

**SUPREME COURT OF INDIA**

Ranen Roy

Vs.

Prakash Mitra

(A Anand and S R Babu JJ.)

26.11.1997

**ORDER**

1. On 8-3-1976, the respondent-landlord made an application under Section 21 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") before the Rent Controller seeking permission to let out the first floor of the demised premises to the appellant-tenant for a period of two years. The statements of the parties were recorded and on 12-3-1976 the learned IIIrd Additional Rent Controller, Delhi, granted permission to the respondent to let out the first floor of the suit premises to the appellant for residential purposes for a period of 24 months with effect from the date of order. On 26-5-1978, the respondent made an application before the Additional Rent Controller for issuance of warrant of possession of the first floor of the premises let out to the appellant since the appellant had not vacated those premises by that date, even though the period of two years had expired. The application seeking warrants of possession was resisted and objections were filed by the appellant to that application on 18-8-1978. Before the application of the respondent could be considered on merits, it appears, the appellant made a statement withdrawing his objections. The prayer for withdrawal of the objections was unqualified and no liberty was sought by the appellant to file fresh objections. On 5-1-1979, the objections were permitted to be withdrawn and the learned Additional Rent Controller granted further one year's time to the appellant to vacate and hand over the vacant possession of the premises to the respondent-landlord. After the expiry of one year, on 11-1-1980, the appellant filed yet another application before the Rent Controller raising fresh objections to the application seeking warrants of possession with the prayer that the objections be decided on merits. That application was allowed on 20-8-1980. On 20-2-1981, the respondent-landlord made an application before the Additional Rent Controller stating that since the earlier objections had been withdrawn without reservation, no fresh objections could

be filed by the tenant-appellant. The landlord's application was dismissed on 29-5-1981. On the landlord's agitating the matter before the Rent Control Tribunal, the matter was remanded to the learned Additional Rent Controller on 10-9-1981 to determine the question of maintainability of the second set of objections. On 12-2-1992, the learned Additional Rent Controller held that the second set of objections filed by the appellant were barred by the principle of res judicata. The tenant's appeal before the Rent Control Tribunal against the order dated 12-2-1982 failed on 4-3-1982. The High Court dismissed the second appeal on 18-3-1982. Hence this appeal by special leave.

2. The facts are not in dispute. On 5-1-1979, the appellant made the following statement before the learned Additional Rent Controller:

I withdraw my objection. I may be granted time up to 31-12-1979 to vacate the premises. I shall continue to pay rent to pet.

3. As would be seen from the above statement it was unqualified and no reservation had been made. Order 23 sub-rule (4) of Rule 1 of the CPC provides that where the plaintiff either abandons any suit or part of a claim under sub-rule (1) or withdraws from a suit or part of a claim without seeking any liberty to institute a fresh suit in respect of the subject-matter of such suit or part of the claim, he shall be precluded from instituting any fresh suit in respect of that subject-matter or that part of the claim. This provision is clearly attracted to the facts of the present case. The appellant's second set of objections filed on 11-1-1980 were, therefore, not maintainable. The Rent Control Tribunal as well as the High Court, therefore, committed no error in dismissing those second set of objections. The orders of the Rent Control Tribunal and the High Court are accordingly upheld though for different reasons as stated above. This appeal consequently fails and is dismissed.

4. At this stage, learned Counsel for the appellant submits that the appellant is constructing his house and his children are scheduled to take their final exams in the month of April 1998. He, therefore, prays for some time for the appellant to vacate the premises. The respondent is not present despite service. In view of the submissions made by learned Counsel for the appellant, it appears appropriate to us to grant time to the appellant to vacate and hand over the vacant possession of the suit premises to the respondent on or before 31-5-1998. The appellant shall file the usual undertaking within four weeks.