

K.S. Patcha Vs. Arun Sarna

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Court : Delhi

Decided On : Aug-04-2008

Reported in : 151(2008)DLT784

Judge : Shiv Narayan Dhingra, J.

Acts : Delhi Rent Control Act - Sections 14C, 25B and 50; Public Premises Act; Code of Civil Procedure (CPC) - Order 12, Rule 6 - Order 23, Rule 1; [Constitution of India](#) - Article 227

Appeal No. : CM(M) No. 1190/2007

Appellant : K.S. Patcha

Respondent : Arun Sarna

Advocate for Def. : Mukul Sharma, Adv.

Advocate for Pet/Ap. : M.N. Krishnamani, Sr. Adv.,; R. Venkatraman and; Vaishnavi

Judgement :

Shiv Narayan Dhingra, J.

1. By this petition under Article 227 of the [Constitution of India](#), the petitioner/landlord has challenged the legality of order dated 20.7.2007 passed by

the learned ARC in the eviction petition filed by the landlord under Section 14-C read with Section 25-B of the Delhi Rent Control Act.

2. The relevant facts are that the petitioner/landlord/owner of flat No. 118 Civil Supplies Co operative Group Housing Society Plot No. 6, Sector -4, Dwarka, New Delhi inducted respondent as a tenant by a lease agreement dated 6.1.2001 for a period of 11 months at the monthly rent of Rs. 3700/-. The petitioner at that time was employee of CPWD, Government of India and was working as an Assistant Engineer. He retired from the service on 31.1.2006. His family consisted of his wife, two sons and two daughters. While in the service, he was occupying the government accommodation and after his retirement he continued to occupy the government flat for some time. However, an eviction order was passed against him under Public Premises Act and he was also charged with penalties for overstaying. Before his retirement, he filed a Civil Suit No. 136/2004 for possession and recovery of rent from the respondent. In the WS filed before the Civil Court in the Civil Suit, the respondent took following objections:

The suit was not maintainable since the jurisdiction of the Civil Court was barred by the provisions of the Delhi Rent Control Act. and in respect of rent respondent made following averments/pleadings in para 04 of the WS.

That the contents of para 4 of the plaint, so far as those relate to the rent for the tenancy portion, are incorrect and are hereby denied. It is submitted that the tenancy Agreement dated 6.1.2001 expired due to efflux of time after 11 months of its coming into existence, and thereafter a fresh, oral tenancy agreement took place between the plaintiff and the defendant in relation to the suit premises under which the defendant agreed to remain a tenant of the plaintiff on the monthly rent of Rs. 3100/- (Rs. Three Thousand One Hundred only) per month. The rent of the suit premises was reduced to Rs. 3100/- by oral agreement between the plaintiff and the defendant, as it was the rent prevalent for similar premises at Dwarka at the material time. The plaintiff and the defendant also agreed that the sum of Rs. 7400/- advanced to the plaintiff by the defendant under the previous agreement dated 6.1.2001 be retained and treated by the plaintiff as a security deposit. The contention of the plaintiff that the tenancy period had been extended for three

times for three months period due to the request made by the defendant is incorrect and are hereby denied. The plaintiff has not been able to give any details of the three alleged extensions of the tenancy, as no such extensions of tenancy as alleged ever took place.

3. The petitioner had also made an application under Order 12 Rule 6 CPC for passing a decree but the said application did not find favour with the Civil Judge because of the respondent's stand that the rent was Rs. 3100/- p.m. The petitioner then filed a revision petition being CRP No. 190/2006 in this Court. While disposing of this petition on 28.9.2006, this Court also observed that the allegation of respondent was that the rate of rent was subsequently reduced to Rs. 3100/- per month by way of an oral tenancy. The petitioner thereafter filed an application under Order 23 Rule 1 CPC before the Civil Judge for withdrawing the Civil Suit with liberty to file a fresh petition under the Delhi Rent Control Act. This application was allowed by the learned Civil Judge vide order dated 16.12.2006 and the petitioner was given liberty to file a petition under the Delhi Rent Control Act. During pendency of the Civil Suit before the Civil Judge, the respondent had been paying rent at the rate of Rs. 3100/-, which was his contention about the rent. After withdrawal of the suit from the Civil Court, the petitioner/landlord filed an eviction petition under the Delhi Rent Control Act and in this eviction petition the tenant sought leave to contest the petition on the ground that the Rent Controller had no jurisdiction to entertain the eviction petition since the contractual rate of rent was Rs. 3700/- per month in terms of the agreement dated 6.1.2001. The respondent took the stand that since the petitioner had earlier alleged rent of Rs. 3700/- in the Civil Suit, the petitioner was now estopped from alleging rent of Rs. 3100/- before the Rent Controller. He stated that the rate of rent was a disputable issue and the Rent Controller was bound to determine this and this was a contentious issue on which leave to contest should be granted.

4. The learned ARC came to the conclusion that all other requirements of Section 14-C were satisfied. The landlord was a retired government employee, the premises let out by him was required for his own residence and the petition was filed within one year from the date of his retirement. However, he observed that the respondent was able to raise the question of jurisdiction, which was a triable

issue and could be decided by trial and accordingly leave to defend was granted limited to the question of rate of rent.

5. The Counsel for the petitioner has argued that in exercise of jurisdiction under Article 227 of the [Constitution of India](#), this Court should ensure that the stream of justice is not polluted and the respondent is not allowed to approbate and reprobate in accordance with his sweet will about the jurisdiction of the different forums and should not be allowed to retract from the pleadings made by him in the earlier Suit. The order of the Trial Court was bad in the eyes of law. It was not passed on correct proposition of law and the order was liable to be quashed and an eviction order should be passed.

6. The WS filed by the defendant/respondent was duly verified by him and he had stated that the contents of the paragraph 04 of the WS (reproduced above) were correct to his knowledge and para 01 on the merits regarding jurisdiction of Civil Court was correct on the basis of legal opinion received. Pleadings are required to be verified by the parties so that the parties are bound by the averments made in the pleadings. Pleadings filed in a suit cannot be looked upon lightly and a defendant once having made admission in the pleadings cannot be allowed to retract the same as per his convenience. The Courts have always deprecated the tendency to approbate and reprobate according to convenience. In *Mukesh Gupta v. Sushma Vasishtha* 2006 I AD (Delhi) 405 this Court had similar issue where the tenant had taken a plea before the Rent Controller that its jurisdiction was barred since the rent was more than Rs. 3500/- per month and when the suit was filed before the Civil Judge, the tenant again took the objection that the Civil Court had no jurisdiction to try the case in view of the bar under Section 50 of the Delhi Rent Control Act. The tenant in this case had stated that the issue of rate of rent as raised by him was a question of law and it was not adequately answered by the Trial Court and the first Appellate Court. This Court observed that the tenant was estopped from pleading that the Civil Court had no jurisdiction. The tenant was trying to gain time by frivolous arguments advanced before the Court and the contention of the tenant was turned down.

7. It is settled law that a person cannot be allowed to approbate and reprobate. No party can take stand as per convenience and a party cannot be allowed to withdraw from the admissions made by it in the pleadings in respect of the same subject matter. In the civil case, the landlord came clean before the Court and claimed rent at the rate of Rs. 3700/- p.m. relying upon the initial agreement. The tenant/respondent however, stated that this agreement had come to an end and after expiry of this agreement a new oral agreement was entered into between the parties and the agreed rent was Rs. 3100/- per month. He also relied upon certain rent receipts issued by the landlord for Rs. 3100/- and he took the plea that the Civil Court had no jurisdiction. Even before the High Court, the tenant/respondent had not stated that the rent was Rs. 3700/- rather he maintained his plea that the rent was Rs. 3100/- p.m. In view of this contention of the tenant that the monthly rent of the premises was Rs. 3100/- and an oral agreement was entered into after the expiry of written agreement reducing the rent, the landlord/petitioner withdrew his suit before the Civil Court and filed this eviction petition under the Delhi Rent Control Act. The tenant thus, cannot be allowed to take a plea that the rent was not Rs. 3100/- but Rs. 3700/-. The tenant had all along been tendering the rent @ Rs. 3100/-. The learned ARC completely went beyond jurisdiction in allowing the application under Section 25-B of the Delhi Rent Control Act even to the limited extent of rate of rent. Once the tenant had stated in the Civil Suit that the rate of rent was Rs. 3100/- p.m. in terms of an oral agreement, the landlord has a right to sue the tenant on the basis of his admission before the Civil Court. Even if, the tenant takes the plea that the rent was Rs. 3700/- p.m., the ARC on the face of it should have rejected this plea and should have also rejected the application under Section 25-B of the Delhi Rent Control Act.

8. The Courts and the Rent Controller must keep in mind that the Courts cannot be converted into a wrestling field, for trial of tricks where the Court has to act as an umpire. The Courts must effectively intervene and nip the evil of perjury and false statements in bud. Where a tenant takes different stand in different Courts to defeat the effort of landlord to get the premises vacated at the time of need such an effort must be curbed down by the Courts effectively by binding him with his earlier statement in respect of the same premises and his plea of raising a dispute in respect of the rent admitted by him should not be heard and entertained. If the

parties are allowed to approbate and reprobate at their sweet will and convenience and take the Courts for a ride, the whole judicial system shall fail. The courts must effectively check such parties, who take inconsistent stand according to their convenience in different proceedings. I consider the Trial Court grossly erred in holding that a triable issue was there regarding the rate of rent. Once the respondent had taken the stand in one Court that the rent was reduced to Rs. 3100/- p.m, and the Civil Judge had no jurisdiction only Rent Controller had jurisdiction, now he cannot be allowed to reprobate that Rent Controller had no jurisdiction and Civil Court had jurisdiction.

9. The petition is allowed. The order dated 20.7.2007 of the Trial Court is set aside. The petition of the petitioner under Section 14-C of the Delhi Rent Control Act is allowed. A decree for eviction is passed. The respondent is directed to vacate the premises i.e. flat No. 118 Civil Supplies Co operative Group Housing Society Plot No. 6, Sector-4, Dwarka, New Delhi within 30 days from today as he has already illegally prevented the landlord from moving into his premises despite his retirement from the government service long back because of his frivolous pleas.

10. The petition stands disposed of.