

Om Parkash Saluja

Vs

Smt Saraswati Devi

Civil Appeal No. 527 of 1982

(D. A. Desai, V. B. Eradi JJ)

08.02.1982

ORDER

1. This is the usual rigmarole of leave to defend being refused on the grounds entirely untenable. Some time back a reasoned order has been made in Civil Appeal No. 179 of 1982 in which we have pointed out what should be the correct approach of the Rent Controller in granting or refusing leave to defend. Repeating the same thing here would be merely adding to the length of this judgment.

2. We wish to impress upon the Rent Controller dealing with the matters under Delhi Rent Control Act wherein leave to defend is sought to be more meticulous while deciding at the initial stage whether leave to defend should be granted or refused, to keep in view some principles laid down by this Court as early as 1958 and since then much water has been flown under Yamuna bridges. At any rate that is not the stage of adjudication of rival contentions on affidavit or unproved documents. The only test is whether affidavit in support of application seeking leave to defend discloses facts which need investigation by evidence and trial. The approach of the Rent Controller in this case is wholly contrary to the legal position. The High Court unfortunately committed the same error.

3. We have heard Mr. Y. K. Jain, learned counsel for the respondent. We are satisfied that this is a case in which leave to defend ought not to have been refused. Without expressing any opinion that the leave to defend ought to have been granted.

3-A. We accordingly set aside the order of the learned Rent Controller as well as of the learned single Judge of Delhi High Court and grant leave to defend in this case.

4. The appellant herein shall file his written statement within two weeks after appearing before the learned Rent Controller on February 22, 1982. After the written statement is filed, the case should be given top Priority as respondent-landlord seeks possession for personal requirement. After the written statement is filed and other procedural stages are passed through the petition should be disposed of as early as possible but not later than four months from today. In the circumstances of the case, there will be no order as to costs.

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