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Roxy Enterprises (P.) Ltd. Vs. Aruna Raina

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Court : Delhi

Decided On : Jul-08-1993

Reported in : 1994RLR204

Judge : Y.K. Sabharwal, J.

Acts : Delhi Rent Control Act - Sections 14(l); Transfer Property Act - Sections 106

Appeal No. : Civil Miscellaneous (Main) Appeal No. 215 of 1991

Appellant : Roxy Enterprises (P.) Ltd.

Respondent : Aruna Raina

Advocate for Pet/Ap. : P.C. Khanna,; B.L. Anand and; O.P. Gupta, Advs

Judgement :

Y.K. Sabharwal, J.

(1) The first page of the lease deed dated 29.10.80 (Ex. Public Witness f/1) in respect of premises in question shows that it has been entered into between Lesser, Mrs. Aruna Raina respondent No. 1 and the lessee M/s. Roxy Enterprises Pvt. Ltd.-petitioner herein. Last page of the deed mentions the name of M/s Roxy Steel Wires Pvt. Ltd, respondent No. 2 as lessee and has been signed by its M.D The rate of rent stipulated is Rs. 2.443. 20 p.m. One of the terms of the lease deed

stipulates that the lessee shall be entitled to renew the initial lease after every three years with an increase of 15% in the rent over the last rent paid and other terms and conditions would remain the same. A registered notice dated 11.3.86 was sent by Landlady to respondent No. 2, inter-alia, alleging that respondent No. 2 is liable to eviction as it is a contumacious defaulter in payment of rent and was in arrears since Oct. 1985 and in respect thereof demand for payment was made. A copy of the notice was also sent to the petitioner stating that in case the petitioner treats itself to be the tenant it should comply with the requirements of the notice.

(2) Petitioner and respondent 2 are sister concerns. The eviction petition was filed by respondent 1 against respondent 2 and the petitioner on ground of non payment of rent u/S. 14(l)(a) of Delhi Rent Control Act, 1958 (the Act,) and on certain other grounds. It has been, inter-alia, pleaded in the eviction petition that the tenants had not paid arrears of rent from October 1985 to July 1986 despite notice dated ll the March, 1986 and that a sum of Rs. 28.906.80p calculated at the rate of Rs. 2809.68 was due as rent from the tenants for the period from 1st October 1985 to 31st July 1986. The landlady stated in the eviction petition that the lease deed is between her and respondent No. 2 but in the body of the lease the name of the lessee has been given as that of the petitioner as she did not notice this Discrepancy at the time of execution of the lease deed. The landlady prayed that in the event of either of the said two companies being held as tenants the notice regarding non payment of rent and termination of tenancy had been served on both and thus both the respondents in the eviction petition were liable to vacate the premises as neither had paid the arrears of rent. Para 3(b) of the eviction petition which requires a landlord to state the name and address of the tenant/tenants, the names of both the companies have been mentioned as tenants.

(3) A joint W/S. was filed by the petitioner and respondent 2, inter-alia, pleading that rent up to June, 1986 had already been paid to the landlady. It was further pleaded that the tenants had been served an attachment order by M.C.D. vide letter dated 7.3.86 and thus the landlady was not entitled to claim any rent till the attachment subsists. Para 3 (b) of the, eviction petition was not denied as it was

stated that the said para needs no reply. It was also pleaded that the clause of 15% increase of rent was illegal. Regarding notice dated 11.3.86 the tenants pleaded that 'Para 18 (b) is wrong and denied that any such notice was served, as alleged, much less a valid notice.'

(4) On 4.7.87, Arc after, inter-alia, noticing that cheque of Rs. 11,238.72 representing rent for the month of Oct. 1985 to Jan, 1986 was dishonoured came to the conclusion that petitioner was in arrears of rent w.e.f. 1.1.85 up to date at the rate of Rs. 2809.68. The petitioner was accordingly directed to deposit Rs. 29,904.00 with Mcd out of arrears of rent and pay or deposit the balance within a month from the date of the order and it was further directed that further rent month by month @Rs.2809.68be paid or deposited by 15th of each succeeding month. The order dated 4.2.87 was, however, modified in appeal and by order dated 9.9.87 passed by Tribunal, petitioner and respondent 2 were directed to pay to the landlady or deposit with trial court the arrears of rent (a) Rs. 2443.20p instead of Rs. 2809.68 w e.f. 1.10.85 minus the amount of Rs. 46,520.00 up to the end of the month previous to the month in which deposit is made, within one month and also directed that they shall continue to pay or deposit the future rent at the same rate month by month by 15th of each succeeding month. The Tribunal also noticed in the order that according to the counsel for petitioner sum of Rs. 29,809.00 had been paid to Mcd on 3.8.87.

(5) An application dated 13.1.88 u/S. 15 of the Act, was filed by the landlady before the Arc praying that the defense of the tenants be struck off, inter-alia, pleading that the landlady had received a communication from the M.C.D. dated 8.1.88 informing that the cheque deposited by the tenant with the M.C.D. was dishonoured on presentation and the tenant had neither tendered nor paid nor deposited the said amount. By order dated 1.6.88 made by the Arc the defense of the petitioner was struck off. It has been noticed in the order that the cheque of Rs. 29,504.00 dated 3.8.87 given by the tenant to the Mcd was dishonoured for which no Explanationn had been given. It has also been noticed by the Additional Rent Controller that the report of the Nazir shows that rent only up to Sept., 1987 had been paid as the treasury numbers of the deposits dated 15.9.87,30.10.87 and 4.1.88 had not been received. It has further been noticed in the order that even if it

is taken that rent was deposited on 15.9.87, 30.10.87 and 4.1.88 still it shows that there is no deposit of rent for the month of Nov., and Dec., 1987 and for months of Feb to May, 1988 and for these months also no reason or Explanationn whatsoever had been given. The petitioner did not file any appeal against the order dated 1.6.88 and thus the said order became final. Further, from communications of the Corporation dated 19.11.86 Ex. Pw l/R-4 and Ex. Public Witness 1/11 dated 8.1.88 it is evident that the cheque of Rs. 29,504.00 deposited by the petitioner with the Mcd had been dishonoured and the said amount was claimed from the landlady. From Ex. Public Witness I/12 dated 29.9.88 a letter of the Mcd it appears that the said amount of Rs. 29,504.00 was paid by the landlady vide G-8 receipt No. 930050 dated 21.3.88.

(6) An order of eviction dated 16.3.91 was passed by Arc against the petitioner and respondent No. 2, interalia, holding that order u/S. 15(1) of the Act had not been complied with and the petitioner and respondent No. 2 were not entitled to benefit u/S. 14of the Act. The plea that the attachment notice dated 7th March 1986 had been received by the tenants and as such the landlady was not entitled to claim any rent on 11.3.86 when notice was given, was rejected by learned Arc and it was noticed in the order that it is not the case of the tenants that they have paid the amount either before notice or even within two months of the service of notice to Mcd or to the landlady. The first appeal filed by the petitioner herein was dismissed by the Tribunal on 5.4.91. Now this petition u/Art. 227 of the Constitution of India has been filed praying for setting aside the impunged orders dated 16.3.91 and 5.4.91.

(7) Mr. P.C. Khanna, learned counsel for petitioner submits that in absence of service of a valid notice of demand and determination of the question as to who is the tenant the Rent Controller had no jurisdiction to pass an order of eviction on ground of non payment of rent u/S.14(l)(a) of the Act. He contends that the landlady was herself not certain as to whether the petitioner was her tenant or respondent 2. In this regard reliance is placed by Mr. Khanna on Para 9 and 14 of the eviction petition and to the cross exam. of the landlady. In Para 9 and 14, Counsel points out that the landlady has stated that the premises were let to respondent 2 herein and in cross exam. she states that the petitioner company

was the tenant. The contention of Mr. Khanna has no substance. The eviction petition is to be read in its entirety. Para 9 and 14 of the eviction petition cannot be read in disregard to other parts of the petition. Reading of para 9 and 14 of the petition Along with para 3(b), 18 and 19 shows that there is no merit in the contention of learned counsel. Further in Para 9 when the landlady states that the premises were let to respondent 2 she also states that Paras 18 and 19 of the petition be seen. In Para 14 the landlady states that the premises were let to respondent 2 herein vide registered lease deed dated 27.10.80 and the photostat copy of the lease deed is attached. In Para 18 with reference to the lease deed the landlady states that the said deed is between her and respondent No. 2 and she explains that in the body of the lease name of the petitioner herein has been given which the landlady did not notice at the time of execution of the lease deed and then reference is made to the notice of demand and it has been prayed that in the event of either of the companies being held tenants of the premises in dispute they were liable to eviction as they bad not complied with the notice. As noticed herein-before, in Para 3(b) of the eviction petition the names of both petitioner and respondent 2 have been stated as tenants and in the joint W/S. filed by petitioner and respondent 2, Para 3(b) of the eviction petition has not been denied. In view of aforesaid reference to the cross exam of the landlady is meaningless. In view of the ambiguity in the lease deed which seems to have occurred because of petitioner and respondent 2 being sister concerns, the landlady, in my opinion, rightly gave notice to both the companies and rightly filed the eviction petition against both the said companies and it cannot be held that Controller had no jurisdiction.

(8) The validity of the notice is challenged contending that the endorsement in the notice feat to the petitioner has not been signed and thus it is urged by Mr. Khanna that the unsigned notice is not valid. The notice dated ll the March, 1985 is addressed to M/s. Roxy Steel Wires Pvt. Ltd. It is signed by counsel for the landlady. Copy of the notice has also been sent to the petitioner-M/s. Roxy Enterprises Pvt. Ltd with the endorsement in the notice to the following effect : -

'SHOULD you treat yourself as tenant respecting the above said premises this serves as notice to you also. In the event of your failure to comply with the

requirement of the notice within the stipulated period, petition for eviction shall be filed against you also.'

(9) Learned counsel for the petitioner contends that a unsigned notice sent to a tenant u/S. 106 of the Tpa is not valid and in support relies upon Ganesh Dass vs. Joga Singh 1975 Rcr 520. The cited decision has no applicability to the facts and circumstances of the present case for the reason that the notice in the present case, cannot be said to be unsigned. The notice has been signed by counsel for the landlady. The absence of signatures after the aforequoted endorsement does not mean that the notice itself has not been signed. In any case, there has been substantial compliance and assuming there was any defect on account of non signing after the endorsement it would only be an irregularity which would not vitiate the notice. The notice has to be read from the commonsense point of view bearing in mind how such notices are understood by ordinary people and not in a hypertechnical manner (Sec ; Rakesh Kumar Vs, Hindustan Everest Tool Ltd., 34(1988)DLT 382 Further, the petitioner and respondent 2 have not specifically pleaded the ground of invalidity of the notice as now being urged by the counsel. The main emphasis in the w/s is on denial of service of the notice and not that it is invalid. It has not been pleaded that the notice is invalid on the ground of endorsement not being signed or on the ground that the landlady had not made up her mind as to who is the tenant. The alleged ground of invalidity of the notice has been urged for the first time in this petition and not before the courts below. The petitioner cannot be permitted to urge this ground for the first time in these proceeding (See : Batco Mal vs. Rameshwar Nath A.I.R.. 1971 Del 98.

(10) Next, learned counsel for the petitioner contends that when the notice dated 11.3.86 was served the petitioner was under an order of attachment from Corporation to pay the rent to the Corporation and thus the amount claimed in the notice was not legally recoverable by the landlady. The courts below have noticed that it is not the case of the petitioner that either before or even after service of notice the rent was paid either to M.C.D. or to the landlady. The service of order for attachment u/S.162 of the D.M.C. Act does not mean that the tenant is immune altogether to pay the rent either to Mcd or to the landlady. The rent has neither been deposited with the Mcd nor paid to the landlady. The tenant cannot be

permitted to say that because of the service of the order of attachment rent will be paid neither to the Corporation nor to the landlady. By the order of attachment the petitioner was required to pay the rent due or falling due to the Corporation immediately and every month thereafter as and when it becomes due. The petitioner did not pay or deposit the rent with the landlady or the Mcd even after service of notice. The petitioner failed to pay or deposit the rent even after the order was made by the Arc on 4th July, 1987 directing it to deposit Rs. 29,504.00 with Mcd out of the arrears of rent. That direction was upheld by the Tribunal in appeal. The petitioner misrepresented in appeal that sum of Rs. 298081- had been deposited with the Corporation on 3.8.87 As noticed herein before the cheque had been dishonoured by the bankers of the petitioner on presentation. In View of the facts and circumstances of the case the contention of the petitioner that the rent was not legally recoverable by the landlady cannot be accepted. Further, the petitioner had also failed to deposit the rent at least for the months of Nov., Dec, 1987 and Feb. to May, 1988, and on consideration of the said default including the fact of dishonour of the cheque the defense of the petitioner was struck off on 1.6.88. The conduct of the petitioner has been contumacious.

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