

Vidya Sagar Vs. Shakuntala Devi

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Court : Delhi

Decided On : Nov-07-1991

Reported in : 1992(22)DRJ123; 1992RLR5

Judge : S.C. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 140

Appeal No. : Civil Revision Appeal No. 434 of 1991

Appellant : Vidya Sagar

Respondent : Shakuntala Devi

Advocate for Pet/Ap. : Vijay Gupta and; H.L. Narula, Advs

Judgement :

(1) Shri Vidya Sagar, hereinafter referred to as the petitioner has challenged the order of the Addl. Rent Controller Delhi dated 18- 4-91, whereby an order of eviction was passed against him in respect of the disputed premises under section 14D of the Delhi Rent Control(Amendment) Act.

(2) In brief, the facts of the case are that Smt. Shakuntala Devi, hereinafter referred to as the respondent in about December, 1989 instituted an eviction petition against the petitioner on the ground under section 14D of the Delhi Rent Control (Amendment) Act. As per the averments made in the petition, she is the

owner landlady of the property 58, Banarsi Das Estate, Timarpur and that she is a widow. The suit premises were let out by her husband to the petitioner and that she requires the same for her residence and she does not have any other property for her residence. The ground floor is in occupation of another tenant Shri P.C.Gupta. She wants to live in her own house in Delhi. Since the petition was filed under Section 14D of the Act, process under Schedule Iii of the Act were issued to Vidya Sagar, petitioner, who in turn appeared and filed an application seeking leave to defend the case on 16-1-90 within the stipulated period of fifteen days. However, the affidavit filed by him in support of his application dated 16-1-90 was without any attestation.

(3) The Addl. Rent Controller did not agree with the contention of the counsel for the petitioner that non attestation of the affidavit is only a technical defect and that this affidavit though unattested should be taken note of and the application filed under Section 25B(4) of the Act should be heard on merits. The Addl. Rent Controller held that the unattested affidavit filed under Section 25B(4) of the Act is not an affidavit in the eyes of law and as no affidavit was filed within fifteen days from the date of service for seeking leave to defend the petition, so the statement made by the landlady in the petition for eviction shall be deemed to be admitted by the tenant and the landlady is entitled to an order of eviction on the ground as laid down under sub section (4) of Section 25B of the Act. In these circumstances, an order of eviction was passed against the petitioner Vidya Sagar.

(4) Reliance has been placed by the counsel for petitioner on various decisions reported as 1981(1) Rcj 206, 1982(1) Rcj 349, 1984(2) AIRCJ291 in support of his contention that if verification of the affidavit filed in support of the application for leave to defend is not in accordance with the law, an opportunity ought to be given to the tenant to file an additional affidavit and also when the affidavit was inadvertently not filed the same can subsequently be taken on record. Learned counsel further submitted under Section 7 of the Oaths Act, 1969 no omission to take any oath or make any affirmation shall invalidate any proceedings or render inadmissible in evidence whatsoever or in respect of which such commission substitution or irregularity took place and therefore. When the petitioner has expressly stated on oath that the contents of the application were true, the fact that

the affidavit remaining unattested was only an irregularity and could not adversely affect the right of the petitioner. He also pointed out that on 21-1-91 he moved an application under Section 151 Civil Procedure Code bringing to the notice of the Addl. Rent Controller that the affidavit was filed unattested due to inadvertence and that he may be allowed to correct the defect of attestation of the affidavit dated 16-1-90. The respondent opposed that application by filing a reply but the Addl. Rent Controller did not pass any specific order while disposing of the application and the Addl. Rent Controller only mentioned about the said application in his order. He argued that the impugned order dated 18-4-91 whereby the Addl. Rent Controller has claimed to consider the affidavit filed by the petitioner is to be set aside and the petitioner is entitled to the grant of leave to contest the eviction petition sought by him or in the alternative the case be remanded back to the Addl. Rent Controller for consideration of his leave application filed by him on merits.

(5) Section 25B(4) of the Delhi Rent Control (Amendment) Act reads as under:

'THE tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the third schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the application shall be entitled to an order for eviction on the ground aforesaid....'

(6) A perusal of this section shows that the tenant has to file an affidavit stating the grounds on which he seeks to contest the eviction petition within 15 days from the date of service of summons issued in form specified in Schedule Iii of the Act. Filing of the affidavit stating the grounds on which the tenant seeks to contest the petition is mandatory provision of law in these summary proceedings.

(7) The point which now requires determination is whether an unattested affidavit filed along with an application seeking leave to defend under Section 25B(4) of the

Delhi Rent Control Act is sufficient compliance of this mandatory provision of law. It is also to be seen whether filing an unattested affidavit is only a technical defect and can be allowed to be removed even after the statutory period of 15 days.

(8) The decisions on which the learned counsel for the petitioner has relied upon are not helpful to the petitioner in the present circumstances of the case. In all those cases, there was verification of the affidavit but that verification was defective. In those circumstances opportunity was given, to rectify the defect but in this case, the affidavit filed is unattested. Filing an unattested affidavit cannot be said to be a technical defect or an irregularity keeping in view the provisions of Section 25B(4) of the Act. It is clear that no affidavit was filed containing the facts on the basis of which leave to defend was sought. There is no dispute about the legal proposition that the Rent Controller has no power to condone the delay in filing the application in the form of an affidavit seeking leave to defend under Section 25B(4) of the Act after the expiry of the period of limitation i.e. after fifteen days from the date of service, it is only under the provisions contained under Order 37 Rule 4 Civil Procedure Code that an application can be moved recalling the order of eviction with sufficient cause being shown, The petitioner has not adopted this procedure in this case. He has only moved an application under Section 151 Civil Procedure Code in which it was stated that due to inadvertence affidavit filed in support of the application remained unattested and he prayed that he may be granted permission to correct the defect of attestation in the affidavit dated 16-1-90 in the interest of justice. He filed an affidavit duly attested with the application under Section 151 Cpc, but this is not an affidavit as required under Section 25B(4) of the Delhi Rent Control Act. No affidavit containing the facts on the basis of which leave to defend is sought is on the record. Unattested affidavit cannot be treated as an affidavit as is required to be filed under Section 25B(4). Not only that the affidavit should be attested but it should also be sworn before an attesting authority. It is mandatory requirement that application seeking leave to defend has to be filed along with an affidavit. Rather the application should be in the form of affidavit as the wordings of Section 25B(4) of the Delhi Rent Control Act provides but no such affidavit has been filed. The Rent Controller has taken note of and discussed all the points raised before him and I find no infirmity or illegality in the order passed by the Rent Controller. There is no jurisdictional error in the order of

the -Rent Controller and therefore I dismiss this revision petition at the admission stage itself.

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