

Krishan Kumar Vs. Vinod Kumar and anr.

Krishan Kumar Vs. Vinod Kumar and anr.

SooperKanoon Citation : sooperkanoon.com/693917

Court : Delhi

Decided On : Feb-13-2008

Reported in : 148(2008)DLT668

Judge : Vipin Sanghi, J.

Acts : Delhi Rent Control Act - Sections 14, 25B and 25B(4); Code of Civil Procedure (CPC) - Order 41, Rule 27

Appeal No. : R.C.R No. 59 of 2007 and C.M. Appl. Nos. 8735-36/2007

Appellant : Krishan Kumar

Respondent : Vinod Kumar and anr.

Advocate for Def. : Rajesh Sharma, Adv.

Advocate for Pet/Ap. : J.K. Jain, Adv

Judgement :

Vipin Sanghi, J.

1. Under challenge in this Petition is the order passed by the learned Additional Rent Controller in E-647/2006 filed by the petitioner whereby the learned Additional Rent Controller has dismissed the petitioner's aforesaid eviction Petition filed under Section 14(i)(e) of the Delhi Rent Control Act (the Act).

2. The Respondent tenant despite service in the prescribed form failed to file an application seeking leave to defend within the statutory period. In fact, even without applying for and obtaining the leave of the Controller, the written statement was directly filed, though beyond the 15 days period prescribed for filing the application for seeking leave to defend. Thereafter, an application for seeking condensation of delay in filing the application seeking leave to defend, and an application for treating the written statement as the application seeking leave to defend was filed by the respondent. Both these applications were dismissed by the learned Additional Rent Controller. This dismissal was never challenged by the Respondent. Thereafter, the learned Additional Rent Controller proceeded to examine the claim of bonafide requirement of the petitioner. By the impugned order he dismissed the Eviction Petition holding that the need projected by the petitioner was not bonafide and that he was already in occupation of accommodation sufficient for his needs and the needs of his family. Challenging the said order, this Petition has been filed.

3. The primary contention of the petitioner is that once an application seeking leave to defend is dismissed, or in a case where the same is not filed, the Controller has no jurisdiction to dismiss the Petition under Section 14(1)(e) and he must proceed to allow the Petition. In support of this submission, the petitioner relied on two decision of this court reported in 1987 (1) RCR 556, Shri Bachan Singh v. Shri Khem Chand and 1993 (3) RLR 133, Smt. Bhuvneshwari Devi v. Col. Kalyan Singh. In the first of the aforesaid two decisions, while interpreting Section 25B(4) of the Act this court held that the said provision is mandatory and if no application for leave to defend is filed, it is obligatory for the Rent controller to accept the statement made by the owner - landlord and order eviction. In the second decision as well, this court has held that if the tenant on whom the summons are duly served in the form specified in 3rd Schedule does not contest the prayer for eviction by filing an affidavit seeking leave to defend, the Controller is bound to take the statements made by the landlord in the application for eviction as correct. In Bhuvneshwari Devi (supra), the Additional Rent Controller, instead of taking the statements made by the petitioner in the Eviction Petition as correct, had proceeded to analyze the facts and came to conclusion that the grounds of eviction had not been made out. This Court upset that decision and allowed the

landlord's revision Petition.

4. Learned Counsel for the Respondent on the hand submits that the plan filed by the petitioner before this court is different from the one filed by him before the learned Additional Rent Controller and that the petitioner has sought to mislead this Court. He submits that this petition should be dismissed on this short ground, since the Court is exercising discretionary jurisdiction.

5. I do not find any merit in this submission. It has been pointed out by the learned Counsel for the petitioner that, in fact, he has moved an application under Order 41 Rule 27 CPC disclosing that the plan as filed before the learned Trial Court was inaccurate and, therefore, he sought the leave of this Court to file the correct plan. He has also made averments disclosing the filing of a different plan before this court from the one filed before the ARC. Moreover, I have compared the plan as filed by the petitioner before the ARC (a certified copy thereof was shown to the court by the Respondent), and the one filed on record before me. The Respondent has also placed before me the plan that he had filed before the learned ARC. The admitted position is that the ground floor is in the occupation of the respondent and the first, second and barsati floors are in the possession of the petitioner. therefore, what is material and needs examination is the extent of accommodation shown to be available with the petitioner. On a comparison of all the plans it is seen that there is hardly any difference so far as the first and the second floor plans are concerned. On the First Floor, two rooms have been shown apart from the Balcony, kitchen and a toilet in all the plans. On the Second Floor, one big hall, apart from a toilet and balcony have been shown in all the plans. However, in the plan filed by the petitioner before the learned Additional Rent Controller, Barsati floor has not been shown, whereas, the same has been shown in the plan filed by the respondent as also in the plan now filed by the petitioner before this court.

6. It is explained by the petitioner that there was an omission on his part in showing the barsati floor in the plan filed before the ARC. It is that omission, which the petitioner has attempted to make up by filing a fresh plan with an application under Order 41 Rule 27 CPC. Be that as it may, the fact of the matter is that the

learned ARC proceeded to pass the order by taking into account the existence of the room on the barsati floor and its availability with the petitioner. In view of the aforesaid, I do not find much substance in this argument of the Respondent.

7. Learned Counsel for the Respondent then argued that the statutory limitation of 15 days prescribed in Section 25B for filing of an application for seeking leave to defend is not mandatory and is merely directory. For this proposition he placed reliance on the decision of this Court in : 76(1998)DLT905 , Sukhmal Jain v. Smt. Bhagwati Devi and Anr. However, that is not the issue before me at this stage. The fact of the matter is that the application seeking condensation of delay and the one for converting the written statement into an application seeking leave to defend were dismissed by the Additional Rent Controller and that order has never been challenged by the Respondent. Even in the present Petition, there is no cross objection by the Respondent. Consequently, the said order whereby the application seeking conversion of the written statement into an application seeking leave to defend, and the application for seeking condensation of delay was dismissed, cannot be upset in these proceedings. That order has not even been placed on record. This Court cannot predicate the reasons for which the said applications of the respondent were dismissed.

8. In the present case, admittedly, no application seeking leave to defend within the statutory period was filed. What was filed, was stated to be a written statement and that too was filed after the expiry of the statutory period of limitation for filing an application seeking leave to defend. Subsequently, two applications that were moved by the Respondent. One for treating the written statement as an application for seeking leave to defend and other for condensation of delay. Both were dismissed. The dismissal of these applications was accepted by the Respondent and he has not challenged them ever since. Faced with the aforesaid scenario, in my view, the Additional Rent Controller was bound to proceed to pass the eviction order as held by this court on two earlier occasions. However, he proceeded to examine the claim on its merit by perusing the plan filed on record by the respondent. In view of the aforesaid, the impugned order is liable to be set aside and eviction order ought to follow against the Respondent.

9. Even on merits, I have examined the case of the petitioner after hearing the parties. The petitioner had set up his case of bona fide requirement on the basis that he, his wife, one married son, his wife with an infant grandson are residing in the property. He has an old mother-in-law who has no son and therefore, she is also being looked after by the petitioner. He also has a married daughter. He would, therefore, reasonably be entitled to three bed rooms, one for himself and his wife, one for married son, and one for his old mother in law. He would also require one room for his guests. Apart from that he is entitled to have a drawing and dining room and a pooja room. The accommodation available with the petitioner as disclosed in the plan filed by the respondent before the learned ARC, and by the petitioner before me, consists of two rooms on the First Floor, one hall on the Second Floor and one room on the Barsati. Even if the hall on the second floor and the room on the barsati are considered as two livable rooms, as opposed to four rooms which are available, his requirement is at least for six rooms. I have, in this estimation not taken into account the need for a separate room for the infant child.

10. In view of the aforesaid, I allow this Petition and pass an eviction order against the Respondent. The eviction order shall not be executed for a period of six months from today.

11. As far as C. M. No. 2229/2008 is concerned, filed for summoning the original record from the court of the ARC, it has become infructuous since the matter has been disposed of.