

(1995) 08 DEL CK 0108

Delhi High Court

Case No: Second Appeal No. 15 of 1995

Kapoor Fabrics

APPELLANT

Vs

Kamla Marwaha

RESPONDENT

Date of Decision: Aug. 25, 1995

Citation: (1995) 60 DLT 175

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: I.S. Mathur, Tarun John, Mukul Rohatagi, A.X. Nijhawan and Anup Trehan, for the Appellant;

Judgement

Arun Kumar, J.

(1) The main argument on behalf of the appellant is that the judgment of this Court dated 28th October, 1992 inter parties is not correct. By the said judgment, this Court had remitted the case to the Rent Control Tribunal for issue of a fresh notice to the Land & Development Officer to state the position clearly, as to whether the said office was contemplating any action of re-entry in face of continued misuse or whether they are willing to condone it for all time to come. The relevant portion of the judgment is reproduced as under :

"...THE orders passed by the Addl. Rent Controller and confirmed by the Tribunal cannot be faulted with, but it is a fit case that while confirming the orders for the past misuser, the case is remitted to the Rent Control Tribunal for issue of a fresh notice to the L&DO to state the position clearly, as to whether the said office was contemplating any action of re-entry in face of continued misuse or whether they are willing to condone it for all time to come, rather than on year to year basis, as in the past. In the event of a firm stand conveyed by the L&DO, no more benefit of Section 14(ii) of the should be accorded to the respondent and they should be called upon to stop forthwith the misuse or suffer ejectment, order of eviction becoming expiable forthwith, after the expiry of a given time, on tenant's failure to stop

misuser . With these directions, the appeal is disposed of. The parties to appear before the concerned Rent Control Tribunal, personally or through Counsel, further proceedings in terms of this order on 11th November, 1992 with notice shall be issued to the Land and Development Office to state the position firmly and finally, and appropriate orders shall be passed in the light of directions given above. "

(2) In terms of the demand order, the matter was taken up by the Rent Control Tribunal. Notice was issued to the L&DO. In response to the notice, Shri / Sehrawat, Deputy Land & Development Officer, Nirman Bhawan, New Delhi made statement on oath as under : "Statement of Shri A.C. Sehrawat, Deputy Land & Development Officer, Nirman Bhawan, New Delhi on S.A. In answer to the question raised to the notice in terms of judgment dated October 28, 1992 of Hon'ble High Court in this case, I am to confirm that L.&D.O. is not willing to condone the misuse in respect of property No 29, defense Colony, New Delhi for all times to come. L.&D.O. issued a notice dated 11.1.93 to the appellant-landlord. I have seen the copy of that notice which bears my signatures. It is Ex. X-1. In view of the notice it is already mentioned therein that in the event of failure to comply with the notice i.e. to remedy the breaches within 30 days then action to re-enter/cancel the lease, would be taken. As per the notice, office of L.& D.O. contemplates re-entry in this case."

(3) On the basis of the said statement, the Tribunal passed the impugned order dated 16th May, 1995. The Deputy Land & Development Officer who was examined before the Tribunal took a firm stand that the office of the Land & Development Officer is not willing to condone the misuse in respect of the property in suit for all time to come. He reiterated the notice of the L&DO issued by the L&DO to the landlady dated 11th January, 1993 in which the landlady had been called upon to stop misuser. To quote the said notice, "...required to remedy the breaches within days from the date of receipt of this notice and stop the misuse within the specified period. In the event of your failure to comply with the above, action to rent cancel the lease will be taken." This makes it clear that the Land & Development Officer was not prepared to condone the breaches for all times to come. In these circumstances, I do not find any error in the approach of the Rent Control Tribunal in its judgment dated 16th May, 1995.

(4) Learned Counsel for the appellant submitted that the appellant should have liberty to cross-examine the said witness from the office of the L&DO an opportunity in this behalf was denied to the appellant by the Tribunal. In the respect, the Tribunal passed a reasoned order "stating that the witness had been summoned as a Court witness in pursuance of the order of the High Court dated 28th October, 1992. I am unable to find any fault with this reasoning of the Tribunal in declining the request of the appellant for cross-examination of the witness." In fact, the witness had been summoned in pursuance of order of this Court dated 28th October, 1992 and the said order contains the guidelines and the purpose for examination of the said witness. The inquiry was a limited inquiry for a limited purpose and the appellant could not be permitted to widen the scope of the inquiry.

(5) Next the learned Counsel for the appellant submitted that in view of a Division Bench judgment of this Court in Civil Writ 1110 of 1973 dated 3rd November, 1982, the judgment of this Court dated 28th October, 1992 passed in the course of this very litigation between the parties is rendered per in curium. Admittedly, the Division Bench judgment was not brought to the notice of the learned Single Judge who decided the appeal inter parties prejudgment dated 28th October, 1992. Further, the said judgment of this Court which is inter parties has become final as it was not challenged by either party by way of appeal or special leave to appeal. Therefore, in the facts of the present case, I am unable to accept the argument that the judgment dated 28th October, 1992 should be treated as per in curium. With the above observations, this appeal is dismissed in limine.