per mensum. The learned Tribunal observed that even subsequent to the disconnection of telephones in January 1982 the appellants continued paying rent at the enhanced rate of Rs. 3,850.00 per mensem uptil July 1982. That being so, the tenant had no cheek to say that the same should be suspended because of the withdrawal of the facility of the telephones. He also observed that the amount of Rs. 10,500.00 represented consolidated amount to be paid in the event of the telephones being disconnected as Stipulated damages already agreed upon between the parties. So, the tenant could not have the best of both the worlds by claiming a further reduction of Rs. 500.00 per month on account of disconnection of the telephones.

(6) The learned counsel for the appellants has assailed the aforesaid order of the Tribunal primarily on the ground that it is contrary to the undisputed documentary evidence on record. He has invited my attention in this respect to an indemnity bond dated 24th February 1979 which was executed jointly by the respondent and the original Lesser M/s. Bathia Motors (P) Limited in favor of appellant No. 1. The relevant recital in the said indemnity bond is extracted below for ready reference :

'WHEREAS Office Flat No. 601 in 'SIDDHARTHA' Building..... was originally let out by M/s. Bathia Motors (P) Ltd to M/s. Hindustan Computers Ltd. with effect from 1st November, 1978 on a monthly rent of Rs. 3500.00 (Rupees three thousand five hundred only) which included the facility of two Telephones and one Pbx and fixtures comprising of two executive cabins, pantry, loft and electric fittings (the break up of rent being Rs. 2500.00 for flat, Rs. 5001- for fixtures and Rs. 500!- for telephones).'

(7) The respondent and M/s. Bathia Motors (P) Ltd. further stipulated that appellant No. I would have the continued use of the facility of the aforesaid two telephones and the Pbx as long as it remained in occupation of the demised premises and they undertook to indemnify appellant No. 1 in the following language :

'THAT in case the facility of the two telephones and one Pbx is withdrawn for any reason at any time, then Smt. Kaushalya Rani and M/s. Bathia Motors (P) Ltd. will jointly and severally indemnify M/s. Hindustan Computers Ltd. for Rs. 10,500.00 (Rupees ten thousand five hundred only) and which means that they will immediately refund to M/s. Hindustan Computers Ltd. security deposit of Rs. 10,500.00 originally kept with M/s. Bathia Motors (P) Lid. and transferred Along with the flat to Smt. Kaushalya Rani'

(8) The respondent also delivered a separate letter (not dated) to appellant No. 1 confirming in furtherance to the indemnity bond that in case the telephones were disconnected at any time for any reason, it could adjust the security amount of Rs. 10,500.00 from the rent of the flat.

(9) Obviously it was in view of the aforesaid in trinity bond and the assurance embodied in the subsequent undated letter written by the respondent to appellant No. 1 that the learned Tribunal confirmed the order of the Rent Controller regarding the refund and adjustment of Rs. 10,500.00 . Says he, 'Admittedly the said facility for whatever reason is now not available. thereforee, it is obvious that the adjustment of Rs. 10,500.00 was rightly granted because the amount became refundable. There is no ground to interfere on that score.'

(10) This conclusion of the learned Tribunal manifestly leaves no room for doubt that the plea of the respondent-landlady that the telephones had been disconnected on account of non-payment of telephones charges by the appellants was not tenable and as such not relevant to the decision of the controversy about the refund of the security deposit. Strangely however, the learned Tribunal slipped into a grave error when he, as noticed above, characterised the said amount as 'stipulated damages already agreed upon in case of disconnection.' It is not intelligible how and on what basis he could treat the refund of the security deposit as consolidated amount representing 'stipulated damages already agreed upon.' Further the learned Tribunal repelled the contention of the appellants that on the amenity of the telephones being no longer available the quantum of rent to the extent of Rs. 500.00 per mensem as representing the telephone charges was liable to be suspended. The reason assigned by him seems to be as under :

'THE parties themselves had agreed to a stipulated amount to be refunded if the amenity is withdrawn. In other words, there was no agreement that the rent would be suspended.'

(11) I am constrained to observe that the learned Tribunal would not have come to the conclusion stated above, had he noticed the recital in the indemnity bond with regard to the break up of the agreed rate of rent which has been extracted above. On a plain reading of the said recital it becomes crystal clear that the amount of Rs. 500 .00 per mensem was payable in respect of the facility of the telephones provided by the landlord at the demised premises. Hence, the liability of the tenant to pay the said amount came to an end automatically the moment the said facility was no longer available for any reason whatsoever. This is the plain implication of

the stipulation contained in the indemnity bond and the assurance given by the respondent in the separate letter, adverted to above. It would be indeed preposterous to suggest that even though the tenant is entitled to the refund of the security deposit, he is still liable to pay the amount of Rs. 500.00 per month which was expressly payable on account of the facility of the telephones and the PBX. Such a conclusion would be clearly repugnant to the very language of the indemnity bond and the aforesaid letter.

(12) That apart, the view of the learned Tribunal that the tenant is liable to pay rent at the enhanced rate of Rs. 3850.00 per mensem as representing consolidated rent because the rent was last paid at that rate is equally fallacious. It is no doubt true that under Section 15(1) of the Act the Controller is to 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 rent were legally recoverable from the tenant. However, the words 'at the rate of rent at which it was last paid' have been judicially interpreted by this Court in some reported decisions. ln Rajinder Pershad v.Suraj Mal and others, 1973 Rcj 313 the plea of suspension/abatement of rent by the tenant for part of premises was raised at the stage of an order under Section 15(1). A question naturally arose with regard to the fixation of the last paid rent in a situation like this. The learned Judge (P.M. Khanna, J.) observed :

'IF the tenant seeks to invoke the doctrine of suspension of rent, the Controller has to decide the dispute so raised after giving the parties an opportunity of being heard. He has to conduct some sort of inquiry howsoever brief it may be. His decision may be based, as naturally it would be at that stage, on prima facie evidence. But he has to be satisfied that arrears of rent are due; and for this, the tenant's plea, if any, for a total or partial abatement of rent has to be considered.'

His Lordship amplified the position further saying :

'THE Controller had then to find out the rate of rent at which it was last paid for the reduced accommodation. And unless this was done, order under section 15(1) could not be passed. It had to be determined, whether the portion of the premises taken away from the tenant was such as had rendered the remaining portion with

the tenant, quite useless for the purpose for which the premises had been taken on rent and whether it was a case of total abatement of rent. Or again whether it was a case of partial abatement. If it was the latter case, then what was the last paid proportionate rent for the reduced accommodation, from which the eviction is now claimed. For, it was only the proportionately reduced rent for the said reduced accommodation from which eviction is now sought, which can be said to be the rate of rent last paid for that accommodation.'

(13) The question whether a tenant is entitled to total or partial suspension of rent or proportionate reduction of rent when he is deprived of a part of tenanted premises or facilities, also came up for consideration before V.S. Deshpande, J. in N.K. Baslas v. Krishan Lal, 1973 Rlr 14 In the said case the tenant was indisputably using a telephone which was installed in the premises at the time of the lease but the same was removed by the landlord subsequently. The tenant pleased that the parties had agreed that the landlord should charge only Rs. 175.00 as rent and an amount of Rs. 75.00 from the agreed rent would be reduced due to the loss of the telephone facility. The tenant further pleaded that the landlord had deprived him of the use of the rear courtyard and hand pump. However, the landlord denied all these allegations. In these circumstances, Deshpande, J. (as His Lordship then was) observed :

'.....THErate at which the rent was last paid is not disputed but the amount of rent legally recoverable by the landlord from the tenant within the meaning of Sub-section (2) of section 15 is disputed. Just as a plea by the tenant that he has paid a part of the rent claimed by the landlord has to be inquired into by the Controller (M.M.Chawlav. J.S. Sethi, : [1970]2SCR390) because the dispute between the parties relates to the amount of the rent legally recoverable from the tenant by the landlord, similarly the plea of the tenant that he is not liable to pay the rent at the agreed rate after the deprivation of the facilities also requires that the Controller must first decide the liability of the tenant to pay the rent and the rate at which it could be payable after the deprivation of the premises before the Controller can pass an order under section 15(2) of the Act. Both these pleas appear to stand on the same footing and no valid distinction can be made between them.'

(14) The instant case, to my mind, stands on a much better footing for the tenant, for it was specifically stipulated that an amount of Rs. 500.00 would be payable for the use of the telephones. Further, once it is conceded that the tenant is entitled to the refund of the security deposit of Rs. 10,500.00 , there is no valid reason or justification why the tenant should continue to pay Rs. 500.00 per month even after the disconnection of the telephones. It is, of course, a different thing that the landlady may claim adjustment of the amount to the extent of telephone bills due from the petitioners against the security deposit and the petitioners cannot in law disown (heir liability for the same. Suffice it to say that the consideration for Rs. 500.00 per month, viz. the use of the telephones, failed the moment they were disconnected for any reason whatsoever.

(15) The learned counsel for the petitioners has also contended that at any rate the amount of Rs. 500.00 did not form part of the expression 'rent' as the telephones installed at the premises could, by no stretch of reasoning, be said to constitute an integral part of the 'premises' which term has been defined in Section 2 of the Act as meaning 'any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or any other purpose, and includes-(i) the garden, grounds and outhouse, if any, appertaining to such building or part of the building; (ii) any furniture supplied by the landlord for use in such building or part of the building.' Evidently the telephones did not form part of the building as such which was let to petitioner No. 1. The question is whether a telephone can be said to .be an item of furniture or not. Obviously this word is a derivative of the word 'furnish' and is generally used for denoting such articles which are provided in any premises for their better enjoyment. The meanings assigned to the word 'furniture' in the Chambers's Twentieth Century Dictionary are 'movables, either for use or ornament, with which a house is equipped, equipment....."Since a telephone is a highly sophisticated instrument and may be specially provided to a tenant for use, it is not considered to be an item of furniture in. the. common parlance. It is more in the nature of an amenity or a facility rather than furniture. Anyhow, in view of the fact that the break up of the total amount payable by the tenant in this case specifies the sum of Rs. 500.00 as payable on account of use of the telephones, I need not delve deep into this question, and I would be content to say that the 'respondent-landlady is no longer

entitled to charge for the Use of telephones.

(16) To sum up, thereforee, this appeal succeeds. Hence, the impugned order is modified to the extent that petitioner No. 1 shall be liable to pay rent at the rate of Rs. 3,350.00 per minim with effect from 1st February 1982. I may, however, clarify that any observation made by me in this order shall not in any way prejudice the rights of the parties on merits. Keeping in view all the circumstances of the case, I leave the parties to bear their own costs.