

Harish Chander Vs. Krishan Kumar

Harish Chander Vs. Krishan Kumar

SooperKanoon Citation : sooperkanoon.com/694309

Court : Delhi

Decided On : Dec-04-1984

Reported in : AIR1985Delhi70; 1985RLR70

Judge : D.R. Khanana, J.

Acts : Evidence Act, - Sections 17

Appeal No. : Civil Revision Appeal No. 54 of 1978

Appellant : Harish Chander

Respondent : Krishan Kumar

Advocate for Pet/Ap. : G.N. Aggarwal and; S.L. Bhatia, Advs

Judgement :

D.R. Khanana, J.

(1) This Civil Revision has arisen out of an order dated 8.12.77 of Sub Judge whereby it was held that the agreed rent of Rs. 30.00 p.m. for the premises in dispute included electric charges as well.

(2) So far as the status of Krishan Kumar as tenant under Harish Chander, plaintiff in the premises in dispute, the same is admitted. So also the rate of rent. The tenant has, however, asserted that the agreed rent of Rs. 30 p.m. includes electric

charges for the electricity which he consumes in the demised premises. This is refuted by the land-lord, and hence this litigation up to this Court.

(3) It may be relevant to mention that earlier the learned Sub Judge came to the same view that the rent included electric charges. This was in the judgment dated 21.10.1975 when the landlord's suit for the recovery of Rs. 1080.00 towards arrears of rent from 1.12.1971 to 30.11.1974 was decreed. During the course of that judgment the observation was made that the rent of Rs. 30 p.m. included electric chages. The landlord felt aggrieved by that observation, and, thereforee, sought review and pointed out that certain important documents on record which purported to contain admissions of the tenant were not taken into account. That review application was rejected by the trial court, and then the landlord filed a revision before this Court which was decided on 20.5.1977 by V.S. Deshpande. J. (as His Lordship then was). It was observed that the judgment of the trial court was vitiated on account of an error apparent on the face of the record inasmuch as documentary evidence which had the implication of an admission on the part of the tenant and which should have been an important piece of evidence, was not taken into account. Three of the documents Ex. P.1, Ex. D.1 and Ex. D. 2 where required to be considered by the trial court, as such the matter was sent back for their consideration by the trial court. It was thereafter that the impugned order confirming the view earlier taken, was passed.

(4) As this revision has come up for hearing, a preliminary objection has been taken that it is not maintainable, and in support reliance has been placed upon M/S D.L.F. H.&.C. Co. (P) Ltd: V. Sarup Singh 1971 Dlt 115. It was observed that the position seems to be firmly established that while exercising the jurisdiction u/s 115, it is not competent for the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of (he Court to try the dispute itself. The errors contemplated by the words 'illegality' and 'with material irregularity' as used in S. 115(c) it was noted, contemplated breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with.

(5) In order to grasp the full implication of this decision of the Supreme Court in the context of the background of the present case it is necessary to give some more details of the facts. The landlord before instituting this suit served a notice upon the tenant in which there was specific statement that the rent was of Rs. 30 p.m. besides house-tax, electric and water charges. In the reply which the tenant sent to the notice on 16.11.1973, the tenant admitted the status as such, but denied 'that the rent of Rs. 30 p.m. besides the house-tax, electric and water charges'. In the next sentence, it was added that he had been paying Rs. 30 p.m. house rent including the house-tax which was illegal, as the landlord was not authorised to charge house-tax from the tenant. It was also added that the landlord had refused the supply of water from the tap fixed in the premises. From this reply the landlord had pleaded that the tenant had taken the objection to the inclusion of house-tax in the amount of Rs. 30.00 and that there was no specific case set up that the electric and water charges were also included.

(6) The landlord had also referred to a reply which the tenant filed before the Slum Authorities when the landlord had applied for seeking permission for filing ejectment proceedings against the tenant. In that reply, the tenant had mentioned that he had been paying Rs. 30 p.m. inclusive of rent and house tax, while the landlord was not allowed to recover any house-tax from the tenant. There was no mention of inclusion of electric charges in the amount of Rs. 30. In this revision petition the landlord has in para 6 incorporated the corresponding para of his petition before the Slum Authorities, wherein there was a specific mention that the house-tax, electric and water charges were besides the rent of Rs. 30. Mr. S.L. Bhatia, appearing on behalf of the respondent has taken exception to the mention of this paragraph on the ground that the proper course for the landlord was to have obtained certified copy and file that before the trial court. However, the tenant was questioned whether he had any copy of that petition which had been filed before the Slum Authorities by the landlord. He has replied in negative. The landlord has, however, referred to the copy of the writ petition which the tenant had filled in this Court and in which the copy of his petition moved before the Slum Authorities had been filled, and which did bring out the para as mentioned in paragraph 6 of the present revision.

(7) The overall impact of these documents left little doubt that the electric charges were apart from the rent. All through the emphasis by the tenant was that he should not be required to pay house-tax apart from the rent. He was right in his contention as the primary liability for payment of house-tax is of the owner, unless there is a specific contract to the contrary. No such contract has been shown as admittedly there has been no rent deed executed between the parties.

(8) The trial court has laid emphasis on the oral evidence of two witnesses, one of whom stated that the electric charges were included in the rent, and the other stated that on one occasion the rent was accordingly paid. None of them has been, however, able to state what was the exact amount of electric charges that the tenant was paying to the landlord for each and every month. Mr. G.N. Aggarwal has made reference to *Chhote Lal V. Kewal Krishan* 1971 R C.R. 318 (SO), in which it was observed that where the electric charges are not fixed and can only be ascertained at the end of each month, after the electricity consumed is known, while the rent is payable in advance, it is clear that the electric charges cannot be held to form part of the rent.

(9) Where the documentary evidence is available, and there are admissions contained of one of the parties, it is hazardous to place reliance upon oral evidence, more so in a case like the present where the oral evidence does not give any clear picture of the amount of electric charges which were to be included in the rent. The learned trial court, therefore, mis-directed itself in the appreciation of this basic evidence, and ignored it on the ground that an admission in another proceedings cannot be taken into account in any subsequent proceedings. An admission against one's own interest is a valuable piece of evidence against that person, and can in given circumstances, be enough to clinch the matter against him, unless it can be shown to be erroneous. There was thus a basic error committed by the learned trial court. As the facts narrated above will show, earlier the revision in similar circumstances was entertained by Deshpande, J., and I do not see any reason why this revision should not lie.

(10) Another difficulty which, however, has cropped up is that there is a joint matter of two tenants in this property. The contention of the respondent is that he

being per force made entirely liable to pay electric charges and the other tenant is not contributing anything in the same. The landlord, however, does not want to share the burden of the charges of the other tenant, and wants to shift the responsibility in that regard to the respondent and seeks that he should settle the requisite share of the other tenant with that tenant. I am, however, unable to sustain this contention. There is no privity of contract between the two tenants inter se. The other tenancy is the creation of the landlord, and it is, therefore, for him to oblige the other tenant to pay his share of the electricity. It is, therefore, held that the respondent will be obliged to pay his share of the electric bills resultant from the consumption of the electricity from the joint meter of the other tenant.

(11) The decree of the trial court will be considered modified in the light of the observations made above. trial court that the. appellant had deserted the respondent and, therefore, the latter was entitled to a decree of divorce. The appeal is allowed, and the decree of divorce reversed. The appellant will be entitled to costs throughout. Counsel's fee Rs. 1,000.00

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com