

CASE NO.:
Appeal (civil) 3201 of 1999

PETITIONER:
J.P. ANAND

RESPONDENT:
D.G. BAFFNA

DATE OF JUDGMENT: 30/10/2001

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2001 Supp(4) SCR 593

The following Order of the Court was delivered :

This appeal by special leave is from the judgment and order of the High Court of Delhi in Civil Revision No. 61 of 1999 dated February 5, 1999. The dispute in this appeal arises under Section 25B(S) of the Delhi Rent Control Act, 1958 (for short, 'the Act').

The respondent filed eviction petition under Section 14(l)(e) of the Act in the court of Rent Controller, Delhi, stating that the appellant is the tenant of Flat No. 21-D, SFS, Motia Khan, New Delhi (for short, 'the premises') and he needed it for his bona fide personal occupation. On receipt of summons of the eviction petition, the appellant filed an application under Section 25B(5) of the Act seeking leave of the court to contest the eviction petition.

On considering the material placed before it, the learned Additional Rent Controller dismissed the application of the appellant and ordered eviction of the appellant on August 19, 1998. The appellant unsuccessfully challenged that order in the High Court of Delhi by filing the revision, referred to above, which was dismissed by the impugned order on February 5, 1999. Thus, the appellant is in appeal in this Court.

Mr. Rajiv Dutta, learned senior counsel for the appellant, contends that in the affidavit accompanying the application seeking leave to defend the eviction petition numerous grounds are taken but both the learned Additional Rent Controller as well as the High Court did not properly appreciate the ground that the appellant denied the relationship of 'landlord and tenant', between the parties, which if accepted would non-suit the respondent as such leave to defend ought to have been granted. Learned counsel for the respondent submits that the appellant's only claim before the court of the Rent Controller as well as the High Court was that he had purchased the premises and has been in its possession not as a tenant but as an owner thereof and that was found against the appellant. He did not urge specifically before the Rent Controller or before the High Court that the relationship of landlord and tenant did not exist between them as such that ground was not dealt with specifically by the courts.

The point for consideration is : whether on true interpretation of sub-section (5) of Section 25B of the Act, the appellant has been illegally denied leave to defend the eviction petition filed by the respondent.

Chapter III A was inserted in the Act by Act 18 of 1976 with effect from December 1, 1975 which contains three sections. Section 25B, appears in that chapter and provides for summary trial of certain applications. We are concerned here with sub-sections (4) and (5) of the said provision, which read thus:

"25B. Special procedure for the disposal of applications for eviction on the ground of bona fide requirement -

(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 grounds aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14, or under Section 14A."

A plain reading of the above provisions, shows that sub-section (4) precludes a tenant from contesting an eviction petition filed against him unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. It further provides that in default of the tenant's appearance in pursuance of the summons or his obtaining leave to contest the eviction petition, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction of the tenant on the ground mentioned in the eviction petition. Sub-section (5) obliges the Controller to grant leave to contest the eviction petition if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14 or under Section 14A. The facts disclosed in the affidavit should not be vague or imprecise, they should be clear and definite, and should prima facie make out the ground stated in support of the application seeking leave to contest the eviction petition.

A perusal of clause (e) of sub-section (1) of Section 14 of the Act shows that it empowers the Controller to order recovery of possession of premises from the tenant by a landlord, if the premises let out for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependant on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation. Admittedly the respondent's application seeking eviction of the appellant was filed under clause (e) of sub-section (1) of Section 14 of the Act.

It would be appropriate to refer to the grounds stated in the affidavit accompanying the application filed by the appellant under Section 25B(5) of the Act. Grounds (1) and (m) are relevant for purposes of sub-section (5). They relate to - (1) denial of relationship of landlord and tenant, between the respondent and the appellant and (2) the respondent having alternative accommodation : it is alleged that the wife and married daughters of the respondent applied to the Delhi Development Authority for allotment of accommodation in their favour.

There can be no doubt that for entertaining a petition under Section 14 of the Act existence of relationship of landlord and tenant between the parties to the petition is a condition precedent. Though the respondent asserted existence of such a relationship, the appellant denied the same in ground (f). The denial of relationship is on the basis of the appellant's claim that he had purchased the premises under an oral

agreement for sale and paid certain amounts towards part consideration, and therefore he is occupying the premises as the owner and not as the tenant. Both the learned Additional Rent Controller and the learned Single Judge of the High Court found that the case set up by the appellant was unfounded. The learned counsel for the appellant disputed that the alleged agreement of tenancy between the parties was filed in the Court of the Additional Rent Controller. To verify this aspect, we called for the original records. On perusal of the record it is noticed that along with the rejoinder a zerox copy of the agreement of tenancy was filed in the Court of the Additional Rent Controller. The main plea of denial of relationship of the landlord and the tenant is indeed a plea of the appellant asserting title to the premises in himself and that was found against him. In the backdrop of the plea of the appellant and the finding of the Rent Controller and the High Court, A it cannot be contended legitimately that the learned Additional Rent Controller or the learned Single Judge of the- High Court erred in not recording specific finding that the relationship of landlord and tenant existed between the parties, more so when the plea as such was not urged before the said courts.

The other ground that was urged to seek leave to contest the eviction petition is with regard to the bona fide requirement of the respondent for the reason that the wife and the married daughters of the respondent hold accom-modation. The learned Additional Rent Controller found that the wife and the married daughters applied for allotment of accommodation to the Delhi Devel-opment Authority and that did not amount to having alternative accommoda - tion and that the need of the respondent was bona fide and that he had no alternative accommodation. This finding of fact was not challenged in the High Court.

We are informed that the appellant has filed a suit for specific perform-ance of contract for sale of the premises and that is pending before the Court of the District Judge, Delhi. We make it clear that the findings recorded by the leaned Additional Rent Controller or High Court and any observation made by this Court shall not prejudice the rights and obligations of the parties in the suit which shall be decided by the learned District Judge, Delhi on its own merits uninfluenced by those proceedings.

In the result we find no substance in this appeal; the appeal is dismissed accordingly. There shall be no order as to costs.