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Court : Delhi

Decided On : Dec-08-1987

Reported in : 34(1988)DLT76

Judge : Sunanda Bhandare, J.

Acts : Delhi Rent Control Act, 1958 - Sections 14; Code of Civil Procedure (CPC), 1908 - Sections 144

Appeal No. : Civil Miscellaneous (Main) Appeal No. 258 of 1987 and Civil Miscellaneous Appeal Nos. 1316 and 1418

Appellant : Sant Kumar

Respondent : Jogindrawati and ors.

Advocate for Pet/Ap. : J.C. Mahindra and; Rishikesh, Advs

Judgement :

Sunanda Bhandare, J.

(1) Respondent no. - Smt Shrimati Devi filed a petition for eviction against one Shri Shi.v Dass respondent no. 3 herein under Section 14 of the Delhi Rent Control Act. An eviction order was passed against Shri Shiv Dass. In execution of that eviction order, Smt. Jogindrawati was dispossessed. Smt. Jogindrawati filed an application for restoration of possession in her favor which was allowed by the

Additional Rent Controller, Delhi by his order dated 13-4-1987. Smt. Shrimati Devi went in appeal against that order which was rejected and it was held that Smt. Jogindrawati was entitled to restoration of possession. When Smt. Jugindrawati applied for restoration of possession one Shri Sant Kumar he. the petitioner herein objected and filed an application under Order 21 Rule 98 read with Section 151 of the Code of Civil Procedure claiming independent right as a tenant in the premises since 1985. The case of Shri Sant Kumar is that after Smt. Jogindrawati was dispossessed he was inducted as a tenant in 1985 and, thereforee, his possession should be protected. The application under Order 21 Rule 98 read with Section 151 of the Code of Civil Procedure was rejected by the Additional Rent Controller by his order dated 20th July 1978. Against this order, the petitioner filed an appeal before the Rent Control Tribunal which was also dismissed. Warrants of possession were issued in favor of Smt. Jogindrawati. When the warrants of possession were being executed another application as filed by the petitioner again under Order 21 Rule 98 read with Section 151 of the Code of Civil Procedure. The prayer for stay of dis-possession was rejected by the Additional Rent Controller by his order dated 18th September 1987 on the ground that since I lie previous application under Order 21, Rule 98 was rejected, it amounted to rest judicata and a second application was not maintainable and he could not sit in appeal against the order passed by his predecessor. A review petition was filed by the petitioner against that order which was also rejected by the Additional Rent Controller on 9th October 1987. The petitioner has challenged these two orders of the Additional Rent Controller, Delhi dated 18th September & 9th October 1987 in this petition under Article 227 of the Constitution of India.

(2) It is submitted by the learned counsel for the petitioner that the second application under Order 21 Rule 98 read with Section 151 of the Code of Civil Procedure is maintainable because such an application could be filed only after warrants of possession had been issued by the court in favor of the decree holder and the Additional Rent Controller had erred in rejecting the stay application of the petitioner even before the objection petition was decided by the court. Learned counsel submitted that the petitioner was a bona fide tenant and his rights are protected in view of the judgment of this Court in Shamlal v. Jaswant Kaur etc., Air1980 362.

(3) On the other hand, it is contended by the learned counsel for respondent no. 1 that the stay application having been dismissed on 20th July 1987 the second stay application was not maintainable. It was submitted that the Division Bench judgment of this Court in Shamlal case (supra) is not applicable to the facts of the present case inasmuch as original landlady was objecting to restitution in the preset case. It was submitted that previously when Smt. Jogindrawati had come to this Court in O. M. (M) 164 of 1986 in January 1987 praying for early disposal of the restoration application, the landlady had not anywhere stated that she had inducted any tenant. In fact even when the restoration application was allowed in April 1987 the landlady nowhere stated that she had inducted another tenant. The petitioner is colluding with the original landlady so that respondent no. I is kept out of possession. Smt. Jogindrawati had been squatting all throughout outside the premises in dispute and the petitioner is not a bona fide tenant and even if he has come in possession he all through-out knew about the litigation between the landlady and Smt. Jogindrawati.

(4) I find that the Additional Rent Controller, Delhi in his order dated 20th July 1987 has observed that the petitioner has failed to make out a prima-facie case and also arrived at a prima-facie conclusion that the petitioner and the original landlady are colluding with each other to keep Smt. Jogindrawati cut of possession. That is the basis for the rejection of the stay application filed by the petitioner. The appeal filed before the Rent Control Tribunal was also dismissed. The petitioner did not choose to challenge these two orders but instead filed a fresh application under the same piovision. True that as per the Division Bench judgment of this Court in Shamlal's case (supra) a bona fide tenant is to be protected but if prima-facie the court finds that the tenant objector is only put up by the landlady to avoid restoration of possession the alleged new tenant cannot get protection under the Delhi Rent Control Act. In the impugned order the Additional Rent Controller has observed that the petitioner and the landlady are colluding to keep Smt. Jogindrawati out of possession. The record also shows that the landlady who opposed restoration has nowhere stated that she had inducted any other tenant after obtaining the original decree. Furthermore, the petitioner having not chosen to challenge the previous order of the Additional Rent Controller, Delhi dated 20th July 1987 and the order of Rent Control Tribunal cannot now be permitted to re-

open the issue. Furthermore, I find that the order dated 20th July 1987 was passed on objections filed by the petitioner after warrants for possession had been issued and thus there is no merit in the legal contention raised by the petitioner.

(5) For the above reasons I do not find this to be a fit case for interference under Article 227 of the Constitution of India. Dismissed.

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