

Edwln Brave Vs. Hari Chand

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Court : Delhi

Decided On : Dec-08-1981

Reported in : 21(1982)DLT209; 1982(3)DRJ117; ILR1982Delhi697

Judge : Sultan Singh, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

Appeal No. : Civil Revision Appeal No. 712 of 1980

Appellant : Edwln Brave

Respondent : Hari Chand

Advocate for Pet/Ap. : S.S. Rao and; G.L. Seth, Advs

Judgement :

Sultan Singh, J.

(1) This revision petition under Section 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') is directed against the judgment and order of the Additional Controller dated 21st April, 1980 refusing the petitioner-tenant leave to defend and passing an order of eviction against him. A portion of the premises on the first floor of the property at 41, National Park, Lajpat Nagar Iv, New Delhi was let to the petitioner on 1st December, 1967 on a monthly rent at Rs. 215.00 . The respondent filed the eviction application under Section 14(l)(e) read with

Sections 25A and 25B of the Act on 11th October, 1979 alleging that he was owner of the premises in dispute, that he required the premises for the residence of himself a

(2) This is however another objection to the effect that the eviction application does not disclose any cause of action and as such the same is liable to be rejected under Order 7 rule 11 of the Code of Civil Procedure. Rule 23 of the Delhi Rent Control Rules, 1959 provides that in deciding any question relating to procedure not specially provided by the Act and the Rules, the Controller and the Tribunal shall be guided by the provisions contained in the Code of Civil Procedure. In short rule provides that the provisions contained in the Code of Civil Procedure are applicable to the proceedings under the Rent Control Act. Under Order 7 rule 11 of the Code of Civil Procedure it has been provided that the plaint shall be rejected where it does not disclose a cause of action. In the eviction application under Section 14(1)(e) of the Act one of the essential ingredients for claiming eviction against the tenant required to be pleaded is that the premises were let for residential purpose. This fact, as already stated, was never pleaded by the respondent in the eviction application. In other words, the application for eviction does not contain all the essential ingredient, i.e. the cause of action under Section 14(1)(e) of the Act. The provisions of Order 7 rule 11 (a) of the Code are mandatory. Further Order 7 rule 1 of the Code provides that the facts constituting the cause of action and when it arose shall be pleaded in the plaint. As the petition for eviction does not disclose a cause of action the eviction application is liable to be rejected under rule 11 of Order 7 of the Code. Learned counsel for the respondent-landlord has filed an application (C.M. No. 4095 of 1981) under Order 6 rule 17 of the Code seeking leave to amend the eviction application to add the words, 'the premises in suit were let for residential purposes'. Learned counsel for the petitioner however submits that the eviction application does not disclose a cause of action and as the provision of Order 7 rule 11 of the Code are mandatory, leave to amend cannot be granted. Learned counsel for the respondent however submits that the eviction application contains necessary allegations to show that the premises in suit were let for residential purposes. He refers to paragraphs 4 and 5 of the eviction petition These paras form a part of the Form 'A' prescribed under the said Rules. In para 4 of the form the petitioner is required to state,

'Whether the premises are residential or non-residential'. The respondent-landlord in reply has stated the word 'Residential', This will only mean that the premises in suit are residential. Again in para 5 the form requires the landlord to state, 'In case of residential premises, the number of persons occupying the same and in the case of non-residential premises the purposes for which these are used and the number of employees, if any, working therein'. The respondent in reply to this para 5 states, 'the respondent above named along with his wife and one son is residing in the premises in suit'. Reading these questions and answers contained in paras 4 and 5 of the application, I find that there is no allegation that the premises were let for residential purposes. Para 4 shows the nature of the premises i.e. whether they are residential or non-residential. The premises which are residential may be let for business purposes. Similarly in para 5 if the premises are residential, the landlord is required to state the number of the persons occupying the same. It is only in the case of non-residential premises that the purposes for which these were used is required to be stated. According to the respondent the premises are residential and therefore he stated that the respondent and his family has been residing in the premises. Thus I do not find any allegation in the eviction petition to the effect that the premises were let for residential purposes.

(3) Learned counsel for the respondent next contends that in the form prescribed under the rules no elaborate pleadings are necessary. This may be correct. But the question is whether the ground of eviction constituting the cause of action has been pleaded or not. As already stated, the ground of eviction as contained in Section 14(l)(e) of the Act has not been pleaded. Learned counsel relies upon *Rattan Lal v. Vardesh Chander and others*, : [1976]2SCR906 in support of his plea that the Rent Act contemplates no elaborate pleadings but filing out of particulars in a proforma which takes the place of a plaint. This is so as observed by the Supreme Court but it does not mean that necessary allegations of facts constituting the cause of action are not to be pleaded. Learned counsel then relies upon *Dr. Hans Raj Dawar and another v. Shri Shyam Kishore*, 1977 (2) RLR 253 wherein the learned single Judge of this court has observed that inadequacy of the pleadings was not fatal to the case. In that case the ground of eviction pleaded under clause (h) of the proviso to Section 14(1) of the Act read, 'the tenant has whether before or after commencement of this Act built, acquired, vacant

possession of, or being allotted a residence'. This pleading in that case is a reproduction of Section 14(l)(h) of the Act. The eviction application did not contain any further particulars and therefore the learned single Judge held that failure to give particulars was not fatal. In the instant case the ground of eviction under Section 14(l)(e) of the Act has not been made out at all but in the case of Dr. Hans Raj Dawar and another (Supra) the ground of eviction under Section 14(l)(h) was properly pleaded and it lacked only particulars. This judgment does not help the respondent. Learned counsel next contends that the respondent should be allowed to amend the eviction application. It is true that the amendment should be allowed liberally and should not be refused on technical grounds. Learned counsel refers to *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon*, : [1970]1SCR22 wherein it has been held that the amendment of plaint should not be refused on technical grounds, in that case the suit was brought in the name of the firm under Order 30 rule 1 of the Code. An objection was raised that the firm was unregistered. The plaintiff applied for amendment of the plaint on the ground that Manohar Lal was carrying on business as a Manager of the joint family under business name and that he had filed the suit on behalf of the family in the business name. The Supreme Court allowed Manohar Lal Proprietor-Manager of the firm to be substituted besides other amendments. Learned counsel further refers to *Provabati Kunwar v. Kaiser Kunwar and others*, : AIR1959 Cal642 wherein the plaintiff was allowed to amend the plaint making out an alternative case after it was held by the court that the suit as framed was not maintainable. In *Smt. Batni and others v. Shri Tej Singh*, 1966 Himachal Pradesh I it has been observed that amendment of the plaint seeking alternative relief of possession can be allowed even if it deprives the defendant from taking the plea that the suit was not maintainable. Maintainability of the suit and the disclosing of a cause of action in a plaint are two different things. These authorities are, therefore, not applicable to the facts of the present case.

(4) Lastly counsel for the respondent relies upon *M/s Ganesh Trading Co. v. Moji Ram*, : [1978]2SCR614 . In that case the suit for recovery of money was filed by a firm through a partner. The plaintiff sought an amendment that the suit was filed by one of the partners of the dissolved firm. It was held that the amendment ought to have been allowed and the Supreme Court allowed the same. It has been

observed by the Supreme Court, 'Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent'. Thus am of the view that as rules I and II of Order 7 of the Code are mandatory and as the eviction application does not contain the facts constituting the cause of action, the same is liable to be rejected and amendment cannot be allowed. A similar question had arisen before me. In Dr. (Mrs.) N. D. Channa v. M/s. Hindustan Industrial Corporation, New Delhi, : AIR1981 Delhi305 and I held that the eviction petition was liable to be rejected as the landlord had not pleaded that the petitioner had no other reasonably suitable residential accommodation. The application for leave to amend the petition was also not allowed. I, therefore, hold that the petitioner-tenant was entitled to leave to defend the eviction application but as the petition does not disclose cause of action to enable the landlord to obtain an order of eviction under Section 14(l)(e) of the Act, the petition is liable to be rejected. I accordingly accept the revision petition and rejected the eviction application. This rejection however does not preclude the respondent-landlord from presenting a fresh eviction application in respect of the same cause of action under Order 7 rule 13 of the Code. The respondent shall also be liable to pay costs to the petitioner. Counsel fee Rs. 300.00.

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