

Gajender Solanki Vs. Banso Devi

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Court : Delhi

Decided On : Aug-31-2005

Reported in : AIR2006Delhi24; 124(2005)DLT409; 2005(84)DRJ353

Judge : Mukul Mudgal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 144 - Order 21, Rule 97 - Order 23, Rule 3; ;Delhi Rent Control Act - Sections 14(1) and 50

Appeal No. : CRP No. 485/2001

Appellant : Gajender Solanki

Respondent : Banso Devi

Advocate for Def. : M.K. Singh, Adv.

Advocate for Pet/Ap. : R.P. Bansal, Sr. Adv. and; P.K. Bindal, Adv

Judgement :

Mukul Mudgal, J.

1. This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (for short CPC) is filed against the order of the learned Senior Civil Judge dated 24th February, 2001 allowing the appeal filed against the order dated 15th December, 1999 passed by the learned trial Court dismissing the application filed

by the petitioner under Section 144, Order 21 and Rule 97 CPC, in the execution proceedings.

2. The learned Trial Judge had allowed the application filed by the petitioner under Section 144, Order 21 Rule 97 CPC. The appeal filed by the respondent Banso Devi was allowed by the learned senior Civil Judge leading to the present revision petition. The relevant facts of the case are as under:-

(a) The petitioner had filed a suit for permanent injunction against the respondent on the allegation that he was tenant in flat No. 203-A, W.P. Block, Maurya Enclave, Pitampura, Delhi and was sought to be dispossessed by the respondent forcibly and without due process of law.

(b) Thereafter the parties resolved the dispute on 28th January, 1999. The statement was made before the Trial Court where the petitioner had agreed to vacate the premises on or before 30th April, 1999. The undertaking was accepted by the respondent and the suit was disposed of in terms of the compromise and the decree sheet was prepared accordingly.

(c) Since the petitioner did not honour the decree after the expiry of the period stipulated in the undertaking made before the Court on 28th January, 1999, the respondent filed an execution petition arraying the petitioner herein as the Judgment Debtor. The main plea taken in response to the execution petition by the petitioner/ tenant was that the compromise decree dated 28th January, 1999 which was passed by the learned trial court was without jurisdiction as the jurisdiction of the Civil Court to order eviction of a tenant from the tenanted premises was barred by the provisions of the Delhi Rent Control Act.

(d) The Appellate Court while reversing the trial court's judgment dated 15th December, 1999 has given a finding that the suit was filed by the petitioner himself in a civil Court averring that he was threatened with forcible dispossession from the premises. The petitioner having filed the civil suit, as per the averments in the plaint, the appellate Court has rightly held that the Civil Judge was fully competent to try the suit, being only a suit of civil nature. The appellate Court has noticed the mandate of Order 23 Rule 3 CPC and in my view correctly arrived at a conclusion

that the petitioner on his own volition agreed to vacate the tenanted premises. Since the subject matter of the compromise was vacation of the tenanted premises and the same was duly recorded, the subject matter could be compromised as it relates to the parties to the dispute. There is no eviction of the tenant and it was the vacation by the petitioner himself on his own volition which is rightly recorded by the appellate Court. Order XXIII Rule 3 CPC reads as under:-

'Compromise of suit.-- 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], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

3. The contents of Order 23 clearly show that it is open to the parties to arrive at compromise for settlement even in respect of issues which are not the subject matter of the suit. Thus the finding of the appellate court are indeed justified fully by the mandate of Order XXIII Rule 3 CPC. Besides, the petitioner's conduct is such as would dis-entitle him to any equity in his favor. The petitioner gave an undertaking on 28th January, 1999 agreeing to vacate the premises by 30th April, 1999, and utilized the aforesaid time and thereafter has sought to take the plea that the consent decree was passed without jurisdiction only after utilizing the time fully granted by the consent decree.

4. The main plea raised by the learned counsel for the petitioner is that any dispute regarding the eviction of tenanted premises fell within the province of the Delhi Rent Control Act (in short the 'Act') and in particular under Section 14(1). Reliance has been placed on the non-obstante clause of Section 14(1) of the Act.

It has also been contended that the learned Trial Court did not have jurisdiction and the same is barred by Section 14(1) as well as Section 50 of the Act. It has also been contended that there is no lawful compromise as the settlement arrived at was on a slip of paper which was forcibly recorded in the Police Station. In my view this plea is not open to the petitioner at this juncture as the undertaking was given before the Court on 28th January, 1999 and if there was a threat and the agreement was arrived at under coercion exercised in the Police Station a grievance about threat/coercion could and should have been made at least before the trial Court on 28th January, 1999. No such grievance has been made before the Trial Court before whom the undertaking was given and this plea has been taken subsequently. The petitioner has already enjoyed the possession up to 2005 i.e., beyond six years of the original date. The Hon'ble Supreme Court in : AIR 1991 SC2234 , Byram Pestonji Gariwala v. Union Bank of India, has laid down the following position of law:

'22. Counsel's role in entering into a compromise has been traditionally understood to be confined to matters within the scope of the suit. However, a compromise decree may incorporate not only matters falling within the subject matter of the suit, but also other matters which are collateral to it. The position before the amendment in 1936 was that, in respect of the former, the decree was executable, but in respect of the latter, it was not executable, though admissible as judicial evidence of its contents.'

In view of the above position of law as the compromise decree may comprise of matters outside the suit but collateral to it no cause for interference is warranted with the order of the learned Appellate Court dated 24th February, 2001. The petitioner's agreeing to vacate the premises was an issue collateral to his suit praying that he be evicted only in accordance with due process of law.

5. The last plea raised by the petitioner is that the effect of Section 14(1) of the Act is available to him. The appellate Court has rightly recorded that it was not a case of eviction and that the order leading to the vacation of the premises was passed on an undertaking given by the petitioner himself on his own to vacate the premises that too in a Civil Suit filed by the petitioner himself seeking the relief that

he should not be dispossessed except in accordance with law. Hence, no cause for interference has been made out. The petition is thus dismissed and stands disposed of.

6. However, since the petitioner has been a tenant of the respondent/landlord for a substantial period of time, I am of the view that he should be given sufficient time to vacate the tenanted premises. Accordingly, the petitioner is directed to vacate the premises on or before 31st January, 2006, subject to filing an undertaking on affidavit within four weeks from today to vacate the premises on or before 31st January, 2006 and subject to petitioner's paying all arrears of rent/damages within four weeks and his continuing to pay the rent/ damages month by month. The affidavit of undertaking is also required to state that the petitioner alone was in exclusive possession of the premises in question. The petitioner shall hand over peaceful and vacant possession to the respondent on or before 31st January, 2006.

7. All pending applications also stand disposed of.