

Subhash Chander Basra Vs. Tata Consultancy Services and ors.

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Court : Delhi

Decided On : May-08-1990

Reported in : 41(1990)DLT459; 1990(18)DRJ341; 1990RLR416

Judge : N.N. Goswamy, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 142(1)

Appeal No. : Civil Miscellaneous (Main) Appeal No. 217 of 1989

Appellant : Subhash Chander Basra

Respondent : Tata Consultancy Services and ors.

Advocate for Pet/Ap. : Ashok Kumar,; Vijay Gupta,; B.S.C. Singh and;

Judgement :

N.N. Goswami, J.

(1) This petition by the owner landlord is directed against the order dated 8-5-1989 passed by the Rent Control Tribunal whereby the appeal of respondent No. 2 was allowed and as a result the eviction petition filed by the petitioner which had been decreed by the Rent Controller stood dismissed.

(2) The admitted facts are that the petitioner is the owner/landlord of premises No. 48/8, East Patel Nagar, New Delhi. The 1st floor of (be said premises was let out

by the petitioner to respondent No. 1, M/s. Tata Consultancy Services, hereinafter called the respondent company, on 16-12-1979 by a duly executed lease agreement dated 6 12-1979 on a monthly rent of Rs. 1200.00 . The lease agreement provided that the lease could be terminated on one month's notice and that the respondent company had the option to allot the flat to any of its employees. Admitted the premises were occupied by Shri A.R. Tandon, an employee of the respondent company. The said Shri A R. Tandon resigned his job and as a result was relieved on 30-9-1981. The respondent company by their letter dated 29-9-1981 informed the petitioner that the respondent company would not be requiring the flat, that is, the premises in dispute any more and hence as per the lease agreement between the parties the petitioner should treat the said letter as one Month's notice for vacation of the premises. However, by a subsequent letter dated 6-10-1981 the respondent company while referring to its earlier letter dated 29-9-1981 informed the petitioner that the earlier letter should be treated as cancelled and they would continue to retain the premises for being occupied by another officer. The petitioner, however, declined to accept The second letter and intimated that he had already arranged to induct another tenant. Again by another letter dated 21-10-1981 the respondent company reiterated its letter dated 6-10-1981 and also remitted the rent for the month of October 1981. This letter was accepted by the petitioner and the petitioner intimated to the respondent company that in future they should give clear one month's notice in case of vacating the premises. The petitioner also informed that his letter dated 14-10-1981 may be treated as cancelled. Consequently the respondent company continued to be a tenant.

(3) It appears that after having resigned the job with the respondent company Shri A.R. Tandon left for some foreign country and his brother, namely, Shri P.R. Tandon, respondent No. 2 herein, continued to remain in possession of the premises. Since he did not vacate the premises and informed the respondent company that he had become a direct tenant of the petitioner the respondent company then wanted a clarification from the petitioner. The petitioner clarified the position by stating that he had never taken Shri P.R. Tandon as a tenant and the respondent company continued to be the tenant and it was for the respondent company to get vacant possession of the premises from unauthorised possession

of Shri P.R. Tandon. The respondent company continued to pay the rent of the premises till January 1982 but thereafter they stopped making any payment of rent.

(4) The petitioner filed an eviction petition against the respondent company and also imp leaded Shri P.R. Tandon as respondent No. 2 The eviction petition was filed under Section 14(i)(a)(b) of the Delhi Rent Control Act, that is, on the grounds of non-payment of rent and sub-letting/parting with possession of the premises. In paragraph 18(a)of the petitioner was pleaded:-

'18(a) (i) :-The respondent has neither paid nor tendered the rent of the premises w.e.f. 1-2-1982 and has avoided to pay or tender the whole of the arrears of rent despite service of notice of demand. 18(a)(ii) :-That the respondent has sub-let, assign or otherwise parted with the 'possession of the premises to one Shri A.R. Tandon without obtaining consent in writing of the petitioner, and Shri A.R. Tandon has handed over possession of the premises to Sbri P.R. Tandon, respondent in an unauthorised manner. The name oi Shri P.R. Tandon has been brought on record under the orders of the Court. Hence the amended petition.'

Again in paragraph 19 of the amended petition it was pleaded :-

'The premises were lei out to respondent No. I concern for residential purposes with option to allot the premises to any of the employees of the respondent. The respondent concerned allotted the premises alter the inception of the tenancy to one Shri A R. Tandoii, an employee oi the concern. Shri A.R. Tandon and his family occupied the premises. Sbri A.R. Tandon resigned bids job with the respondent concern sometimes in the month of September 1981, so far as the petitioner knows, he obtained his dues. from the respondent concerned concerned but the later did not get the premises vacated by Shri A.R. Tandon. Now, Shri A.R. Tandon has migrated to some foreign country, leaving his brother, Shri P.R.Tandon in unauthorised occupation of the premises. They have refused to vacated.'

(5) The eviction petition was contested by both the respondents. The respondent company in its written statement pleaded that since it had already instituted a suit

for possession and for mesne profits against Shri A.R. Tandon and the petitioner's suit was liable to be stayed. The respondent company also admitted that Shri A.R. Tandon was occupying the premises as its employee but denied any further suggestion that his brother, that is. respondent No. 2 was in any way occupying the premises on their behalf. The respondent company also denied the allegation that it had parted with possession in favor of Shri P.R. Tandon or anyone else. Shri P.R. Tandon in his written statement pleaded that the respondent company was not a tenant and had nothing to do with the premises. According to Shri P.R. Tandon he had become the tenant in his own right and the petitioner had received rent from him. He, however, admitted that no rent note had been executed between the petitioner and respondent No. 2 but the petitioner on October 7, 1981 had received a sum of Rs. 7,200.00 from respondent No. 2 in advance as rent with effect from 8th October 1. 1981, to March 31, 1982. He further pleaded that thereafter the rent was tendered by him but the petitioner refused to accept the same. The money orders sent by respondent No. 2 were also refused and as a consequence he had deposited rent for the month of April 1982 under Section 27 of the Delhi Rent Control Act and similarly had deposited the rent for the month of May and June also He also pleaded that he was not liable to be evicted under Section 14(1)(a) and (b) since no notice was served on him.

(6) The case of respondent No. 2 was solely based on the alleged receipt for Rs, 7,200.00 which is Ex. Px on record and is annexed to the petition as Annexure 'A-1'. The receipt reads as under :-

'RECEIVED Rs. 7,200/' from Shri P.R. Tandon as advance rent with effect from 1-10-1981 on 7-10-1981 '

(7) The Rent Controller went into the entire case and carefully scrutinised the oral and documentary evidence on record. He came to the conclusion that the receipt produced by respondent No. 2 was not genuine and he further recorded the finding that Shri A.R. Tandon instead of handing over the possession of the premises to the respondent company clandestinely allowed his brother Shri P.R. Tandon to continue to occupy the premises in suit. Legally the respondent company continued to be the tenant under the petitioner since they had never

handed over the vacant and peaceful possession of the premises to the petitioner and as such relationship of landlord and tenant existed between the petitioner and the respondent company. He further found that the respondent company was in arrears of rent with effect from 1-2-1982 and in spite of notice had failed to tender the rent. Consequently the Rent Controller before passing an order of eviction under Section 14(i)(a) thought it proper to pass an order under Section 15(i) of the Delhi Rent Control Act. The respondent company was directed to pay or deposit the arrears of rent with effect from 5-2-1982 at the rate of Rs, 1200-per month within one month and to continue to pay or deposit the future rent month by month. He further directed that in case of compliance with the order under Section 15(i) the respondent would be entitled to the benefit of Section 14(2) of the Act and in the event of failure to comply with the order an order of eviction from the premises in suit shall be deemed to have been passed. He also passed an eviction order under Section 14(i)(b) of the Act on the finding that the respondent company had parted with possession of the premises, by order dated March 13, 1989.

(8) Dissatisfied with the aforesaid order respondent No. 2, that is, Shri P.R. Tandon filed an appeal before the Rent Control Tribunal. No appeal had been filed by respondent No. 1. The Tribunal mainly basing its findings on the letter of the petitioner dated October 14, 1981 written to the respondent company and on the receipt Ex. Px recorded the finding that the respondent company surrendered its lease with effect from 1-10-1981 and the petitioner had accepted Shri P.R. Tandon as a tenant at the rate of Rs. 1200.00 per month with effect from that date. Consequently the appeal filed by respondent No 2 was allowed and the eviction petition filed by the petitioner stood dismissed.

(9) The petitioner came to this Court by this petition under Article 227 of the Constitution of India. After service of notice respondent No. 2 appeared before me and was represented by a counsel. On December 1, 1989 it was brought to my notice that respondent No. 2 was in occupation of the premises and had not paid any rent/damages for use and occupation since 1-2-1982 and even till that date the rent had been paid by the respondent company but none had paid rent after that date. The learned counsel for respondent No. 2, namely, Shri P.R. Tandon admitted that respondent No. 2 was in occupation of the premises and had not

paid rent/damages since April 1982. The contention of the learned counsel was that his client was willing to pay the rent provided the petitioner admits him as a tenant. On hearing the learned counsel for the parties I passed the following order :-

'Admittedly the respondents have not paid rent/damages since 1982. I do not propose to hear the respondents till they are able to pay rent/damages at the agreed rate. The amount should be deposited in the Court of the Rent Controller within four weeks from today. To come on 11-1-1990.'

(10) Respondent No. 2 filed an appeal against the aforesaid order. The said appeal was dismissed by the Division Bench of this Court Or January 9, 1990. Inspire of that the order was not complied with and instead the learned counsel for respondent No. 2 raised the technical objection that there was no specific carder under Section 15(2) of the Act. In order to avoid any technical objection I passed a specific order on that date under Section 15(2) of the Act. By the said order respondent No. 2 was directed to pay deposit the arrears of rent at the rate of Rs. 1200.00 per month with effect from 14-1982 till the date of the order within one month- It was further provided that in case the order was not complied with, this Court will have no option but to strike off the defense of the defense of the respondent. Even the order was not complied with and instead respondent No. 2 filed an appeal against that order which was dismissed by a Division Bench of This Court The respondent thereafter held a Special Leave Petition in the Supreme Court which was also dismiissed. Inspire of that she older was not complied with. The total arrears of lent/damages due from respondent No. 2 amounted Rs 1-15,200.00 in addition to four four months lent which was paid by the respondent company for which also the liability was of respondent No. 2. I gave an option to the learned counsel for for respondent No. 2 to clear the entire arrears by two Installments, the first to be paid within a week or so and the second to be paid after a period of six months. Even this offer was not acceptable to the learned counsel and he offered to pay the amount in Installments spreading over two years, in these circumstances had no option but to strike out defense of respondent No. 2 and 1 ordered accordingly.

(11) In view of the defense of respondents No. 2 having been struck off and respondent No. 1 not having pressed its tenancy, the petition has necessarily to be allowed. However, in order to satisfy myself I went into the various documents including the alleged receipt produced by respondent No. 2. The type of paper used for the receipt and the language in which the receipt has been executed clearly indicate that the same is a forged document. It is on record that the petitioner used to issue regular receipts from printed receipt book. The receipt in question produced by the respondent No. 2 clearly shows that the upper part of the paper has been torn off and since the space left for only one line the words received Rs. 7,200.00 from Shri P.R. Tandun as advance rent with effect from 1-10-1981 on 7-10-1981. have been typed, the receipt was allegedly executed at 7.00 p.m. and respondent No. 2 was, unable to recall as to who typed the receipt and where the same had been typed. Admittedly the petitioner is a literate person and he can write in his own hand. The receipt does not mention the creation of tenancy or even the number of the premises for which alleged tenancy was created. Ordinarily I would have directed the prosecution of respondent No. 2 but since I have struck off his defense I refrain from doing so at this stage. For the reasons recorded above the petition is allowed and as a consequence the impugned order passed by the Rent Control Tribunal is set aside and that of the Rent Controller is restored. The petitioner will be entitled to his costs from respondent No. 2 which I quantify at Rs. 2,000.00.