

**SUPREME COURT OF INDIA**

Prithipal Singh

Vs.

Satpal Singh(D) Th.Lrs.

C.A.No.8501 of 2009

(Tarun Chatterjee and Rajendra Mal Lodha JJ.)

18.12.2009

**JUDGEMENT**

**TARUN CHATTERJEE, J.**

1. Leave granted.

2. This is an appeal arising out of a Judgment and order dated 30th of October, 2006 passed by the High Court of Delhi at New Delhi in C.M. No. 65 of 2002, whereby the High Court had dismissed the petition filed by the landlord/appellant and upheld the order passed by the Additional Rent Controller, Delhi. The order of the Additional Rent Controller holding that he is conferred with power to set aside an ex-parte order for eviction in the exercise of its jurisdiction under Order 9 Rule 13 read with Order 37 Rule 4 and Section 151 of the 1 Code of Civil Procedure (in short, "the Code") was thereby affirmed by the High Court in appeal.

3. The brief facts leading to the filing of this appeal may be stated as follows in a nutshell :- The landlord/appellant filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (in short "the Rent Act") before the Rent Controller, Delhi for eviction of the Tenant/Respondent from No. 1-C/46, Ramesh Nagar, Namdhari Colony, New Delhi (in short "the tenanted premises"). After filing of the eviction proceeding, summons was issued in compliance with Section 25(3) (a) of the Rent Act to the tenant/respondent to appear before the Rent Controller on a specified date for the purpose of defending the eviction proceeding. The tenant/respondent filed an affidavit by way of an application praying for leave to defend the eviction proceeding after delay of 8 days from the date of service of notice upon him. By an order dated 28th of February, 2001, the Affidavit (the application for leave to defend) was rejected by the Additional Rent Controller as it was filed 8 days beyond the date mentioned in the summons. Since there was a delay of 8 days, Additional Rent Controller held that under the Rent Act, he was not conferred with any power to condone the delay in filing such affidavit.

Since the prayer for leave to defend the proceeding was rejected as a follow up action, an eviction order was passed by the Additional Rent Controller, Delhi in favour of the landlord/appellant on 28th of February, 2001 in compliance with sub-section (4) of Section 25 B of the Rent Act.

4. Feeling aggrieved, the tenant/respondent filed an application for setting aside the aforesaid order dated 28th of February, 2001 passed by the Additional Rent Controller, Delhi under Order 9 Rule 13 read with Order 37 Rule 4 and Section 151 of the Code and also prayed for leave to defend the eviction proceeding after condoning the delay in filing the same. By an order dated 7th of December, 2001, the application for setting aside the ex-parte order of eviction passed on 28th of February, 2001 was allowed and the eviction proceeding was restored to its original file by the Additional Rent Controller, Delhi. The Additional Rent Controller, by the aforesaid order, also allowed the prayer of the tenant/respondent by granting leave to contest the eviction proceeding in compliance with Section 25(B)(4) of the Rent Act.

5. Aggrieved by the aforesaid order of the Addl. Rent Controller, Delhi, the Landlord/Appellant filed an application under Article 227 of the Constitution, which came to be registered as CM No.65/2002, before the High Court of Delhi at New Delhi. The High Court, by the impugned judgment, had dismissed the petition filed by the landlord/appellant holding that there was no patent error or erroneous exercise of jurisdiction by the Trial Court in setting aside order of eviction thereby restoring the affidavit filed by the tenant/respondent for leave to contest the eviction proceeding. However, the High Court observed in the impugned Judgment that the Additional Rent Controller may not have power to condone the delay in seeking leave to defend, but once the eviction decree was passed, the Addl. Rent Controller can set aside an order of eviction and restore the prayer for leave to defend the eviction proceeding by resorting to Order 9 Rule 13 read with Order 37 Rule 4 and Section 151 of the Code.

6. Against the aforesaid order of the High Court, a Special Leave Petition was filed, which on grant

of leave, was heard in presence of the learned counsel for the parties. Before us, the pivotal issues which were raised by the learned counsel for the parties, may be stated as follows :- (i) Whether the Additional Rent Controller, exercising powers and jurisdiction under the Rent Act, which is a special Act, was justified in setting aside the order of eviction which amounted to restoration of and allowing the application for leave to defend the eviction petition although such application was rejected earlier on the ground of delay.

(ii) Whether the Additional Rent Controller is competent to recall orders of eviction on an application under Order 9 Rule 13 read with Order 37 Rule 4 and Section 151 of the Code and condone the delay in applying for leave to defend when he was not conferred with such power to condone the delay in filing the application for leave to defend the eviction proceedings under the Rent Act specially when such an affidavit (application for leave to defend) was earlier rejected by the Additional Rent Controller, Delhi on the ground of delay.

7. We have heard Mr. Gulati, learned counsel appearing for the Landlord/Appellant and Mr. Tyagi, learned counsel appearing on behalf of the tenant/Respondent. We have carefully examined the impugned order of the High Court as well as the order of the Addl.

Rent Controller, Delhi. Before we take up the aforesaid issues for our decision, it would be useful for us to refer to some of the relevant provisions of the Rent Act read with Third Schedule of the Rent Act and relevant Rules of the Delhi Rent Control Rules, 1959 (in short, "the Rules").

8. Chapter III of the Rent Act deals with control of eviction of tenants. Section 14 of the Rent Act protects a tenant from eviction.

Section 14 (1)(e) of the Rent Act says that when the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member in his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation, the Rent Controller may, on the application made to him in the prescribed manner, make an order for recovery of possession. By an amendment dated 1st of February, 1975, Section 14 was amended so far as the classes of landlords are concerned. Section 14A confers right on a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or any local authority, which is required to be vacated on the notice issued by such authority. Section 14B was inserted for the purpose of conferring right on the landlords who are members of Armed forces to recover immediate possession of the premises on the ground of bona fide requirement. This amendment of Section 14 of the Act was brought by the Legislature on 1st of February, 1988. Section 14C was introduced by another amendment conferring power on a landlord who is a Central Government or a Delhi Administration employee to recover immediate possession from a tenant. Section 14D deals with the right of a widow of a landlord to recover

immediate possession of a tenanted premises for the bona fide requirement of a widow. All these amendments were brought into force by the Legislature on 1st of January, 1988.

9. Now comes Chapter IIIA of the Rent Act which consists of Sections 25A to 25C and inserted by Act of 1976, i.e., w.e.f. 1st of February, 1975. By introduction of Chapter IIIA, a special provision was introduced by the Legislature for summary trial of certain applications filed under the Rent Act. Section 25A of the Act clearly says that this provision of Chapter IIIA to have overriding effect notwithstanding any inconsistency thereof contained elsewhere in this Act or any other law for the time being in force. Section 25B is the provision by which special procedure for disposal of applications for eviction on the ground of bona fide requirement filed at the instance of the landlord under Section 14 or 14A or 14B or 14C or 14D of the Act has been laid down. Since we are concerned primarily with Section 25B of the Rent Act, by which the procedure has been adopted specifically for eviction of a tenant by a landlord on the ground of bona fide requirement, we need to reproduce the said Section which runs as under:- "25B - Special procedure for the disposal of applications for eviction on the ground of bona fide requirement - "(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso 10 sub-section (I) of section 14, or under section 14A1[or under section 14B or under section I4C or under section 14D], shall be dealt with in accordance with the procedure specified in this section. (2) The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in the Third Schedule.

(3)(a) The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an 8 affidavit slating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the

applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (c) of the proviso to sub-section (1) of section 14, or under section 14A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

(7) Notwithstanding anything contained in sub-section (2) of section 37, the Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Where no application has been made to the High Court on revision, the Controller may, exercise the powers of review in accordance with the provisions of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A, shall be the same as the procedure for the disposal of applications by Controllers.

10. From a close examination of Section 25B sub-section (1) of the Rent Act, it would be evident and clear that in an application filed by a landlord for recovery of possession of any premises on the ground specified in Clause (e) of the proviso to sub-section (1) of Section 14 or under Section 14A or under Section 14B or under Section 14C or under Section 14D, shall be dealt with in accordance

with the procedure specified in this Section. (Emphasis supplied)

11. Sub-section (2) of Section 25B of the Rent Act says that the Controller shall issue summons in relation to every application referred to in sub-section 1 in the form specified in the Third Schedule. Sub-section (3) (a) of Section 25B provides that Controller, in addition to and simultaneously with, the issue of summons for service on the tenant, also directs the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the 1 circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

12. A reading of sub-section (3)(a) of Section 25B would clearly indicate that in a proceeding under Section 14(1)(e), how the tenant can be served intimating institution of the eviction proceeding and date fixed for hearing of the same. Sub-section (3)(b) of Section 25B says when the acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

13. Next comes the very important provision in Section 25B of the Rent Act, i.e., sub-section (4) of the same. It clearly provides that a tenant on whom the summons is duly served in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he 1 seeks to contest the application for eviction and obtains leave from the Controller, as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

14. From a careful perusal of sub-section (4) of Section 25B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceeding shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition.

15. At this stage, we may also note that in sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made 1 clear by the Legislature that if the summons of the proceeding is

received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.

16. Sub-section (5) of Section 25B of the Act clearly says that the Controller shall give to the tenant leave to contest the eviction proceeding if the affidavit filed by the tenant discloses such facts as would itself disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in clause (e) of the proviso to Section 14 (1) or under Section 14A.

17. Sub-section (6) of Section 25B of the Rent Act says that where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable. Sub-section (7) of Section 25B says that notwithstanding anything contained in sub-section (2) of Section 37, the Controller shall, while holding an enquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes including the recording of evidence.

1 Sub-section (8) of Section 25B bars an appeal or a second appeal against an order for recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section. Proviso to sub-section (8) of Section 25B also makes it clear that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is, according to law, call for the records of the case and pass such order in respect thereto as it thinks fit. Sub-section (9) of Section 25B deals with the power of the Controller to review its order if no application was made before the High Court in revision.

18. Finally, sub-section (10) of Section 25B clearly says that the procedure for the disposal of an application for eviction on the ground specified in Clause (e) of the proviso to sub-section (1) of Section 14 or Section 14A shall be the same as the procedure for disposal of application by Controllers.

19. The scope of Chapter IIIA of the Rent Act has been elaborately discussed in the case of Ravi Dutt Sharma v. Ratan Lal Bhargava, (AIR 1984 SC 967), in which this Court duly discussed the object of the Rent Act and also the insertion of Chapter IIIA of the same in the following manner :-  
1 "The dominant object of the act is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14A and for avoiding unusual dilatory process provided otherwise by the Rent Act.

It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing

eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief, which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A. The Legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14(A) and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the Amending Act and the purposes, which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of property Act was still preserved, no genuine grievance could be made."

20. Before we take up the question posed before us in detail, we may also refer to one provision of the Rules, namely, Rule 23 of the said Rules which runs as under :- "Code of Civil Procedure to be generally followed - In deciding any question, relating to procedure not specifically provided by the Act and these rules the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908."

21. A challenge was thrown to Section 25B of the Rent Act in Kewal classification held to be not in consonance with the objective sought to be achieved and the aforesaid provision must be held to be unconstitutional wherein this Court held that the special provision namely, Section 25B of the Rent Act providing summary procedure for eviction while the landlord pleading bona fide personal requirement, separate classification of such landlords were held to be justified as such classification must be held to be in consonance with the objective sought to be achieved and provision not unconstitutional. Accordingly, in the aforesaid decision, this Court held that Section 25B does not suffer from excessive delegation. Keeping in view the aforesaid observations of this Court in this case and considering the special provisions made in Section 25B of the Act, we conclude that Section 25B of the Act is a complete code by which the entire procedure to be adopted for eviction of a tenant on the ground of bona fide requirement filed by the landlord in respect of a premises, shall be followed. As noted herein earlier, Section 25B(1) clearly says that any application filed by a landlord for recovery of possession of 1 any premises, inter alia, on the ground of Section 14(1)(e) of the Rent Act, shall be dealt with in accordance with the procedure specified in Section 25B of the Rent Act. Therefore, sub-section (1) of Section 25B makes it clear that if any application for eviction of a tenant is filed by the landlord, the special procedure indicated in Section 25B has to be followed and Section 25B(1) clearly stipulates that the application for eviction shall be strictly dealt with in accordance with the procedure specified in this Section.

22. Apart from that, as we have noted herein earlier, Section 25B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25B of the Act. Therefore, after insertion of Section 25B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25B and question of

relying on Rule 23 of the Code, which also does not give full right to apply the provisions of the Code, could be applied.

23. That apart, Rule 23 does not specifically confer any power on the Controller to follow the provisions of the Code in special classes of landlords. It is a general rule, by which the Controller in deciding any question relating to procedure not specifically provided by the Act and these rules shall, as far as possible, be guided by the provisions contained in the Code.

24. In view of our discussions made hereinabove that Section 25B has been inserted by the Legislature for eviction of a tenant of a certain classes of landlords, in which the entire procedure has been given, it is difficult for us to hold that Rule 23 of the Rules can be applied in the present case in view of the specific provisions provided in Section 25B of the Rent Act. Accordingly, we are of the view that Rule 23 has no manner of application.

25. That being the position, if Rule 23 cannot be applied in the present case because of applicability of Section 25B, which is a special code and specific procedure for eviction of a tenant by a landlord on the ground of bona fide requirement, we cannot agree with the courts below that in view of Rule 23 of the Rules, the provisions of the Code can be applied in the present case and, therefore, we are of the view that the High Court had acted illegally and with material irregularity in the exercise of its jurisdiction in setting aside the order of eviction and in allowing the affidavit filed by the tenant for the purpose of defending the proceedings for eviction.

26. That apart, from a perusal of the order of the High Court and also of the Rent Controller, it would be evident that the High Court had relied on a decision of the Delhi High Court in the case of Mohd. Quresh vs. Smt. Roopa Fotedar & Ors. [1990 (1) ILR 16] and held in favour of the tenant/respondent. In Mohd. Quresh (supra), another decision of the Delhi High Court in the case of Gurditta a conclusion that in view of Rule 23 of the Rules, the Rent Controller was conferred with the power to entertain an application under Order 37 Rule 4 read with Section 151 of the Code.

27. We may now note that the High Court, relying on Mohd. Quresh (supra) which had relied on the decision of Gurditta Mal (supra) held that the application under Order 37 Rule 4 read with Section 151 was entertainable by the Rent Controller. In our view, the High Court, while deciding the present case had failed to notice that the decision in Gurditta Mal (supra) was considered in the subsequent decision of this Court in the case of Prakash H Jain v. Ms. Marie Fernandes 1 (AIR 2003 SC 4591). In para 8 at page 4593 of the aforesaid decision, this Court observed as follows:- "In Gurditta Mal v. Bal Swarup (AIR 1980 Delhi 216) a learned Single Judge of the said High Court chose to infer conferment of power under Rule 23 of the Delhi Rent Control Rules, 1959, though such power was not conferred under the statute, by relying upon Section 151 CPC which in our view could not have been, having regard to the very nature and content of power under Section 151 and its inapplicability to Authorities other than ordinary courts"

Again in para 10 at page 4594, this Court observed as under :- "We have carefully considered the submissions of the learned counsel appearing on either side. Questions of the nature raised before us have to be considered not only on the nature and character of the Authority, whether it is court or not but also on the nature of powers conferred on such Authority or Court, the scheme underlying the provisions of the Act concerned and the nature of powers, the extant thereof or the limitations, if any, contained therein with particular reference to the intention of the Legislature as well, found expressed therein. There is no such thing as any inherent power of court to condone delay in filing a proceedings before Court/Authority concerned, unless the law warrants and permits it, since it has a tendency to alter the rights accrued to one or the other party under the statute concerned."

28. Therefore, in view of our discussions made hereinafter and in view of our findings that there was no reason for us not to rely on the decision of Prakash H. Jain (supra), only because that decision was rendered under the Maharashtra Rent Control Act, whereas the present case has been filed under the Delhi Rent Control Act, but on 2 comparing the aforesaid two Acts and in view of the observations and principles laid down by this Court in Prakash H. Jain (supra), as noted hereinafter, we are of the view that the provisions under the Maharashtra Rent Control Act and the provisions under the Delhi Rent Control Act are *pari materia* and therefore, the decision in the case of Prakash H. Jain (supra) practically overrules the decision of the Delhi High Court reported in Mohd. Quresh (supra) and Gurditta Mal (supra).

29. For the reasons aforesaid, we are therefore of the view that the High Court has acted illegally and with material irregularity in the exercise of its jurisdiction in affirming the order of the Additional Rent Controller whereby the Additional Rent Controller had allowed the application for setting aside the order of eviction and restored the application for leave to contest the eviction proceeding when such power, in our view, was not conferred on the Rent Controller to entertain such an application filed by the tenant/respondent.

30. There is another aspect of this matter. It is difficult to understand how an application for leave to contest having been rejected, may be on the ground of delay, could be allowed when it is not disputed by the tenant respondent that no application for condonation of delay 2 could be entertained by the Rent Controller as the provisions of the [Limitation Act, 1963](#) could not be attracted.

31. That apart, we have also carefully examined the special reason given by the tenant/respondent in the original application for leave to contest and the present application after order of eviction was passed. On a reading of these two applications, we find that the same defence was taken by the tenant after the order of eviction was passed and therefore, we do not think that such reason can be considered to be a special reason within the meaning of Order 37 Rule 4 of the Code for allowing the tenant to defend the proceedings if Order 37 Rule 4 of the Code applies to a special Act.

32. For all the reasons aforesaid, the order of eviction passed by the Additional Rent Controller on 28th of February, 2001 stands restored, the impugned order of the High Court as well as the order of the Additional Rent Controller, Delhi, are set aside and the application filed by the landlord under Section 14(1)(e) of the Rent Act stands allowed.

33. Considering the facts and circumstances of the present case, we grant time to the tenant/respondent to vacate the tenanted premises within a period of six months from this date provided the 2 tenant/respondent files an usual undertaking in this Court within one month.

34. In the event, if no undertaking is filed within a month mentioned hereinabove, it will be open for the landlord/appellant to proceed and take delivery of possession in accordance with law.

35. The appeal is thus allowed. There will be no order as to costs.