

(1995) 01 DEL CK 0087

Delhi High Court

Case No: Civil Revision Appeal No. 417 of 1994

P.P. Kalra

APPELLANT

Vs

M.V. Bhatnagar

RESPONDENT

Date of Decision: Jan. 1, 1995

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 45

Citation: (1995) 32 DRJ 182

Hon'ble Judges: Devinder Gupta, J

Bench: Single Bench

Advocate: A.S. Chandhiok and K.R. Chawla, for the Appellant;

Judgement

Devinder Gupta, J.

(1) Order of Ms. Sharda Aggarwal, Rent Control Tribunal, Delhi passed on 18.8.1994, partly accepting the appeal of landlord respondent and thereby modifying the order passed by Shri Babu Lal, Additional Rent. Controller, Delhi on 2.7.1994 is under challenge in this petition under Article 227 of the Constitution.

(2) The petitioner claiming himself to be a tenant under the respondent filed a petition u/s 45 of the Delhi Rent Control Act (hereinafter referred to as the Act) claiming restoration of essential amenities, namely, electricity, to the premises in question being a shop. It was alleged that, the landlord respondent had cut off the electric connection without just and sufficient cause. Thus, there was withholding of essential supply to the premises let out to the tenant. This withholding of essential supplies was alleged to be with a view to compel the tenant either to enhance the rent or to vacate the premises. Petitioner also prayed for ex parte interim order for restoration of electricity. On notice being issued, the respondent contested the petitioner's claim alleging that petitioner was a sub-tenant and proceedings for tenant's eviction were already pending. On the question of withdrawing of essential amenities the respondent alleged that original tenant, namely, C.L. Mehra had not

paid electricity charges w.e.f. June 1980 and due to non payment of such arrears amounting to Rs. 18,620.00 electricity supply had been disconnected by DESU. Since the petitioner was an unauthorised occupier and electricity supply had been disconnected by Desu due to non payment of electricity bills, Therefore, the petitioner was not entitled to any relief against the respondent.

(3) The Controller, after hearing counsel for the parties, allowed the application for interim relief. It was observed that though there was a dispute as regards relationship of landlord and tenant yet it was not in dispute that the petitioner was in occupation of the premises. To the premises electricity supply was available, Therefore, it being an essential amenity was liable to be restored. By making reference to a pending file of Eviction case No. E-25/1987 V.K. Bhatnagar v. C.L. Mehra & Others, the Controller observed that the stand taken by the respondent that electricity dues had not been paid since 1980 by the tenant was wholly untenable since in the said proceedings for eviction no grievance had been made to that effect. A prima facie case was held to have been made out by the petitioner for restoration of electricity. Accordingly a direction was made to the respondent to restore the same within a week.

(4) The respondent feeling aggrieved, preferred an appeal. The Tribunal held that despite the fact that there was a serious dispute as regards relationship of landlord and tenant, the petitioner was entitled to the essential amenity, at least till the stage the eviction petition was not decided. The Tribunal, however, differed with the findings of the Controller as regards non-payment of electricity dues. The Tribunal disbelieved the petitioner's version that electricity charges stood paid to landlord respondent month by month and no arrears were due and payable since there was a separate sub meter catering to the need of the premises in question. While maintaining the order of the Controller as regards restoration of electricity, the Tribunal made it subject to the condition of petitioner paying a sum of Rs. 18,621.00 to the respondent within a week. It is this order, which is under challenge.

(5) On hearing counsel for the parties and going through the record and considering the submissions made at the Bar, I do not consider it to be a fit case for interference in exercise of powers under Article 227 of the Constitution of India.

(6) The Tribunal was justified in coming to its conclusion on the basis of material available on the record. The Controller did not base its finding on the basis of the material on record but was primarily influenced by the pleadings in some other proceedings, copies of which were not produced on record. The Controller appears to have called the file of a pending case before him while deciding the question of grant of interim relief in these proceedings. The Controller ought not to have made a reference to the file of another proceedings but ought to have confined his findings on the basis of material available on the record of this case. Any findings recorded without any material on record is not sustainable in law.

(7) No objection was taken by the tenant as regards the production of photo copy of the bill for the period ending May 1994 before the Tribunal, which disclosed the arrears as regards electricity to the tune of Rs. 18,621.00 due to non payment of which electricity supply had been disconnected. The question as to whether the petitioner had or had not been paying regularly the electricity charges still is a matter which will be required to be decided on evidence in this case. No definite findings without evidence can be recorded. But in order to grant interim relief the Tribunal was perfectly justified in putting the petitioner to terms that the electricity will be restored subject to his making the payment of amount of equivalent to the electricity bill due to which electricity supply was disconnected by DESU. This obviously will be subject to the decision in the proceedings u/s 45 of the Act, where in case the petitioner proves that electricity dues already stood paid to the respondent the Controller will be justified in making an appropriate order for refund of the amount to the petitioner or for adjustment as the case may be.

(8) The order of Tribunal being based upon the material on record, it will not be appropriate for this court to substitute its own decision by re-appreciating the material again. Thus, there is no force in the petition, the same deserves to be dismissed and is hereby dismissed. It is hereby clarified that the payment of amount by the petitioner in terms of the order of the Tribunal will be subject to the result of the proceedings.