

Prem Kumar Khullar Vs. Vijay Kumar Gupta

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Court : Delhi

Decided On : Jul-18-1994

Reported in : 57(1995)DLT357; 1994(30)DRJ643; 1994RLR525

Judge : Usha Mehra, J.

Acts : Delhi Rent Control Act - Sections 14C; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 9, Rule 13

Appeal No. : Contempt Civil Petition No. 258 of 1993

Appellant : Prem Kumar Khullar

Respondent : Vijay Kumar Gupta

Advocate for Pet/Ap. : L.K. Bhushan and; P.N. Bhardwaj, Advs

Judgement :

Usha Mehra, J.

(1) The present controversy revolves around the statement of the petitioner that he would withdraw all his pending cases within one month from the date of the last receipt of the Installment of arrears of rent. Mr.P.N.Bhardwaj, counsel for respondent contended that since -all the cases which were stated in the statement of respondent had not been withdrawn by the petitioner within one month, therefore, the respondent stood absolved from his undertaking given to the Court

dated 19th April,1991. Hence, no contempt proceedings can be initiated against him.

(2) Shri Prem Khullar, petitioner herein, had filed eviction petition against M/s Karam Chand Thapar & Bros. and Anr. Order of eviction was, however, passed against the said firm only by the Rent Controller on 6th November,1990. So far as the respondent No.2 Sh.Vijay Kumar Gupta, order of eviction was not passed against him. After the eviction order the landlord took out execution. Against the execution the present respondent i.e. (respondent No.2 before the trial court) filed an application under Order 9 Rule 13, Cpc, read with Section 25B of the Delhi Rent Control Act (in short the D.R.C. Act) for setting aside the eviction order. He sought opportunity for filing leave to defend affidavit/ application. Objection under Section 25 of the D.R.C. Act read with Rule 98 & 99 Civil Procedure Code were also filed by the present respondent on 29th January,1991. The said objections when came up for consideration before the Rent Controller, present parties entered into compromise which was recorded by the Rent Controller on 19th April,1991. Pursuance to the said compromise the present respondent accepted the decree of eviction and undertook to be bound by the same provided he was allowed to vacate the premises in question or before 31st August,1993. When the respondent failed to vacate the premises as per his undertaking given to the Rent Controller, the landlord has initiated this contempt proceedings.

(3) In order to appreciate the relevant contentions and counter contentions raised by the counsel for the parties it would be expedient to reproduce the statement made by the parties before the Rent Controller, the undertaking given by the respondent and the acceptance of the same by the Court. Statement of Sh. Vijay Kumar Gupta Respondent herein on S.A.

'SINCE the petitioner has agreed to accept me as tenant under him on the conditions that I will pay him the entire arrears of rent amounting to Rs.1,58,000.00 for the period up to 30th April,1991 within a period of five months.....etc. One month security will be adjusted at the time handing over possession. In view of the compromise between the parties I will withdraw my objection filed in the execution petition and my application under Order 9 Rule 13, Cpc, and another application

under Section 151, Cpc, and undertake to vacate the premises in dispute on 31st August,1993. I undertake to pay the rent and electricity and water charges to the authorities concerned as per the bills and also undertake not to sublet or part with possession of the premises in dispute. I admit the site plan filed in the original petition .is correct. This statement is subject to the withdrawal of other cases filed by Shri P.K.Khullar and by M/s Karam Chand Thapar & Bros..... In case there are two consecutive defaults in payment of the rent the eviction order shall be executable immediately and if I fail to deposit the entire arrears of rent by 18th Septembcr,1991 the eviction order will be executable against me. Since I am accepted as a tenant by the petitioner I accept the decree passed against me.'

Statement of Sh. P.K. Khullar Petitioner, on S.A.

I have heard the statement of respondent / Jd No.2 and in view of his statement for making the entire payment of arrears of rent and undertaking to vacate the premises on 31st August,1993, I accept him as tenant and decree be passed against him. Time be granted to respondent No.2 to vacate the premises on 31st August,1993. I undertake not to claim the amount of rent from respondent No.1 M/s Karam Chand Thapa & Bros. in the civil suit as mentioned in the statement of respondent / Jd No.2 if the arrears of rent are paid as per undertaking. I undertake to withdraw all my other cases against Sh.Vijay Kumar Gupta and M/s Karam Chand Thapar & Bros. after the arrears of rent are cleared within one month after the receipt of the final Installment of arrears of rent. In case of any of my cases is not withdrawn against the respondent No.2 he will not be bound by his undertaking. I also undertake not to claim any rent from M/s Karam Chand Thapar & Bros. on account of arrears of rent from 11th December,1977 onwards till vacation of the premises by respondent No.2.....'

(4) On the basis of this undertaking, the Court, on 19th April,1991, after citing the facts of the case passed the following order :-

'I find that the compromise is in the interest of both the parties. The undertaking given by the Jd is accepted. The eviction order passed in petition bearing No.758/89 will be executable against him as per his undertaking. Since the objections have been withdrawn they are dismissed as withdrawn. The application

under Order 9 Rule 13.CPC, has also been withdrawn. The same is also dismissed as withdrawn. Since the matter has been compromised, the question of stay does not arise. The parties are bound by their respective statements and the undertaking given to the Court. From the statement of the parties I hold that now from today onwards the Jd No.2, the tenant under the Dh will pay rent of Rs.1,000.00 per month and that the respondent is granted time to vacate the suit premises on or before August 31st, 1993. The respondent is further directed to pay the entire arrears of rent on or before 18th September, 1991 as per schedule of payment given by him in his statement recorded today in this Court, and in case of any two consecutive defaults or failure to pay the entire arrears of rent by September 18, 1991, the order of eviction shall immediately be executable against the JD. The Dh will also withdraw the petitions filed by him against the Jd No.2 and in case he fails to withdraw the said petitions after receiving the entire arrears of rent by September 18, 1991, in that even the Jd No.2 will not be bound by his undertaking.'

(5) Mr. L.K. Bhushan, Advocate appearing for the petitioner contended that as the petitioner had withdrawn all the cases before 31st August, 1993, the respondent cannot wriggle out of his undertaking nor can he, after taking advantage of the compromise, be permitted to violate the same. He cannot be allowed to get out of the compromise or can take advantage of the non withdrawal of all cases within one month. In fact it was not the condition precedent of the respondent's statement to the Court that the cases filed by petitioner must be withdrawn within one month from the last date of payment of arrears., The time of withdrawal of cases was not the essence of the undertaking. The essence of his statement was that cases filed by him would be withdrawn after the final arrears of rent paid, but definitely before the date of eviction the premises so that no prejudice be caused to the respondent. That is the reason that the Court after recording the undertaking while passing the order nowhere stipulated that if petitioner did not withdraw all cases filed by him against the respondent within one month from the last date of the receipt of the arrears of rent, the respondent would be absolved or that the eviction decree would not be operative or executable against him. The order is very specific when it is stated that the decree holder will withdraw the cases filed by him, but no period specified by which time the cases be withdrawn. In fact it was

the undertaking given by the respondent which was accepted by the Rent Controller. Respondent's undertaking was only to the effect that if all cases were withdrawn by the landlord filed against him and J.D.No.1, he would vacate the premises by 31st August,1993. It was not a condition precedent in the undertaking given by the respondent and accepted by the Court, that the landlord must withdraw all the cases within one month or that if landlord failed to do so then respondent would be liable to eviction and that he would be absolved of his undertaking nor it formed part of the order of the Court dated 19th April,1991. The statement of the parties was very clear i.e. that after the final Installment was paid by the respondent the petitioner would withdraw all the cases. In any case, before the date of vacating the premises i.e. 31st August, 1993, all the cases have been withdrawn by the landlord. It is not proper for the respondent now to state that he stood absolved from his undertaking given to the Controller.

(6) The contention of Mr.Bhardwaj counsel for respondent that the vacation of premises by the respondent by 31st August,1993 was linked with the withdrawal of all cases within one month, to my mind, cannot be substantiated on the basis of the facts which have come on record. The undertaking given by the respondent Mr.V.K.Gupta, was accepted by the Rent Controller. In his undertaking he specifically undertook to vacate the premises in dispute by 31st August,1993. The only condition stipulated by him was that the petitioner would withdraw other cases filed against him and M/s Karam Chand Thapar & Bros. numbering seven details of which was given. This the landlord was to do after receipt of final Installment of arrears of rent. Respondent nowhere in his undertaking stated that if these seven cases were not withdrawn within one month he would not vacate the premises. Hence now it does not lie with him to use this as an excuse to get out of his undertaking given to the Court. He had undertaken to vacate the premises by or before 31st August,1993, if this much period was given to him and also that other seven cases filed by the petitioner be withdrawn he was to be absolved of his undertaking only when he could prove that those seven cases have not been withdrawn. It has not been the case of the respondent that these seven cases as mentioned by him in his statement were pursued by the petitioner even after making statement in the Court or that the petitioner took any steps in those cases. All those seven suits mentioned in the statement of the respondent were either suit

for recovery of rent or for damages for use and occupation or an eviction petition under the D.R.C. Act. In view of the compromise arrived at between the parties and the undertaking given by the respondent on 19.4.91, Mr. Bhushan rightly contended that those cases in fact had become infructuous. So far as the schedule of payment by the respondent was concerned, the time was the essence of the undertaking and the schedule was accepted by the petitioner while accepting the undertaking of the respondent. But so far as the time of withdrawal of the cases was concerned no such schedule was fixed nor time was the essence nor such an order was passed by the Rent Controller as is apparent from the reading of the para 7 of the order of the Rent Controller. The only condition imposed by the Controller was that 'Decree holder will also withdraw the petitions filed by him against Jd No.2 and in case he fails to withdraw the said petitions after receiving the entire arrears of rent by 18.9.91 in that event Jd No.2 will not be bound by his undertaking (underlining is mine). This order of the Rent Controller dated 19th April, 1991 clearly indicates that the Controller was fully conscious of the duty the decree holder had to discharge after receiving the rent and under what circumstances the respondent would be absolved of his undertaking given to the Court. That if the decree holder, the present petitioner fails to withdraw all the cases after receipt of arrears of rent then of course the respondent would not have been bound by the undertaking given by him to the Rent Controller. The Rent Controller in his order nowhere stipulated that cases were to be withdrawn within one month. Therefore, it cannot be said that one month was the condition precedent of withdrawal of the cases or that this condition was accepted by the Controller while accepting the undertaking of the respondent on 19th April, 1991. The respondent after having taken the advantage of three years' period for vacating the premises, to my mind, cannot be permitted to turn round and say that he is now not bound by the undertaking given by him to the Controller. As already observed, all the seven cases already stood withdrawn prior to 31.8.93, therefore, the defense set up by the respondent to my mind, is an after thought. He wants to wriggle out of the undertaking given by him which cannot be permitted either on facts or on law. The acceptance of the undertaking of the respondent was unconditional. Even while discussing the undertaking of the respondent and the statement made by the petitioner, the Controller did not stipulate that those

seven cases were to be withdrawn within one month failing which undertaking would come to an end. The Controller left it open to the petitioner, decree holder, to withdraw those cases but inadvertently before the date of vacation and if he fails to do so only then respondent herein would have been absolved of his undertaking. thereforee, the interpretation .which Mr.Bhardwaj has given to the undertaking given by the respondent cannot be accepted.

(7) The other objection raised by Mr.Bhardwaj that the decree of eviction not binding on the respondent is also without force. In fact the respondent filed objection against the eviction order under Section 25 of the D.R.C. Act read with Order 21 Rule 98 & 99, Cpc, and Section 151, Cpc, wherein he claimed himself to be the actual and direct tenant of the petitioner and sought declaration that he be declared tenant of the petitioner and till then decree of eviction passed against the Jd No.1dated 6.11.90 be not executed against him. These objections on account of the compromise arrived at between the parties dated 19.4.91 were dismissed as withdrawn. The present respondent accepted the decree of eviction passed in favor of the petitioner. Now, therefore, the respondent is estopped from challenging that decree by claiming that since he was not a party to the eviction petition, thereforee, the decree of eviction is not binding on him. This objection of the respondent is self contradictory and contrary to the undertaking given by him to the Rent Controller on 19.4.91.

(8) Mr. Bhardwaj further raised the objection to the decree on the ground that the bonafide requirement of the petitioner was not considered by the Controller hence the decree passed against the present respondent on the basis of the compromise recorded on 19th April,1991 is a nullity. This argument is also without force. In fact the Controller after recording the evidence and going through the pleadings passed the eviction decree under Section 14C of the D.R.C. Act. The said petition was contested by M/s Karam Chand Thapar & Bros. It is only at the execution stage that the present respondent filed objections and contested the decree vide his application under Order 9 Rule 13, Cpc, and under Section 25B read with Order 21 Rule 98 & 99, Cpc, which he subsequently withdrew and accepted the decree passed against the respondent No.1 under Section 14C of the D.R.C. Act. thereforee, the submission of Mr.Bhardwaj that the ground of eviction having not

been satisfied before the compromise decree was passed, is without merits. The decree of eviction was passed after contest. The Controller upheld the . bonafide needs of the landlord and, therefore, passed the decree, which decree without protest was accepted by the present respondent. Hence it cannot be said that the Rent Controller had not applied his mind before passing the eviction decree or that he did not take into consideration all the essential ingredients of Section 14C of the D.R.C.Act. Reliance by Mr.Bhandari on Supreme Court's decision in : AIR 1970 SC794 is of no help to him. The facts in that case are distinguishable. As already observed and for the sake of repetition it is pointed out that in the instant case the decree was passed after contest and it was not a mere compromise decree. Nor the decree was passed dehere the provisions of Sub Section 14C of the Act as was the case in Nagindas Ramdas Vs . Dalpatram Iccharam alias Brijram and ors. : [1974]2SCR544 . In that case the decree was passed before the Court was satisfied that the provision of Section 14C were made out or not. But that is not the case in hand.

(9) Mr. Bhardwaj's objection that order of eviction dated 19.4.91 is not final is also without force. Mere pendency of an application under Section 152 Cpc, seeking correction to the effect that respondent should not be shown as judgment debtor No.2 does not mean that decree is not final. Merely because of this correction, the order of 19th April,1991 cannot be said to be under challenge, rather in the concluding sentence of his undertaking, the respondent has accepted the decree passed in favor of the petitioner, therefore, order dated 19th April,1991 became final, between the parties. In the application under Section 152 Cpc the respondent has not taken the plea that the order of the Controller dated 19th April,1991 suffers because the Controller did not impose the time of withdrawal of the suits within one month by the petitioner as the condition precedent. Hence, the oral submission of Mr.Bhardwaj in this regard cannot be accepted. It has never been the case of the respondent that the petitioner should or ought to have withdrawn the seven suits within one month of 18th September, 1991. The order also does not indicate time limit for withdrawal of these suits. Reading of para 6 of the application filed under Section 152 Civil Procedure Code shows that the respondent was aware of the fact that no time frame or time limit was imposed for the withdrawal of the cases by the petitioner. Said para is reproduced as under :-

'6.That although in the statement of the respondent Jd No.2, for making payments were 18th May, 18th June, 18th July, 18th August and 18th September, 1991 yet the Hon'ble Court observed that June being the month of Vacation the payments would be made on 21.5.91, 1.7.91, 10.7.91, 19.8.91 and 16.9.91 and the Court will fix the case on those dates so that all the arrears of rent are paid in the Court. Obviously meaning thereby that the concerned file will not be consigned to record room till after the payment are made and the D.H. in compliance with his undertaking would withdraw all his suits against the respondents.'

(10) Reading of this para also fortifies the contention of counsel for the petitioner that no time limit was prescribed for withdrawal of cases at the time of accepting the undertaking or passing the order dated 19th April,1991. therefore, 'one month' not being a precondition of withdrawal of cases the respondent cannot be allowed to wriggle out of the undertaking given by him. As no prejudice has been caused to him of the non withdrawal of those cases within one month coupled with the fact that he has already taken advantage of three years in vacating the premises, he cannot be permitted to take advantage of this new interpretation of his undertaking. Moreover, all cases having stood withdrawn before 31st August,1993, I am of the view that the respondent is now deliberately and intentionally avoiding to comply with the, undertaking given by him to the Court and accepted by the Rent Controller and hence committed contempt of the Court.

(11) Having come to the conclusion that the respondent has committed a contempt of the Court, I accordingly hold him guilty. However, taking into consideration the totality of the circumstance, I sentence him to undergo simple imprisonment of three months and a fine of Rs.5000.00 . In case he fails to deposit the same, he shall undergo simple imprisonment for a period of ten days. However, an opportunity is granted to respondent to purge the contempt and in case the respondent hands over the vacant possession within to days from today, then the penalty imposed will not be made operative. But in case he fails to do so, the penalty will come into operation immediately.