

CASE NO.:
Appeal (civil) 895 of 2007

PETITIONER:
Vinay Kr. Khambate

RESPONDENT:
Vinay Kr. Aggarwal & Ors

DATE OF JUDGMENT: 22/02/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 10951 of 2006)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the orders passed by a learned Single judge of the Delhi High Court dismissing the petition filed by Appellant.

A brief reference to the factual aspect would suffice. Respondent filed a petition for eviction of the appellant's father under Section 22(d) of the Delhi Rent Control Act, 1958 (in short the 'Act') claiming that the premises in suit are required for furtherance of activities. Father of the appellant filed a written statement stating that the respondent-Trust was a private trust and as such the petition under Section 22 was not maintainable as the said provision specifically excludes from its ambit institutions set up by a private trust. Before recording of evidence, appellant's father expired on 26.6.2003. Respondent moved an application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (in short the 'Code') stating that the appellant was the sole surviving legal heir of the deceased-tenant. Since tenancy of the father of the appellant had been terminated as such there was no succession of the tenant to acquire the tenancy in succession even for a limited period of one year. Appellant filed his reply and took the stand that he was a perpetual tenant and had inherited tenancy rights of his father. Learned Additional Rent Controller by order dated 16.9.2005 allowed the application under Order XXII Rule 4 of the Code read with Section 2(1)(ii) of the Act. While deciding the application, he passed the eviction order on the same day i.e. on 16.9.2005 by observing that the appellant was not financially dependent on his father at the time of his death and since the suit premises were let out for residential purposes, tenancy of the father having been terminated by notice dated 21.9.1999, appellant had the right to continue in possession for a limited period of one year only and he cannot take the defence taken by his father. Appellant challenged the said order by preferring an appeal before the Rent Control Tribunal, Delhi (in short the 'Tribunal'). The Tribunal dismissed the appeal. A petition was filed before the High Court challenging the orders of the Additional Rent Controller and the Tribunal and the High Court by the impugned order dismissed the petition.

Though several points were taken by the appellant in support of the appeal, primarily it was stated that the order of eviction could not have been passed on the very same day on which the application under Order XXII Rule 4 was allowed. The question whether the appellant had any defence available was to be adjudicated. The order of eviction could not have been passed in a summary way as has been done.

Learned counsel for the respondents supported the orders passed by lower forums and the High Court.

Undisputedly the respondents had filed an application under Order XXII Rule 4 of the Code read with Section 2(i)(ii) of the Act. The same was filed on 5.9.2003 and the relevant portion of the petition read as follows:

"That although Shri Vijay Kumar Khambate is the son of the deceased respondent and the only LR yet he does not come under the purview of 'tenant as envisaged under Section 2(1)(ii) of the Delhi Rent Control Act as he was not financially dependent on the respondent. As such there is no successor of the deceased respondent to acquire the tenancy in succession even for a limited period of one year."

The reply to the said petition was filed by the appellant where the following stands were taken:

"That the deceased Shri P.S. Khambate died as a contractual tenant and on his death the respondent became the tenant by operation of law.

That the respondent Vinay Kumar Khambate was living in the premises in suit and was not financially dependent on deceased respondent and as such the tenancy of the respondent is not hit by the provision of Section 2(1)(ii) of the Delhi Rent Control Act and the respondent became a lawful perpetual tenant after the death of late Shri P.S. Khambate. Thus the petition as framed and filed is not maintainable."

The Additional Rent Controller allowed the application in terms of Order XXII Rule 4 of the Code and on the same day without considering the various stands taken in the objection, disposed of the matter.

It would have been appropriate for the learned Additional Rent Controller to permit the appellant to place materials in support of his stand which obviously has not been done. In the above circumstances we set aside the order of the High Court confirming the order of the Tribunal and the Additional Rent Controller and remit the matter to the Additional Rent Controller who shall hear the appellant on the question as to whether the appellant was perpetual tenant and/or inherited the tenancy right of his father. We make it clear that we have not expressed any opinion on the merits. Since the matter is pending since long, Additional Rent Controller would do well to dispose of the matter within a period of four months from the date of receipt of our order. Parties are permitted to file copy of this order before the Additional Rent Controller so that

the matter can be heard early.

The appeal is allowed to the aforesaid extent with no orders as to costs.

JUDIS