

Arvind Berry Vs. A.P.S. Bindra

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Court : Delhi

Decided On : Jan-21-1985

Reported in : AIR1985Delhi248

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Second Appeal No. 288 of 1984

Appellant : Arvind Berry

Respondent : A.P.S. Bindra

Advocate for Pet/Ap. : P.P. Malhotra,; Ravi Sudan,; I.S. Mathur and;

Judgement :

Sultan Singh, J.

(1) This Second Appeal under Section 39 of the [Delhi Rent Control Act, 1958](#) (for short 'the Act') by the tenant is directed against the judgment and order dated 23/5/1984 of the Rent Control Tribunal confirming the order dated 16/2/1984 of the Additional Rent Controller. The question for decision is : Whether the order for eviction of the appellant dated 7/1/1980 is a nullity and not executable

'Statement of tenant: Statement of Arvind Berry on S.A. I admit the necessity of the petitioner as he has no other suitable residential accommodation. The petitioner;' is the owner of the premises. Eviction order may be passed in favor of the petitioner. However, I may be given time to vacate the premises till 31/10/1984. In the meantime I shall pay rent/damages for use and occupation at Rs. 1,500.00 p.m. w.e.f. 3/1/1980 I undertake to hand over the vacant possession to the petitioner on or before 31/10/1984. In case I do not pay rent/damages for use and occupation for 2 months consecutively the petitioner shall be at liberty to take execution proceeding at once against me. I shall abide by the terms and conditions of compromise application Ex. P. 1. Parties be left to bear their own costs. sd/- Rent Controller. Delhi 7-1.1980"

Statement of landlord : Statement of Rear Admiral A.P.S. Bindra on S.A. : I have heard the statement of the respondent. The same is correct. The respondent may be granted time till 31/10/1984 Ex. P. 1 bears the signatures of both the parties. Parties may be left to bear their own costs. sd/- Rent Controller, Delhi 7/1/1980'

(3) The Rent Controller passed the following order on 7/1/1980 :

'7/1/1980: Present : Counsel for the parties. Order: The petitioner has sought eviction of the respondent from the premises detailed in para 8 of the petition on the ground of personal bona fide requirement. From the material on record, as well as in view of the statements of the petitioner as well as respondent who has admitted the service of notice, the ownership of the petitioner and the purpose being residential as well as the factum of the petitioner having not in possession of any other reasonably suitable accommodation and the need of the petitioner being bona fide, I hereby pass an eviction order against the respondent. I am also satisfied that the petitioner requires the premises bona fide. However, the execution order will not be executable before 31-1-1984. sd/- Announced. J.D. Kapoor R.C. Delhi.'

(4) On 27/1/1984, the appellant filed an application under section 152 read with Section 151 of the Code of Civil Procedure stating that the parties had agreed that the order would be executable after 31/10/1984 but in the order time to vacate was given only up to 31/1/1984. The appellant, therefore, prayed for correction of the

date. It was also stated that the respondent had acquired possession of the ground floor of the suit property, thus his requirement had since been satisfied. It was further stated that when the compromise was recorded, the respondent had played a fraud because he knew that the ground floor was going to be vacated by the tenant therein. The eviction order, he pleads, was thus not executable. The respondent contested the application. The Additional Controller by order dated 16/2/1984 held that there was a clerical mistake and the time to vacate had been granted up to 31/10/1984. Other pleas of the appellant were rejected. On appeal, the Rent Control Tribunal by order dated 23/5/1984 confirmed the order of the Additional Controller.

(5) At the time of admission of this Second Appeal it was submitted that neither there was any allegation nor any evidence on record that the premises in the suit were let for residence. The appeal was admitted. The appellant also filed an application (C.M. No. 4689/84) for leave to amend the grounds of appeal to raise the question that the eviction petition did not disclose any cause of action as it was not pleaded that the premises were let for residential purpose and that the petitioner was the owner of the same; and therefore, the eviction petition was liable to be & dismissed and the eviction order passed on compromise between the parties was without Jurisdiction, nullity and not-executable. The learned counsel for the respondent filed reply. A question of law had been raised in this application : What is the effect of failure to disclose cause of action in the eviction petition and passing of an eviction order based on compromise on the basis of such a petition. After hearing the parties I had allowed the learned counsel to argue the point.

(6) Learned counsel for the appellant has raised the following points:

(1) The eviction Petition did not disclose any cause of action for an eviction order under Section 14(1)(e) of the Act and as such, the Controller had no jurisdiction to pass an order of eviction and the eviction order passed on the basis of compromise, is thus without jurisdiction, non-est, nullity, void and not executable.

(2) The order of eviction was obtained by playing fraud upon the court because at the time of entering into compromise the landlord knew that the ground floor of the

premises was being vacated and his need, if any, would be satisfied. (3) The landlord does not require the premises any more, he having already acquired vacant possession of the ground floor and considering the subsequent events and facts it be held that the eviction order is not executable.

(7) The question is : Whether the Compromise order of eviction dated 7/1/1980 is a nullity and not executable The learned counsel for the appellant submits that the eviction petition did not disclose a cause of action. The Additional Controller in the absence of allegations, constituting the cause of action for the passing of an order of eviction under Section 14(1)(e) of the Act, in the petition, had no jurisdiction to order eviction. He submits that without a plea, no amount of evidence can be looked into and in the absence of necessary pleadings, no order of eviction can be passed.

(8) Section 14(l)(e) of he Act is as under :

'14(1). Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or controller in favor of the landlord against a tenant : Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely: (a) xxx xxx xxx (b) xxx . xxx xxx (c) xxx xxx xxx (d) xxx xxx xxx (e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him. If he is the owner thereof or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation : Explanationn : For the purposes of this clause, 'premises let for residential purposes' include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes ; (f) xxx xxx xxx'

To appreciate the argument of the learned counsel for the appellant, it is necessary to state further facts. The application for eviction is titled as

'EVICTION of Tenant under Section 14(1)(e) of the Delhi Rent Control Act'. Para 18(a) mentions the ground on which the eviction of the tenant was sought. It reads as under : 'That the petitioner is holding the Rank of Rear Admiral in the Indian Navy and is at present posted at Delhi. The petitioner is retired from Indian Navy on 28-2-1978. The petitioner, for the time being, is occupying government accommodation which he will have to vacate on his retirement from active service. The petitioner, therefore, requires the premises bona fide for himself and for the residence of his family as the petitioner has no other suitable accommodation for his residence.'

(9) In the written statement, there is no objection that the eviction petition does not disclose any cause of action. As already stated, the landlord examined himself as A.W. 1 besides six other witnesses. The landlord has deposed that he is the owner of the suit premises, that he has no other property except the property in suit, that he retired on 28/2/1978, that his family consists of himself, his wife, one married daughter and one son of marriageable age, aged about 24 years, that the premises were given for residential purpose, that he requires the premises for the residence of himself and his family, that when he vacated the government accommodation, he moved into Room No. 14 Gymkhana Club. The tenant as R.W. I has deposed that the landlord has been comfortably residing in the club premises, that the accommodation is adequate and reasonably suitable, that he does not require the premises for his own residence and he wants to increase the rent only.

(10) In the compromise application dated 2/1/1980 the tenant admitted that on the evidence led or otherwise by the landlord, he was satisfied that he required the suit premises bona fide for his residence, he had no suitable residence he was the owner of the premises, and if any other portion would fall vacant in the building before 31/10/1984, the eviction order would not become invalid or inoperative. The tenant undertook to vacate and hand over possession on or before 31/10/1984. On record, there is a letter dated 15/1/1976, Ext. A.W.1/10 by the tenant to the landlord wherein the tenant had stated that the premises would be used only for his residence. From the pleadings of the parties, oral and documentary evidence on record, compromise application, statements in support of compromise

application, it is established that (a) the suit premises were let for residential purposes, (b) they are required by the landlord for his residence and the residence of his family, (c) he is the owner of the premises and (d) he has no other reasonably suitable accommodation. These are the requirements under Section 14(1)(e) of the Act for the passing of an order of eviction. The Rent Controller at the time of passing of eviction order on 7/1/1980 on the basis of record in this case satisfied himself that the ground of eviction was available.

(11) It is now well established that an order for eviction based on compromise is not void, but good and enforceable if the tenant while entering into compromise admits on record the existence of facts, either proved or admitted which entitled the landlord to an order of eviction on any one of the grounds of eviction under the Act. In *K.K. Chari v. R.M. Seshadri*, : [1973]3SCR691 , it has been observed as under:

'THE true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact viz. the existence of one or more the conditions mentioned in Section 10 were shown to have existed when the court made the order. Satisfaction of the Court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based. It is no doubt true that before making an order for possession the court is under a duty to satisfy itself as to the truth of the landlord's claim if there is a dispute between the landlord and tenant. But if the tenant in fact admits that the landlord is entitled to possession on one or other of the statutory grounds mentioned in the Act, it is open to the court to act on that admission and make an order for possession in favor of the landlord without further enquiry. It is no doubt true that each case will have to be decided on its own facts to find out whether there is any material to justify an inference that an admission, express or implied, has been made by the tenant about the existence of one or other of the statutory grounds.'

(12) In *Nagindas Ramdas v. Dalpatram Ashram alias Brijram and others*, : [1974]2SCR544 , it has been further observed that the material for the satisfaction of the court may take the shape either of evidence recorded or produced in the case, or it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself, and that admissions, if true and clear, are by far the best proof of the facts admitted and they by themselves can be made the foundation of the rights of the parties.

(13) In *Smt. Nai Bahu v. Lala Ramnarayan & Others*, : [1978]1SCR723 , it has also been observed that the court is to be satisfied about the compliance with the statutory requirements on the totality of facts of a particular case bearing in mind the entire circumstances from the stage of pleadings up to the stage when the compromise is affected. In that case a compromise decree in eviction suit under the Rent Act was passed and it was held that there was sufficient material to show that the trial court applied its mind and was satisfied that it was a valid decree under the Rent Act could be passed. The learned counsel for the appellant, however, refers to the following observation in this judgment:

'THE court is satisfied whether a statutory ground for eviction has been pleaded which the tenant has admitted by the compromise'.

Learned counsel submits that as the ground of eviction pleaded in the present case does not constitute a cause of action within the meaning of Section 14(l)(e) of the Act, the compromise is invalid. In this judgment, as already stated, it has been held that the totality of facts of a particular case from the stage of pleadings up to the stage when the compromise was affected has to be taken into consideration. This judgment nowhere lays down that if the ground of eviction had not been properly pleaded, an order of eviction cannot be passed on the basis of evidence, admissions and other circumstances on the record.

(14) Learned counsel for the appellant refers to the judgment in *Abdul Hamid and another v. Nur Mohammad*, : AIR1976 Delhi328 . This was a case for eviction under Section 14(1)(e) of the Act. The landlord had failed to plead that 'he has no other suitable residential accommodation'. It was observed that without making necessary allegation laid down under Section 14(1)(e) of the Act, there will be no

jurisdiction for a Rent Controller to order for eviction and that the conditions stated therein must be strictly established before jurisdiction can be exercised under the Act, to order eviction of any tenant. In this case, order of eviction was not passed. It is not a case where the order of eviction was a nullity. On the contrary, it was held that no ground was made for eviction under Section 14(1)(e) of the Act. Learned counsel for the appellant next refers to *Ramkarandas Radhavallabh v. Bhagwandas Dwarkadas*, : [1965]2SCR186 wherein it has been observed that if the plaint discloses no cause of action the court cannot pass any decree in favor of the plaintiff. This was a case under Order 37 of the Code of Civil Procedure. Order 37 Rule 2(2) of the Code contemplates that the court would accept the statements in the plaint as correct and on these statements pass such decree as the plaintiff may in law be entitled. This case does not advance the argument of the appellant.

(15) In *Dr. (Mrs.) ND. Khanna v. M/s. Hindustan Industrial Corporation, New Delhi*, : AIR1981 Delhi305 it has been observed that in an eviction petition under Section 14(1)(e) of the Act if one of the ingredients were not pleaded, it amounted to non-disclosure of cause of action and eviction petition was liable to be rejected. In that case, the tenant had raised the plea that the eviction application did not disclose a cause of action. On this ground, the eviction petition was rejected. In the case in hand, no such plea was raised by the Court in his written statement, in his objections before the Controller or in the grounds of appeal before this Court except by a separate application C.M. No 4689 of 1984.

(16) Learned counsel for the appellant further argues that the purpose of letting the suit premises was not pleaded. The evidence of the landlord was recorded without any plea. He says that though documentary evidence in the form of Ext.A.W. 1/10 wherein tenant admits that premises will be used for residence is on the record, but the same cannot be looked into. According to him, it is well established principles of law that no part of evidence can be looked into on a plea which was never raised. The principle is no doubt true, but the facts of each case have to be considered. It has to be seen whether any prejudice was caused to a party in case of failure of proper pleadings. In *Nagubai Ammal and others v. B. Shama Rao and others*, : [1956]1SCR451 , it has been observed that evidence led on issues on which the parties actually went to trial should not be made the

foundation for decision of another and different issue, which was not present to the minds of the parties and on which they had no opportunity of adducing evidence. It has been further observed that such a rule has no application to a case where parties go to trial with knowledge that a particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating thereto. In the instant case, the appellant-tenant himself placed on record the letter Ext. A.W. 1/10 dated 15/1/1976 showing that the premises were let to him for use as residence. He was also aware of the ground of eviction under Section 14(1)(e) of the Act.

(17) In the present case, the appellant and the respondent knew all the pleas in dispute to be proved. It seems to me that if a plea is not specifically made and it is known by implication to the parties, the mere fact that the plea was not specifically taken in the pleadings would not necessarily disentitle the party, if it is satisfactorily proved by evidence and no prejudice was caused.

(18) In the instant case, the appellant-tenant did not plead that the eviction application did not disclose any cause of action. The evidence was led without any objection regarding absence of plea. The compromise was affected and it was submitted by him that on the basis of evidence on record and otherwise, a decree against him under Section 14(1)(e) of the Act be passed. As already stated, there is sufficient material on record to substantiate all the ingredients required to be proved for an order of eviction under Section 14(1)(e) of the Act. Thus, it cannot be said that failure to plead all the ingredients of the Section 14(1)(e) of the Act in the present case resulted in any prejudice to the appellant and as such eviction order cannot be set aside and cannot be held unexecutable. The plea of non-disclosure of cause of action within the meaning of Order 7 Rule 11 of the Code of Civil Procedure ought to have been raised at the earliest. If it had not been raised, it is deemed to have been waived. In the instant case, no such plea was ever made. Had a plea been raised, the respondent would have taken steps to amend the petition. He is now in Second Appeal taken by surprise. A party cannot be allowed to raise such a plea in Second Appeal or Revision at the time of execution after about 7 years of the institution of the eviction case, specially where no prejudice has been caused to him. (See: Smt. Kaushalya v. Mangtoo and another, 1969 Plr

(Del) 117 Paramjit Singh & Others v. Bawa Gurdas Ram and Others, 1978(2) R.C.J. 40 and Shri Gurdial Nagdev v. Smt. Devi Bai, 1979 (1) R.C.R. 119

(19) Learned counsel for the appellant next submits that if an eviction petition does not disclose a cause of action and an order of eviction is passed, the order is without jurisdiction, non-est and nullity in the eye of law and as such not executable. He refers to the judgment in Prem Kumar v. Grehpal Singh & Others, 1974 R.C.J. 505 where the fact that the landlord has no other reasonably suitable accommodation was not pleaded. In that case, there was no material on record in support of the various ingredients constituting the cause of action under Section 14(1)(e) of the Act. There was no material on record that the landlord had no other reasonably suitable accommodation. In those circumstances it was held that the eviction order based on compromise was a nullity.

(20) The learned counsel then refers to M.D. Oswal Hosier v. Swami Krishna Nand Govinda Nand Bhagwat Dham Ashram Trust, : 1982(3)DRJ122 wherein the order of eviction was passed under Section 22 of the Act, on the basis of compromise, but there was no material on record to substantiate that the landlord was a public institution. In other words all the ingredients to be proved under Section 22 of the Act were not available on record to the Controller at the time when he passed the order of eviction. Under these circumstances, it was held that the order of eviction was a nullity.

(21) Learned counsel next refers to Union of India v. Tarachand Gupta & Bros., : 1983(13)ELT1456(SC) , wherein it has been observed that a determination which takes into consideration factors which the officer has no right to take into account, is no determination. He submits that in the present case, the Controller has taken into consideration the fact that the premises were let for residence although he has no right to take this fact into consideration as there was no plea. I do not agree. The Supreme Court has made this observation in connection with a license for the import of goods. The facts of that case are not at all applicable to the facts before me. Learned counsel for the appellant also refers to R. v. Fulham, Hammersmith and Kensington Rent B. Tribunal, 1953 (2) All E.R. 4. and Anisminic Ltd. v. The Foreign Compensation Commission & another, 1969(1)All E.R. 208 in support of

his submission that the Controller had no jurisdiction to pass the order of eviction in the absence of necessary pleadings. These cases have no relevancy to the case before me. It is, therefore, not necessary to discuss them.

(22) The learned counsel submits that if an order of eviction is passed without jurisdiction, it is a nullity. Nullity means an order passed by a Court which lacks inherent jurisdiction. If an order has been passed, it may be wrong in law, but if a court had jurisdiction over the subject matter and the parties, it may decide the same rightly or wrongly. In those circumstances it cannot be said that a wrong order passed in the exercise of jurisdiction is a nullity. In *R. Krishnamurthy v. S. Parthasarathy and another*, Air 1949 Mad 780 a distinction has been pointed out between 'want of jurisdiction' and 'error in exercise of jurisdiction'. A decree would be absolutely null and void if there was inherent want of jurisdiction, but if the want of jurisdiction is on grounds to be determined by the court itself, the decree could not be set aside by collateral proceedings. If the question which is alleged to create the want of jurisdiction, is which the court is bound to decide, the matter is not one relating to jurisdiction; and if there is any error in the decision, it can only be remedied by an appeal or other proceedings known to law. In *Ittyavira Mathai v. Varkey Varkey and another*, : [1964]1SCR495 , a decree was passed in a suit barred by time but the court had jurisdiction over the party and the subject matter : Decree was not held to be a nullity. In *Dhirendra Nath Gorai v. Sudhir Chandra Ghosh and others*, : [1964]6SCR1001 , it has been observed that the safest rule to determine what is an irregularity and what is nullity, is to see whether the party can waive the objection. If he can waive it, it amounts to an irregularity, if he cannot, it is a nullity. In the present case, the question whether the eviction application did not disclose a cause of action was one which the tenant could waive and he waived. The exercise of jurisdiction by the Additional Controller for want of proper pleadings is thus only an irregularity and not a nullity. In *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others*, : [1971]1SCR66 , it has been held that an executing court cannot go behind a decree even if it is erroneous in law or on facts. It has been observed that the objection as to the validity of a decree on grounds of jurisdiction cannot be raised for the first time if the question depends on investigation of facts.

(23) The argument of the learned counsel is that the order of eviction is contrary to law as there were no proper pleadings. But such a contention does not go to jurisdiction and is not entertainable after the passing of the decree in the course of proceedings for execution or otherwise. He submits that an objection that a decree was a nullity can be raised at any stage of the proceedings. It is true that such an objection can be taken at any stage but the plea must pertain to inherent lack of jurisdiction rendering the court incompetent to try the case. Even then the objection can be entertained if it is patent on the face of the record and court will not investigate into the question of fact. The property in question was within his jurisdiction and the ingredients on the basis of which the Controller had jurisdiction to pass an order of eviction under Section 14(1)(e) were available on record duly proved or admitted at the time when the eviction order on the basis of compromise was passed. There was no inherent lack of jurisdiction. It is not a nullity.

(24) Learned counsel for the appellant next submits that the landlord has acquired accommodation on the ground floor of the property in suit and his need stands satisfied. He submits that the subsequent events can be taken into consideration and it be held that the order of eviction is not executable. I do not agree. In *Syed Asodullah Kazmi v. The Additional District Judge and others*, : [1982]1SCR77 , it has been held that if an order for eviction had become final, subsequent events could not be taken into consideration to reopen the same. In that case an order of eviction of a tenant from a part of the premises became final by order of the Supreme Court. There was death of the landlord before obtaining possession. A writ was filed to reopen the proceedings. It was held that in such circumstances, subsequent event could not be taken into consideration.

(25) In *Sitam Ram v. Jai Baboo*, 2nd 1973 (2) Del 548 a Division Bench of this Court held that a tenant against whom a decree for eviction on the ground of personal need of the landlord was passed under the Act is not entitled to agitate at the stage of execution that the personal need of the landlord had ceased to exist and the decree, therefore, was inexecutable. That was a case for a decree for eviction under Section 13(1)(e) of the Delhi & Ajmer Rent Control Act, 1952 similar to Section 14(1)(e) of the present Act.

(26) Lastly, the learned counsel for the appellant submits that the eviction order was obtained by fraud as on the date when the compromise was entered into the landlord was in the knowledge that he was going to get vacant possession of the ground floor premises. This ground is not available to the appellant. No particulars of alleged fraud have been pleaded and such a plea is not available in executing court. The appellant in the compromise application had agreed that in case any other portion falls vacant in the building or the landlord acquires any other accommodation before 31/10/1984, the eviction order would not become invalid or inoperative. In view of this compromise there is no question of any fraud by the landlord. All the points raised by the appellant are not sustainable in law.

(27) The appellant at the time of passing of eviction order on the basis of the compromise had given an undertaking to vacate the premises up to 31/10/1984. This appeal was admitted on 19/9/1984, but at the time of passing order for stay of dispossession of the appellant, the appellant had agreed to give an undertaking that in case of dismissal of his appeal, he would vacate the premises within the time to be granted by the Court. He filed an affidavit dated 5/11/1984 giving an undertaking to this Court that he would vacate the premises within the time to be fixed by Court in case of dismissal of his appeal. This appeal has no merit and is dismissed. The appellant is granted one month to vacate. He is directed to hand over vacant possession of the premises to the respondent within one month from today, as per his undertaking dated 5/11/1984. No order as to costs of this appeal.