

Tressa Nair Vs. Sobha Ram

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Court : Delhi

Decided On : May-24-1985

Reported in : 1985RLR463

Judge : G.C. Jain, J.

Acts : Delhi Rent Act - Sections 14(1)

Appeal No. : Civil Revision Appeal No. 452 of 1984

Appellant : Tressa Nair

Respondent : Sobha Ram

Advocate for Pet/Ap. : G.C. Lalwani and; G.S. Vohra, Advs

Judgement :

G.C. Jain, J.

(1) NO. 25/23 Old Rajinder Nagar, New Delhi consisting of one room, store with common use of Verandah, bath, latrine and open courtyard, to the respondent Sobha Ram on a monthly rent of Rs. 100.00 on 7.11.74. On 8.11.79 she brought a petition for his eviction from the said premises u/s 14(l)(e) of the Delhi Rent Control Act (the Act).

(2) The tenant defended the claim on a variety of contentions. These are (i) the petition did not disclose a cause of action for want of plea that the landlady had no other reasonably suitable accommodation, (ii) the letting purpose was residential cum-commercial and (iii) the landlady required accommodation for herself and her daughter only, the accommodation with her was reasonably suitable. The petition had been filed because the tenant had filed a suit for recovery of Rs. 10,000.00 which he had advanced to the landlady on the day of letting and had obtained a decree. She had even withheld the rent deed executed at the time of letting. Her requirement was not bonafide.

(3) Those pleas found favor with the ARC. He consequently dismissed the eviction petition on May 5, 1984. Feeling aggrieved the landlady has brought this revision u/s 25B(8) of the Act.

(4) The function of pleadings is to ascertain with precision the matters on which the parties differ. A respondent in an eviction petition, is entitled to know what it is that the petitioner-landlord alleges against him. The petitioner in his turn is entitled to know the defense pleas raised in answer to his claim. The main purpose is to prevent surprise at the trial. A material fact which has not been pleaded, cannot be allowed to be proved during the trial. thereforee, all material facts which would entitle the landlord to obtain an order for eviction must be pleaded. In other words in a petition for eviction on the ground of bonafide requirement the landlord must plead (i) that he was the owner of the premises; (ii) that the same had been let out for the residential purpose; (iii) that he bonafide required the premises for occupation as a residence for himself and members of his family dependent on him; and (iv) that he had no other reasonably suitable accommodation. It was so held by this court in Abdul Hamid vs . Nw Mohammad : AIR1976 Delhi328 . Similar view was taken in Hari Mohan vs . Rameshwar Dayal : AIR1980 Delhi291 , Dr. (Mrs.) N.D. Khanna vs . Mfs. Hindustan Industrial Corporation : AIR1981 Delhi305 , and Mr. Edwin Bruce vs. Hari Chand 1982 (1) R.C.R. 172

(5) In the present case the ground on which the eviction of the tenant was sought has been pleaded in the following words :

'THAT the premises are residential one were let for residential purposes to the respondent and is required bonafide by the petitioner for use and occupation as residence for herself and members of her family dependent on her and that she does not have adequate accommodation in her possession. She has one small room in her occupation. She has a daughter and a nephew dependent on her for accommodation. Petitioner is the owner of the premises.'

(6) The three necessary ingredients, namely, that the landlady was the owner of the premises (ii) that the same had been let out residential purpose and (iii) that she required the same for use and occupation as residence for herself and members of her family, have admittedly been pleaded. The contention of Mr. Vohra, learned counsel for the tenant, is that the fourth essential ingredient that the landlady had no other reasonably suitable accommodation is missing. I do not agree. The landlady in the grounds reproduced above, has specifically averred that she had only one small room in her occupation and had no adequate accommodation in her possession. 'Adequate' means sufficient. Thus it had been pleaded that the landlady had only one room which accommodation was not sufficient. These pleadings, in my view, meet the requirement of pleading the material facts, at least in substance. The tenant in the w/s averred that the landlady was in occupation of two rooms, one store kitchen, bath, Wc and Verandah. She required accommodation for herself and her daughter. The accommodation with her was more than sufficient. From these averments it is clear that the tenant knew the case of the landlady which he was required to meet. He was in no way taken by surprise. No prejudice was caused to him.

(7) It is settled law that pleadings should be construed liberally. In *Kedar Lal vs . Hari Lal* : [1952]1SCR179 the Supreme Court observed (that it would be slow to throw out a claim on a more technicality of pleadings, when the substance of the thing is there and no prejudice is caused to the other side) however clumsily or inartistically the plaint may be worded. This judgment, in my view, fully applies to the present case.

(8) Mr. Vohra, learned counsel for the respondent urged that the averments made in the petition indicate that the landlady had no sufficient accommodation in the

property in dispute there was no indication that she had other reasonably suitable accommodation any where else in Delhi. When the landlady says that she was in occupation of only one room and had no sufficient accommodation it was implicit that she had no other accommodation any-where else. It was not the case of the respondent that she owned or possessed any other residential accommodation.

(9) Before I proceed to examine the merits of the case I may notice the contention of Mr. Vohra regarding the scope of the revision u/s 25B(8) of the Act. It was contended by him that S. 25B(8) does not contemplate re-hearing postulated in an appeal. The submission is that a decision on a question of fact cannot be disturbed in a revision u/s 25B(8) of the Act. Reliance was placed on a decision of the Supreme Court in Hari Shanker vs. Rao Girdhari Lal (1962) Suppl. 1 S.C.R. 933

(10) This question came for consideration before a full bench of this court in Mohan Lal vs . Tirath Ram Chopra : AIR1982 Delhi405 . Hari Shankar's case was noticed. The full bench held : Mrs. Tressa Nair vs. Sobha Ram

'43. There is one very important distinction which exists between the provisions of S. 25B and that of S. 35 of the Delhi and Ajmer Rent (Control) Act, 1952. The distinction is that whereas the power of revision u/s 35 of the 1952 Act was to be exercised after a right of appeal had been exhausted by any of the parties, u/s 25B of the Act the right of appeal has been expressly taken away. In its place a limited right has been conferred on the High Court in proviso to Sub Section (8). We feel that the observations of the Supreme Court in Hari Shankar's case would not, therefore, be quite apposite while construing S. 25B(8). The limited jurisdiction as envisaged, by Beamont, C.J. in Bell and Co.'s case, which was approved by the Supreme Court in Hari Shankar's case, may have been applicable if the right of appeal contained in S. 38 of the Rent Control Act, 1948 had not been taken away. Moreover, the language of S. 35 of the 1952 Act and S. 25B of the present Act is not identical. In our opinion the jurisdiction of the High Court u/s 25B(8) has to be interpreted, keeping in view the legislative intent. The revision u/s 25-B(8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction u/s 115 Civil Procedure Code . The High Court would have jurisdiction

to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by Controller would not be interfered with by High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exists the High Court would not be entitled to interfere with the order of the Controller u/s 25B(8) of the Act.')

(11) Conscious of this legal position, Mr. Lalwani, learned counsel for the landlady, contended that the findings of the learned Addl. Controller regarding the letting purpose and bonafide requirement were perverse. A great injustice has been done to the landlady. These findings, argued the learned counsel, were liable to be reversed in exercise of the powers u/s 25B(8) of the Act. I find merit in this submission.

(12) The rent deed does not contain any provision as to the purpose of letting. Both parties produced oral evidence. [In paras 12 to 20 evidence is discussed and conclusion is that finding of Arc that letting was residential-cum-commercial was perverse]

(13) Mr. Vohra then contended that even if the letting purpose was residential the tenant was using the same for residential-cum-commercial purposes, since long, and, therefore, he was not liable to be evicted u/s 14(1)(e) of the Act. Reliance was placed on Gopal Dass Verma vs . Dr. S.K. Bhardwaj : [1962]2SCR678 .

(14) The case set up by the tenant is that he was preparing eatables for sale at, his restaurant which was in Krishna Market Sarswati Marg, Karol Bagh, New Delhi. Besides, the fact that the evidence on this point was most unsatisfactory, it was only an incidental use and was covered by the Explanationn to clause (e). It says 'For the purposes of this clause, 'premises let for residential purposes' include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purpose;' Preparing of Pakoras or eatables meant for sale at some other place was incidental purpose. In Gopal Dass's case (Supra) a substantial part of the premises was put to

professional use by the tenant. This is not the case here.

(15) The landlady admittedly required the accommodation for residence for herself and her daughter. She was in possession of a room measuring 13 ft. x 8 ft. and part of 8-7 ft. x 7 ft., kitchen, common bath and latrine. I have given the measurements according to the plan filed by the tenant. The contention of Mr. Vohra is that the part of Verandah was a regular room. It had been divided by a wooden partition and thus the landlady was in occupation of two rooms which accommodation was sufficient for two members.

(16) It was admitted by the tenant that this wooden partition is not up to the ceiling. The gap is about 1 ft. Because of the wooden partition and that too not up to the ceiling this Verandah cannot be termed as a room. Even if it was taken as a room it would not make much difference. The landlady is admittedly A Grade Nurse. She has a telephone she had a dining table as admitted by the tenant's witness. Her statement shows that she had almirah, a Diwan, television, fridge etc. The front room which is a regular room, therefore, could be used only as a drawing room-cum-dinning room. The Verandah cannot be conveniently used as a bed room for both of them. The daughter was 15 years old in 1981. She was a student of 10th class in St. Thomas School and must be in college now. She required space for her studies. There is no privacy in the Verandah room. The said accommodation could not be held as reasonable. Landlady had every right to make herself reasonably comfortable. The decision of this court in Union Carbides I Ltd vs. Dalip Singh 1981 D.R.J. 184 has no application to the facts of this case.

(17) Learned Additional Controller observed that earlier landlady's nephew also lived with her and there was no change in her circum stances. The number of the members of her family had rather reduced by one. He, however, did not take into consideration her living habits, and the fact that her daughter was now grown up and required a separate room for studies and sleeping.

(18) Mr. Vohra also urged that the landlady deliberately filed a wrong site plan. Earlier she had served a notice to the tenant in which she claimed eviction on the ground of subletting only. There was no mention of bonafide requirement and these circumstance made her claim malafide. I find no substance in this

submission. In the plan filed by her she had not shown the wooden partition. Her Explanation is that this wooden partition was erected later on because of the strained relations between the parties due to this litigation. This Explanation has merit because in para 8 of the eviction petition she described the premises under the tenancy of the tenant as one room, common use of Verandah etc. In the written statement correctness of this description was not denied. It shows that till the filing of the written statement Verandah was a common Verandah and there existed no wooden partition.

(19) The notice was given on December 18, 1974. As is clear from the sale deed Ex. Aw 1/1 she purchased this property on June 15, 1974. On the date of notice a period of 5 years had not elapsed from the date of this acquisition. Therefore she had no cause of action for claiming eviction on the ground of bonafide requirement on that date. The absence of this ground in the notice is, therefore, of not much consequence. The finding regarding bonafide requirement for all these reasons is unreasonable, perverse and could not be sustained.

(20) In conclusion the order of the Additional Rent Controller is set aside & instead an order for recovery of possession of the premises in dispute is made in favor of the petitioner against the respondent. The respondent is allowed six months time to vacate the premises. Parties are left to bear their own costs.