

Birbal Vs. Shambu Dayal

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Court : Delhi

Decided On : Jan-24-1989

Reported in : 37(1989)DLT320

Judge : B.N. Kirpal, J.

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

Appeal No. : Criminal Review Appeal No. 1274 of 1981

Appellant : Birbal

Respondent : Shambu Dayal

Advocate for Pet/Ap. : Pramod Ahuja and; B.J. Nayar, Advs

Judgement :

B.N. Kirpal, J.

(1) The challenge in this revision petition is to the order of eviction which has been passed by the Additional Rent Controller against the petitioner-tenant.

(2) Briefly stated, the facts are that the respondent filed a petition for eviction of the petitioner under section 14(l)(e) read with section 25B of the Delhi Rent Control Act. It was alleged in the petition that the petitioner-herein was a tenant of one room, a verandah and a kitchen on the ground floor of property No. 1658 Sohan

Ganj.Subzi Mandi, Delhi at a monthly rent of Rs. 23.00 . According to the respondent the said premises were let out for reside

(3) - In the written statement which is filed it was contended by the petitioner herein that the premises were let out for residential-cum-commercial 322 purposes. It was also the case of the petitioner-herein that the tenanted premises consisted of one room. one courtyard, one store, one canopy, one kitchen, one chabutra, open courtyard, common bath and common latrine and as the petition had been filed for partial eviction, thereforee, the said petition was liable to bedismissed. The petitioner-herein also denied the ownership of the respondent-herein and it was also contended that the respondent hid enough accommodation on the first floor of the premises in dispute and which had not been shown in the site plan.

(4) In the replication which was filed, the respondent reiterated the averments made in the petition and denied the correctness of the averment contained in the written statement.

(5) The Additional Rent Controller, vide his order dated 29th September, 1981 came to the conclusion that the respondent was the owner of the premises in dispute and that he did not have sufficient accommodation with him. He further found that the premises had been let for residential purposes only and the petition had not been filed for part of the tenanted premises. It was also held by the Additional Rent Controller that no part of the premises were available with the respondent-landlord on the first floor of the house in question.

(6) Aggrieved by the aforesaid order of eviction which was passed by the Addl. Rent Controller, the petitioner has filed the present revision petition.

(7) Before me, the first contention which has been raised by the learned counsel for the petitioner is that the respondent had not come to the Court with clean hands. It is contended that the respondent had another residential house and he had four rooms therein. These four rooms were vacant and were available to the respondent for his use and occupation. The petitioner fil(r)d an application annexing therewith extract from the Municipal record in an effort to show that four

rooms of house No. 10572, Manakpura, Delhi were lying vacant.

(8) A reply was filed by the respondent to the said application. It was contended that premises No. 10572, Manakpura, Delhi were purchased by Smt. Hira Devi, the respondent's wife by a sale deed dated 17th October, 1974. It was further stated that the said premises had been let out by Smt. Hira Devi to different tenants and at the time when the eviction petition was filed the said premises were in the occupation of S/Shri Sachidhalal Mahapatra, Moti Lal and Puran Chand. Affidavits of these tenants were also filed along with the reply.

(9) It is pertinent to note that the petitioner-herein did not take this plea about the respondent or his family member having alternative accommodation in the written statement filed by the petitioner. It is contended that the petitioner did not know about this at the stage when the written statement was filed. In any case, the petitioner could have sought leave to file an amendment application and placed the relevant material on record before the case was decided by the Addl. Rent Controller. In any case, the respondent's wife has filed affidavit in which she has disclosed the particulars as to when the premises belonging to her were given on rent. The persons who were occupying the premises in 1979, when the present eviction petition was filed, have been named. The premises had been let out to these persons in January/February, 1977. This averment is supported by their affidavits and I see no reason to disbelieve the same. It is, in view of the aforesaid, not correct to contend that the correct particulars had not been given by the respondent with regard to the premises available with the respondent at the time when the eviction petition was filed.

(10) It was next contended that the respondent-landlord had two rooms on the first floor of the premises in question. It was submitted by Shri Ahuja that according to the petitioner-herein two rooms on the first floor were available and were in possession of the respondent and the respondent was wrongly contending that the same had been let out to one Shri Sahdev. This contention was also raised before the Addl. Rent Controller. Parties had led evidence on this point and the Addl. Rent Controller found that one Shri Baij Nath, RW3, who had been produced by the petitioner-herein, had himself supported the respondent's case and had

deposed that the respondent-landlord had no accommodation on the first floor. In view of this statement by the tenant's own witness, which corroborated the statement of the respondent-landlord, the non-production of Shri Sahdev as a witness cannot be regarded as fatal to the case of the respondent. The respondent no doubt took a risk in not producing Sahdev as a witness. If RW3 had not supported the respondent then, possibly, one could have come to a conclusion that the best evidence had not been led by the respondent to prove the non-availability of accommodation on the first floor of the house in question. In view of the statement of Shri Baij Nath, RW3 there remains no doubt on this point and the Additional Rent Controller rightly came to the conclusion that no accommodation was available with the respondent on the first floor of the house.

(11) It was then submitted by the learned counsel for the petitioner that the eviction petition had been filed for only part of the tenanted premises. The Addl. Rent Controller has referred to the rent note Ex. AW2/1 and has come to the conclusion that according to the rent note the premises which were let to the petitioner by the respondent consisted of only one room, one kitchen, and a verandah. I have also perused the rent note which is on the record of this case and the premises which have been let by the respondent to the petitioner have been clearly mentioned in the said rent note as consisting of only one room, one verandah and a kitchen. These are the premises which were let out by the respondent to the petitioner and therefore, the Addl. Rent Controller rightly came to the conclusion that the eviction petition has not been filed for part of the tenanted premises.

(12) Lastly, it was sought to be contended that the respondent was not a man of status and did not, therefore, require the premises bonafide for his use. No such contention had been raised by the petitioner either in the written statement or before the Addl. Rent Controller and, therefore, he cannot be permitted to raise this submission in this Court for the first time. The question as to whether the respondent is a man of status or not is essentially a question of fact. If such a contention had been raised by the petitioner then the respondent would have had an opportunity of leading evidence in rebuttal. In the absence of any such averment and as this contention was not raised before the Additional Rent

Controller also, I cannot permit this question to be agitated before me for the first time.

(13) No other contention has been raised before me, I do not find any merit in this petition.

(14) For the aforesaid reasons, the revision petition is dismissed. Parties are left to bear their own costs.

(15) Counsel for the respondent states that execution proceedings will continue but the respondent will not dispossess the petitioner for a period of one month from today.

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