

Smt. Anand Kaur

Vs

Pritam Lal

Civil Appeal No. 966 of 1976

(R. B. Misra, A. D. Koshal, V. B. Eradi JJ)

14.01.1982

ORDER

1. The short point arising for determination in this appeal concerns the validity of a notice served by the landlady-appellant on the tenant-respondent and purporting to be one issued in accordance with the provisions contained in clause [a] of sub-section [1] of Section 14 of the Delhi Rent Control Act [hereinafter called 'the Act'], and we may at the very outset reproduce the relevant provisions of that section :

14. [1] Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant :

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :

[a] that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1982;

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[2] No order for the recovery of possession of any premises shall be made on the ground specified in clause [a] of the proviso to sub-section [1], if the tenant makes payment or deposit as required by Section 15 :

Provided that no tenant shall be entitled to the benefit under this sub-section, if having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months.

2. The tenant-respondent has remained absent and unrepresented at the hearing and we have had the advantage of being addressed by Mr. Vinoo Bhagat, learned counsel for the appellant only.

3. It was not disputed before the High Court that in an earlier proceeding the tenant had taken advantage of the provisions contained in sub-section [2] of Section 14 of the Act, that he committed another default in the payment of rent which covered the period from June 1, 1973 to November 30,

1973 and that it was then that a notice dated December 14, 1973 was served on him. The notice stated :

Your contractual tenancy in respect of House No. A-54 [double-storey] Kalkaji, New Delhi-19 had already been terminated thereafter you are a statutory tenant liable to pay damage for use and occupation at the rate of Rs. 15 [rupees fifteen per month] to me. That you have not paid the said damages after May 1973. In case you do not clear the arrears up to date within two months from the date of this notice, I shall be compelled to issue instructions to my legal adviser to file an application for your eviction.....

4. No attempt to pay the rent was made in spite of the notice till the end of February 1974. Although thereafter rent was remitted to the landlady through money orders but she refused to accept the same and made an application; to the Controller for eviction of the tenant on the sole ground of a second default in the payment of rent. Both the Controller and the Tribunal in the appeal held that the notice was a valid one and that the expression "damages for use and occupation" contained therein meant nothing more or less than rent. In a second appeal, a learned Single Judge different from the courts below and was of the opinion that the word 'rent' and the said expression could not be taken to be synonymous and that there was no demand of rent in the notice in question which did not, therefore, satisfy the requirements of the provisions contained in clause [a] above extracted. It is the judgment of the learned Single Judge which is assailed in the present appeal.

5. After hearing Mr. Vinoo Bhagat, learned counsel for the appellant, we are of the opinion that the contents of the notice. It is significant that the notice specially stated that on account of the termination of the tenancy by an earlier notice the tenant had become what in popularly known as a statutory tenant and it was in this context that a claim was made for damages for use and occupation at a rate equivalent to the agreed rent. We are of the opinion that in the circumstances of the case the demand so made could not be construed as anything but a demand for rent. Consequently the notice must be held to satisfy the requirements of clause [a] of sub-section [1] of Section 14 of the Act.

6. For the reasons stated above, we accept the appeal, set aside the impugned judgment and restore the orders of the Controller and the Tribunal. The case is remitted for further proceedings to the controller who shall dispose of it within three months from the receipt of records from this Court. No costs.

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