

Bnt Associates Ltd. and anr. Vs. G.C. Jerath and anr.

Bnt Associates Ltd. and anr. Vs. G.C. Jerath and anr.

SooperKanoon Citation : sooperkanoon.com/698017

Court : Delhi

Decided On : Feb-27-1992

Reported in : 47(1992)DLT573; 1992(23)DRJ221; 1992RLR293

Judge : P.N. Nag, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25B

Appeal No. : Civil Revision Appeal No. 33 of 1991

Appellant : Bnt Associates Ltd. and anr.

Respondent : G.C. Jerath and anr.

Advocate for Pet/Ap. : S.K. Luthra and; Vinod Kumar, Advs

Judgement :

P.N. Nag, J.

(1) This revision petition is directed against the order dated 3rd December, 1990 passed by Shri S.M. Chopra. Additional Rent Controller. Delhi whereby tenants have been refused to leave to defend and contest the application for eviction filed by the landlords on bonafide requirement.

(2) In the petition filed by the respondents/landlords for eviction on the ground of bonafide requirement under Section 14 of the [Delhi Rent Control Act, 1958](#)

(herein- after referred to as the 'Act') the tenant-petitioner has filed an affidavit dated 4.12.1989 under Section 25B(4), 25B of the Act stating various grounds to contest the application of eviction. One of the grounds taken in para 6 is that the petitioner No. 2 stated to be the daughter of petitioner No. 1 is not dependant upon the petitioner No. 1 for purposes of residence or otherwise. She has been residing at Lucknow along with her husband and family members since the date of her marriage. The husband of petitioner No. 2 is employed at Lucknow and they have made sufficient arrangement for themselves to settle at Lucknow. They also own their own residential house at Lucknow and they have intentions to settle down at Lucknow where they have lived for over two decades, thus, cultivating friendly and social relations. Although the Additional Rent Controller has referred to this ground in the order but he has not considered the ground for determining whether or not the leave to contest the application should be granted.

(3) The facts set up by the tenants are if true, in my opinion, prima facie disclose that the landlord in such circumstances would be disentitled to obtain an order for recovery of possession of premises and, therefore, leave to contest should have been granted to the tenant.

(4) In Precision Steel & Engineering Works and another v.s Prem Deva Niranjana Deva Tayal : [1983]1SCR498 , the Supreme Court has held that the Controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question, 6 Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in clause (e) of the proviso to Section 14, The Controller is not record a finding on disputed question of facts or his preference of one set of affidavits against the other set of affidavits. That is not the jurisdiction conferred on the Controller by sub-section (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord for obtaining an order for recovery of possession.

(5) In the present case, unfortunately, the Additional rent Controller, after having made reference to averments made in para 6 of the affidavit of the tenant has not dealt with this matter. In fact he has not applied his mind on this aspect of the matter, with the result, he has exercised his jurisdiction with material irregularity and the impugned order requires to be set aside.

(6) Having regard to the overall circumstances in view, it is a fit case where leave to contest should have been granted by the Additional Rent Controller.

(7) The revision petition is, therefore, allowed, the impugned order is set aside and accordingly leave to contest the application for eviction is granted.

(8) The eviction petition was filed sometime in 1989. It will be appreciated if the eviction petition is disposed by the Additional Rent Controller expeditiously, preferably within one year from today.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com