

Yashpal Vs. Chamanlal Sachdeva

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Court : Delhi

Decided On : Mar-22-2006

Reported in : 129(2006)DLT200; 2006(89)DRJ78

Judge : R.S. Sodhi, J.

Acts : Delhi Rent Control Act - Sections 14(1) and 14(2)

Appeal No. : Civil Misc. (Main) No. 192 of 2001

Appellant : Yashpal

Respondent : Chamanlal Sachdeva

Advocate for Def. : None

Advocate for Pet/Ap. : M.L. Mahajan, Adv

Disposition : Petition dismissed

Judgement :

R.S. Sodhi, J.

1. C.M.(M) 192 of 2001 challenges order dated 22.1.2001 of the Additional Rent Control Tribunal (for short 'the Tribunal') in R.C.A. No. 47 of 1997 whereby the learned Tribunal partly allowed the appeal holding - the appeal is accordingly partly allowed. The respondent shall deposit the rent up-to-date in the court below

within one month of the date of this order. In case of any dispute about non-deposit of the rent, they shall appear before this Court so that controversy about the rent up-to-date is finally settled. In the event deposit is to the satisfaction of the appellant, benefit of Section 14(2) DRC Act shall be extended to the respondent and in the event it is not up to the satisfaction, final appropriate order shall be passed by this Court in the event in dispute.

2. Brief facts of the case, as have been noted by the Tribunal, are as follows :

1. An eviction petition was preferred by the appellant against the respondent u/s 14(1)(a) r/w Section 14(1)(c) of the DRC Act. The court below dismissed the petition of the appellant. An appeal has been preferred against the order of the court below. During the course of the arguments only the order of the court below with respect to Section 14(1)(a) of the DRC Act has been questioned before me. The order of the court below with respect to the ground available u/s 14(1)(c) of the DRC Act has not been questioned. It is final. To that extent the petition shall stand dismissed.

2. The facts relevant for the purposes of petition u/s 14(1)(a) are that the respondent Yashpal was inducted as a tenant in the property bearing No. R-868, New Rajinder Nagar, New Delhi. He was originally a tenant of Smt. Kesar Devi who is the mother of the appellant as well as one Shri Banwari Lal. It is admitted before me by the parties that Smt. Kesar Devi died on 11.8.76.

3. Under the law of inheritance the right devolved upon the brothers. The appellant claimed that the right to the property fell upon the appellant since a Will was executed by Smt. Kesar Devi on 30.5.76 in which the property was given to the appellant. Sh. Banwari Lal, however, claimed that Will was executed by the mother in which equal rights to the property were given to the appellant as well as Banwari Lal. Since there were two wills, the matter was taken up before the Probate Court. In the Probate Court the will of Banwari Lal was accepted and the will propounded by the appellant was rejected. The matter has been taken up now before the Hon'ble High Court where the rights of the owners created by the alleged wills is pending consideration. In the order in Probate division which was passed by the Ld. District Judge Banwari Lal was made the executor of the Will. He also claimed

that the rights to take action against the tenant be extended to him.

It is also not in dispute that the respondent paid the rent to the appellant for the period 1.8.89 to 31.1.90 and since thereafter the rent was not paid by the respondent to the appellant. It is also not disputed that a notice of demand dated 10.3.93 was served by the appellant on the respondent. Notice is Ex AW1/4. In this notice appellant had made a demand w.e.f. 1.2.92 to 28.2.93. It is also not disputed that the respondent after the period of the notice sent to the appellant half of the amount by cheque which was not encased by the appellant. Today it is not questioned before me that a notice dated 29.3.93 Ex RW1/2 was also received by the respondent on behalf of Banwari Lal issued by M/s. Diwan and Company Advocates calling upon the respondent to pay him 50% share of the entire arrears of rent within two months of the receipt of notice. The respondent was, thus, faced with two notices. One notice is dated 10.3.93 on behalf of the appellant making a demand of the full rent and the another notice on behalf of Banwari Lal dated 29.3.93 making a demand of 50% of the rent by Banwari Lal.

The appellant felt that the remittance of half of the amount by cheque was not due compliance of the notice. The appellant, therefore, filed an eviction petition under Section 14(1)(a) of the DRC Act claiming himself to be the landlord qua the respondent and the respondent having failed to comply with the notice within two months of the notice of demand by paying entire arrears of rent, was liable to eviction under Section 14(1)(a) of the DRC Act.

The respondent contested the petition claiming that the claim of the appellant that the appellant is the sole owner of the property is wrong. The petition, therefore, is liable to be dismissed. It was also claimed that the appellant was not the sole landlord. Other owners/landlords of the property were necessary parties to the petition and in absence of them the petition was liable to be dismissed.

The notice dated 10.3.93 was not on behalf of all the owners of the property, the respondent pleaded.

I questioned Sh. Mahajan is there any owner other than the appellant and Banwari Lal? The answer is in the negative. Thus the respondent admits that there are two

co-owners of the property namely the appellant and Banwari Lal and claims that unless Banwari Lal is joined in the petition, the petition was not competent. The appellant was not entitled to seek eviction.

Another admitted document I find on record is the reply notice Ext. AW1/A sent by the respondent. No amount as per demand was sent along with this reply notice. It was, however, stated in the reply notice that the appellant was not entitled to receive the rent unless the matter between the appellant and his brother is settled and the respondent is supplied with the necessary documents entitling the appellant to receive the rent in respect of the premises in dispute after the death of the mother of the appellant.

Later on, however, vide document Ex AW1/R2 a sum of Rs. 2312.50 was remitted by cheque dated 24.7.93 to the appellant. A sum of Rs. 1,500/- was given to Banwari Lal on 26.7.93 while the balance sum of Rs. 812.50 ps it is stated was given to Banwari Lal by cash on the said date.

It is. Thus, admitted on record that within two months of the notice of demand served by the appellant on the respondent and also within two months of the notice of demand served by Banwari Lal on the appellant, the appellant had not parted with the amount of the rent due either to the appellant or Banwari Lal or half half to both of them.

Admittedly vide receipts Ex CW1/3 and AW1/2 rent was remitted by the respondent to the appellant for the period from 1.8.89 to 31.1.90. It is thereafter the rent was due. It is also an admitted fact that the appellant as well as Banwari Lal were contesting on the basis of the Wills propounded by them with respect to the right of sole owner and co-owner of the property as far as the appellant was concerned. It is not in dispute today that the Ld. District Judge in the Probate division held the appellant as the co-owner of the property along with Banwari Lal.

3. Nobody appears for the respondent in spite of notice having been served on him.

4. It is contended by counsel for the petitioner that a co-owner cannot bring about a suit for eviction by himself. He submitted that unless all the co-owners are joint together, the suit for eviction would not be maintainable. Counsel contended that half of the rent having been paid to one of the co-owners, as demanded of him by his notice, should be considered as compliance of the notice of demand and, therefore, no order under Section 14(2) of the Delhi Rent Control Act could be passed since there was no default. Counsel also submitted that the respondent claims himself to be the sole owner which claim was rejected by a competent court and, therefore, the eviction petition filed by the respondent claiming himself to be the sole owner could not be maintained.

5. Heard counsel for the petitioner and with his assistance I have gone through the record of the case. The question - whether a co-owner can maintain a petition for ejectment - no longer appears to be *res integra*. The Supreme Court has ruled that a co-owner can maintain a petition and that the inter se arrangement between owners is no business of the tenant. The tenant is required to deposit rent as per agreement or otherwise month by month and default of such deposit would invite a petition for eviction. It is not for the tenant to tell the landlords how to manage their affairs. It is also not open to the tenant to insist that all co-owners be made a party to the petition, for this part is left to the co-owners themselves who may join the petition, if they wish to; support or oppose the tenant, as they may desire. But, the tenant cannot insist on all co-owners to join the eviction proceedings. In the present case, the both co-owners have served notices of non-payment on the tenant who has chosen to pay fifty per cent to one of them. This is impermissible since the tenant cannot bifurcate the tenancy unilaterally, nor can he pick and choose his landlord. In the case in hand, admittedly there has been a default in complying with the notices dated 10.3.1993 and 29.3.1993. The Tribunal has taken into consideration all issues raised by the petitioner and has, in its reasoning, adequately answered them.

6. The fundamental question having been answered by this Court, namely, that a co-owner can maintain a petition for eviction, I find no infirmity in the order under challenge. The petition is dismissed.

