

CASE NO.:
Appeal (civil) 2866 of 2001

PETITIONER:
MANOJ KUMAR

Vs.

RESPONDENT:
BIHARI LAL (DEAD) BY LRS.

DATE OF JUDGMENT: 18/04/2001

BENCH:
D.P. Mohapatra & Shivaraj V. Patil

JUDGMENT:

D.P. MOHAPATRA, J
L...I...T.....T.....T.....T.....T.....T...J

Leave granted.

The core question that arises for determination in this case is whether the Additional Rent Controller, Delhi, in the facts and circumstances of the case, was right in refusing leave to contest the prayer of eviction to the appellant. The parties are related to each other. The appellant is the nephew of the respondent. The dispute relates to the property No.5A/11004, Gali No.7, WEA Sat Nagar, Karol Bagh, Delhi, which is a residential premises. The proceedings before the Rent Controller was initiated on the application filed by the respondent under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (for short the Act) seeking eviction of the appellant on the ground of bona fide requirement of the landlord for occupation by himself and his family members. In the said proceeding, the appellant filed an application under Section 25(B) of the Act seeking leave to contest the prayer for eviction. The application filed by the appellant under Section 25(B) was rejected and the petition filed by the respondent for eviction of the appellant was allowed vide the order dated 20th March, 1998 of the Additional Rent Controller, Delhi. The operative portion of the order reads thus:

In view of the above discussion and for the reasons given therein, I am of the considered view that the respondent has failed to put forth any fact/triable issue which require recording of evidence. Therefore, application under section 25B(5) of DRC Act for grant of leave to defend is dismissed. Accordingly, eviction order is passed in favour of the petitioner and against the respondent qua the suit premises No. 5A/11004(Quarter No.167) Ground Floor, Gali No.7 WEA Sat Nagar, Karol Bagh, New Delhi more specifically shown in red colour in the site plan which is now Ex.C1. However, this order shall not be executable before expiry of the period of six months from today. File be consigned to RR.

The Revision Petition filed by the appellant against the said order was dismissed by the High Court by the order dated 1st September, 1998. The operative portion of the order is extracted hereinbelow:

The pleas which have been raised by learned counsel for the petitioner are already being examined by Civil Court for which the petitioner will be at liberty to move for appropriate orders of stay or directions in respect of alleged dispute between the parties. The respondent shall be at liberty to resist the same by taking out proceedings in accordance with law. The present petition, in view of the above, is dismissed with the liberty as aforesaid.

Hence, this appeal.

The case of the respondent as appears from the averments in the eviction petition is that he is the landlord of the premises in question and the appellant is his tenant. An agreement was entered between the parties on 1.11.1985 for sale of the property by the respondent to the appellant for consideration of Rs.49,000/-, out of which a sum of Rs.45,000/- was paid by the latter to the former as part payment of consideration and the appellant was put in possession of the property. Subsequently, it transpired that due to some difficulty the sale deed could not be executed. The sum received towards consideration was returned by the respondent to the appellant. Thereafter, the appellant continued to occupy the premises as a tenant w.e.f. 1.11.1993. It was the further case of the respondent that he required the premises for occupation by himself and members of his family and, therefore, an order for eviction of the tenant may be passed.

On receiving notice, the appellant filed the application under Section 25(B) of the Act accompanied by an affidavit in which it was stated inter alia that on the face of even admitted facts the case pertains to a dispute over ownership and not a dispute as regards landlord and tenant. In paragraph 4 of the petition, it was specifically averred that the petitioner (respondent herein) has not put the respondent in possession as tenant but vide an agreement to sell after receiving full and final payment. It was alleged in paragraph 5 of the petition that the alleged tenancy is a figment and fiction of the mind of the petitioner which does not exist at all; that nothing whatsoever has been prima facie shown that the ownership was overnight turned into tenancy. It was also averred in the petition that the petitioner was trying to take fraudulent advantage of issuing two cheques to the respondent (appellant herein) by saying that it was a refund of the sale consideration. According to the appellant, there was no question of any refund of consideration. It was also alleged that the petition was false and fraudulent and there is no cause of action in favour of the petitioner.

From the order passed by the Additional Rent Controller it appears that he proceeded on the assumption that the appellant had admitted the relationship of landlord and tenant between the parties. He observed in paragraph 4 of the order that the respondent in his application as well as in the accompanying affidavit has stated that the present case pertains to dispute of ownership and there is no dispute as regard to landlord and tenant. In paragraph 10 of the order while recording his findings on the essential

ingredients of Section 14(1)(e) of the Act, the Additional Rent Controller observed he has specifically stated that there is no dispute as regard to landlord and tenant. On such consideration, the Additional Rent Controller declined to grant leave to the appellant to contest the prayer for eviction and allowed the eviction petition filed by the respondent. From the order of the High Court it appears that the Court has not adverted to the questions which arise for determination in the case. The court disposed of the Revision Petition filed by the appellant with the observation that since he has filed two suits for specific performance of the agreement of sale between the parties, he could approach the Civil Court for appropriate order of stay or direction.

By the order dated 19.7.1999, this Court issued notice to the respondent to show cause why the special leave petition should not be disposed of at notice stage itself for showing cause as to why till the petitioners suit for specific performance and title suit which are pending, are decided, the decree for possession should not be executed. But at the hearing of the appeal, learned counsel appearing for both the parties have addressed the court on the question of validity and sustainability of the order passed by the Additional Rent Controller rejecting the application filed by the appellant under Section 25(B) of the Act. Therefore, we will take up the question as formulated earlier.

In Section 25(B), the special procedure for the disposal of applications for eviction on the ground of bona fide requirement is laid down. Sub-Sections 1, 4, 6, 8 and 10 of the said section which are relevant for the purpose of the present case are quoted hereunder:

Section 25(B)- Special procedure for the disposal of applications for eviction on the ground of bona fide requirement-

(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A (or under Section 14B or under section 14C or under section 14D), shall be dealt with in accordance with the procedure specified in this section.

X	x	x	x
X	x	x	x

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

X	x	x	x
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(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

X X X X

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this Section is according to law, call for the records of the case and pass such order in respect thereto as thinks fit.

X X X X

(10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A, shall be the same as the procedure for the disposal of applications by Controller.

On a plain reading of the provision in Section 25(B), it is clear that the Statute prescribes a special procedure to be followed in the proceedings for the eviction of a tenant in certain class of cases. From the provisions of sub-section 4 of Section 25 it is manifest that in case the tenants prayer for leave to contest is refused by the Controller then he shall be deemed to have admitted the case of bona fide requirement pleaded by the landlord and on the basis of the deemed admission an order of eviction will be passed by the Controller. The provision prescribed is a drastic measure for eviction of tenants particularly, in a statute intended to provide protection to tenants against arbitrary and whimsical action of unscrupulous landlords for their eviction. Therefore, strict interpretation of the provisions is necessary. On a reasonable and purposeful interpretation of the statute, it is clear that if from perusal of the petition for leave to contest and the affidavit filed with it, the Controller finds that the tenant has pleaded a triable case then he shall not refuse leave to contest the case, otherwise the provision is liable to be mis-utilised by unscrupulous landlords to get their tenants evicted easily.

Coming to the order passed by the Additional Rent Controller, as noted earlier, he proceeded on the assumption that the appellant had not denied the relationship of landlord and tenant and in fact had admitted all the ingredients for establishing a case under Section 14(1)(e) of the Act. The impression was totally erroneous, based on a mis-reading and mis-construction of the petition filed by the appellant seeking leave to contest. On perusal of the petition, it is clear to us that what the appellant had pleaded was that there was no relationship of landlord and tenant between the parties inasmuch as he had been put in possession of the premises on the basis of the agreement to sell the property to him and not as a tenant. Unfortunately, the Additional Rent Controller failed to read the petition and the affidavit correctly which resulted in

the mis-conceived idea about the case of the appellant. This mis-conception vitiated the entire order. It is unfortunate that the High Court failed to notice this manifest error in the order of the Additional Rent Controller and disposed of the Revision Petition by merely granting leave to the appellant to approach the Civil Court for appropriate interim order in the suits filed by him. We are constrained to observe that the manner of disposal of the case by the High Court was rather superficial. The order of the Additional Rent Controller which is manifestly erroneous should not have been allowed to stand. On consideration of the entire matter, we have no hesitation to hold that the order passed by the Additional Rent Controller as confirmed by the High Court is unsustainable and has to be vacated. Accordingly, the appeal is allowed. The order passed by the High Court of Delhi dated 1st September, 1998 in Civil Revision No.380/98 confirming the order passed by the Additional Rent Controller dated 20th March, 1998 is set aside. It is made clear that the appellant shall clear the arrears/dues for use and occupation of the premises from 1.12.93 to June 2000, if the same has not been already done, within three months from today. There shall be no order as to costs.