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

Manmohan Singh Vs. Indo American Electricals Ltd. and anr.

Manmohan Singh Vs. Indo American Electricals Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/701475

Court : Delhi

Decided On : Dec-19-1991

Reported in : 46(1992)DLT511

Judge : Santosh Duggal, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 41, Rule 19

Appeal No. : Civil Revision Appeal No. 349 of 1990

Appellant : Manmohan Singh

Respondent : indo American Electricals Ltd. and anr.

Advocate for Pet/Ap. : P.B. Menon,; M.R. Menon,; M.R. Jaitley and;

Judgement :

Santosh Daggal, J.

(1) This revision petition is directed against an order dated 12th March, 1990, paused by the Rent Control Tribunal, Delhi dismissing objections of the Petitioner, Manmohan Singh, to withdrawal of the application that had been filed by respondent No. 1, namely, Indo American Electricals Ltd, (hereinafter referred to as the Company), under Order 41 Rule 19 Civil Procedure Code . The position that emerges on a reading of this order is that the Company, had filed an appeal against the eviction order passed in favor of respondent No. 2 against respondent

No. 1. That appeal appears to have been dismissed in default and it was then that the Company had moved an application for restoration of the appeal under the provisions of Order 41 Rule 19 C.P.C. While that application was pending consideration, an application was moved before the Court intimating that there was a compromise between the landlord and the tenant, and pursuant to which application under Order 41 Rule 19 Civil Procedure Code . was sought to be withdrawn. The result would be that the appeal would remain dismissed in default, and the eviction order shall become final. That application is stated to have been moved not by the tenant but by the landlord who is now respondent No. 2.

(2) On that application being moved, the present petitioner, filed objections praying for being heard before the application for withdrawal was disposed of and it was this application which was rejected by the Court on the ground that the petitioner being not a tenant in his individual capacity and the withdrawal of the application being authorised by power of attorney given to Mr. M.R. Jaitley, Advocate, Counsel for the Company, the petition could not be heard in opposition to the said application.

(3) The petitioner has reiterated his objections in the present revision petition. Mr. P.B. Menon appearing for the petitioner has, at the outset, stated that the whole question was whether this withdrawal of the application was under proper authority of either the Board of Directors, or that of a director or an officer of the Company duly authorised in this behalf by a resolution of the Board of Directors. He asserts that the petitioner was in possession of the premises as having been Managing Director of the Company at the inception of the tenancy, and that he continued to be the Director throughout. Mr. Menon while conceding that Mr. Manmohan Singh may not have a right to be heard in his personal capacity, contends that it was, nevertheless, incumbent upon the Court to satisfy itself that the application for withdrawal had been made under proper authority. It is also stated at the Bar that after the petitioner filed objections to the withdrawal, the Court did not even call upon the Company to state its position on facts vis-a-vis the contentions raised by the petitioner. This fact is admitted by Mr. Jaitley that the Company did not file any reply. He has explained, though, that this was for the reason that it was not called upon by the Court, to file any reply and the matter was disposed of only by hearing

the counsel for the parties. 513

(4) That being so, the impugned order stands vitiated because of failure of the Court to satisfy itself as to whether the application for withdrawal of the application under Order 41 Rule 19 Civil Procedure Code . had been moved under proper authorisation of the Company, because once this objection was raised, the Court was obliged to record its satisfaction that the compromise was in pursuance to a resolution passed by the Board of Directors or that the statements were being made before the Court, on valid authority.

(5) This order Is, thereforee, liable to be set aside on this short ground. The result is that the application under Order 41 Rulel9CPC shall stand revived, to be heard and disposed of on merits.

(6) At this stage, Mr. Menon has given an undertaking at the Bar, which is hereby recorded, that the petitioner will not claim any right to be heard individually in respect to this application or any other proceedings before the Rent Control Tribunal relating to the appeal or the application under Order 41 Rule 19 Civil Procedure Code ., and that he will allow the application under Order 41 Rule 19 C.P.C. as made. and on the file of the Court to be heard and disposed of on merits, and that the only locus standi In the matter was that of the Company.

(7) I accordingly set aside the order dated 12th March, 1990 passed by the Rent Control Tribunal and direct that the application under Order 41 Rule 19 Civil Procedure Code . that had been moved by the Company, be restored to his file, and beard on merits on the basis of the facts set out in that application and then an appropriate order be passed on merits. Since this is a matter arising out of an eviction order passed as far back as on 11th January, 1986, it is ordered that the file shall be put up before the Rent Control Tribunal on 16th January, 1992 on which date the parties, namely, the Company through Counsel, and the landlord, respondent No. 2, with or without Counsel shall appear and the Court shall fix a very early date for hearing of the application under Order 41 Rule 19 of the Civil Procedure Code , and shall ensure that it is disposed of within two months of the date, the parties appear before him for the first time.

(8) At this stage. It is stated by Mr. Bawa that the landlord has not been paid rent with effect from 1st March, 1990. As per statement made before the Rent Control Tribunal, it was stated that since the Company was withdrawing the application under Order 41 Rule 19 Civil Procedure Code . and even the appeal, it would not be liable to pay the rent thereafter. Because of the ensuing controversy, rent has not been paid because the petitioner claims to be in possession of the property on behalf of the Company. Be that as it may, Mr. Menon today has undertaken in Court that the petitioner shall see to it that the entire arrears of rent are paid up to date by the Company to the landlord.

(9) Mr. Menon has further elaborated his statement to the effect that the petitioner is now back in the management of the Company and shall be in a position to ensure that necessary steps are taken to comply with the orders of the Court, and the undertaking given herein, and future rent is also paid regularly so long as the matter is not finally disposed of. This undertaking is recorded, and it is ordered that the entire arrears of rent with effect from 1st March, 1990 to 31st December, 1991 shall be paid in Court to respondent No. 2 or his Counsel or any other authorised representative, if not paid earlier, on the date fixed, namely, 16th January, 1992. It js further ordered that hearing of the application shall be subject to compliance of this order, and payment of arrears of rent to the landlord, and in the event of non-compliance, the application shall be liable to dismisal forthwith. Future rent shall also be paid regularly direct to the landlord by the Company by 7th of every succeeding month, up to the time the matter is finally disposed of.

(10) The revision petition stands disposed of in the above terms. No order as to costs.

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