

(1990) 06 DEL CK 0002

Delhi High Court

Case No: Interim Application No. 4588 of 1990 and Suit No. 1878 of 1990

Prithvi Raj Tandon

APPELLANT

Vs

Subhash Chander Basra and
Another

RESPONDENT

Date of Decision: June 27, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151

Citation: (1990) 42 DLT 68

Hon'ble Judges: D.P Wadhwa, J

Bench: Single Bench

Advocate: B.S.C. Singh, A.C. Gambhir, P.N. Lekhi, Ashok Kumar, G.D. Goel, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) This is the plaintiff's application filed under Order 39 Rules 1 and 2 and section 151 of the Code of Civil Procedure. The suit in which this application has been filed is for declaration that the plaintiff is the tenant of the first floor of the premises bearing No. 48/8, East Patel Nagar, New Delhi, of which, defendant No. I is the owner and that the plaintiff is not liable to eviction in execution of an order passed by Hon'ble Mr. Justice N.N. Goswamy of this Court which order is dated 8.5.1990 and was made in C.M. (Main) 217/89. In the application the prayer is that defendant No. I who is the owner and landlord of the premises in question be restrained from disturbing the possession of the plaintiff on the basis of the aforesaid order Mr. Justice N.N. Goswamy.

(2) There are two defendants. As noted above, the first defendant is the owner and landlord of the premises in question. The second defendant was the original tenant of the premises in question. The defendants have yet to file their written statements. Defendant No. 1 has, however, filed his reply to the present application.

No reply has been filed by defendant No. 2.

(3) Defendant No. 1 has raised various objections to the maintainability of the suit itself. He has stated that after the first round of litigation under the Delhi Rent Control Act and under Article 227 of the Constitution in which the plaintiff was a party and he having failed, he could not institute the present suit. This, it was stated, is against the provisions of the Delhi Rent control Act, 1958. It was also stated that against the order of Justice Goswamy, the plaintiff went in appeal even up to the Supreme Court and there also he failed. It also appears that the suit is barred under Explanation Viii to section 11 of the Code. The interim relief claimed by the plaintiff is sought to be denied to him on various other pleas on merit as well. In fact a plea was raised that the suit itself should be dismissed at this stage. However, in deciding the present application I have only to take a prima facie view of the matter.

(4) Defendant No. 1 granted lease of the premises to defendant No. 2 at a monthly rent of Rs. 1, 200.00 . It was some time in December 1979. The premises were occupied by Mr. A.R. Tandon, brother of the plaintiff, as an employer of defendant No. 2. This A.R. Tandon resigned his job with defendant No. 2 and defendant No. 2, Therefore, wrote letter dated 29.9.1981 to defendant No. 1 informing him that defendant No. 2 would not be requiring the premises any more. However subsequently by another letter dated 6.10.1981 defendant No. 2 informed defendant No. 1 that its earlier letter should be treated as cancelled and that defendant No. 2 would continue to retain the premises for being occupied by another officer of defendant No. 2 Defendant No. 1, however, refused to accept the contents of this second letter of the second defendant. However, again by letter dated 21.10.1981 second defendant reiterated its letter of 6.10.1981 and also remitted rent for the month of October 1981. This was accepted by defendant No. 1. The consequence was that defendant No. 2 continued to be the tenant. As would be seen from the order of Justice Goswamy dated 8.5.1990, A.R. Tandon left for some assignment in the foreign country and the plaintiff, his brother, continued to remain in possession of the premises. He did not vacate he premises and informed the second defendant that he had become a direct tenant under defendant No. 1. Defendant No. 2, Therefore, wanted a clarification of this score from defendant No. 1. He informed defendant No. 2 that he had never taken the plaintiff as his tenant and that it was defendant No, 2 which continued to be his tenant and it was for defendant No. 2 to get the premises vacated from the unauthorised possession of the plaintiff. up to January 1982 defendant No. 2 paid rent of the premises to defendant No. 1 and. ceased making any further payment. Though admittedly the premises since then have been in possession of the plaintiff, he has neither paid any rent nor damages to defendant No. 1.

(5) Defendant No. 1 filed a petition for eviction against defendant No. and plaintiff was also impleaded as respondent No. 2 therein. The petition for eviction was filed on the grounds of non-payment of rent and sub-letting parting with possession of

the premises. The petition was allowed by the learned Rent Controller. An appeal against that order was, however, filed by the plaintiff herein before the Rent Control Tribunal who, however, allowed the appeal and dismissed the eviction petition of the first defendant. The learned Rent Control Tribunal held that on 7.10.1981 defendant No. 1 had received a sum of Rs. 7,200.00 in advance as rent from the plaintiff for the period from 1.10.1981 to 31.3.1982 and had given him a receipt for the purpose. This receipt read as under :-

"RECEIVED Rs. 7,200- from Shri P.R. Tandon as advance rent with effect from 1.10.1981 on 7.10.1981."

(6) Against this order of the Rent Control Tribunal defendant No. filed a petition under Article 227 of the Constitution (C.M. (Main) 217/89) which resulted in the order dated 8.5.1990. Goswamy J. has detailed the facts in the order. By an earlier order he had directed that since plaintiff had not paid rent/damages since 1982 he will not hear the respondents till they pay rent/damages at the agreed rate and that the amount should be deposited with the Rent Controller within four weeks. According to plaintiff himself the agreed rate of rent was Rs. 1,200.00 per month and it had not been paid since 1982. plaintiff had contended in those proceedings before Goswamy J. that he was willing to pay rent provided defendant No. 1 accepted him as a tenant. Against this interim order of Goswamy J. the plaintiff filed an appeal before a bench of this Court which was dismissed. The order remained uncomplied. plaintiff raised an objection that there was no specific order u/s 15(2) of the Delhi Rent Control Act. Goswamy J. noted that in order to avoid any technical objection he passed a specific order u/s 15(2) of the said Act. Against that order also the plaintiff filed an appeal before a bench of this Court which was dismissed and the Supreme Court also dismissed SLP of the plaintiff. The consequence was that the defense of the plaintiff had to be struck off and so accordingly done. As on today the arrears of rent/damages amount to over Rs. 1,30,000.00 . Before me it was also offered that the plaintiff was prepared to pay this amount only if the defendant No. 1 accepted him as a tenant and not otherwise. The petition was, Therefore, allowed by Goswamy J. and the order of the Rent Controller ordering eviction was restored. As to the receipt which the plaintiff claimed to have obtained from defendant No. I I will only refer to the following para from the judgment of Goswamy J. :-

"In view of the defense of respondent No. 2 having been struck off and respondent No, 1 not having pressed its tenancy, the petition has necessarily to be allowed. However, in order to satisfy myself I. went into the various documents including the alleged receipt produced by respondent No. 2. The type of paper used for the receipt and the language in which the receipt has been executed clearly indicate that the same is a forged document. It is on record that the petitioner used to issue regular receipts from printed receipt book. The receipt in question produced by respondent No. 2 clearly shows that the upper part of the paper has been torn off and since the space left for only one line the words "received Rs. 7,200.00 from Shri

P.R. Tandon as advance rent with effect from 1.10.1981 on 7.10.1981", have been typed. The receipt was allegedly executed at 7.00 p.m. and respondent No. 2 was unable to tell as to who had typed the receipt and where the same had been typed. Admittedly the petitioner is a literate person and he can write in his own hand. The receipt docs not mention the creation of tenancy or even the number of the premises for which the alleged tenancy was created. Ordinarily I would have directed the prosecution of respondent No. 2 but since I have struck off his defense I refrain From doing so at this stage."

(7) With the aforesaid background I do not think that the plaintiff has a prima facie case or the balance of convenience in his favor. It would be most unjust to defendant No. I if restrain him from getting the order of evidence executed in circumstances of the present case. I have to balance the equities. The receipt for alleged payment of Rs. 7,200/ has been adversely commented upon by Goswamy, J. in his judgment. With this conduct of the plaintiff he is not entitled to any interim relief I, Therefore dismiss the application with costs.

(8) Suit No. 1878/90: To be listed on 30th July, 1990, before the Deputy Registrar for further proceedings.