

Narinder Kumar Vs. Vishnu Kumar Nayyar

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Court : Delhi

Decided On : Feb-11-1993

Reported in : 49(1993)DLT684; 1993RLR247

Judge : Usha Mehra, J.

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

Appeal No. : Civil Revision Appeal No. 2 of 1993

Appellant : Narinder Kumar

Respondent : Vishnu Kumar Nayyar

Advocate for Pet/Ap. : M.G. Dhingra and; Om Prakash, Advs

Judgement :

Usha Mehra, J.

(1) By this petition, Mr. Narinder Kumar has assailed the order dated 19th October, 1992 of the Additional Rent Controller dismissing his application for leave to defend and passing an order for eviction under Section 14(1)(e) of Delhi Rent Control Act (hereinafter called as the Act') against him.

(2) The brief facts of the case are that Shri Vishnu Kumar Nayyar, the landlord instituted eviction petition on 4th February, 1992 against Narinder Kumar, the

tenant on the ground of bonafide requirement. The landlord was working as Deputy Manager (Maintenance) Foundry in H.M.T. Ltd. Pinjore, Ambala, Haryana. The landlord let out the premises in question to the tenant consisting of two rooms, kitchen with common use latrine, bathroom and courtyard on a monthly rent of Rs. 800.00 vide agreement dated 15th July, 1986. The premises were let out for residential purposes.

(3) The landlord retired from service with effect from 30th November, 1991. After retirement he wants to shift to Delhi and occupy his house in question which is under tenancy. Since the possession of the house is with the tenant, the landlord is presently residing at Panchkula in a rented house. His younger brother with his mother are occupying one room of the house in question. The mother and brother of the landlord are dependent on him for purposes of residence. So far as his family is concerned, he has one son and two daughters. His son is married and is employed at Chandigarh. His two daughters are married and residing at Delhi. It is for his use and use of his family members dependent upon him that the possession of the premises in question is required.

(4) The tenant sought leave to defend inter-alia on the grounds that the petitioner is neither the landlord nor owner of the property. In fact it is one Mr. Roshan Lal Sehgal who had been collecting the rent as landlord. That the landlord is permanently residing at Panchkula and does not want to shift to Delhi, he in fact wants to increase the rent and since it has not been agreed to, therefore this eviction petition. Even otherwise he wants to sell this property after getting it vacated. His son's requirement cannot be the ground for eviction, nor his brother for residence is dependent upon him. His mother is residing with his brother. He has no dependent for residence.

(5) The Addl. Rent Controller dismissed the application for leave to defend because he found that the affidavit of the tenant did not disclose the facts which, if proved, would be sufficient to entitle him to defend and accordingly passed the eviction order.

(6) It is against this order that the tenant has come up in revision. The impugned order has been assailed primarily on the ground that the trial court while

dismissing the leave to defend application has relied and taken into consideration the documents filed by the landlord which is against the well settled principle of law.

(7) In *Precision Steel & Engineering Works and another Vs . Prem Deva Niranjana Deva Tayal* reported in : [1983]1SCR498 , it has been laid down that the effect of the provisions of Sub-Section (4) of Section 25-B of the Act are that the Controller would act on the admission of the tenant and there is no better proof of fact as admission, ordinarily because facts which are admitted need not be proved. It has further been laid down that the Controller has to confine himself to the affidavit filed by the tenant under Sub-Section (4) of Section 25-B of the Act and the reply, if any, on behalf of the landlord but production and admission and valuation of documents at this stage has no place. If the affidavit discloses such facts as would disentitle the landlord from recovering possession, the mere disclosure of such facts must be held sufficient to grant leave. Such facts on which leave to defend may be granted as enumerated by the Supreme Court are that the landlord has other accommodation in his possession which is sufficient for him, that the conduct of the landlord discloses avarice for increasing rent by threatening eviction that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself, that the dependents of the landlord for whose benefit possession is sought are not persons to whom in the eye of law the landlord was bound to provide accommodation, that the past conduct of the landlord is such as would disentitle him to the relief of possession etc.

(8) The perusal of the affidavit filed by the tenant shows that he had taken up contradictory stands so far as the status of the landlord/owner is concerned. In para 2 (b) of his application he has pleaded that the petitioner's neither landlord nor owner. In Clause (e) of para 2 he has admitted the execution of the agreement of rent dated 16th July, 1986 but challenged it being obtained by practicing fraud. In Clause (h) of para 2 he has further pleaded that petitioner has no intention to shift to Delhi and is only interested to sell the house after the same is vacated by the tenant. This is blowing hot and cold in the same breath. This clearly shows that tenant is not sure of his defense. He put up contradictory pleas/grounds which

makes his defense vague and uncertain. If the petitioner is not the landlord and owner of this property, then he has no right to sell this property. thereforee on the face of it, in view of this contradictory stand, the trial court rightly came to the conclusion that no ground is made out for granting the leave on this account.

(9) So far as the question of ownership and being landlord is concerned, in reply to para 14 of the petition, the tenant admitted that there was a written agreement of tenancy. Para 14 of the petition is reproduced as under:-

Para

14

Date on which the premises were let That premises was let out to to the tenant and details of the respondent with effect from agreement if any, with the land 16.07.1986 vide agreement dated lord (attested copy of the agreement, 15th July, 1986 (copy of the to be attached), Agreement is attached herewith).On a monthly rent of Rs. 800.00 and later on It was increased to Rs.850.00 .

(10) The respondent in his leave to defend replied as under:- Para-2 (e)

'THAT even otherwise, in face of the situation as aforesaid existing, the alleged agreement dt. 16.07.1986 allegedly claimed to have been executed between the parties which finds mention in para 14 of the eviction petition can conveniently be termed just a fraud being perpetuated on the deponent since his signatures thereon had been obtained by false misrepresentation in as much, the petitioner wrongly claimed himself to be the landlord of the property when essentially he was not, more so, when the same was never adhered to or acted upon, especially when the same was never adhered to nor acted upon and stood frustrated when the applicant never paid any rent to the petitioner in pursuance of the same qua the suit property thus creating no relationship of landlord and tenant between the parties, making the eviction petition wholly incompetent and liable to be dismissed on this score.'

(11) Then again in para 2(f), the tenant admitted the rent agreement and terms thereof. Hence the trial court rightly came to the conclusion that in view of this

reply of the tenant that there existed a written rent deed, the parties are to be governed by the same. The Supreme Court in Precision Steel & Engineering Works and another (supra) observed that the Controller would act on the admission of the tenant and there is no better proof as admission. The landlord annexed with his petition the 'rent deed' which formed part and parcel of his pleadings. The tenant in his affidavit did not deny the execution of the said rent deed. Rather he admitted the execution of the same as well as the terms contained therein, But took the plea that the said rent deed was obtained by fraud being perpetuated on him and his signatures thereon had been obtained by false mis-representation. Admittedly the execution of the rent deed is not denied hence the trial court could not have come to any other conclusion than holding that the plea of the tenant is without merits and that the petitioner is the landlord/owner of the property and that Roshan Lal Sehgal was the nominee of the landlord/owner for purposes of the collection of rent only. Clause 11 of the rent deed which formed part of the pleadings, clearly mention Roshan Lal Sehgal to be the nominee of the ' landlord for purposes of collecting rent. thereforee, the contention of Mr. M.G.Dhingra, counsel for the petitioner, that the trial court has taken into consideration the document and evaluated the same at this stage, has no merit. In fact the Supreme Court in the case of Precision Steel has observed that the Tribunal will take into consideration pleadings of the parties and the affidavit filed by the tenant and reply of the landlord before coming to any conclusion as to whether leave is to be granted or not. In the case in hand, the rent deed is a part of the pleading, part of the main petition and the execution of the rent deed has been admitted by the tenant. thereforee it cannot be said that the trial court allowed to place on record some documents and took into consideration. In fact, in view of the specific admission on the part of the tenant to the averments of the landlord in the petition with regard to rent deed which is signed by tenant and which clearly shows the petitioner to be landlord/owner, the trial court was justified in relying on the same. The admission of the tenant to the pleading of the petitioner could be looked into by the trial court. Even otherwise mere assertion that the person who instituted proceedings is not owner would not raise any triable issue.

(12) Now turning to the second ground that the tenant was using the premises for residential-cum-commercial purposes. This plea on the face of it is against the terms of the written rent deed executed between the parties. The premises were let out for residential purposes. It is amply clear from the pleadings of the parties, because the rent agreement dated 16th July, 1986 which is pleaded in the petition and which formed part of the pleadings clearly indicate that the premises were let out for residential purposes only.

(13) It is not disputed by the tenant that the landlord has retired from his services at Pinjore. It is also not the case of the tenant that the landlord has any other suitable residential accommodation at Delhi. His only plea is that the landlord is permanently settled at Panchkula which is near Chandigarh where his son is working and in old age being parents he would like to be near his son. To my mind, this ground is without merits. Petitioner's son is working at Chandigarh but his two married daughters, brother and mother are residing at Delhi. After retirement if he wishes to live in his own house where his other relations are residing, it cannot be said that his requirement is malafide. He cannot be forced to live, whether he wants it or not, in the neighborhood of this son. He has only this house in Delhi which is in occupation of the tenant. In this old age, after retirement, if the landlord wants to come and settle in his own house, it cannot be said that this desire is malafide or based on any ulterior motive. The tenant has admitted that the brother and mother of the landlord are occupying one room in this disputed premises. Two rooms are in the occupation of the tenant and they have a common bathroom, latrine and courtyard. If the landlord and his wife wants to come and occupy those two rooms and to be near their family members, like brother, mother and daughters it cannot be said that he has no intention to shift nor the desire to live in his own house in this fugue end of his life and can be thrown away by calling it a malafide or having any ulterior motive. The landlord has not sought the eviction for his son. He has not sought the eviction for himself and for the members dependent on him. After all wherever the parents are living the married son and married daughters would come and visit them there. At that time they have to be accommodated, and therefore, both the rooms are required by the landlord for his use which cannot be considered to be an unreasonable demand. Tenancy was created in 1986 and rent fixed was Rs. 800.00 thereafter

raised to Rs. 850.00 p.m. It is not the ground of the tenant that it is the landlord/owner who wanted increase in the rent. Hence this plea was rightly found baseless.

(14) I agree with the view expressed by the Additional Rent Controller that the application for leave to defend and the affidavit to not disclose the facts which, if proved, would be sufficient to entitle him to defend. The affidavit in the instant case, in my view does not disclose such facts.

(15) This revision petition, therefore, fails and the same is dismissed. No order as to costs.

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