

Ram Kumar Vs. Virender Kumar

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Court : Delhi

Decided On : Aug-24-1985

Reported in : 1985RLR570

Judge : G.C. Jain, J.

Acts : Delhi Rent Act - Sections 14(1)

Appeal No. : Second Appeal No. 22 of 1985

Appellant : Ram Kumar

Respondent : Virender Kumar

Advocate for Pet/Ap. : B.P. Gupta and; M.M. Sudan, Advs

Judgement :

G.C. Jain, J.

(1) This is a tenant's appeal from the order of the learned Rent Control Tribunal dated 18.2.82. It was filed on 6.7.85. It being barred by time the appellant 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. It was let out to the appellant by Sohan Lal (since deceased) on 5.6.64. On 13.12.76 the landlord brought an application for recovery of the

possession of the said shop u/s 14(1)(a), (c), (f) and (j) of the Delhi Rent Control Act, 1958 (for short 'the Act').

(3) The petition was resisted. In those proceedings an order u/s 15(1) of 'the Act' was made on 26.10.77 directing the tenant to pay or deposit the arrears of rent at the rate of Rs. 35.00 p.m. with effect from 1.7.74 within one month of the order and also to continue to pay or deposit the future 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. 230.00. The rent for the month of Nov. 1977 was deposited in Jan. 1978. The landlord, therefore, moved an application u/s 15(7) of 'the Act' for striking out the defense. The application was dismissed on 17.8.78. There was again a 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 u/s 14(l)(a) of 'the Act'. The appellant was not given the benefit of the provisions in S. 14(2) and 15(6) of the Act because of the defaults in depositing the rent for the months of Nov. 1977 and April, 1979. Relying on the decision of the Supreme Court in *Delhi Cloth Mills vs Hem Caw* : [1978]1SCR241 the Tribunal dismissed the appeal on 18.2.82.

(4) The appellant thereafter moved a review petition on 23.2.82 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 situated. This was dismissed on 26.2.82. Same objection was raised by him in a petition filed before the Additional Controller on 3.3.82. Appeal against the said order was dismissed by the Tribunal on 20.7.82 and second appeal was dismissed by this Court on 14.9.82. 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 23.9.82 this court directed the Controller to decide the petition within 15 days of the order. The objection petition was dismissed on 8.10.82 and subsequently the said 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 14.12.83.

(5) Sohan Lal, decrees-holder died in the meantime and his L.R.s (the present respondents) were brought on record. The appellant there after resisted the execution of the warrants for possession. On 6.1.84 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 6.5.85.

(6) Having failed in these delaying tactics the tenant filed this second appeal on 6.7.85 u/s 39. It provides a period of 60 days for filing an appeal to High Court from an order made by Tribunal. Excluding time spend for certified copy of the order of Tribunal there was admittedly a delay of more than 3 years. The appellant consequently moved the present application (CM 1908/85) u/s 5 of Limitation Act for condoning the delay. It was alleged that at the time of dismissal of his appeal by the Tribunal on 18.2.82 he had been advised by his counsel that according to the law prevalent the delay could not be condoned for the purpose of giving a benefit u/s 14(2) of 'the Act', and, therefore, he did not file any appeal. The Supreme Court however, in Ram Murti v. Bholu Nath : AIR 1984 SC1392 has now held that the delay could be condoned for the purposes of giving the benefit u/s 14(2) of 'the Act'. It was also alleged that a second appeal (C.L. Nagpal vs. Dharam Pal Singh Sao 275/72) involving similar question was pending disposal in this court and was decided only on 7.1.85 and 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 S. 5 of Limitation Act has no application. However it would not make any difference. Proviso to S. 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. 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 therefore 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 18.2.82 his counsel advised him 'that the law was 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 C & G Mills Co. Ltd. v. Hem Chand : AIR1972 Delhi275 and ruled that the Controller had no discretion to extend the time prescribed u/s 15(1) of 'the Act' for the purpose of giving the benefit of the provisions contained in S. 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 Murthi'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 S. 15(1) cannot be construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under S. 14(1)(a) without anything more due to the failure on his part to comply with the requirements of S. 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 S. 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 with 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 u/s 14(l)(a) of 'the Act' on the basis of the full bench decision of this court in Delhi Cloth Mills' 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 strangers would be uncertain and unsecure. A new interpretation of law by the High Court or the Supreme Court may .be made after short time or after even 40/50 years. If it was treated a sufficient cause then there would never be any finality. A 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 vs. Shabildas Prevention of Food Adul. cases 1980 (I) 67, V.V. Kudva v. E.S.I. Corp. Air 1972 Mys 204 Basdeo vs. Murli Dhar Air 1942 Oudh 447, and Ponnamma Pillai v. Velayudhan 1981 Kerala L.T. 21.

(12) The appellants' learned counsel relied on the decision of the Supreme Court in Harcharan v. State : 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 filing the appeal.

(13) Reliance was also placed on Jai Singh vs. Maman Chand : [1980]3SCR224 . In that case landlord obtained a decree for recovery of possession and arrears of

rent under the provisions of Bombay Rents 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 accommodations 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 Govt. issued a notification u/s 3 of the Cantonment (Extension of Rent Control laws) Act, 1957 extending the provisions of the Bombay Rents 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 12, 1967. The other objection was that the decision in Misc. 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 at 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 decisions whether one appeal was

competent or not. This is not the case here. There was no conflict of decisions at the relevant time. The law laid down by the Supreme Court in Delhi Cloth Mills case (supra) was the law of 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 A.I.R. in 1984 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 vs. Dhar am Pal Singh (1985) (1) RCJ 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. Every such decision by this court would not justify the condensation of the delay up to the date of that decision.

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