

Parmod Kumar Rastogi Vs. Gian Chand Jain

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Court : Delhi

Decided On : Nov-20-1995

Reported in : 63(1996)DLT231; (1996)114PLR36

Judge : Arun Kumar, J.

Acts : [Delhi Rent Control Act, 1958](#); [Evidence Act, 1872](#); [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 3

Appeal No. : Civil Miscellaneous (Main) Appeal No. 31 of 1991

Appellant : Parmod Kumar Rastogi

Respondent : Gian Chand Jain

Advocate for Pet/Ap. : S. Poddar and; Ravi Gupta, Advs

Judgement :

Arun Kumar, J.

(1) By this petition under Article 227 of the Constitution of India, the petitioner has challenged the concurrent decisions of the Additional Rent Controller as well as of the Rent Control Tribunal dismissing the objection of the petitioner against execution of the eviction order. The basic facts are that the respondent purchased the property in suit vide a sale deed duly registered on 12.8.1970. The sale deed showed that the father of the respondent namely. Ram Sarup Jain was already a

tenant in the property. The petitioner herein was inducted' in the year 1976. An eviction petition was filed on 28th April, 1988 by the respondent herein against Smt. Lila Devi, the mother of the respondent who, according to the respondent had succeeded to the tenancy rights of his deceased father Ram Sarup Jain and the petitioner herein on the allegation that respondent No. 1 had without consent in writing of the landlord sublet, assigned or parted with possession of a portion of the tenanted premises as shown red in the site plan filed Along with the eviction petition in favor of respondent No. 2. Thus/eviction was sought on the ground of sub-letting. Written statement was filed by respondent No. 1 supporting the case of the landlord in the eviction petition. However, no written statement was filed by the respondent No. 2 who was alleged to be the unauthorised sub-tenant in the premises. On the other hand on the date of hearing fixed before the Additional Rent Controller, an application under Order 23, Rule 3 read with Section 151 Cpc was filed on 4th August, 1988 praying that the parties had arrived at a compromise. The respondents agreed to hand over peaceful vacant possession of the entire tenanted premises to the landlord on 31st March, 1990. A formal compromise agreement arrived at between the petitioner herein and the landlord was annexed to this application. It was prayed that a decree be passed in terms of the compromise arrived at between the parties. The application is signed by the landlord as well as by the Advocate of respondent No. 1. There are no signatures on this application either of the petitioner herein or his Advocate. It may be mentioned here that the agreement by virtue of which the compromise was effected was annexed with the application for recording compromise and was filed in Court. It was duly signed by the landlord as well as the petitioner herein and is also witnessed by a third party. The objector who is petitioner herein has not disputed the fact that the compromise agreement is signed by him. On the basis of application under Order 23, Rule 3 Cpc and the agreement annexed thereto, the Addl. Rent Controller recorded a compromise on 4th August, 1988 and passed an eviction order against the respondents, i.e., the tenant as well as the sub-tenant. It was further ordered that the eviction order would be executable only after 31st March, 1990 if the tenants failed to vacate the premises and deliver the possession thereof in accordance with the compromise. The agreement was marked as Exhibit C-2. The order sheet of the Court recording this compromise

and passing the eviction order is signed by all the three parties, i.e., the landlord as well as the tenant and the sub-tenant. The last date for handing over possession of the premises as per the said order was 31st March, 1990. On 28th March, 1990, the petitioner herein filed objections before the Additional Controller challenging the compromise as well as the eviction order passed by the Addl. Rent Controller. After hearing Counsel for the parties on the objections, the Addl. Rent Controller finally dismissed the objections vide his judgment dated 19th November, 1990. It was held that it was a case in which it would be presumed that the Court had satisfied about the existence of the statutory ground for eviction before passing the eviction order in the facts and circumstances of the case. The Addl. Controller relied upon the judgments of the Supreme Court in *Nagindas Ramdas v. Dalpatram Iccharam @ Brijram and Others*, : [1974]2SCR544 and *K.K. Chari v. R.M. Seshadri*, : [1973]3SCR691 . It was observed by the Additional Controller that there was 'a clear admission in the agreement Exhibit C-2 about the existence of ground of subletting and this fact was specifically recorded by the Court in the order itself, and thus it will be presumed .that the Court was satisfied about the existence of said statutory ground and the decree passed in the case thus, cannot be said to be a nullity.' The Addl. Controller further considered the argument on behalf of the objector that the compromise application was not signed by the objector. On this basis, it was submitted before the Controller that the requirement of Order 23, Rule 3 Civil Procedure Code was not satisfied and, therefore, the alleged compromise could not be given effect to. On this aspect. the Addl. Controller observed that it was sufficient that the objector had signed Exhibit C-2 which was the basis of the compromise application and the agreement itself was filed in Court Along with the application under Order 23, Rule 3 CPC. Thus, the objections were dismissed on 19th November, 1990 by the Addl. Controller. The objector filed an appeal against the judgment of the Addl. Controller before the Rent Control Tribunal. The appeal met the same fate and was dismissed by the Tribunal vide its judgment dated 17th January, 1991. The present petition is directed against these decisions of the authorities below.

(2) The learned Counsel for the objector vehemently urged that this was a case of total lack of jurisdiction on the part of the Additional Controller in dealing with the matter. He contended that the alleged tenant was none else than father of the

landlord and after the death of the father, the mother of the landlord. On this basis, the contention is that the alleged sub-tenancy was a camouflage. Really, the objector was a tenant in the premises and fraud had been played on the Controller in obtaining an order of eviction on the basis of an alleged sub-letting. Secondly, it is submitted that the Controller could not record satisfaction on the basis of facts on record that the objector was a sub-tenant in the premises. The third submission is that there was no lawful compromise and the alleged compromise in the present case does not satisfy the requirements of Order 23, Rule 3 CPC.

(3) So far as the contention on behalf of learned Counsel for the petitioner that the Controller had no jurisdiction to entertain the eviction petition and for that reason the eviction order is a nullity, the same is without any merit. The objector was neither claiming himself to be the owner of the premises nor it is a case of the objector being a trespasser. At the highest, the case of the objector could be that he was a tenant in the premises and the alleged sub-tenancy was a camouflage. The moment the Controller is called upon to consider whether a party is a tenant or a sub-tenant, no question of inherent lack of jurisdiction can be raised nor it can be said to be a case of fraud to confer jurisdiction on the Controller. therefore, reliance by the learned Counsel for the objector on Smt. Shrisht Dhawan v. Shaw Brothers 46 (1992) Dlt 194 is totally misplaced.

(4) The next point for consideration is assuming that the Controller had the jurisdiction to try the eviction petition, was there sufficient material on record for the Controller to be satisfied that the objector was a sub-tenant in the premises and pass an eviction order on that basis. In this connection, reference has to be made to the compromise agreement arrived at between the present objector and the respondent landlord. In the said agreement, para 2 of the recitals runs as under ;

'That the said late Shri Ram Sarup Jain son of Ram Bhagat Jain further sublette the portion of the tenanted premises to the party of the First Part, i.e., Shri Parmod Kumar Rastogi son of late Shri Ved Parkash Rastogi on 1.7.1977. Consequent upon die death of Shri Ram Sarup Jain, his wife Smt. Lila Wati Jain, Successor heiress continued the sub-tenancy in favor of Shri Parmod Kumar Rastogi son of

late Shri Ved Kumar Rastogi in the same manner.'

(5) Para 3 refers to the objector as a sub-lettee. Para 5 of the agreement is again relevant and is reproduced as under :

'That whereas the party of the first part approached the party of the second part (Shri Gian Chand Jain) with the request to compromise the pending petition in the Court of Shri M.L. Mehta A.R.C. fixed for hearing on 4.8.1988 and it was mutually agreed upon without going into merits of case between the parties to this agreement that the party of the first part i.e. (Shri Pramod Kumar Rastogi) shall vacate the portion under the subtenancy of the first party on 31st March, 1990. The party of the second part after appreciating the reason mentioned by the party of the first part, i.e. inability to vacate the sub-tenancy premises presently as above agreed to the request of the party of the first part.'

(6) As per the settlement recorded in the said compromise, the tenant and the sub tenant had to vacate the entire premises in their occupation by 31st March, 1990. This agreement is signed by the objector as well as by the landlord besides a witness. His signatures on this agreement are not disputed by the objector. This agreement was filed in Court Along with application under order 23, Rule 3 Civil Procedure Code for recording a compromise. The application is not signed by the objector although it is signed by the landlord and the respondent No. 1/tenant. On the basis of the said application, the Additional Controller passed the following order :

'Present : Parties with their Counsel. The parties have compromised. Joint application Ext. C-1 is filed with agreement Ext. C-2. Both the respondents undertake to vacate the suit premises on or before 31st March, 1990 which is agreed by the petitioner. They admit the claim of the petitioner in toto as pleaded in the petition. As such eviction order is passed against the respondents which shall, however, be executable only after 31.3.1990 if they failed to vacate and deliver the possession of the suit premises to the petitioner on or before that. The terms of agreement as contained in Ext. C-2 shall be binding on the parties. File be consigned to R.R. ARC/4.8.88'

(7) This is further not in dispute that beneath the above order passed by the Controller all the three parties have appended their signatures. On the basis of these facts, the Additional Controller found that the satisfaction recorded by him regarding unauthorised sub-tenancy was not without basis and, therefore, no fault could be found with the order whereby the eviction decree was passed. In the written compromise which is duly signed by the objector as well as by the landlord, at various places the objector has been described as a sub-tenant. Further, as per para 5 quoted above, the parties invited the Controller to pass an eviction order on the basis of the compromise allowing the respondents in the eviction petition time up to 31st March, 1992 to hand over vacant possession of the premises. The objector who was admittedly a party to the agreement described himself as a sub-tenant at various places in the agreement without any reservations. He cannot be now allowed to contend that the finding about sub-tenancy is not justified. He cannot be allowed to challenge the said finding in the execution proceedings. In view of the admission of the objector, the Controller was right in presuming the unauthorised sub-letting and passing an eviction order on that basis. The learned Counsel for the objector relied on : 21(1982)DLT174 . Oswal Hosiery v. Swami Krishna Nand Gowinda Nand Bhagwat Dham Ashram Trust in support of his plea that the satisfaction recorded by the Controller regarding alleged sub-letting was illegal, unauthorised and unjustified. The said case relates to a finding in relation to the peculiar facts forming part thereof and is not an authority to support the contention raised by the learned Counsel for the objector in the present case. In the said judgment, the facts were that an eviction order was sought by a charitable trust on the ground that the suit premises was required by the trust for furtherance of its activities. In the written statement the tenant had denied that petitioner was a charitable trust. However, the Counsel appearing for the tenant made a statement admitting that petitioner landlord was a charitable trust and an eviction order followed. Ultimately, the Court found that the Counsel had .no authority to make a concession admitting that the petitioner landlord was a charitable trust. On merits also, it was found that the petitioner trust was not a charitable trust. In the present case, the alleged sub-tenant himself admitted that he was a sub-tenant in the premises and the eviction order was passed. This leaves me with the last point raised on behalf of the objector, i.e. the compromise recorded by the Additional

Rent Controller was not a lawful compromise because the application under Order 23, Rule 3 Civil Procedure Code was not signed by the objector tenant. In this connection, first a reference has to be made to the relevant provision contained in Order 23, Rule 3 Civil Procedure Code which runs as under:

' Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by parties.....'

The learned Counsel for the objector emphasised that words 'writing and signed by parties' relate to the application under Order 23, Rule 3 Civil Procedure Code and since in the present case the application was not signed by the objector, the requirements under Order 23, Rule 3 Civil Procedure Code was not satisfied. This argument is devoid of any merit in view of the fact that Rule 3 refers to compromise in writing and signed by the parties. This does not mean that the compromise application must be signed by the parties. It only means that the compromise should be a written compromise signed by parties. therefore, if the application under Order 23, Rule 3 is not signed by the parties or by one of the parties it will not make any difference so long as a written and signed compromise is filed Along with it. It is only in a case where the application itself contains the compromise and there is no other written document accompanying it, that the compromise application will have to be necessarily signed by the parties. It will be sufficient if a written and signed compromise between parties accompanies the compromise application as it has happened in the present case. The compromise in the present case is result of a written agreement signed by the parties. The written agreement Exhibit C-2 accompanied the compromise application which satisfies the requirement of Order 23, Rule 3 CPC. Further, there is an additional fact in the present case and it is, the objector as well as the other two parties have signed the order sheet of the Court on the page where the compromise and the eviction order is recorded. This puts the matter entirely out of any pale of controversy. In this connection, I may refer to a judgment of this Court in Shri Krishan Mohan Singh v. Sri Chand Gupta and Others 1993 Delhi 365.

(8) Thus, there is no merit in any of the contentions raised on behalf of petitioner in the present petition. The same is liable to be dismissed.

(9) The learned Counsel for the respondent landlord has submitted that the present petition under Article 227 of the Constitution of India is not maintainable. I need not go into this argument since the petition is being rejected on merits. The learned Counsel for the respondent landlord submits that for the last 5 years, he has been denied possession of the premises and the Executing Court be directed to ensure that he is put in possession of the premises in question forthwith. I hope in the facts and circumstances of the case, the Executing Court will see that the landlord is not deprived of the possession of the premises any further. The Executing Court will render all assistance to the decree holder in accordance with law for getting the possession of the premises expeditiously. The petition is dismissed with costs. Counsel fee Rs. 3,000.00 .

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