

SUPREME COURT OF INDIA

A.K. Jain

Vs.

Prem Kapoor

C.A.No.4680 of 2008

(Tarun Chatterjee and Aftab Alam JJ.)

28.07.2008

JUDGMENT

Aftab Alam, J.

1. Heard counsel for the parties.

2. Leave granted.

3. This appeal arises for an eviction proceeding instituted by the appellant, the landlord, in terms of Section 13 of the *Haryana Urban (Control of Rent & Eviction) Act, 1973*. The eviction of the respondent, the tenant, was sought on a number of grounds, of which only personal necessity now remains relevant, and we, accordingly, propose to take note of facts germane to that ground. The Rent Controller, Faridabad rejected the Eviction Petition (24 of 1998) filed by the appellant by order dated 26 August, 2004. The Appellate Authority, however, allowed the appellant's appeal (Rent Appeal No.6 of 2004) and ordered the respondent's eviction by judgment dated 28 March, 2005. The High Court in turn, set aside the appellate order and restored the judgment and order passed by the Rent Controller vide the judgment and order dated 3 April, 2007 in Civil Revision No.2344 of 2005 (O & M), preferred by the respondent. The High Court allowed the respondent's revision and dismissed the eviction petition filed by the appellant primarily on the ground that the appellant had failed to make the necessary averments in the Eviction Petition as required by Section 13(3)(a)(i) of the Act. The finding of the High Court that led to the dismissal of the appellant's case is admittedly based on an error of record and the order coming under appeal is therefore liable to be set aside on that score alone. But before proceeding further we must recount the relevant facts and the respective views taken by the courts below.

4. The appellant, in August 1995, inducted the respondent as a tenant in a portion of his dwelling house at no.1007 in Sector 14, Faridabad. The let-out portion consisted of one garage-room and one bed room with attached bath and toilet. The portion of the house that remained with the landlord consisted of two bed rooms, baths and toilets and a kitchen.

5. On 13 April, 1998 the appellant filed the petition for eviction of the respondent from the tenanted portion of the house inter alia on grounds of personal necessity. In the Eviction Petition, it was pleaded that the appellant needed the entire house, including the part tenanted by the respondent for himself and his family. It was stated that the appellant's family consisted of himself, his wife and a son and a daughter, both of whom were of marriageable age and were likely to be married soon. The respondent resisted the eviction proceeding and controverted the plea of personal necessity by pointing out that the appellant was an Executive Engineer in the Haryana Electricity Board and he was posted in Hisar where he lived in an official residence. His daughter stayed in Sholapur in connection with her studies. It was contended that the plea of personal necessity was false and unfounded.

6. The eviction proceeding remained pending before the Rent Controller for over six years in course of which a number of developments took place that, according to the appellant, further aggravated his need for a larger space and he required, more than before, the tenanted portion of his house. The appellant's son was married in January 1999 and his wife (the appellant's daughter-in-law) also came to live with them in that house. In 2004, he had one daughter who was about two years old at that time. (It was stated before us that the appellant's son has now two female children aged 8 years and 6 years respectively). During the pendency of the proceeding before the Rent Controller, the daughter of the appellant was also married and though she lived with her husband, both of them frequently came to visit and stayed over-night with her parents. The appellant, therefore, needed a separate room not only for her son and daughter-in-law but also for her daughter and son-in-law. Another significant development was that the appellant's retirement from service had come very close and he had no other place to live than his own house, a portion of which was the subject matter of the proceeding.

7. The rent controller did not accept the appellant's case and rejected the Eviction Petition by order dated 26 August 2004.

8. Against the order passed by the Rent Controller the appellant filed appeal before the Appellate Authority on 27 September 2004. It is significant to note here that five days after the order was passed by the Rent Controller the appellant retired from service on 31 August, 2004 and before the Appellate Authority he produced his retirement order dated 25 August 2004 which was marked as 'X'.

9. The Appellate Authority allowed the appellant's appeal, accepted the case of personal necessity and ordered the respondent's eviction. It took into consideration all the developments that took place since the institution of the proceeding and which were amply borne out from the evidences led before the Rent Controller. As regards the appellant's retirement from service the Appellate Authority made the following observations:

"Admittedly, A.K.Jain, petitioner has since retired from service with effect from 31-8-2004 vide order dated 25-8-2004 mark X and now he has shifted in his house at Faridabad with his wife in which the respondent is a tenant in some portion of the house. The petitioner is not having any otherwise in Faridabad where he alongwith his

wife start living after his retirement from service. The petitioner has the right to live with dignity after his retirement in his own house which was constructed by him while he was in service." [Emphasis added]

The Appellate Authority further observed as follows:-

"The petitioner has constructed his house during his service career. He has retired from his service. He wants to reside in his house constructed by him during his service careers but the respondent is bent upon not to allow the petitioner to reside in the same house which was constructed by him on expenditure of huge amount while in service." [Emphasis added]

The Appellate Authority accordingly found and held:-

".....that the petitioner was entitled to get possession of the rented portion of the house on account of personal necessity and the respondent was liable to be evicted on account of the personal necessity of the landlord."

10. The respondent-tenant filed revision before the High Court against the order of eviction passed by the Appellate Authority. As noted above, the High Court allowed the revision; set aside the order passed by the Appellate Authority and restored the order of Rent Controller.

11. The High Court order coming under appeal before us is based on the premise that in the eviction petition filed by him the appellant- landlord had failed to make the necessary declarations as required under Section 13(3)(a)(i)(b) and (c) of the Act. In order to show the omissions in the pleadings the High Court extracted certain paragraphs from what it supposed to be the eviction petition filed by the appellant. Unfortunately, the High Court committed an error of record and the extracts reproduced in the High Court judgment are not from Rent Petition No.24/1998, from which the revision arose but those are from a different petition filed later by the appellant. Learned counsel appearing for the respondent-tenant fairly accepted that the statements quoted in the High Court judgment are not from the eviction petition filed by the appellant and in that regard the High Court has committed an error of record. For our satisfaction we also referred to Rent Petition No.24 of 1998 which is a part of Annexure P-1 to the S.L.P. On a perusal of paragraphs 5 (i) to (iv) we are satisfied that the pleadings fully comply with the requirements of Section 13(3)(a)(i) (b) and (c) of the Act. The High Court order is thus liable to be set aside on this score alone.

12. Though conceding that the High Court order suffered from a fatal error of record, learned counsel appearing for the respondent-tenant sought to resist the appellant's appeal on two other grounds. The counsel first submitted that in the year 1998 when the eviction proceeding was instituted the appellant was very much in service. He retired from service a few days after the eviction petition was dismissed by the Rent Controller. However, the event of the appellant's retirement from service, arising subsequent to the dismissal of the proceeding by the first court was never brought on record in accordance with law either by making any amendment in the pleadings or by a petition for bringing on record any

additional evidence. All that was done was to simply file the retirement order before the Appellate Authority where it was marked as 'X'. The Appellate Authority had, therefore, committed an error in taking it into consideration in support of the appellant's plea of personal necessity. In support of the submission he relied upon the decisions of this Court in (i) *Om Prakash Gupta V. Ranbir B. Goyal*¹, and (ii) *Ram Kumar Barnwal V. Ram Lakhan*².

13. We are unable to accept the submission. It needs to be clarified that the respondent-tenant does not deny the fact that the appellant retired from service on 31 August, 2004. As a matter of fact, when asked pointedly, learned counsel for the Respondent was not in a position to deny that the appellant had in fact retired from service on 31 August 2004. He, however, contended that the fact of the appellant's retirement had not come before the court in accordance with law. It is noted above that the Appellate Authority observed that the retirement of the appellant was an admitted fact. It may further be noted that before the High Court a petition under Order 41 Rule 27 was filed on behalf of the appellant- landlord to produce the retirement order as an additional piece of evidence. The High Court, however, rejected the prayer observing as follows:

"It is not in dispute that the respondent-landlord had retired during the pendency of the petition before the Rent Controller and the learned Appellate Authority has already taken note of the subsequent event i.e. retirement of the landlord and, therefore, the present application under Order 41 Rule 27 of the CPC cannot be said to be competent. Accordingly, the same is dismissed being unnecessary." [Emphasis added]

14. Even before us it was admitted that the appellant had retired from service on the date stated by him. The appellant's retirement from service on the date as stated by him being admitted by the respondent the Appellate Authority was fully justified in taking that development into consideration. No prejudice was caused to the respondent because the appellant did not make any formal amendments in the pleadings or because the retirement order filed before the Authority was not accompanied with a formal petition under Order 41 Rule 27. The contention raised on behalf of the respondent is not highly technical and it is calculated only to frustrate the proceeding coming to a just- conclusion by making it quite incidental and completely subservient to the Court's procedures. We also fail to see how the two decisions relied upon by the counsel can support the case of the respondent. We thus find no merit in the submission.

15. Learned counsel next submitted that the order of eviction was also based on the growing needs of the appellant's son but in that connection there was no pleading as required under Section 13(3)(a)(ii) of the Act.

The provision referred by the counsel reads as follows:

"(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession -

(a) In the case of a residential building, if, --

(i) xxx xxx xxx xxx

(ii) He requires if for use as an office or consulting room by his son who intends to start practice as a lawyer, qualified architect or chartered accountant or as a "registered practitioner" within the meaning of that expression used in the *Punjab Medical Registration Act, 1916*, the *Punjab Ayurvedic and Unani Practitioners Act, 1963*, or the *Punjab Homoeopathic Practitioners Act, 1965*, or for the residence of his son who is married:

Provided that such son is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be, and has not vacated it without sufficient cause after the commencement of the 1949 Act."

16. We are unable to accept this submission because we see no application of the quoted provision to the facts of this case. Section 13(3) (a) (ii) will have application only in case the eviction is sought for the son's requirement independently and separately from the landlord. In this case, the son and his wife and children are part of the landlord's family and all of them are living together. The accommodation of the son, his wife and their children is part of the landlord's personal necessity. The case of the appellant clearly falls under section 13(3)(a)(i) that deals with the situation where the landlord requires the tenanted premises for his own occupation and it does not attract section 13(3)(a) (ii) that deals with the requirements of the son of the landlord. In taking the view we are supported by the decision of this Court in *Joginder Pal V. Nawal Kishore Behal*³. In paragraph 33 of the decision it was held and observed as follows:

"Our conclusions are crystallized as under:

(i) The words "for his own use" as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must received a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression - landlord requires for "his own use", is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal "emanations" of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence - economic or otherwise, between the landlord and such person in the background of social, socio- religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are: (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement; and, (ii) whether on the facts

and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as "his own" occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as "his own" and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward; and (iii) the intrinsic tenability of the claim. The court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the court shall adopt a practical and meaningful approach guided by the realities of life.

(v) In the present case, the requirement of the landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord "for his own use" within the meaning of Section 13(3)(a)(ii)."

17. For the reasons discussed above we find no merit in this respondent's pleas. Accordingly, the appeal succeeds and it is allowed. The order of the High Court is set aside and the order of the Appellate Authority is restored.

18. In the facts and circumstances of the case, however, the respondent-tenant is allowed six months time to vacate the tenanted premises on condition of filing the usual affidavit before this Court within four weeks from today.

¹(2002) 2 SCC 256

²(2007) 5 SCC 660

³(2002) 5 SCC 397