

CASE NO.:
Appeal (civil) 8131 of 2002

PETITIONER:
N.C. Daga

RESPONDENT:
Inder Mohan Singh Rana

DATE OF JUDGMENT: 05/12/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & ARIJIT PASAYAT

JUDGMENT:

JUDGMENT

(Arising Out of S.L.P. (C) No. 21346/2001)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to judgment of the Delhi High Court upholding decision of the Additional Rent Controller, Delhi (in short 'the Rent Controller') declining leave to the present appellant to contest in a proceeding under the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act').

Brief reference to the factual aspects would suffice. The respondent-landlord filed a petition for eviction on several grounds; primarily on the ground of personal requirements. Before the Rent Controller an application was moved under Section 25-B of the Act by the appellant-tenant for grant of leave to defend said eviction petition filed under Section 14(1), proviso (e) of the Act, by the present respondent-landlord. On 10.9.1999 landlord had filed the eviction petition alleging that he wanted the premises for his personal use, since the accommodation available to him was not suitable and he does not own any other property in Delhi. Tenant resisted the eviction petition on many grounds. It was contended that there was no relationship of landlord and tenant between the parties, and in any event the premises were let out for residential/commercial purposes as mentioned in the Lease Agreement executed between the parties on 1st September, 1971, and, therefore, he is entitled to grant of leave to defend. Additionally, it was stated that the petition was mala fide and an abuse of process of law, barred by res judicata as earlier petitions filed by one Smt. Tejinder Kaur Rana on the ground of bona fide requirement, and another petition filed by the mother of the landlord were dismissed. Reply to the application for grant of leave to defend was filed by the landlord, where he denied the allegations made, though he admitted that earlier petitions had been filed. It was, however, contended that the principles of res judicata were not applicable, and there was no bar on filing fresh petition for eviction on the ground of bona fide requirement in the changed circumstances. Rejoinder was filed by the tenant. The Rent Controller held that there was prima facie material to show that the applicant was the landlord and the owner of the premises. Coming to the plea taken that the premises were let out for commercial purposes it was noticed that the paragraph 7 of the lease-deed on which reliance was placed did not indicate that the premises were let out for residential cum commercial purposes. On the contrary, what the said paragraph indicated was availability of option to use the premises for commercial purposes after requisite formalities were observed. It was held that before leave to defend is granted, the respondent must show that some triable issues which disentitled the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the

respondent and if he fails, the eviction follows. The respondent has failed to make out a case for grant of leave to defend. Accordingly, eviction order was passed under Section 14(1)(e) of the Act, but it was directed that the applicant will not be entitled to execute eviction order before the expiry of six months in terms of Section 14(7) of the Act. The revision before the High Court of Delhi was also dismissed. It was, inter alia, observed that the tenant had not filed any document to support the plea in regard to the commercial use of the premises. It was further held that no prima facie case was made out by the tenant.

In support of the appeal Mr. Jaspal Singh, learned senior counsel submitted that a bare reading of Section 7 of the Lease Agreement made the position clear that the premises were let out for residential and commercial purposes, and, therefore, the courts below were not justified in refusing leave to contest. The jurisdiction to grant leave or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. Even if it is conceded for the sake of argument that clause (7) did not make out a case for commercial user, yet the fact that for more than two decades the tenant was carrying on commercial activities in the tenanted premises clearly made out a case of consent.

In response, counsel for the respondent-landlord submitted that the whole case built up by the tenant centered round clause (7) and the plea of implied consent has been raised for the first time before this court. Such plea was even not raised before the High Court. In any event, according to him, the matter has become infructuous because the possession has been taken pursuant to execution of the order passed by the Rent Controller.

In view of the admitted position that pursuant to the order passed by the Rent Controller, possession has been taken on execution of the order permitting eviction, and absence of specific stand regarding implied consent it is, however, not necessary to go into the finer details and to examine the rival stand in the background of legal position as it would amount to rendering decision on a purely academic question. The appeal is, therefore, dismissed, without any order as to costs.