(2011) 05 DEL CK 0254

Delhi High Court

Case No: CM (M) 190 of 2011

R.N. Verma		APPELLANT
	Vs	
Gulshan Rai		RESPONDENT

Date of Decision: May 9, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 7
- Delhi Rent Control Act, 1958 - Section 14(1)

Citation: (2011) 182 DLT 177

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Pradeep Dewan, with Mr. Dalip Mehra, for the Appellant; Amardeep Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Valmiki J Mehta, J.

M.(M) No. 190/2011 and CM. Nos. 8019, 3520 and 6508/2011

1. At the outset, learned Senior Counsel for the petitioner states that by this petition the petitioner is only impugning the order dated 19.8.2010 which has dismissed the application for leave to defend and has decreed the petition for bona fide necessity u/s 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act"). In my opinion this petition is liable to be dismissed on the short point of lack of locus of the petitioner.

2. The facts of the case are that the subject eviction petition u/s 14(1)(e) of the Act was filed for eviction of three respondents, namely, Sh. S.N. Verma as respondent No. 1, Sh.

R.N. Verma, respondent No. 2 and M/s. Verma Leather Factory and Tannery Pvt. Ltd. as respondent No. 3. It was averred in the petition that father of the respondent Nos. 1 and 2, namely late Sh. B.N. Verma was the original tenant of the premises, and after his death tenancy devolved upon respondent Nos. 1 and 2. After averring these facts, the petitioner in the eviction petition stated as under:

It is respectfully prayed that order for recovery of possession of premises shown red in the plan be passed in favour of the petitioner and against respondent Nos. 1 and 2 who according to the petitioner are the tenants. It case, the said respondents plead tenancy in favour of respondent No. 3 and the Court comes to conclusion that respondent No. 3 is the tenant, then decree of eviction be passed against the said respondent. Costs of the petition be allowed to the petitioner.

3. The position which emerged in the trial Court was that the respondent No. 1 did not file an application for leave to defend. The petition was therefore rightly decreed against respondent No. 1 who in any case is not the petitioner before the Court. The eviction petition was decreed against the present petitioner inasmuch as the petitioner made a specific averment in the leave to defend application filed by him that the respondent No. 2 was not the tenant and respondent No. 3/company was the tenant. I note that the respondent No. 3/company in the trial Court is not the petitioner before me and the only petitioner before me is the respondent No. 2 in the trial Court and who stated that he is not the tenant and tenant is the respondent No. 3.

4. The aforesaid facts show the following:

(i) The petition was filed against three respondents, the first two respondents being the legal heirs of the tenant, and the third respondent being a company.

(ii) Respondent No. 1, one of the sons of original tenant, did not file any application for leave to defend but only respondent Nos. 2 & 3 the present petitioner and the company filed a leave to defend application. The leave to defend application of the company was beyond time and I am not dealing with the same inasmuch the only petition before me is by the respondent No. 2 in the original eviction petition.

(iii) Respondent No. 2 who is before me admitted in categorical terms that he is not a tenant in the premises and it is only the respondent No. 3 who is a tenant in the premises.

(iv) The eviction petition specifically stated in para 20 in terms of Order 1 Rule 7 of Code of Civil Procedure, 1908 (CPC) that the decree may be passed against either of the respondents, whoever is found to be the tenant.

5. Learned Senior Counsel for the petitioner argued two basic points before this Court. The first argument was that unless there is a relation of landlord and tenant no petition can be filed under the Act. It is argued that the petitioner had pleaded that only the respondent Nos. 1 and 2 in the original eviction petition were tenants and therefore there

cannot be any decree against the company/respondent No. 3. The second point which was argued, which is actually related to the first, that the provision of Order 1 Rule 7, CPC applies only if the petitioner is in doubt as to against whom the relief must be sought and that the landlord/petitioner in the trial Court was not in any doubt because in the eviction petition it was averred that the respondents 1 & 2 therein, the sons of the late tenant were the tenants.

6. I am afraid I am unable to agree with the contentions as raised by the learned Senior Counsel for the petitioner. Firstly, the petitioner herein and the respondent No. 2 in the trial Court made a clear cut admission that he was not the tenant in the premises and the tenant in the premises was the respondent No. 3 therein the company. Admittedly, the company is not before me. Therefore, the Court of Addl. Rent Controller was fully justified in dismissing the leave to defend application of the petitioner because as per the case of the petitioner he was not the tenant. There is therefore no locus of the petitioner to file this petition as admittedly the petitioner admits that he was not the tenant. So far as the second argument that the provision of Order 1 Rule 7, CPC only applies if there is doubt against whom relief can be sought, and there was no doubt expressed by the petitioner in the petition, I find that the argument is misconceived for the reason that Order 1 Rule 7, CPC is specifically meant to cover situations such as the present where the petitioner may not know against whom the relief can be sought and which the landlord did by making a prayer accordingly and which is reproduced above in para 2.

The object of Order 1 Rule 7 is that petitions/suits should not be dismissed on account of technicalities because otherwise after decision of one case another case may have filed against other person. It is to prevent multiplicity of proceedings and to avoid technicalities in the disposal of the petitions that Order 1 Rule 7, CPC exists in the statute and which aptly applies to the facts of the case.

7. Before concluding, I must clarify that I am making no observations with regard to validity, entitlement or otherwise qua the application of leave to defend which is stated to have been filed by the company since the company is not before me. Whatever rights are there of the company, the same would be dealt with in accordance with law if and when any petition is filed on behalf of the company.

With the aforesaid observations, the petition is dismissed.

Since the main petition dismissed, interim orders are vacated. Next date of 9.8.2011 stands cancelled.