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Sunder Lal Vs. Sham Lal

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Court : Delhi

Decided On : Mar-20-1987

Reported in : 32(1987)DLT195

Judge : Sunanda Bhandare, J.

Acts : Constitution of India - Article 227; Delhi Rent Control Act, 1958 - Sections 14(1)

Appeal No. : Civil Miscellaneous Appeal No. 1238 of 1986

Appellant : Sunder Lal

Respondent : Sham Lal

Advocate for Pet/Ap. : C.P. Wig and; V.D. Mahajan, Advs

Judgement :

Sunanda Bhandare, J.

(1) This petition under Article 227 of the Constitution of India is directed against the order of the Additional Rent Controller, Delhi dated 23/09/1986 whereby the evidence of the petitioner herein wasclosed.

(2) The petitioner had taken the first floor of property no. 5694-5, GaliNo. 3, New Chandrawal,SabjiMandi, Delhi on a monthly rent of Rs. 100.00.The respondent

filed an eviction petition under Section 14(1)(e) read with Sec. 25-B of the Delhi Rent Control Act seeking the eviction of the petitioner from the said premises on the ground of bona fide personal requirement. The petitioner's application for leave to defend was granted and accordingly the petitioner was to lead evidence in support of the contention that the respondent did not require the premises in question for his bona fide personal need. During the pendency of the eviction petition, the respondent moved an application under Sec. 15(2) of ehe Delhi Rent Control Act which was granted and since the petitioner defaulted in complying with that order, the Additional Rent Controller struck off the defense of the petitioner. An appeal was filed by the petitioner against that order before the Rent Control Tribunal which was also dismissed on 6/07/1985. The petitioner filed a second appeal in this Court which was allowed on 18/02/1986 and the order of the Additional Rent Controller striking out the defense was set aside and the case was remanded back to the Additional Rent Controller to decide the same according to law.After the remand, the petitioner was to produce his evidence. He, thereforee,made an application for summoning the witnesses from E.S.I, office, Rationing office and House-tax Department of the Municipal Corporation of Delhi. the petitioner accordingly deposited the diet money and process fee. However, the witnesses did not appear on the date fixed by the Additional Rent Controller.The Additional Rent Controller, thereforee, issued D.O. letters to these witnesses on 12-8-86 asking them to appear before the Court on 23/09/1986.The petitioner also moved another application on 11/08/1986 for summoning these witnesses and again deposited diet money and process fee. The Additional Rent Controller summoned these witnesses for 23/09/1986.Since none of these witnesses appeared on 23/09/1986, the impugned order came to be passed.

(3) It was contended by the learned counsel for the petitioner that The Additional Rent Controller had not considered the circumstances why these official witnesses could not appear on the given date and without considering the relevant facts in this regard, the evidence of the petitioner was closed.Learned counsel submitted that inadvertently on the summons as well as on the application the date was wrongly mentioned as 21/09/1986 instead of 23/09/1986 and that is why the witnesses did not appear on 2 3/09/1986. Learned counsel submitted that all the three witnesses are official witnesses and the petitioner having deposited the diet

money and processfee, he could not be held responsible for non-appearance of these witnesses.Learned counsel prayed that one final opportunity be given to the petitioner to summon these three witnesses and the petitioner will serve these witnesses dusty for any date to be fixed by the Additional Rent Controller.

(4) On behalf of the respondent it was contended that the petitioner is deliberately delaying the proceedings. This Court vide order dated 1 8/02/1986 had directed the Additional Rent Controller to dispose of the case within one month from the date of that order and inspire of that the petitioner has not yet concluded the evidence.

(5) From the perusal of the order sheet, it appears that after the case was remanded back to the trial court, the petitioner examined himself and moved the application for summoning the three official witnesses. The trial court considered the relevance of these three witnesses and not only directed summons to issue to these witnesses but also sent D.O. letters asking these witnesses to appear before the court. If these witnesses had not appeared inspire of service of summons, it was open to the trial court to take action against these witnesses for non-appearance inspire of service of summons. However, it appears in the present case, the trial court has not considered the reason why these witnesses did not appear on the specified dates. The trial court also did not consider whether the petitioner was responsible for the non-appearance of these witnesses

(6) Having considered the facts and circumstances in my opinion, sincethe trial court had itself considered it necessary to issue D.O. letters to these witnesses before closing the evidence of the petitioner, the trial court ought to have first considered whether action should be taken against these witnesses forenoon-appearance as provided in the Code of Civil Procedure and if it was found that the petitioner was responsible for the non-appearance of the witnesses, it should have considered whether the evidence of the petitioner should be closed.Since from the record, it appears that these witnesses did not appear on23-9-1986 because on the summons and on the application a wrong date wasgiven, it was necessary to ascertain whether this mistake was genuine and bonafide or deliberate. The trial court has not considered this aspect at all. I find that on the previous occasion, the

witnesses could not be examined for no fault of the petitioner. The petitioner had also given the correct date on the summons and deposited the diet money in time on the previous occasion. The error in recording the date on the second occasion thereforee, appears to be bonafide. Moreover, since the learned counsel for the petitioner has now made a statement that if one more opportunity is given to examine these witnesses, the petitioner will have the summons served dusty, in my opinion, it is in the interest of justice that one more opportunity should be given to the petitioner to have these three witnesses summoned.

(7) In the result, the petition is allowed. The order dated 23/09/1986 is set aside. The Additional Rent Controller is directed to summon the three witnesses mentioned in the application of the petitioner annexed as Annexure-A to this petition for any one date. The service on these witnesses will be effected dusty by the petitioner himself. The Additional Rent Controller is further directed to give a date for examination of these witnesses on any date convenient to it in the month of April 1987 and to dispose of the case, according to law, within two months from today. It is made clear that if the petitioner fails to serve the summons on these witnesses on the date given by the trial court, the evidence of the petitioner will be closed and the case will be decided within two months from today as directed. The parties will appear before the Additional Rent Controller on 26/03/1987 for appropriate directions in that regard. Trial Court record be sent down immediately through Special Messenger. No costs.

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