

Trilochan Singh Vs. Usha Dhir

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Court : Delhi

Decided On : May-17-1993

Reported in : 51(1993)DLT534; 1993RLR482

Judge : Usha Mehra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 27

Appeal No. : Civil Miscellaneous Appeal No. 644 of 1991 and Civil R. Appeal No. 340 of 1990

Appellant : Trilochan Singh

Respondent : Usha Dhir

Advocate for Def. : Mr. Kamlesh Kumar

Advocate for Pet/Ap. : H.S. Dhir and; Kamlesh Kumar, Advs

Judgement :

Usha Mehra, J.

(1) By this application, the petitioner wants to place on record the three rent receipts alleged to have been executed by Smt. Surjit Kaur, the previous landlady from whom the present respondent purchased the house in question in 1979. According to the petitioner, he was a tenant of Smt. Surjit Kaur, who permitted him

to use the premises for residential-cum-commercial purposes somewhere in 1973-74.

(2) In the beginning of 1974, landlady issued the receipts confirming the fact that the tenanted premises was allowed to be used for residential-cum-commercial purposes. The fact that the premises was let out for residential-cum-commercial purposes was specifically pleaded before the Additional Rent Controller. However, since these receipts could not be traced out, therefore, these could not be placed at the time of filing the written statement or at the time when the evidence was adduced or subsequent thereto. Even after Usha.Dhir, the respondent herein, purchased this premises, the petitioner had been using the same for residential-cum-commercial purposes. This fact was in the knowledge of the respondent. Till the revision petition was filed in 1990 these receipts were not traceable. However, during the pendency of the revision petition, the present Counsel Mr. H.S. Dhir was of the firm view that at the time of inception of tenancy there must be some writing/receipt /correspondence between the landlady and the petitioner. On being stressed by the Counsel, the petitioner took the matter seriously and searched out his old record in the house and business premises. On the advice of the Counsel when the record was searched, three rent receipts beside other letters and bills were found which the petitioner in turn handed over to the lawyer and consequently present application. That the non-production of documents was neither intentional nor deliberate,

(3) This application has been contested by the respondent on the ground that the petitioner, when he appeared in the witness box as R.W. 1 on 12th December, 1989, made a categorical statement that no agreement was executed with Smt. Surjit Kaur the previous owner and that the said landlady/owner never issued any rent receipt. The receipts which have now been purported to have been issued by the erstwhile landlady are, therefore, forged and fabricated documents. If, however, these alleged receipts were issued by previous landlady, then these were in possession and under the control of the petitioner. He did not try to trace these receipts. He cannot take advantage of his negligence, and, therefore, at this stage additional evidence should not be allowed.

(4) I have heard the learned Counsel for the parties and perused the record. In order to decide this application we have to look to the provisions of Rule 27 (1) of Order 47 which are reproduced as under : 0.41 R. 27(1) of Civil Procedure Code .
'(l) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.'

(5) The perusal of the above rule makes it clear that the additional evidence can be adduced only when the same was refused by the Trial Court or when the petitioner establishes that in spite of exercising due diligence, this evidence was not within his knowledge or could not be traced out in spite of the best efforts or that this evidence is required by the Appellate Court. None of these grounds are made out in this application. The petitioner never exercised due diligence to trace out these rent receipts. The primary duty of the applicant is to show that it was owing to no want of diligence on his part that the documents could not be traced out. In fact this rule covers discovery of new and important evidence not available at the trial as a ground for allowing additional evidence. thereforee, the word used in the rule 'within his knowledge' would mean new or fresh evidence which was discovered subsequently and for that the applicant has to satisfy the Court that he exercised due diligence but still such evidence was not within his knowledge. Order 41 Rule 27 is not to be taken recourse to merely because a party at appellate stage finds that some material which could have tilted the scale in his favor has not been produced which should have been produced. It is unimaginable that the petitioner who had been litigating with the respondent for more than 6 years was not aware of the existing of these rent receipts and on the insistence of the lawyer, his wife searched out these receipts. This averment of the petitioner in

this application clearly shows that he did not exercise due diligence. It is not believable that a tenant would not remember as to whether any receipt was issued by his landlord and for that he had to be reminded by his lawyer. After all he was a tenant and if any rent receipts were issued by the landlady it must have been in his knowledge. Para 7 of his application makes a very interesting reading : Para 7 'That the petitioner herein preferred the revision in March, 1990 before this Hon'ble Court as no documents were traceable about the permission granted by the previous landlady Smt. Surjit Kaur for residential cum commercial user. During the pendency of this revision petition the petitioner also engaged Shri H.S. Dhir, Advocate, for prosecuting this revision petition. Mr. Dhir after going through the brief asked the petitioner as to whether any rent receipts were issued by the landlady at the time of inception of tenancy of these premises or subsequent thereto or at any point of time or there was any correspondence regarding the user of the suit premises for residential cum commercial purpose resting with the petitioner herein, because Mr. H.S. Dhir was of the firm view that at the time of inception of contract of tenancy there must be some writing/receipt/correspondence between the landlady and the petitioner herein. This fact was stressed by the Counsel to be taken as a very serious matter and the petitioner was asked to go through the entire record of his house and business. Mrs. Harcharan Kaur wife of the petitioner herein who had accompanied the petitioner in the chamber of Mr. Dhir was advised to go through the old records and if any document was available, the same should taken out for bringing the same to the notice of the Hon'ble Court. After searching the house and business site for about 1' months, Mrs. Trilochan Singh was able to trace out a very old file containing three rent receipts apart from other letters and bills etc. which they brought to the Counsel. After seeing these receipts Counsel opined that these receipts are very much material and relevant for a just and proper decision of the case. These receipts could neither be traced nor located by the petitioner herein despite exercising his due diligence as he had lost sight by them due to the passage of time.' This shows the casual attitude of the tenant. He never bothered to find out the receipts but it was his Counsel who was of the firm view that there must be some writing and, thereafter, the tenant took the matter seriously. To my mind, the petitioner has not been able to satisfy to this Court that he exercised due diligence.

The additional evidence is allowed to be produced for the requirement of the Court and not to enable a party to make good the deficiency in his case. The provision of Rule 27 are not intended to be invoked to allow a litigant who had been unsuccessful in the Trial Court to patch up the weak parts of his case and fill up the omissions at appellate stage. Supreme Court in the case of Soonda Ram & Anr v. Rameshwar Lal & Anr., : AIR 1975 SC479 , opined that where requisite findings of fact have been recorded on appraisal of the evidence adduced by the parties. The issue was decided, on the evidence adduced by the parties 538 and the defect was not such that could enable the Court to obliterate and ignore the evidence adduced on the point. In such an eventuality the High Court committed no error, rather, it was right in not permitting the appellants to adduce any additional evidence at the appellate stage. There is no justification for making an order of remand in such a case. The petitioner has not satisfactorily explained the best efforts made and still this additional evidence he could not adduce at the first instance or that he was deprived of the opportunity to produce this evidence. That apart, petitioner appearing as R.W. 1 on the contrary in no uncertain words admitted that the previous landlord/owner never issued any rent receipt to him. So having admitted that no rent receipts were issued, where is the question now for him to let these be produced. The petitioner in his written statement, in reply to para 14, did not deny that there was no written agreement. Had these rent receipts been in existence indicating the purpose of letting, the petitioner at the first available opportunity would have mentioned so in the written statement itself. Mr. Kamlesh Kumar, appearing for the respondent contended that the petitioner admitted in a suit filed by him before Sub-Judge that the rate of rent since 1979 was Rs. 275.00 per month. But these alleged rent receipts show the rate of rent to be Rs. 250.00 per month. therefore, these receipts are fabricated. Moreover, no revenue stamp has been affixed on these rent receipts. Had it been genuine and issued at the relevant time, there would have been revenue stamps affixed on these receipts. He further contended that the petitioner has fabricated these receipts but could not affix the revenue stamps of the relevant time. I am not going into the controversy about the genuineness or otherwise of these receipts. Admittedly this Court has ample power to allow the additional evidence at any stage, if is satisfied that the additional evidence was not available in spite of due

diligence or that the same was not within the petitioner's knowledge. Even otherwise from the facts which have come on record it indicates that the portion given on tenancy is being used for residential purposes only and it is only a portion under the stairs which is not a part of the tenancy, is alleged to be used for storage of left over chicken.

(6) For the reasons stated above I find no merits in this application, the same is accordingly rejected.

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