

SUPREME COURT OF INDIA

Topper Builders & Construction P.Ltd

Vs.

Md. Israil

C.A.No.5720 of 2009

(B.N.Agrawal and G.S.Singhvi JJ.)

21.08.2009

ORDER

Leave granted.

1. Heard learned counsel for the parties.

2. The appellant filed suit for eviction of respondent no.1 on the ground of subletting. The trial court vide its judgment dated 28th August, 1981 decreed the suit by recording a finding that the tenant had sublet the premises without the written consent of the landlord, as required under Section 14 of the *West Bengal Premises Tenancy Act, 1956 [hereinafter referred to as the Act]*. On an appeal preferred by respondent no.1, the High Court reversed the judgment and decree of the trial court and dismissed the suit. Hence, this appeal by special leave.

3. A perusal of the impugned judgment shows that even though the High Court recorded a finding that the tenant has not adduced any evidence to prove that the property was sublet with the written consent of the landlord, such consent could be inferred from the reply to the statutory notice and conduct of the parties, i.e., investment of large sums of money by the tenant for carrying out repairs and renewals of the suit premises. In the opinion of the High Court, non- production of the alleged agreement cannot be an open and shut case in all situations and in the circumstances of the case, permission of the landlord in subletting of the suit premises can be inferred.

4. In our opinion, the reason assigned by the High Court for upsetting the judgment of the trial court is legally untenable. Section 14 of the Act, which provides for restriction on subletting, reads as under:-

“14. Restriction of subletting. (1) After the commencement of this Act, no tenant shall, without the previous consent in writing of the landlord -

(a) sublet the whole or any part of the premises held by him as a tenant; or

(b) transfer or assigns his rights in the tenancy or in any part thereof.”

5. The plain language of the above reproduced section makes it clear that the tenant cannot sublet whole or any part of the premises without previous written consent of the landlord. In the instant case, the trial court as also the High Court have concurrently found that the tenant has not produced any evidence of having sublet the suit premises after obtaining written consent of the landlord. This being the position, reversal by the High Court of the judgment and decree of eviction passed by the trial court cannot be sustained. The appeal is, accordingly, allowed, impugned order rendered by the High Court is set aside and decree for eviction passed by the trial court is restored. Respondent No.1 is granted time till 28th February 2010, to vacate the premises in question upon filing undertaking to this effect in this Court within four weeks from today. It is directed that in case respondent No.1 fails to vacate the premises in question within the aforesaid time, it would be open to the decree-holder to file an execution petition for delivery of possession and in case such a petition has already been filed, an application shall be filed therein to the effect that respondent No.1 has not vacated the premises in question within the time granted by this Court. In either eventuality, the executing court is not required to issue any notice to respondent No.1. The executing court will see that delivery of possession is effected within a period of fifteen days from the date of filing of the execution petition or the application aforementioned. In case for delivery of possession any armed force is necessary, the same shall be deputed by the Superintendent of Police within forty eight hours from the date requisition is received therefor. It is also directed that in case anybody else, other than the respondent No.1, is found in possession, he shall also be dispossessed from the premises in question.