

Chajju Ram Vs. Ram Dulary

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Court : Delhi

Decided On : Oct-07-1980

Reported in : 18(1980)DLT495; 1981(2)DRJ20; 1981RLR27

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 39

Appeal No. : Second Appeal No. 196 of 1980

Appellant : Chajju Ram

Respondent : Ram Dulary

Advocate for Pet/Ap. : Abdul Jaleel and; B.N. Parihar, Advs

Judgement :

Sultan Singh, J.

(1) Smt. Ram Dulary, respondent filed an application on 9th August, 1973 for eviction of Chajju Ram, appellant under Section 14(l)(a),(e) and (h) of the [Delhi Rent Control Act, 1958](#) (hereinafter called 'the Act'). The Additional Controller by order dated 11th October, 1976 passed an eviction order under Section 14(l)(e) of the Act giving six months' time to the appellant to vacate the premises. He further held that the arrears of rent were due and the appellant Vms directed to deposit the rent within one month from the date of the order and on compliance of the

same the eviction petition would fail, holding that the benefit under Section 14(2) of the Act has been taken. The appellant filed an appeal under Section 38 of the Act before the Rent Control Tribunal and the appeal was dismissed on 23rd January, 1980. The appellant has filed this second appeal under Section 39 of the Act. He has also filed an application, C.M. No. 1601 of 1980 under Section 5 of the Limitation Act. This appeal was filed on 15th April, 1980. The certified copy of the order of the Rent Control Tribunal was applied on 12th February, 1980 and it was ready on 13.2.1980. Thus the time for filing the second appeal was up to 25th March, 1980.

(2) After allowing the time taken in obtaining the copy of the order of the Tribunal. The appellant also applied for a certified copy of the order of the Additional Controller on 21st March, 1980 and it was ready on 10th April, 1980. The appellant further states that when he visited the copying agency on 10.4.1980 he was informed to visit the copying agency again on 14th April, 1980. In other words, he was told that the certified copy was not ready and he should visit on 14th April, 1980. Accordingly, it appears that he' obtained the certified copy of the order of the Additional Controller on 14th April, 1980 and he filed the present appeal on 15th April, 1980.

(3) By this application the appellant prays that the delay in filing the appeal be condoned. The appellant is entitled to exclude the time taken in obtaining the certified copy of the order of the Tribunal under Section 12 of the Limitation Act but he is not entitled to such exclusion of time for obtaining the copy of the order of the Additional Controller. Order 41 of the Code of Civil Procedure prescribes the procedure for filing the appeals from original decree. Rule I of Order 41 of the Code of Civil Procedure prescribes that the memorandum of appeal shall be accompanied by a copy of the decree appealed from and the copy of the judgment unless the appellate court dispenses therewith. Order 43 rule 2 of the Code prescribes that Rules of Order 41 of the Code shall apply to appeals from orders. Order 42 rule of the Code further provides that the rules of Order 41 shall apply to appeals from appellate decrees. Thus Order 41 rule I of the Code applies to appeals from orders. This is second appeal and Rules and Orders of the Punjab High Court Vol. V Chapter I Part A Rule 2(b) provides, 'Every memorandum of

appeal shall be accompanied by copies of the decree and judgment as prescribed by Order 41, Rule 1 of the Civil Procedure Code. In the case of Second Appeals, in addition to the documents prescribed by Order 41, Rule I of the Code, memorandum shall be accompanied by a copy of the judgment of the court of the first instance unless the appellate court dispenses therewith'. Thus, under the rules of this Court it is necessary for the appellant to file a copy of the judgment of the first instance i.e. of the Controller in the case. The appellate court under the said rule has power to dispense with the filing of the judgment of the court of first instance. The appellant by this application prays that he spent the time in obtaining the certified copy of the order of the Additional Controller and therefore the period spent by him in obtaining, the said copy be excluded in calculating the time for filing of this appeal or the delay in filing of the appeal be condoned. I am afraid it is not possible. Time spent in obtaining the certified copy of the order of the Additional Controller cannot be excluded as no provision has been pointed out to me for the exclusion of such time. As regards the condensation of delay, it appears that there was no bar for the appellant to file an appeal against the order of the Tribunal with the certified copy thereof along with an ordinary copy of the order of the Additional Controller and making a prayer for exemption in filing the certified copy of the order of the Additional Controller within the meaning of Rule 2(b) Part A of Chapter I of Vol. V of Rules and Orders of Punjab High Court. Admittedly, this has not been done. The last date for filing the appeal was 25th March, 1980 but it was filed on 15th April, 1980. There is no Explanation why the appeal was not filed up to 25th March, 1980. The only ground appears to be that the appellant had applied for obtaining the certified copy of the trial court on 21st March, 1980 and as the same was not available to him, he did not file the appeal. This is no ground. The law does not provide for the exclusion of time spent by the appellant in obtaining the copy of the judgment of the first court. On the contrary the law provides that copy of the judgment of the first court be filed but the filing of the same could be dispensed with by the appellate court.

(4) I do not find any sufficient cause for condoning the delay in filing the appeal. The application, C.M. No. 1601 of 1980 is therefore dismissed. Consequently, the appeal, S.A.O. No. 196 of 1980 being barred by time is dismissed. There will be no order as to costs.

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