

(2001) 09 DEL CK 0085

Delhi High Court

Case No: C.M. (M) No"s. 155 and 522 of 2001

Shri Ashok Kumar Sharma

APPELLANT

Vs

Shri Lal Chand Sharma

RESPONDENT

Date of Decision: Sept. 17, 2001

Acts Referred:

- Constitution of India, 1950 - Article 227
- Delhi Rent Control Act, 1958 - Section 15(1), 15(4)

Citation: (2001) 94 DLT 768

Hon'ble Judges: Vikramajit Sen, J

Bench: Single Bench

Advocate: Mr. S.P. Pandey and Mr. Anil Kaushik, for the Appellant; Mr. V.K. Srivastava, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Vikramajit Sen, J.

This is an unfortunate dispute between Father and Son in respect of House No. 11/4314, Gali Kayasthan, 3, Darya Ganj, New Delhi. The Father has alleged in paragraph 14 of the eviction petition that his Son is an old Tenant and that no rent agreement had been executed between them. It is, however, alleged that the monthly rent is Rs. 2500/- excluding all other charges. The tenanted premises have been described as two rooms and one open courtyard as shown red in the Plan annexed to the petition. Arrears of rent are claimed with effect from 1.1.1999 and the service of Notice of Demand is not in dispute. Reliance is placed on a Rent Receipt dated 4.1.1999 recording these facts. On the observe of the Receipt there is a notation to the effect that the Son will not claim tenancy rights. The contention of the Tenant, who has filed the present petitions under Article 227 of the Constitution, is that the relationship of landlord and tenant is vehemently denied. It is stated that the Son is a joint owner of the property and has been residing in it throughout his

life. In respect of the Rent Receipt it has been explained by the son that it was required and executed only for making a claim of rent from the employers of the Son.

2. The Additional Rent Controller and the Rent Control Tribunal have concurrently found that a prima face case had been made out by the Father u/s 15(1) of the Delhi Rent Control Act (hereinafter referred to as "the Act"). Accordingly an Order u/s 15(1) of the Act was passed by the Additional Rent Controller. In Appeal the Rent Control Tribunal sustained the Order but initially modified this Order to the extent that it would be treated as having been passed u/s 15(4) of the Act instead of Section 15(1) of the Act. Liberty was granted to the Father/Landlord had thereafter approached the Court and after hearing both the parties the Tribunal had allowed the Father/Landlord's application for Review. The initial Order is dated 25.1.2001 and the review Order is dated 31.7.2001. The former has been challenged in CM (M) 155/2001 and the latter in C.M. (M) 522/2001. The Review was confined to the question of whether the Order should have been passed u/s 15(1) or 15(4) of the Act. After considering the arguments raised the Tribunal reviewed its earlier Order and maintained the initial Order passed by the Additional Rent Controller by holding that the deposit shall be made u/s 15(1) and not u/s 15(4) of the Act. The Tribunal preferred this view for the reason that Section 15(4) should be resorted to only where there is a possible doubt that the rent was payable to a person other than the Petitioner in the eviction petition. I find no error in respect of the Orders passed in the Review.

3. This contention of the Petitioner/Son/Tenant all throughout is that no relationship of landlord and tenant exists. It is contended that in these circumstances it is not proper for an order to be passed u/s 15(1) of the Act since it may have the effect fastening a liability to pay rent even in circumstances where the relationship of landlord and tenant is disputed. This controversy has not been authoritatively put to rest by the Full Bench of this Court in *Pritam Dass v. Kumari Jiya Rani*, 1981 (2) All I R C J 459, where the Court had viewed the case in all its complexities and found that a prima facie view can legitimately be arrived at by the Rent Controller even where the relationship of landlord and tenant had been denied. It was of the opinion that the preponderant interest of justice lay in passing an order for deposit of rent, rather than deferring this decision till evidence had been led.

4. The question that arises is whether the concurrent findings of the Courts below in respect of the existence of a prima facie case could have been arrived at. Under Article 227 of the Constitution this Court does not exercise Appellate jurisdiction. It would, Therefore, be improper for the High Court to interfere with the Orders of the Courts below even if it favored a contrary view. The approach must be towards an examination as to whether the conclusion arrived at by a Lower Court is a possibility. If it is so the discretion and judgment of the Lower Court should not be substituted by a contrary view which may have been found attractive by the High

Court. The case of the Father/Landlord is founded on a Rent Receipt, the execution of which is not in dispute. Therefore, a prima facie case did exist. It should not be lost sight of that this is only a prima facie and the Additional Rent Controller can very well reverse it after evidence is led by the parties. This process is underway. I find no jurisdictional error in the concurrent findings of the Courts below. The petitions are dismissed accordingly.

5. In CM (M) 155/2001 I had granted a stay of the impugned Order of the Tribunal conditional on the Petitioner depositing half of the arrears of rent within four weeks. This amount has been deposited by means of an F.D.R. Since the petitions have been dismissed, the Petitioner is directed to deposit the balance up-to-date rent in terms of the impugned Order of the Tribunal dated 31.7.2001 within four weeks from today.

6. Both the writ petitions stand disposed of by this common judgment.