

Castrol Ltd. Vs. Vimla Lumba

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Court : Delhi

Decided On : Mar-28-1985

Reported in : 1985(9)DRJ188

Judge : B.N. Kirpal, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25B

Appeal No. : Civil Revision Appeal No. 144 of 1982

Appellant : Castrol Ltd.

Respondent : Vimla Lumba

Advocate for Pet/Ap. : Y.K. Sabharwal,; Girdhar Govind,; M.M. Sudan,;

Judgement :

B.N. Kirpal, J.

(1) Notwithstanding the sympathetic attitude which is, at times, shown to the tenants in cases of eviction from residential premises, this is one of those cases which shows gross mala fides on the part of a tenant, who happens to be a multi-national company. It is a case of battle between David and Goliath, Goliath being the multi-national company which is a tenant and David being the widow who is the landlady.

(2) The trouble of the respondent-landlady commenced when she let out the premises in question, namely, first floor of House No. 202, Golf Links, New Delhi to the Multi-National Company, namely, the petitioner. At the time when the premises were let out to the petitioner, the respondent was residing as a tenant in a house at I-B Mathura Road, New Delhi. An eviction petition was filed against her on 12th May, 1971. While this eviction petition was pending, on 12th April, 1972 the ground floor of the house in question was let out to one Shri S.C. Jain.

(3) On 5th February, 1973 an eviction order was passed against the respondent and she was asked to vacate the premises I-B Mathura Road, New Delhi by 28th February, 1975. On 8th February, 1973 the garage and servant quarters at house No. 202 Golf Links, New Delhi were let out to the petitioner at a rent of Rs. 300.00 per month, On the following day i.e. on 9-2-1973, by another document the first floor of the house was let out at the rate of Rs. 1100.00 per month for a period of two years. The first floor of the house was given on lease, like the garage and servant quarters, for a period of two years and it was provided that the said term could be renewed or terminated with the consent of both the parties by giving three month's notice in writing. In the deed of 9th February, 1973 it was specifically provided that the premises will be used for residential purposes only. The earlier agreement dated 8th February, 1973 is silent as far as the letting purpose is concerned.

(4) On 20th August, 1974 the lease between the respondent and Shri S. C. Jain in respect of the ground floor of house No. 202 Golf Links, New Delhi was extended for a further period up to 31st December, 1978 at a monthly rent of Rs. 1600.00 . On 7th and 8th February, 1975 the lease period in respect of the premises in question ended. The petitioner did not vacate the same. Proceedings were taken against the respondent by her landlord for getting possession of the premises I-B Mathura Road, New Delhi, where the respondent was residing Warrants of possession were issued against her by the Rent Controller but on a further appeal being filed, the Rent Control Tribunal granted her time to vacate the premises by 31st March, 1976.

(5) Two legal notices on 3rd June, 1976 were issued by the respondent asking the petitioner to vacate the premises by 30th September, 1976. On the petitioner failing to vacate the same. the present eviction petition was filed on 18th November, 1966 An application was filed for leave to contest and on the leave being granted, written statement was filed by the petitioner-herein on 22nd February, 1977.

(6) One of the main contentions which were raised by the petitioner before me was that the respondent did not file the petition for bona fide reasons. The submission was that the respondent wanted an increase in the rent. I have already observed hereinabove that the facts of this case show the mala fides on the part of the petitioner, specially in regard to the conduct of the proceedings in this case. This would become evident from what transpired after the filing of the written statement by the petitioner-herein,

(7) After pleadings had been completed with the filing of the replication on 7th March, 1977 by the landlady, three witnesses were examined by the landlady on 3rd August, 1977. Thereafter she closed her evidence on that date. The case was adjourned to 20th September, 1977 for the tenant's evidence. Before giving further facts, it may be noted that the first witness of the tenant was examined only on 13th January, 1981. How this came about is unfolded from the following facts.

(8) On 20th September, 1977 the case was adjourned on the plea that talks for compromise were going on. On 3rd October, 1977 it was stated that compromise had not been arrived at and the case was adjourned to 5th December, 1977 for the tenant's evidence. On 5th December, 1977 no witness was present and the case was adjourned to 27th March, 1978 subject to payment of costs. On 27th March, 1978 the case was adjourned to 31st March, 1978 stating that talks for compromise are going on. On 31st March, 1978 it was stated that compromise has not been effected and the case was then adjourned to 8th August, 1978 for tenant's evidence. On 8th August, 1978 no witness was present on behalf of the tenant. The report of the Process Server was apparently not believed, the report being that all the witnesses were out of station, and the Additional Rent Controller directed that dusty summons be taken for the witnesses for 16th September, 1978.

(9) On 16th September, 1978 a familiar ploy was adopted. On that date an application under Order 6 Rule 17 was filed by the tenant for amendment of the written statement. The amendment was allowed but replication was not filed and the counsel for the landlady made a statement to this effect. The case was then fixed for evidence of the landlady on 1st August, 1979 and for the tenant on 3rd September, 1979. Presiding Officer being on leave on 1st August, 1979, the evidence of the landlady was recorded on 3rd September, 1979 and she closed her case. The case was adjourned to 10th October, 1979-for the tenant's evidence. On 10th October, 1979 no witness was present on behalf of the tenant and the case was adjourned to 5th December, 1979. On 5th December, 1979 no witness was present and the case was adjourned to 13th March, 1980 for the tenant's evidence. On 13th March, 1980 no witness was present and the case was adjourned to 26th May, 1980. On 26th May, 1980 no witness was present and the Additional Rent Controller ordered the closure of the tenant's evidence. A revision petition was filed against the said order which was disposed of on 16th September, 1980 by Sultan Singh, J. By the said order the tenant was allowed to examine 4 witnesses. The Additional Rent Controller was directed to record the evidence day-to-day. The parties were to appear before the Additional Rent Controller on 9th October, 1980.

(10) On 9th October, 1980 no witness was present on behalf of the tenant. The case was adjourned to 13th January, 1981 for the tenant's evidence. Before that date the expected happened again. On 6/7th January, 1981 another application under Order 6 Rule 17 for amendment of the written statement was filed by the tenant. This application was dismissed on 13th January, 1981 and one witness of the tenant was examined. Against the dismissal of the amendment application, C.M. (Main) No. 39 of 1981 was filed. S. B. Wad, J. directed that on 9th March, 1981 one witness, namely, Rajinder Kumar, should be examined on behalf of the tenant. On 9th March, 1981 no witness was present and again no evidence of the tenant was recorded. By order dated 12th March, 1981 C.M. (M) 39 of 1981 was disposed of. The tenant was given last opportunity to have all the witnesses present on 22nd April, 1981 at its own responsibility. Direction was issued that examination of the witnesses would be conducted from day-to-day.

(11) One last desperate attempt was made by the tenant on 22nd April, 1981. Another application under Order 6 Rule 17 was filed on that / date for amendment of the written statement. Despite orders dated 12th March, 1981 of S.B. Wad, J. only one witness was present on behalf of the tenant, namely, one Shri K.C. Kataria, whose statement was recorded. No other witness was present. An application was moved for adjournment to enable two other witnesses to be examined at a later date. The said application, was, however, dismissed. Against the order of S.B. Wad, J. a Special Leave Petition was filed which was dismissed on 1st May, 1981. On 20th July, 1981 the application for amendment which was filed on 22nd April, 1981 was dismissed. Against this order the Multi-National Company, with all the funds at its disposal and being in possession of the premises in question, again tried its luck by filing a petition under Article 227 of the Constitution in this Court challenging the order dated 20th July, 1981. It may be mentioned that the Additional Rent Controller had in his order dated 20th July, 1981 observed that the application for amendment had been filed for mala fide reasons. Yogeshwar Dayal, J. vide his order dated 10th August, 1981 declined to interfere with the order dated 20th July, 1981 and observed as under :-

'IN view of the finding of mala fides I am not inclined to interfere with the impugned order in the exercise of the revisional jurisdiction of this Court.'

On 12th August, 1981 the petitioner filed an application under Section 151 C.P.C. praying for re-hearing of the earlier application dated 6th January, 1981 for amendment of the written statement. The plea taken in this application was that against the judgment of S. B. Wad, J. while dismissing the Special Leave Petition, the Supreme Court had observed as follows :-

'S.L.P.is dismissed but we reserve liberty to the petitioner to raise the point in the court below that the request for amending the petition was wrongly rejected.'

The attempt of the petitioner to delay the proceedings further was, however foiled when the application for re-hearing was dismissed by the Addl, Rent Controller on 21st August, 1981. Thereafter, finally, the proceedings before the Additional Rent Controller ended with the order of eviction being passed against the petitioner-tenant on 19th October, 1981. It was held by the Additional Rent Controller that

the premises in question were bona fide required for residence by the respondent-landlady. It is this order which is now in challenge in the present petition under section 25B(8) of the Delhi Rent Control Act.

(12) Detailed facts of the manner in which the case progressed before the Additional Rent Controller have been enumerated because one of the contentions of the learned counsel for the tenant before me was that the Additional Rent Controller had erred in rejecting the application for amendment of the written statement which application had been filed on 6th January, 1981. The challenge of the petitioner is also to the order dated 20th July, 1981 whereby the application dated 22nd April, 1981 for amendment of the written statement was rejected. The facts as set-out above speak for themselves. Notwithstanding two orders passed by this Court for day-to-day conduct of the proceedings before the Additional Rent Controller, the said orders were observed more in breach. The first order was dated 16th September, 1980 of Sultan Singh, J. and the second order was dated 12th March, 1981 of S. B. Wad, J. The petitioner-tenant sought to nullify these orders by moving applications for amendment of the written statement, which were rightly dismissed, and about the dismissal of which the grievance has been made before me. As regards the application dated 6th January, 1981, the petitioner-tenant had sought to contend by way of amendment that the premises had not been let for residential purposes only. It will be seen that the first written statement was filed by the tenant on 22nd February, 1977. The tenant was represented by a competent lawyer. No such plea was taken in the written statement and, on the contrary, in the written statement the tenant had admitted that the purpose of letting was residential. As has been noted earlier, an application for amendment of the written statement had been filed on 16th November, 1978 which was allowed by order dated 9th February, 1979. At this time also the tenant did not seek to raise the plea that the premises had not been let for residential purposes only. It is only when the case had been fixed peremptorily on 13th January, 1981 for the recording of the evidence of the tenant that the tenant thought of moving an application on 6th January, 1981 for amendment. I have not an iota of doubt that this application had been filed for mala fide reasons simply with a view to delay and drag on the proceedings. In the application for amendment no reason has been given as to why such a plea had not been raised earlier, except by saying

that inadvertently in the written statement the tenant had not stated expressly that the premises had not been let for residential purposes. To my mind this plea of the tenant is palpably false. The tenant was fully aware of all the pleas which it could take in defense but it opted not to raise the contention that the premises were not let for residential purposes only. The tenant had categorically admitted that the premises were let for residential purposes when the written statement was originally filed and also at the time when the amendment to the same was first allowed.

(13) As regards the order dated 20th July, 1981 it transpired during the course of the hearing before me that a petition under Article 227 was filed which was dismissed by Yogeshwar Dayal, J. on 10th August, 1981 Realizing this, Mr. Sabharwal, the learned counsel for the petitioner, did not press further with this contention regarding the validity of the said order.

(14) The learned counsel for the tenant then strenuously contended that various circumstances of the case would show lack of bona fides on the part of the respondent-landlady. It is contended by the learned counsel that this conclusion will be reached from the cumulative effect of the following facts:

(A) Ground floor of the house was let to Shri S. C. Jain in 1972; (b) At the time when the premises were let to the petitioner-tenant, the landlady knew that she had to vacate I-B Mathura Road, New Delhi where she was residing; (c) the premises were not let to the tenant under section 21 of the Delhi Rent Control Act; (d) it must be presumed that the landlady knew the protection which a statutory tenant had under the Rent Control Act with the result it would not be possible to ask the tenant to vacate the premises at the end of the period of lease; (e) the landlady had falsely stated that had she known at the time when the premises were let to the tenant that she had to vacate I-B Mathura Road then she would not have let out these premises; (f) in 1974 the lease of the ground floor was renewed in favor of Shri S. C. Jain for a further period of 4 years ; (g) the landlady had pleaded the need of her brother by saying that he was dependant upon her for accommodation but she had not produced any documentary evidence to prove this plea; (h) the children of the landlady were not dependant on her for

accommodation and their need at the time when they visited Delhi could not be taken into consideration ; (i) the landlady had income of only Rs. 1600.00 a month and according to her she used to have two servants and one car and, therefore, her need for the first floor could not be bona fide ; (j) her need being limited, she ought not to have made a claim for all the rooms covered by the two tenancies dated 8th February, 1983 and 9th February, 1973 ; (k) the landlady had been living at various places during her casual visits to Delhi and otherwise she lived with her son at Calcutta permanently: (l) the landlady had not produced any ration card or other document to show that she was permanently residing at Delhi.

Before dealing with this aspect, it may be observed that the powers of the Court under section 25B(8) are not appellate powers. Section 25B expressly states that no appeal or second appeal shall lie against the order of recovery of possession of the premises made by the Controller. It is under the proviso to sub-section C8) that power has been given to the High Court to satisfy itself that the order is in accordance with law. It is true that the jurisdiction of this Court under section 25B(8) is not as limited as the jurisdiction of a revisional court in exercise of its powers under section 115 Civil Procedure Code but nevertheless the jurisdiction of the Court under section 25B(8) is not that of an appellate court. therefore, if the trial court has considered all the facts and has come to a finding of fact that there is bona fide need of the premises for the landlady then in exercise of the powers under section 25B(8) the Court may not be justified in re-appraising the evidence for itself and then come to a contrary conclusion.

(15) In any case, even if I was to re-appraise the whole evidence after taking into account all the facts and circumstances of the case, I am entirely in agreement with the Additional Rent Controller that the landlady has been able to prove her case. I will now refer to the various circumstances which have been relied upon by the learned counsel for the petitioner in support of his case.

(16) It is true that at the time when the premises in question had been let out to the petitioner-herein, there was an order of eviction which had been passed against her. What has, however, to be seen is the mind of the landlady at the time when the premises in question were let to the petitioner- tenant. The premises were let

to the tenant on 8/9th February, 1973. As on that date, she had been granted time to vacate the premises I-B Mathura Road up to 28th February, 1975. The landlady could not have presumed that the tenant, which was a Multi-National Company, would go back on the terms of the lease and would not vacate the premises when they were required to do so. It is on record that prior to 28th February, 1975 the landlady, in 1974, had written to the tenant to vacate the premises. The stand of the tenant, however, was, as is evident from Ex. AWI/6 which is a letter dated 31st January, 1975 written to the landlady, that the tenant intended to keep the premises till the end of 1975. The premises were at that time occupied by one Mr. Guha and it was stated by Mr. Guha in the said letter that if he was required to stay in Delhi for a long period, then the Company will not vacate the premises as long as he is here. It is during this period and before the receipt of the letter dated 31st January, 1975 that the lease in favor of Shri S. C. Jain was renewed in 1974.

(17) Mr. Rajiv Sawhney is right in submitting that at that time the landlady had every reason to believe that the tenant will keep its promises and will vacate the premises when the need arose in accordance with the terms of the lease. It is true that the landlady was not accurate in stating that she would not have let out the premises if she had known that she had to vacate I-B Mathura Road, but the fact of the matter is that the premises had been let out to the tenant and the term of the lease was to expire at a point of time which was before the time when the landlady had to vacate the premises at I-B, Mathura Road, New Delhi. The landlady has stated when she appeared as her own witness that Mr. Guha, who was occupying the said premises, had promised that the premises would be vacated and the landlady had believed him. The fact that the faith of the landlady has been belied cannot be taken as a ground against her. Believing that Mr. Guha would stick to his promise, she let out the ground floor which was fetching her a rent of Rs. 1600.00 per month for a further period of 4 years. The need of the landlady was obviously not for a full house. She needed one flat. She preferred to stay on the first floor. One of the reasons given by her was that she was a widow and that she felt more secure on the first floor rather than on the ground floor.

(18) With regard to the need of the brother and the need of the children, it may be mentioned that at one point of time there was thinking in this Court that the need of

the near relations and also of visiting children had to be taken into consideration while judging the bona fide requirement. It is not necessary for me to go into this question because even if it be assumed that the need of the children and of the brother is to be ignored, I find that the need of the landlady has, nevertheless, been established. It has been stated by the landlady as well as by A W.2 that she has been living with different relations in Delhi from time to time. AW2 has also stated that the luggage of the landlady is at different places. The landlady has not taken any premises on rent. The contention of Mr. Sawhney, therefore, is that as - the landlady has no permanent place of residence in Delhi, she has not got a ration card made. Despite evidence having been led by the tenant, there is nothing on record to show that the landlady has been permanently living at Calcutta and not at Delhi. The landlady has denied the suggestion which was put to her. In fact during the course of arguments Mr. Sabharwal admitted that the name of the landlady is shown in the telephone directory of Delhi. If that is so, it is reasonable to presume that she is permanently living in Delhi. It is true that the income of the landlady is only R.S. 1600.00 per month. This, however, does not mean that she is not entitled to a permanent place of residence in Delhi. The landlady is living because of the courtesy which has been extended to her by her relations. She has not taken any premises on rent and nor is she staying with any of her children. Surely the landlady is entitled to bring to an end to her nomadic way of living and she is entitled to settle down in her own house in the evening of her life. It is evident that the letting of the garage and servant quarters on 8th February, 1973 and the letting of the rest of the first floor on 9th February, 1973 was really a part of the same transaction. It has been explained that two separate lease deeds were executed for income-tax purposes. It is not denied that the rent is paid by a single cheque for Rs. 1400.00 per month. It is also clear that for any person to live on the first floor of the premises, it is necessary to have a servant quarter and if the landlady keeps her car then a garage is also required. Therefore, taking all the aforesaid circumstances either singly or cumulatively, I cannot possibly come to the conclusion that there is any lack of bona fides on the part of the landlady in filing the petition. On the contrary, it appears to me that in this case the tenant has sought to abuse the process of the court. It has dragged on the proceedings before the Additional Rent Controller unnecessarily for about five years. Every

effort was made by the tenant to see that the progress of the case was thwarted. It is obvious that to a Multi-National Company, like the tenant, money was no problem and it could afford to incur the legal expenses.

(19) Keeping all these things in view, I dismiss the present revision petition and impose costs of Rs. 5,000.00 , Rs. 2500.00 of which shall be paid to Delhi Legal Aid & Advise Board.

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