

IN THE COURT OF SHRI GIRISH KATHPALIA,
DISTRICT & SESSIONS JUDGE (HQ)
& RENT CONTROL TRIBUNAL (CENTRAL)
TIS HAZARI COURTS, DELHI.

RCT No. 68/2017

S. KULDEEP SINGH
S/o LATE S. IQBAL SINGH
R/o A-271, DERAVAL NAGAR
DELHI-110 007

.....APPELLANT

VERSUS

SH. RAVINDER KUMAR
PROPRIETOR
M/s. R.K. ENTERPRISES
XV/2233, RAJGURU ROAD
CHUNA MANDI, PAHAR GANJ
DELHI-110055

.....RESPONDENT

Date of filing : 08.08.2017

First date before this court : 06.08.2019

Arguments heard on : 13.03.2020

Date of Decision : 12.05.2020

Reason for delay in pronouncement of Judgment : Covid19 Lockdown

Appearance : Sh. S.K. Gupta, counsel for appellant

Sh. Vinay Gupta, counsel for respondent

J U D G M E N T

1. The appellant landlord has assailed judgment and order dated 01.07.2017 of the learned Additional Rent Controller whereby the petition to the extent under Section 14 (1) (a) of the Delhi Rent Control Act was allowed but the petition to the extent under Section 14 (1) (b), (c), (j) and (k) of the Act was dismissed. Upon notice of appeal, respondent tenant entered appearance through counsel. I heard learned counsel for both sides. In the course of final arguments, on 11.10.2019 learned counsel for appellant, by way of endorsement on the ordersheet, opted to confine his appeal to the extent of Section 14 (1) (b), (c) and (k) of the Act after accepting the decision of the learned Additional Rent Controller to the extent of Section 14 (1) (j) of the Act.

2. Briefly stated, the relevant factual matrix as pleaded by the appellant landlord in the eviction petition was as follows. The appellant being registered owner of one room premises bearing no. XV/2233, Raj Guri Road, Chuna Mandi, Paharganj, New Delhi (hereinafter referred to as "the tenanted premises") inducted the respondent as tenant therein at a monthly rent of Rs. 55/- exclusive of

electricity consumption and other charges. The respondent not only defaulted in payment of rent but even illegally sublet, assigned or parted with possession of the tenanted premises without consent of the appellant in writing to one Sh. Bhupinder Kumar, who started carrying out his business of sale and repair of telephones there under the name and style M/s. B.K. Telecom. Although the tenanted premises had been let out for residential purposes, but the respondent started using the same for commercial purposes without consent of the petitioner and despite service of notice dated 23.02.2001, the respondent did not stop misuser of the tenanted premises. Commercial user of the tenanted premises despite service of notice is contrary to the terms and conditions incorporated in the lease of the premises which had been granted to the petitioner by DDA for residential purposes. The respondent also caused substantial damage to the tenanted premises. Hence, the eviction petition.

3. In his written statement, respondent denied the pleadings of the appellant and set up his case as follows. The tenanted premises comprise one shop and the same was let out for commercial purposes only, which is the admitted user of the same ever since inception of

tenancy till date, as such there is no question of misuser. Respondent denied having sublet the tenanted premises to anyone and also denied having caused any damage to the same. Hence, according to respondent, the eviction petition is liable to be dismissed.

4. The appellant filed replication to reaffirm his pleadings.

5. On the basis of above pleadings, the learned Additional Rent Controller conducted trial in which both parties stepped into the box as their solitary witness in support of their respective case.

6. After conclusion of trial, followed by final arguments, the learned Additional Rent Controller wrote the impugned judgment. In the portion of the impugned judgment relevant for present purposes, the learned Additional Rent Controller observed that since it is not the case of the appellant that Sh. Bhupinder Kumar is in exclusive possession of the tenanted premises, the allegation of unauthorised subletting remained not proved; that neither any rent agreement was shown to establish the purpose of tenancy as residential nor any

such allegation was mentioned in the notice Ex. PW 1/8, so it could not be assumed that the tenancy was for residential purposes only; that since admittedly the appellant had not received any notice from DDA or L&DO in respect of the alleged misuser and there was no evidence to show that the tenanted premises had been let out for residential purposes only, it could not be said that the respondent used the tenanted premises contrary to the terms of DDA.

7. During final arguments, learned counsel for appellant argued that parting of exclusive possession to the sub tenant Sh. Bhupinder Kumar is established by the fact that he received notice of this appeal at the tenanted premises and the bill Ex PW 1/6A in the name of B.K. Telecom issued from the tenanted premises remained unchallenged. Learned counsel for appellant also argued that the lease deed Ex. PW 1/7 executed by DDA in favour of the predecessor of the appellant clearly shows that the same was for residential purpose only and admittedly, the respondent is using the tenanted premises for commercial purposes, so violation of terms of lease stands established.

8. On the other hand, learned counsel for respondent argued that the bill Ex. PW 1/6A pertains to different address and not the tenanted premises. It was also argued on behalf of respondent that the lease deed Ex. PW 1/7 already expired 20 years after its execution which was in the year 1940, and admittedly no notice was received by the appellant from any government agency on the ground of misuser.

9. In the backdrop of above pleadings, evidence and arguments I have examined the entire record. It would be appropriate to deal with each ground of eviction separately.

SECTION 14 (1) (b), DELHI RENT CONTROL ACT

10. The legal position pertaining to ground under Section 14 (1) (b) of the Delhi Rent Control Act is not in dispute to the extent that where the tenant has sublet or assigned or otherwise parted with possession of the whole or any part of the tenanted premises without obtaining written consent of the landlord, the landlord can bring eviction petition. The primary requirement in such cases is to prove that the tenanted premises are in exclusive

possession of a stranger to the tenancy. In that regard, as mentioned above, the appellant relies upon two counts, namely receipt of notice of this appeal at the tenanted premises by Sh. Bhupinder Kumar, the alleged sub-tenant and bill Ex. PW 1/A issued in the name of M/s. B.K. Telecom from the tenanted premises.

11. So far as first count is concerned, merely because court process, that too issued by the appellate court and not by the trial court is received at the premises in question by a person, such person cannot be assumed to be in exclusive possession of the premises. Merely because notice of this appeal was received by Sh. Bhupinder Kumar in the demised premises, it cannot be said that he is sub-tenant. Moreover, admittedly such piece of evidence, even if it is considered to be an evidence, was not before the learned trial court at the time of writing the impugned judgment.

12. As regards bill Ex. PW 1/6A, contention of learned counsel for appellant to the extent that there was no cross-examination on the same is contrary to record. In cross-examination dated 22.07.2009, the eviction petitioner PW1 admitted that he never purchased or got

repaired any goods from the shop being run from the tenanted premises and that Ex. PW 1/6A had been received by him from a servant whose name was not known to him and the said servant was employed with one M/s. Sahni Paints but he did not even know address of that shop. In cross-examination of PW1, learned counsel for respondent extended suggestions that the bill Ex. PW 1/6A is a forged document. The bill Ex. PW 1/6A dated 30.05.2001 was neither authored nor received by the plaintiff PW1 and despite the same not bearing name of the person on whom the same was raised, neither the author nor the recipient thereof was brought to the box. As such, the bill Ex. PW 1/6A remains not proved. Most importantly, the address of the tenanted premises is XV/2233, Raj Guru Road whereas the bill Ex. PW 1/6A mentions the address of the shop as 2233, Raj Guru Road and testimony of respondent RW1 in cross-examination that bill Ex. PW 1/6A pertains premises different from the tenanted premises remained unchallenged.

13. Further, in his cross-examination PW1 stated that he saw the respondent only once when the latter paid rent; and that it is the respondent who is using the tenanted premises.

14. I am unable to find any material on record to even feebly establish that the respondent has not been in possession of the tenanted premises at any point of time or has transferred the whole or in part possession thereof to Sh. Bhupinder Kumar or any other stranger. Therefore, there is no error in the findings of the learned Additional Rent Controller on this aspect.

SECTION 14 (1) (c) DELHI RENT CONTROL ACT

15. In the eviction petition, it was pleaded by the appellant that the tenancy between the parties was for residential purposes but the tenanted premises were being misused for commercial purposes. In the corresponding paragraph of written statement, it was pleaded on behalf of respondent that the tenancy was for commercial purposes only as the tenanted premises comprise of one shop.

16. In his cross-examination as PW1, the appellant stated that the respondent was tenant in the tenanted premises much prior to the appellant purchased the premises; and that he did not know terms of tenancy settled between the respondent and the erstwhile landlord

as they had no written agreement of tenancy.

17. There being admittedly no evidence as regards terms of tenancy pertaining to the tenanted premises, it remains not proved that the respondent had been inducted as tenant for residential purposes and consequently, there is no error in the findings arrived at by the learned Additional Rent Controller as regards ground under Section 14 (1) (c) of the Delhi Rent Control Act.

SECTION 14 (1) (k) DELHI RENT CONTROL ACT

18. The provision under Section 14 (1) (k) of the Delhi Rent Control Act contemplates it to be a ground of eviction where the tenant has, notwithstanding previous notice used the tenanted premises contrary to any condition imposed on the landlord by the government authorities while giving him a lease of the land on which the premises are situated. In order to establish this ground, the appellant placed reliance on lease deed Ex. PW 1/7 issued by DDA for the tenanted premises, holding its permissible use to be residential and contended that since admittedly the premises are being used for commercial purposes, the respondent is liable to be evicted.

19. The judicial precedents cited on behalf of appellant lay down the propositions which are not in dispute in the present case. It is not in dispute that where the superior lessor/government authorities lay down a particular permissible use of the premises and in the lease agreement between the parties to the *lis* a user contrary to the one laid down by the superior lessor is fixed, the landlord cannot be estopped from evicting the tenants under Section 14 (1) (k) of the Act. But that is not the issue involved in the present appeal. In the present case, the issue is as to whether any specific user was prescribed by the superior lessor and as to whether the tenant respondent misused the tenanted premises despite notice.

20. The lease deed Ex. PW 1/7 was executed by the Delhi Improvement Trust, the predecessor of the Delhi Development Authority on 16.05.1940 for period of 20 years. There is no evidence on record to ascertain as to whether the said lease was renewed. As on date, there is no government document on record to establish that the tenanted premises had to be used for residential purposes only. Rather, documents Ex. PW 1/1 and Ex. PW 1/2 are certified copies of the sale deeds of the tenanted premises, which indicate that the premises ceased to be on leasehold

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basis with the DDA.

21. In his cross-examination as PW1, the appellant admitted having not received any notice from DDA or L&DO alleging any misuser of the tenanted premises.

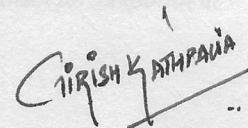
22. The appellant also did not establish or even plead that the permissible use of the tenanted premises as per the relevant master plan or any other law was only residential, but the respondent has been using the tenanted premises in a contrary manner.

23. On this ground also, there is no error in the findings arrived at by the learned Additional Rent Controller.

CONCLUSION:

24. I am unable to find any infirmity in the impugned judgment and order dated 01.07.2017 of the learned Additional Rent Controller, so the same are upheld. The appeal is dismissed. A copy of this judgment be sent to the learned trial court along with the trial court record and appeal file be consigned to record room.

Announced in the open court on
this 12th day of May, 2020 (through VC)



(GIRISH KATHPALIA)
District & Sessions Judge (HQ)
Rent Control Tribunal, Central
Tis Hazari Courts, Delhi (rd)