Sarla Narula

Vs

Raghbir Kaur Rehal and Another

Civil Appeal No. 2608 of 1984

(Sabyasachi Kukharji, G. L. Oza JJ)

06.10.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1.This is an appeal by special leave from the order of the High Court of Delhi dated May 29, 1984. By the aforesaid order the appellant was refused the prayer of being joined as a party in the proceedings in execution and the order of eviction against the tenant was passed under Section 14(1)(e) of Delhi Rent Control Act, 1958.

2. In order to appreciate the question it should be noted on January 16, 1967 there was a lease in favour of respondent 2 of a monthly rent of Rs. 350 p.m. in respect of the premises in question in Greater Kailash, New Delhi. The tenant was a company called M/s. Bharat Carbons and Ribbons Manufacturing Company. The husband of the appellant late T. R. Narula was an employee of the said Company. He retired in 1973. The rent in respect of the premises had been deposited. It is, however, not certain as to on whose account the rent was deposited. On the one hand, the appellant contends that the rent was deposited on account of the appellant's husband and after the death of Shri T. R. Narula on account of heirs of said T. R. Narula, deceased, individually and not on account of or on behalf of the erstwhile tenant of the premises in question. It appears from the record that respondent 1 was in England at the relevant time. Respondent 1 described herself as a permanent settlee in England. The said respondent was at all relevant times represented by her attorney. Respondent 1 who is the landlady of the premises in question is still in England. Her case is that she and her husband are fairly well advanced in age and wish to come back and settle down in India and want to live their last days of life in their own house. They bona fide require the premises in question. This question of bona fide need has been held in their favour and appropriate proceedings instituted by the landlady against the tenant-Company to which the appellant was not a party. Indeed, the tenant did not really oppose the eviction petition because as, according to their version, the tenant had left the premises and Shri T. R. Narula had become the tenant, in his own right. The respondents did not accept that position. There was an application made by the widow of late T. R. Narula to be joined as a party in the suit. This was refused by learned Judge for which reasons have been given. The learned Judge of the High Court has noted that it was the admitted position that M/s. Bharat Carbons and Ribbons Manufacturing Company was the tenant and the appellant's husband was an employee of the said company. He retired in 1973. The rent had been paid since then. However, the landlady was residing out of India and she closed her account when she came back to India and in respect of that the rent was being deposited according to the appellant which appears at page 126 of the paper-book. The landlady protested by a letter written to the bank. The High Court has noted that admittedly there was no receipt in possession of the appellant regarding payment of rent. Counsel for the appellant drew our attention to a document which is described as a

receipt for the rent for the month July 1973. Counsel states that this was filed in the High Court. Counsel further states that there are subsequent receipts. As against these versions of the appellant herein it is asserted that these receipts were not genuine documents put in. Subsequent receipts that had not been, according to the respondents, produced before the High Court and at least relied before the High Court, were not there. The learned Judge of the High Court proceeded on the basis that there was no evidence that there was receipt in possession of the appellant regarding payment of rent. A strong point was made before us that if money was received from the appellant or on behalf of the appellant, it must be presumed that there was surrender of tenancy by M/s. Bhagat Carbons and Ribbons Manufacturing Company and there was tenancy agreement between late T. R. Narula or his wife and the landlady. No such evidence of the acceptance of rent was advanced before the High Court or before us to sustain that ground.

3. The tenancy was originally entered into between the landlady or on her behalf and the company of which T. R. Narula, since deceased, was an employee. There was no evidence adduced and to averment made that the tenancy was for the then tenant. Admittedly that tenancy, as it appears from the records and the evidence, came to an end after the tenant-Company abandoned the premises, and that it was so done was not seriously disputed and T. R. Narula, since deceased or after his death his heirs could not continue unless there was a fresh agreement of tenancy in their favour or novation the original agreement of tenancy. There is no cogent reliable dependable evidence of the same.

4. In view of the categorical finding of the High Court it is difficult to accept the submissions on behalf of the appellant. Apart from that there are no other cogent or available materials to show that there was actually a new contract entered into between late T. R. Narula and the landlady. On the other hand the contention of the landlady and her representative since she was staying away has then to deny any connection with the appellant. Furthermore, the urged notice of the termination of surrender of tenancy was sent to the landlady in rather suspicious circumstances. It is not necessary to dilate in detail on those. The evidence on record advanced in support of the appellant on this aspect cannot and does not inspire any credence of confidence. If that is the position then after the surrender of tenancy by the Company, late T. R. Narula or his heirs had no locus standi and had no right to be joined as party. The High Court notes that there was genuine evidence to show that the landlady needed the premises bona fide. There were concurrent findings of facts of the courts below and the appellant did not raise any contentions at this belated stage.

5. In the aforesaid view of the matter and in the facts and circumstances of the case we find no ground under Article 136 of the Constitution to interfere with the conclusion arrived at by the High Court.

6. The appeal must therefore, fail and is accordingly dismissed, specially in view of the fact that the landlady needs the premises for her family and for her own bona fide need. Parties will pay their own costs.

7. There is, however, another aspect of the matter. The appellant and her family have been residing there for quite some time. The landlady herself has not yet arrived in India and is awaiting her arrival since arrangements have to be made in India. The husband is very much in India awaiting vacancy of the house. In the circumstances we direct that the appellant and her family would be entitled to stay in the premises up to June 15, 1988 upon filing the usual undertaking in this Court within three weeks from today. The appeal is dismissed with the aforesaid directions. Parties will pay their own costs. They will continue to deposit cheques to the counsel for respondents for the remaining period.

</html