

(1986) 11 DEL CK 0049
Delhi High Court
Case No: Second Appeal No. 335 of 1978

Rattan Lal More

APPELLANT

Vs

Gopal Dass Tandon
(deceased by L.Rs..)

RESPONDENT

Date of Decision: Nov. 26, 1986

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14(1)(b), 39

Citation: AIR 1987 Delhi 177

Hon'ble Judges: Sultan Singh, J

Bench: Single Bench

Advocate: S.S. Saluja, for the Appellant; R.K. Aggarwal and H.S. Dhir, for the Respondent

Final Decision: Dismissed

Judgement

Sultan Singh, J.

This second appeal under S. 39, Delhi Rent Control Act, 1958 (for short the Act") is directed against the judgment and order dt. 12-9-1978 of the Rent Control Tribunal confirming the order dt. 1-11-1975 of the Additional Rent Controller passing an order of eviction in favour of Shri Gopal Dass Tandon, respondent 1 and against the appellant and, respondents 2 to 6 of this appeal.

2. Respondent 1 on 3-3-1970 filed a petition for eviction of his tenant Rattan Lal More appellant and sub-tenants. The eviction petition was allowed to be amended. In the amended petition dt. 11th May, 1971, respondent 1 pleaded that the appellant was his tenant in a portion of the premises bearing Municipal No. 5491, Ward No. 6, Nai Sarak, Delhi at a monthly rent of Rs. 224.25; the premises were let in the year 1952 and there was no agreement in writing; the appellant had sublet, assigned or otherwise parted with the possession of part of the premises after 9th June, 1952 without his written consent to respondents 2 to 5 and subsequent to the filing of the eviction petition a part of the premises was also sublet, assigned or

otherwise parted with possession without his consent to Bhola Nath Seth, respondent 6.

3. The eviction petition was contested only by the appellant who admitted himself to be tenant in the demised premises under respondent 1. However, with regard to the merits of the ground of eviction a plea was taken that respondents 2 to 4 were inducted on the second floor at the instance of respondent 1 and they were paying Rs. 100/- per month as rent. The appellant did not make it clear in the written statement as to whom respondents 2 to 4 were paying rent. In respect of B. P. Garg respondent 5 plea was taken that he was an employee of the appellant earlier and had been in possession of one room as his licensee; a suit was filed by the appellant in the Civil Court. The appellant further pleaded that respondent 6 Bhola Nath Seth was not inducted in any portion of the demised premises.

4. The Additional Rent Controller after recording evidence held that the appellant had sublet different portions of the demised premises to respondents 2 to 6 after 9th June, 1952 without obtaining the consent of respondent 1 and, therefore, he passed an order for their eviction. The appeal filed by the tenant was dismissed by the Rent Control Tribunal.

5. In this second appeal, Learned Counsel for the appellant submits that he made an application under O. 6, R. 17, Civil P.C. for leave to amend the written statement but the Additional Rent Controller by order dt. 25-9-1975 illegally dismissed the same. He further submits that the appellant was not given reasonable opportunity to produce his evidence. Lastly he submits that respondent 1 is not entitled to an order of eviction on the ground mentioned in S. 14(1)(b) of the Act.

6. As already stated appellant had admitted himself to be a tenant in the demised premises under respondent 1. By his application dt. 10-9-1975 for leave to amend the written statement he sought to amend paras 3(a) and 3(b) of the written statement, alleging that the said paras were wrong due to bona fide mistake. After amendment he wanted the Controller to read paras 3(a) and 3(b) as "paras 3(a) and (b) of the petition are denied". He alleged that he came to know that there was no relationship of landlord and tenant between him and respondent 1; that the eviction petition was not maintainable against him as the tenancy was in the name of Sarv Mangla Trading Company; that the tenancy was not in the name of R. L. More, the appellant. Respondent 1 contested the application. The Additional Rent Controller by order dated 25th September, 1975 dismissed the application.

7. Learned Counsel submits that an admission can be withdrawn or explained away and, therefore, amendment ought to have been allowed. Respondent 1 in his eviction petition had pleaded that Rattan Lal More S/o Ram Sahai Mal More, Proprietor of Sarv Mangla Trading Company through Jamuna Dass Manager and General Attorney was the tenant. This fact was admitted by the appellant in para 3(b) of the written statement. There is nothing on the record to show that Rattan Lal

More was not the proprietor of Sarv Mangla Trading Company. The appellant sought to plead by amendment that Sarv Mangla Trading Company and not Rattan Lal More was the tenant in the demised premises. When admittedly Rattan Lal More is the proprietor of Sarv Mangla Trading company it is immaterial whether Rattan Lal More or Sarv Mangla Trading Company is described as a tenant in the eviction petition. Nothing material was sought to be added by way of amendment to the written statement. Merely denying the relationship of landlord and tenant by way of amendment cannot be allowed. No explanation was given under what circumstances the relationship was admitted. Anyhow, if there is no change about the proprietary nature of Sarv Mangla Trading Company no purpose is served by amendment. It is true that a defendant can be allowed to amend written statement if it is pleaded that the admission was made under some misapprehension or mistake. In [Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another](#), it has been observed that an admission made by a party may be withdrawn or may be explained away and, therefore, it cannot be said that by amendment an admission of fact cannot be withdrawn. In [Hundari Bewa Vs. Keluni Dei and Others](#), it has been observed that admission made by inadvertence or erroneously in ignorance of true fact can be withdrawn by way of amendment of the written statement. The real question is what was the mistake in the mind of the appellant which he wanted to withdraw. It is admitted that appellant is the proprietor of Sarv Mangla Trading Company and, therefore, his admission that he was a tenant was not wrong. Under these circumstances, it was not at all necessary to grant leave to the appellant to amend the written statement. The order of the Additional Rent Controller dt. 25th September, 1975 dismissing the appellant's application for leave to amend the written statement is in accordance with law.

8. Learned Counsel for the appellant next submits that the Additional Rent Controller acted illegally in closing the evidence of the appellant; that his request for being examined on commission was improperly refused. The perusal of the file shows that number of opportunities were given to the appellant to lead evidence. 9th April, 1975 was the date fixed for his evidence. Counsel for the appellant sought adjournment and gave an undertaking that he would get served all witnesses and the case was adjourned to 23rd July, 1975. On that date again no witness was present. Adjournment was again sought and an undertaking was given that he would complete evidence on the adjourned date. The case was adjourned to 25-9-1975. One witness was examined and further request was made for adjournment. The Additional Rent Controller disallowed the prayer and closed the evidence on the ground that sufficient opportunities had been given to the appellant to lead evidence. A request for the examination of the appellant on commission at Calcutta was also made on that date on the ground that the appellant was suffering from paralysis. No medical certificate in support of the appellant's sickness was produced. No reason was given as to why steps were not taken earlier for getting a commission issued for examining the appellant at

Calcutta. The eviction petition was filed in 1970 and in spite of various opportunities steps were not taken by the appellant to examine the witnesses. The appellant examined Bhola Nath respondent 6 as R.W. 1. No other witness was examined by the appellant at any stage. Under these circumstances, the order of the Additional Rent Controller closing the evidence of the appellant was justified.

9. Respondents 2 to 6 did not contest the eviction petition at all. They did not file any written statement. Respondent 6 as already stated appeared as a witness of the appellant.

The landlord respondent 1 examined Hukam Chand (A.W. 1) an employee of respondents Nos. 2 to 4: Mr. Abdul Alim. Advocate (A.W. 2) who was appointed as a Local Commissioner in a Civil Suit between the parties: Jagdish Rai (A.W. 3) an employee of respondent 6 and Dewan Damodar Dass Tandon (A.W. 4) one of the sons of respondent 1. On the basis of the evidence recorded, the Additional Rent Controller and the Tribunal have held that the ground for eviction of the appellant and respondents 2 to 6 under S. 14(1) (b) the Act had been made out by respondent 1. No reason is being given by the Learned Counsel for the appellant to up-set the said finding of fact. It is well known that the finding reached by the trial Court and the First Appellate Court on an appreciation of evidence cannot be interfered with by the High Court in second appeal unless it is shown that in reaching the finding a mistake of law is committed by the Court or it is based on no evidence or is such as no reasonable man can reach.

10. The Learned Counsel for the appellant next submits that the Rent Control Tribunal in its judgment has observed that the landlord cannot seek eviction of the appellant on the ground that he had sublet a portion to B. P. Garg, respondent 5. It is correct that the Tribunal made this observation para 10 of its judgment but finally the appeal of the appellant was dismissed by the Tribunal. The observation of the Tribunal is, however, not according to record. It is not correct. The appellant had filed a civil suit for mandatory injunction against B. P. Garg, respondent 5 asking him to vacate the premises consisting of a tin covered room. etc.. on third floor of the premises Nos. 5491 Nai Sarak, Delhi. In that suit the appellant pleaded that he was the proprietor of Sarv Mangla Trading Company and a tenant of the premises: that he had given the tin covered room, etc.. to B. P. Garg as a licensee. This suit was decreed by the trial Court but on appeal the Additional Senior Sub Judge set aside the decree of the trial Court and dismissed the suit. On Second Appeal (RSA No. 187/1967) in Re. Rattan Lal More v. Basheshar Pershad Garg this Court dismissed the appellant's suit against B. P. Garg by judgment dt. 26-2-1975. Needless to mention that the landlord respondent 1 was never a party to the said suit by the appellant against B. P. Garg. Any observation made wherein cannot be of any help to the appellant. Further respondent 5 along with other respondents did not contest the eviction petition. If respondent 5 had any independent right, title or interest in the premises in his occupation he ought to have contested the eviction petition.

Learned Counsel for respondent 5 submits that he was a tenant under respondent 1. But as already stated respondent 5 did not contest the eviction petition. Written statement was not filed. No evidence was led and. therefore, it cannot be held that respondent 5 is a tenant under respondent 1.

11. The eviction order under S. 14(1)(b) of the Act passed by the Additional Rent Controller and confirmed by the Rent Control Tribunal is in accordance with law based on evidence. The appeal has no merit and the same is dismissed with costs payable only to respondent 1. Counsel fee Rs. 500/-.