

Manoj Kumar Bhatt and Another Vs. Sewak Ram

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Court : Delhi

Decided On : Apr-13-2012

Judge : P.K. Bhasin

Appeal No. : R.C.R. NO. 162, 163, 173, 174 OF 2011

Appellant : Manoj Kumar Bhatt and Another

Respondent : Sewak Ram

Advocate for Def. : Mr. N.S.Jain

Judgement :

P.K.BHASIN, J

This revision petition under Section 25-B(8) of the Delhi Rent Control Act, 1958(in short „the Rent Act?) has been filed by the petitioners-landlords against the order dated 06.04.2011 passed by the learned Additional Rent Controller („the Controller ?in short) dismissing their eviction petition filed under Section 14(1)(e) of the Rent Act against the respondent-tenant in respect of one shop no. 386, built on Plot no. 24, Khasra No. 235/35-36-39, Block BD, Ward No. 16, Joshi Road, Karol Bagh, New Delhi(hereinafter to be referred as „the tenanted shop?).

2. The brief facts which led to filing of this petition are that the petitioners-landlords had filed an eviction petition against the respondent-tenant seeking his eviction from the tenanted shop on many grounds, one of which was the bona fide

requirement of the tenanted shop. The Controller when took up the eviction petition for the first time on 01.06.2009 had passed the following order:

“Heard. Issue summons of the eviction petition to the respondent in the form prescribed under Schedule-III of DRC Act on filing of PF/RC, for 20.08.09.”

Summons under Schedule III of the Rent Act are ordered to be issued to a tenant when his eviction is sought by his landlord from the tenanted premises under Section 14(1)(e) of the Act, which provision was also invoked by the petitioners-landlords in the present case. Whenever summons prescribed under Schedule III are issued as provided under Section 25-B(2) of the Rent Act in an eviction petition under Section 14(1)(e) the tenant is supposed to obtain permission of the Rent Controller to contest the eviction petition within fifteen days from the date of receipt of the summons and if that is not done the averments made in the eviction petition are to be taken as admitted by the tenant and the Controller is to pass eviction order straightaway. This is so provided under Section 25-B(4) of the Rent Act.

3. The respondent-tenant in the present case was duly served with the summons which was returnable for 20/08/2009 but he did not file any application seeking leave of the Controller to contest the eviction petition within 15 days and instead presented his written statement on 07/08/2009. On 20.08.2009 the learned Controller was on leave and so the ahalmad of the Court fixed the case for 24.10.2009 after recording in the order-sheet that written statement had already been filed. On 24.10.2009 the following order was passed by the Controller:

“Written submissions filed on behalf of the Petitioner on 23.10.2009. it is submitted by the proxy Counsel for the Respondents that main Counsel is not available. At request put up on 19.12.2009 for filing of rejoinder/arguments on the written submissions.”

It appears that instead of writing „written statement?„written submissions?came to be typed in the proceedings of 24th October. Thereafter, the petitioners raised a grievance before the Controller that since the respondent-tenant had not sought leave to contest the eviction petition his written statement should not have been

taken on record and eviction order should have been passed straightaway. From the side of the respondent-tenant it was claimed that since the petitioners had filed the eviction petition on many grounds available to them under the Rent Act ordinary summons should have been issued and wrongly the same had been issued under Schedule III as if the petition was only under Section 14(1)(e) of the Rent Act. That is evident from the following the proceedings of 23.03.2010 recorded by the learned Controller;-

“Ld. Counsel for the petitioner submits that the in the present petition, application for leave to defend has not been filed by the respondents and therefore, respondents are liable to be evicted.

Ld. Counsel for the respondents submits that the present petition is not covered under the summary proceedings and that is why application for leave to defend was not filed and WS was filed because the present petition has been filed under Section 14(1)(a) read with Sections 6A and 7 (2), 14 (1)(b), 14(1)(j) and 14(1)(e) of The Delhi Rent Control Act, 1958 and he seeks more time for submitting relevant authorities on this point.

Put up for further arguments, for 11.05.10.”

4. Then vide order dated 06.04.2011 the learned Controller not only rejected the objection of the petitioners-landlords that written statement should not have been accepted but the eviction petition itself was also rejected as far as the ground under Section 14(1)(e) of the Rent Act was concerned for the reason that the same was not maintainable in view of the bar under Section 14(6) of the Rent Act it having been filed within a period of five years from the date of the purchase of the property in question by the petitioners from its erstwhile owners. The Controller however decided to proceed with the eviction petition on other grounds which had also been invoked by the petitioners-landlords. It was also observed by the controller that earlier summons as prescribed in Schedule III of the Rent Act were wrongly and inadvertently issued.

5. Feeling aggrieved by the order dated 06.04.2001, the petitioners-landlords filed this revision petition.

6. It was argued by Shri Chetan Sharma, learned senior counsel for the petitioners, that the order dated 06.04.2011 is not in accordance with law and suffers from a serious infirmity in that the learned Controller had no option but to pass an eviction order in the matter on the failure of the respondent-tenant to apply for leave to contest after he had been served with the summons requiring him to apply for leave to contest within fifteen days. It was also argued that with the issuance of the summons under Schedule III of the Rent Act it became clear that the learned Controller had confined the eviction petition only to the ground of bona fide requirement covered under Section 14(1)(e) and there was nothing wrong in that decision of the Controller and the petitioners had also not raised any grievance that why their petition had been confined only to the ground of bona fide requirement of the tenanted shop. Therefore, there was no occasion for taking on record the written statement of the respondent-tenant. The learned senior counsel further argued that as far as the bar under Section 14(6) of the Rent Act, because of which the Controller dismissed the eviction petition qua the ground under Section 14(1)(e), is concerned, there was no dispute that the property in question having been purchased by the petitioners-landlords within a period of five years prior to the filing of the eviction petition on the ground of bona fide requirement in normal course would not have been maintainable but in the present case the petitioners had also claimed that that bar was not attracted here since the petitioners were claiming the benefit of the exception to that bar as provided under Section 25-C(1) of the Rent Act but the learned Controller had not even considered that part of the case of the petitioners and had straightaway dismissed the eviction petition based on the ground of bona fide requirement and that has gravely prejudiced the petitioners.

7. Elaborating his submission on the applicability of Section 25-C(1) of the Rent Act, the learned senior counsel for the petitioners had submitted that the petitioners had purchased the tenanted shop as well as three others shops in the same property of which the shop in occupation of the respondent was a part and those four shops were adjoining to their residence at Joshi Road where they have been carrying on their business but the business had to be stopped in the residential premises in view of some order passed by the Hon^{ble} Supreme Court in the case of “M.C. Mehta Vs. Union of India and Ors.”, W.P.(Civil) No.4677/1985,

whereby commercial activities in the residences were ordered to be stopped. In this regard my special attention was drawn to the following averments made in the eviction petition:-

“18-(a)D. Because besides above noted grounds, an overriding ground for eviction under section 14(1)(e) as modified by the Supreme Court of India in the case of Satyawati Sharma Vs Union of India decided on 16-04-08 is that the petitioners are bona fide registered business men and the shop has been purchased for there bona fide requirement and need for themselves and for their family members for expanding business/commercial activities which are not permissible in the residential accommodations under Master Plan 2021, Delhi. Hence the petitioners therefore seek the eviction and recovery of possession on the basis of summary trial by exercising the power conferred under procedure and provisions contained in sections 25A to 25C of the Chapter III A of The Delhi Rent Control Act, 1958 so as to meet the ends of justice.

19(a). That the four shops of Municipal Corporation properties nos. 16/384, 16/385, 16/386 and 16/387 were built on Plot No.24 Khasra No.235/35-36-39 Block BD Ward No.16 abutting Joshi Road Karol Bagh, New Delhi-05 regarding which eviction against occupants is sought by the petitioners alongwith recovery of possession to the petitioners.....

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(j).. That on the other hand, the petitioners of this petition being the abutting owner/resident of the same plot no.24 and are bonafide businessmen and regular tax payers of their business were facing acute shortage of suitable commercial accommodation for their growing needs and requirements of expanding business activities such as Jewellery Shop and Auto Spare Parts Shop etc. which are not allowed in the residential houses under Master Plan 2021 of Delhi. After carefully studying the provisions of The Delhi Rent Control Act, 1958 read with the spirit of modified provisions of section 14(1)(e) by the Honourable Supreme Court of India in case of Satyawati Sharma Vs Union of India and Others decided on 16-04-08 in

Appeal(Civil) 1897/2003, the petitioners purchased the aforesaid four shops.

8. Mr. Sharma had, however, very fairly not disputed that if an eviction petition under Section 14(1)(e) is on the face of it not maintainable because of the bar under Section 14(6) and no benefit of Section 25-C(1) is claimed by the landlord then the same could be rejected by the Controller even if the tenant had failed to apply for leave to contest the eviction petition.

9. Mr. N.S.Jain, learned counsel for the respondent-tenant on the other hand fully supported the decision of the Controller rejecting the eviction petition based on the ground of bona fide requirement because of the bar under Section under Section 14(6) of the Rent Act and argued that the learned Controller had rightly observed that he had committed a mistake initially in issuing the summons under Schedule III of the Rent Act when the eviction petition was filed on many grounds available to the petitioners in the Rent Act and it had to be treated as an ordinary eviction petition not to be tried as per the special procedure under Section 25-B of the Rent Act.

10. After hearing arguments from both the sides the matter was earlier reserved for orders but before orders could be pronounced in some other revision petitions filed by unsuccessful landlords a point had arisen as to the maintainability of revision petition under Section 25-B(8) of the Rent Act at the instance of a landlord. So, order was not passed by me and it was decided to give opportunity to the parties in the present case also to address the Court, if they so desired, on this aspect. Counsel for the petitioner made submissions but no submissions were made from the side of the respondent perhaps because he had not raised any such objection earlier regarding the maintainability of this revision petition.

11. The point about the maintainability of such a revision petition under Section 25-B(8) arose in view of a decision of the Supreme Court in “**Major D.N. Sood v. Shanti Devi 1997(10) SCC 428** wherein it was held that a revision petition at the instance of a landlord is not maintainable. A Division Bench of this Court in the case of “**R.S.Bakshi vs H.K.Malhari and anr.**”, **2002(62) DRJ 272** had held even after noticing the decision of the Apex Court in Maj. Sood’s case(supra) that a revision petition at the instance of a landlord is also maintainable. The Division

Bench decision of this Court in R.S.Bakshi's case(supra) had held the Supreme Court's decision in Maj. Sood's case(supra) to be per incuriam because of the fact that earlier three Judges Bench judgment of the Supreme Court in **"Vinod Kumar Chaudhary vs. Smt. Narain Devi":AIR 1980 Supreme Court 2012**, wherein it was held that a revision petition even at the instance of an unsuccessful landlord is maintainable under the Rent Act, was not brought to the notice of the two Judges Bench which had given the judgment in Major Sood's case. In Vinod Kumar's case the landlord had lost after trial, like in the present case. So, in view of the Division Bench decision of this Court given after considering the two conflicting judgments of the Supreme Court to the effect that such a revision petition is maintainable, I shall now proceed further to consider the petition on its merits.

12. Section 14(6) of the Rent Act reads as under:-

"Where a landlord has acquired any premises by transfer, no application for recovery of possession of suit premises shall lie under sub-section (1) on the grounds specified in clause (e) of the proviso thereto unless a period of 5 years has elapsed from the date of acquisition."

and Section 25-C(1), benefit of which is being claimed by the petitioners, reads as follows:-

"25C (1) Nothing contained in sub-section (6) of section 14 shall apply to a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or any local authority is required by, or in pursuance of, an order made by that Government or authority to vacate such residential accommodation, or in default, to incur certain obligations, on the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependent child in the Union territory of Delhi."

13. With the issuance of the summons prescribed under Schedule III of the Rent Act it is clear that the Controller had limited the eviction petition of the landlord to Section 14(1)(e) of the Rent Act only to which the landlords also did not have any objection. The Controller could have very well done that. It cannot be said that he

had committed any mistake in ordering issuance of summons only in respect of the ground of bona fide requirement. I am also in full agreement with the submission of the learned senior counsel for the petitioners that once having ordered issuance of summons under Schedule III to the Rent Act the learned Controller should not have taken on record any written statement from the side of the respondent-tenant. That course of action is not permissible in an eviction petition which has been treated as a petition under Section 14(1)(e) of the Rent Act. The respondent-tenant's only right is to seek permission from the Controller to contest the eviction petition on whatever grounds he wants to contest it. Without seeking the permission of the Controller the tenant cannot decide for himself that the eviction petition as framed could not be proceeded with only under Section 14(1)(e) and consequently he could file the written statement straightway. If this kind of practice is accepted by the Controllers then that would mean that every tenant would be at liberty to present a written statement and then defend the eviction petition without any prior permission from the Controller. That is not at all permissible and should not have been allowed to be done by the Controller.

14. In the present case, the learned Controller should have taken up the eviction petition for considering whether because of the failure of the respondent-tenant to seek leave to contest eviction order deserved to be passed straightway or for any other reason the same could not be passed. Since in the present case admittedly the eviction petition on the ground of bona fide requirement had been filed by the petitioners within a period of 5 years from the date of purchase of the property in question by them the same was obviously not maintainable in view of the bar contained under Section 14(6) of the Rent Act, which position was not disputed even by the learned senior counsel for the petitioners during the course of hearing of this revision petition. Therefore, the learned Controller was fully justified in dismissing the eviction petition instead of passing an eviction order against the respondent-tenant when on the face of it the eviction petition was not maintainable.

15. However, as noticed already, learned senior counsel for the petitioners had submitted that despite the fact that the eviction petition under Section 14(1)(e) was barred at the time when it was filed in view of the bar under Section 14(6) of the

Rent Act it could still not be dismissed as under Section 25-C(1) of the Rent Act there is an exception provided in favour of the landlord and that exception had been invoked by the petitioners in the present case by pleading that since they were carrying on their business in residential premises and the Hon'ble Supreme Court had in M.C. Mehta's case (supra) directed closure of commercial activities in residential premises the bar under Section 14(6) was not attracted but this plea taken by the petitioners had been totally ignored by the learned Controller while rejecting their eviction petition. Therefore, learned senior counsel contended, the matter deserved to be sent back to the Rent Controller to examine the said plea of the petitioners and then to take any decision in respect of the bar under Section 14(6) of the Rent Act.

16. Though at first blush these submissions made by the learned senior counsel appeared to be quite attractive but when I went through the eviction petition minutely the same have become totally meritless in view of the fact that the ingredients of Section 25-C(1) of the Rent Act were totally missing from the eviction petition. I have already re-produced Section 25-C(1) of the Rent Act. It is not the case of the petitioners that they had been allotted any residential accommodation by the Government and they had been required to vacate the same which had necessitated seeking eviction of their own tenant from the tenanted shop which undisputedly had been purchased by them within a period of 5 years from the date of filing of the eviction petition. The plea taken is that since the Hon'ble Supreme Court in M.C. Mehta's case (supra) had directed shifting of all commercial activities from the residential properties that direction of Hon'ble Supreme Court should be treated at par with an order of the Government as contemplated under Section 25-C(1) let that plea cannot be accepted. The language of Section 25-C(1) is quite clear and unambiguous and this Court cannot introduce into that section what the petitioners want to be introduced therein. In case the Hon'ble Supreme Court had directed the closure of commercial activities from residential premises and the petitioners were going to be affected by that decision of the Hon'ble Supreme Court then the only option available to them was to comply with the direction of the Hon'ble Supreme Court and shift their business activities somewhere else but the remedy of seeking eviction of respondent-tenant was certainly not available to them on that ground at least before the expiry of five

years period from the date of their acquiring the tenanted shop.

17. This revision petition is, therefore, dismissed. Since I have already observed that the learned Controller had treated the eviction petition as one under Section 14(1)(e) only by directing issuance of summons prescribed under Schedule III to the Rent Act it could not have been thereafter treated as an eviction petition under other grounds which were not even pressed into service even by the petitioners after 01st June, 2009. Therefore, now the entire eviction petition would also stand rejected but it is made clear that in case the petitioners would still like to seek eviction of respondent-tenant on other grounds which had been initially taken by them in their eviction petition they would be at liberty to do so by filing fresh eviction petition(s).

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