

D.N. Sharma Vs. S.P. Suri

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Court : Delhi

Decided On : Jul-01-1995

Reported in : 1995IIIAD(Delhi)353; 1995(35)DRJ285

Judge : Usha Mehra, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25B(4)

Appeal No. : Civil Miscellaneous Appeal No. 1794 of 1995 and Civil Revision Appeal No. 461 of 1995

Appellant : D.N. Sharma

Respondent : S.P. Suri

Advocate for Pet/Ap. : Valmiki Mehta and; O.P. Sharma, Advs

Judgement :

Usha Mehra, J.

(1) ADMIT.

(2) The respondent Shri S.P.Suri was a permanent Assistant of C.S.S. cadre of the Ministry of Home Affairs, officiating as Section Officer on ad hoc basis in the said Ministry. He retired from the service w.e.f. the afternoon of 30th June,1994. As an official of the Ministry of Home Affairs, he was allotted a Government

accommodation. Presently he and his family are occupying the said Government accommodation. After his retirement he was required under the rules to vacate the Government accommodation. Accordingly, he approached the present petitioner to vacate the premises under his tenancy, so that the same could be occupied by him and to enable him to leave the Government accommodation. It had also been the case of the landlord/ Mr.S.P.Suri that the present petitioner assured that he would vacate the premises. The petitioner had been allotted by the D.D.A. under the S.F.S.Scheme a house bearing No.B-1/1109 situated at Vasant Kunj, New Delhi. The flat is a duplex type situated at second and third floor. When the petitioner inspired of assurance did not vacate the premises in question, the respondent

(3) Leave to defend application was filed by the petitioner. The main defense set up was that the rent of the premises which the petitioner was paying is more than Rs.3,500.00 per month, therefore, the Rent Controller had no jurisdiction to decide the petition. Secondly the premises was let out for residential-cum-commercial purposes and finally the respondent/landlord had no intention to occupy the premises. He was interested to sell the same. In that affidavit he also took the plea that the lease was for an indefinite period because he had raised with his resources construction of permanent nature which vest in him a right to occupy the premises on perpetual basis. That the rent was partly paid in cash and partly by cheque. Landlord acknowledged the same.

(4) The counter affidavit was filed by the landlord/respondent herein. Mr.S.P.Suri in his affidavit disclosed that initially the rent was fixed at Rs.1,500.00 per month. This was increased to Rs.2,000.00 per month and finally to Rs.2,500.00 per month. He further deposed that at no stage rent was received in cash. The rent had always been paid by the petitioner by cheque. Moreover, the rent was never more than Rs.2,500.00 per month. The premises was let out for residential purposes. The petitioner being an employee of M/s Shriram Fibres Ltd. was already residing in this premises but after he left that employment, he was permitted the tenancy in his name for his residence on the same rent which was being paid by M/s Shriram Fibres Ltd. That he had no intention to sell this premises. Since after retirement he had to vacate the Government

accommodation and to occupy this premises for his residence. The petitioner had always reflected the rent paid by him in his books of accounts. To support this fact, the respondent filed the certified copy of annual statement and Balance Sheet of petitioner's company filed by the petitioner before the Registrar of Company. Filing of those documents with the Registrar of Company was a statutory requirement for petitioner's company. In these documents, the petitioner himself has reflected the rent of this premises as Rs.1,500.00 per month initially and then at the rate of Rs.2,000.00 per month. Thereafter the rent was increased to Rs.2,500.00 per month w.e.f. 23rd May,1990. With this counter affidavit landlord also filed the balance sheet of petitioner's company known as M/s Integrated Corporate Service Pvt.Ltd. It is registered with Registrar of Companies Delhi & Haryana. From petitioner/tenants own documents, the respondent deposed that the rate of rent paid to him was never beyond Rs.3,500.00. The Balance Sheet of the petitioner's Company in fact incorporates as to at what rate the rent was paid to the landlord.

(5) It was in this background that the learned Rent Controller decided the petition. He declined to grant the leave to defend, inter alia, on the grounds that landlord was a Central Government Employee, he stood retired w.e.f. 30th June,1994 and except the house in question he has no other alternative accommodation in Delhi. He has been in occupation of Govt. accommodation which he cannot keep for long and it has to be vacated. He also prima facie came to the conclusion on the basis of the pleadings and the record produced before him that rate of rent was never Rs.3,500.00 or above.

(6) By the present petition, the impugned judgment has been assailed primarily on the ground that the Controller exercised the jurisdiction which never vested in him. This Act does not apply to the cases where the rent is more than Rs.3,500.00 per month. Secondly, the Rent Controller transgressed his jurisdiction by looking to the documentary evidence produced by the respondent/ landlord and ignoring the affidavit and the documents filed by the petitioner.

(7) I have heard Mr.Valmiki Mehta, counsel for the petitioner and Mr.O.P.Sharma for the respondent and perused the record. The learned Rent Controller rightly pointed out that the provision of Section 14C read with Section 25B of the Act

were brought on the Statute Book by the Legislature with the sole object to see that the petition by Government Servants are expeditiously disposed. He also took note of the fact that the landlord Mr.S.P.Suri was occupying Government accommodation. Mr.Suri has not surrendered the Government accommodation because of his own property being in possession of the tenant. He also took note of the fact that the premises are residential and the tenant Along with his wife and son is residing therein. So far as the factum of Mr.S.P.Suri being the landlord there was no challenge. Landlord is occupying Government accommodation even after his retirement from Government service w.e.f. June,1994 is also not disputed. The factum that these premises have been used for residential purposes has also not been assailed. The only points urged by Mr.Mehta at the bar are (i) lack of jurisdiction of the Rent Controller and (ii) that Controller ignored the documents filed by the petitioner. Both these questions are inter-linked, and therefore, taken up together. To prove that the rent paid by petitioner was more than Rs.3,500.00, reliance has been placed on the letters placed by the petitioner on Contoller's file on 18th April,1995. These are purported to have written and signed by the respondent landlord. The execution of any letter or any such note had been denied by the landlord in his counter affidavit. By the time counter affidavit was filed, the petitioner had filed these documents. Why these letters were not filed Along with the leave to defend affidavit? In fact no Explanatinn has been given. In petitioner's own words as stated in his affidavit 'that the deponent is confident that he would be able to locate some such papers in the course of time'. What did he mean by some such paper. No details of such papers were given in his affidavit nor even mentioned whether these papers would be letters written by the landlord or some notes. Moreover, if these letters had been in possession of the petitioner nothing prevented him from filing the same with his affidavit. By merely saying 'some such' papers, which he was optimistic to trace without being sure that papers he had the Controller was justified in concluding that these papers do not inspire confidence of its being genuine. At the time of filing leave to defend affidavit these documents ought to have formed part of the affidavit or at least should have been annexed with the same. The letters purported to have been written by the landlord were filed after six months of the filing of the leave to defend affidavit. Moreover there is no affidavit of the petitioner filed along with

these letters indicating that these are in the handwriting of the landlord and signed by him. These letters were simply placed on record without supporting affidavit of the tenant. therefore, learned Rent Controller was justified in ignoring these letters which were not supported by the affidavit of the tenant. Whereas the respondent landlord with his affidavit filed certified copies of the statements filed by the petitioner with the Registrar of Companies in which he indicated the rate of rent initially to be Rs.1,500.00 then Rs.2,000.00 per month for the period 1988-89. therefore, the learned Rent Controller was justified in relying on these authentic certified copies issued by the Department of Company Affairs. These formed part of the affidavit filed by the landlord. Whereas the tenant placed on record these letters on 18th April,1995 i.e. after the oral and written arguments had already been held. The record of the trial court shows that written submissions were filed on 1st March,1995 with directions that the opposite party may file its written statement, if any, positively within a week before the next date otherwise, the same will not be considered. It was much after 3rd April,1995 that these letters were placed on the file on 18th April,1995 and that too without any supporting affidavit of the petitioner filed Along with these letters. Moreover, permission of the Court was sought at the time of filing these letters.

(8) In the absence of there being any prima facie proof that the rent being more than Rs.3,500.00 per month, the controller was justified in concluding that he had the jurisdiction to try this petition. Mr.Valmiki Mehta then contended that the Controller could not have looked into the documents filed by the respondent landlord. It was only the affidavit of the petitioner tenant which was to be looked into. Since the petitioner had categorically stated that he was paying rent at the rate of Rs.4,500.00 per month w.e.f. 1st April,1992 hence it became a disputed question of fact. The Controller ought to have granted him the permission to lead evidence to prove the assertion made by him in the affidavit. In this regard he placed reliance in the case of Precision Steel Engineering Works Vs . Prem Deva,, : [1983]1SCR498 . I am afraid the observations of Supreme Court in that case are of no help to the petitioner herein. In that case the Supreme Court was dealing with a petition under Section 14(1)(e) read with Section 25-B, (1),(5),(7) and (10) and 37(1) of the Act. While dealing with that application the court was considering only the scope of the powers of the Controller under Section 25B in a petition filed

under Section 14(1)(e) of the Act. It was observed that the Controller must prima facie be satisfied on perusal of affidavits of the parties, proceedings and the other material available on record, that the facts alleged by the tenant are such as would disentitle the landlord from obtaining the order for recovery of possession of the premises on the ground specified in clause (e) of proviso to Sub Section (1) of Section 14.

(9) It was further observed that the word 'disentitled' is a strong word and the Controller must be satisfied that the tenant has such a defense as would defeat the claim of the landlord. The Controller was not to set down the application for trial merely on perusal of the affidavits filed by the tenant without applying his mind to the pleadings of the parties and the material on record. If he finds that the pleadings are such as would entail a trial then the Controller must grant the tenant leave to contest but not otherwise. thereforee, for arriving at a prima facie view, the Controller was to look to the pleadings of the parties or the affidavits filed by the tenant and the counter affidavit filed by the landlord and the reply affidavit if any by the tenant. It must be clarified that in this case no reply affidavit had been filed by the tenant. The leave to defend affidavit was filed to which the landlord filed the counter affidavit. Along with that counter affidavit the documents i.e. certified copies of the balance sheet and the statement filed by the tenant before the Registrar of Company were placed on record by the landlord. These documents were not denied by the tenant by filing any rejoinder affidavit. thereforee, on the date when the arguments were heard the Controller had before him the affidavit of the tenant without any documents on behalf of the tenant and the counter affidavit of the landlord supported by the certified copies of the tenants documents evidencing the payment of rent by the tenant to the landlord. In the counter affidavit the landlord had specifically indicated that at no stage the rent was paid beyond Rs.2,500.00 per month. By his affidavit the landlord refuted the allegations of the tenant that the rate of rent paid was more than Rs.3,500.00 or it was Rs.4,500.00 per month. The landlord even went to the extent of asserting in his affidavit that there was no documentary evidence in possession of the tenant to show that he paid the rent beyond Rs.2,500.00 per month.

(10) That is the reason the tenant in his affidavit seeking leave to defend used the words 'He would be able to locate some such papers in the course of time. To this averment of the tenant, the landlord in his counter affidavit specifically stated that this was an abuse of the provision of law and that this plea was false. Landlord also expressed his apprehension that the tenant would fabricate some documents in this regard. That is why vague averments were made by him. Had there been any such document he would have filed the same with his affidavit. It was in this background that learned Rent Controller observed that the possibility of manipulation of these documents filed on 18.4.1995 could not be ruled out. These observations of the Rent Controller in view of the facts discussed above cannot be called imaginary or far fetched. So far as the observation of the Supreme Court in Precision Steel's case (Supra) do not help the present petitioner. thereforee, the trial court was justified in placing reliance on the decision of the Supreme Court in the case of Surjit Singh Kalra Vs . U.O.I. : [1991]1SCR364 ,where the Supreme Court observed that the remedy under Section 14(1)(e) is available only to landlord in general or the landlords who are not classified landlords under Section 14B to 14D. The classified landlords have been conferred with certain rights which are different from and independent of the rights under Article (six) 14(1)(e).

(11) The documents were not only filed after six months of the filing of the leave to defend affidavit but were simply placed on record without being supported by any additional affidavit of the tenant. No affidavit was filed by the tenant indicating that these were the letters written and signed by the landlord. For these reasons, to my mind, the Trial Court was justified in not placing any reliance on these letters. On the other hand documents filed by the landlord were authentic and belonged to the tenant which he filed in the course of his business. Hence, Rent Controller was within his right to rely on these authentic documents filed by the landlord and came to a prima facie view that no ground was made out to grant the leave. The mere assertion of the tenant to my mind will not constitute any dispute requiring adjudication. If every allegation is treated as dispute then in no case leave to defend can be rejected. Then every tenant will raise such questions against a classified landlord in order to deprive him the premises and the landlord per force will have to undergo full trial. This was not the intention of the Legislature when Section 14-B to 14-D were brought on the Statute Book. thereforee, I find no

merits in this petition nor any ground to interfere with the judgment of the learned Rent Controller.

(12) For the reasons stated above, the petition is hereby dismissed.

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