

Inderjeet Kaur vs Nirpal Singh on 15 December, 2000

Author: Shivaraj V. Patil

Bench: Shivaraj Patil

CASE NO.:
Appeal (civil) 7385 of 2000
Special Leave Petition (civil) 554 of 2000

PETITIONER:
INDERJEET KAUR

Vs.

RESPONDENT:
NIRPAL SINGH

DATE OF JUDGMENT: 15/12/2000

BENCH:
D.P.Mohapatro, Shivaraj Patil

JUDGMENT:

Shivaraj V. Patil, J.

L.....I.....T.....T.....T.....T.....T.....T...J Leave granted.

The controversy that needs to be addressed and resolved in this appeal relates to grant of leave to the tenant under Section 25B(5) of the Delhi Rent Control Act, 1958 (for short the `Act) to contest the application filed for eviction under clause (e) of the proviso to sub-section (1) of Section 14 of the Act.

In brief, the facts leading to the filing of the present appeal are:

The respondent herein (the landlord) filed a petition under clause (e) of the proviso to Section 14(1) of the Act seeking eviction of the appellant (the tenant) from the premises on the ground of his bona fide requirement for his occupation as a residence for himself and other members of the family dependent on him stating that he has come back and permanently settled in India; his sons, daughters and other relations who are settled in United Kingdom also visit him but he is unable to provide them accommodation; his son Shri Rajpal Singh has decided to return to India to

settle and was winding up his affairs at U.K. etc. The appellant after receiving the summons under Section 25B(4) of the Act filed an application supported by an affidavit seeking leave to contest the application for eviction, narrating facts in details and raising grounds in support of his prayer for grant of leave to defend. Besides other contentions, he raised the following:-

(1) The respondent, his son and daughter are British citizens possessing British passports and are permanently settled in United Kingdom. His son is a Computer Engineer and is well-settled there and the question of winding up of his affairs does not arise. His daughter is already married in U.K. and living happily. Even the respondent has no intention to settle in India as he is comfortably settled in U.K. The eviction petition has been filed to increase the rent and / or to sell the premises. (2) The premises were taken on rent for residential-cum-commercial purpose and, therefore, the ground under clause (e) of the proviso to Section 14(1) of the Act is not available. (3) The eviction petition filed is bad for non-joinder of necessary parties. (4) The assertion made in the eviction petition is that the appellant is the tenant of two rooms and for other two rooms a complaint is pending before the Magistrate for trespass.

Hence the Addl. Rent Controller was wrong in passing eviction order in respect of four rooms. (5) A suit filed by the appellant against the respondent to protect his possession in the civil court is pending and in which order of temporary injunction granted against the respondent is operative.

The Addl. Rent Controller, Delhi, by an elaborate order dated 5.3.1999 rejected the application filed by the appellant seeking leave to defend and passed an order of eviction against him in respect of the suit premises. The appellant took up the matter in civil revision in the High Court of Delhi and the same was dismissed, affirming the order of the Addl. Rent Controller. Hence this appeal is brought before us by special leave.

The learned counsel for the appellant urged that (1) the facts stated and substantial grounds raised in the affidavit filed under Section 25B(4) of the Act seeking leave to defend clearly disclosed that the respondent would be disentitled from obtaining an order for the recovery of possession of the premises on the grounds specified in clause (e) of the proviso to Section 14(1) of the Act; (2) the approach of the Addl. Rent Controller in dealing with the application made for grant of leave to defend was not proper having regard to the scope of Section 25B(4) & (5) of the Act; he refused to grant leave to defend after discussing the contentions and documents as if he was deciding the main eviction petition after trial; (3) several triable issues did arise for consideration in the light of the facts stated and rival contentions raised; (4) the disputed facts could not be decided at the time of considering the application for grant of leave; (5) the High Court was also not right in simply affirming the order of the Addl. Rent Controller when the said order suffered with material irregularity and jurisdictional error.

The learned counsel for the respondent made submissions supporting the impugned orders.

Explanation For the purposes of this clause, premises let for residential purposes include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

25B(2) 25B(3) 25B(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

Chapter IIIA deals with summary trial of certain applications expressly stating that every application by a landlord for recovery of possession on the ground specified in clause (e) of the proviso to sub- section (1) of Section 14 of the Act, or under Section 14A or 14B or 14C or 14D shall be dealt with in accordance with the special provisions prescribed in Section 25B of the Act. As per the broad scheme of this Chapter a tenant is precluded from contesting an application filed for eviction on the grounds mentioned in the aforementioned provisions unless he obtains leave from the Controller to contest the eviction petition.

In default of obtaining leave to defend or leave is refused to him an order of eviction follows. It appears recourse to summary trial is adopted having due regard to nature of the grounds on which the eviction is sought with a view to avoid delay so that the landlord should not be deprived or denied of his right to immediate possession of premises for his bona fide use.

At the same time, it is well settled and accepted position in law that no one shall be subjected to suffer a civil consequence like eviction from a premises resulting in hardship to him without providing adequate and effective opportunity to disprove the case against him and establish his case as pleaded.

As is evident from Section 25B(4)&(5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in clause (e) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.

A landlord, who bona fide requires a premises for his residence and occupation should not suffer for long waiting for eviction of a tenant. At the same time, a tenant cannot be thrown out from a premises summarily even though prima facie he is able to say that the claim of the landlord is not bona fide or untenable and as such not entitled to obtain an order of eviction. Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the broad scheme of Chapter IIIA and in particular having regard to the clear terms and language of Section 25B(5).

We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This

being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when a leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25B(7) speaks of the procedure to be followed in such cases. Section 25B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Section 25B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.

This Court in Charan Dass Duggal vs. Brahma Nand while dealing with the question in the matter of granting leave to defend to contest the eviction petition filed on the ground of personal requirement, in para 5 has stated thus:-

5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.

In the same judgment, in para 7 it is further observed:-

7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case.

Summary procedure does not clothe an authority with power to enjoy summary dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. But equally a triable issue raised, enjoins a duty to grant leave. Maybe in the end the defence may fail. It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.

This decision is also referred to, reiterating the same view, in a latter decision of this Court in the case of Precision Steel & Engineering Works vs. Prem Deva Niranjana Deva Tayal .

With this background, we now turn to the facts of the case in hand. It is clear from the reading of the order of the Addl. Rent Controller that he has taken pains to write an elaborate order as if he was writing an order after a full-dressed trial of eviction petition; he has considered merits of the respective contentions at the stage of granting leave to defend under Section 25B(5) without keeping in mind the scope of the provisions and statutory duty cast on him. He exceeded the jurisdiction vested in him in refusing leave to defend to the appellant. It appears to us that he did not focus his attention to the scope and content of Section 25B(5). Having regard to the facts stated and grounds raised in the affidavit filed by the appellant seeking leave to defend which we have already narrated above, it is not possible to take a view that no triable issue arose for consideration. The facts stated in the affidavit of the appellant in support of his application seeking leave to defend prima facie do disclose that the respondent would be disentitled to obtain an order for the recovery of possession of the premises from the appellant particularly when other cases are pending between the parties and defence does not appear to be frivolous or untenable on the face of it. The Addl. Rent Controller has acted with material irregularity and committed a manifest error in accepting the case of the respondent-landlord when the facts were seriously disputed and the correctness or otherwise of the documents required to be examined. Whether the suit premises was used for residential-cum-commercial purposes from the inception and whether the respondent and his son and other members of the family are permanently and comfortably settled in U.K. and whether the requirement of the premises by the respondent was bona fide, are the matters which could not be

adjudicated as has been done by the Addl. Rent Controller at the stage of dealing with the application to grant leave to defend. In this view of the matter, we have no hesitation to say that the order passed by the Addl. Rent Controller refusing leave to defend to the appellant cannot be sustained. Unfortunately, the High Court also has affirmed it without taking into consideration the correct legal position indicated above having regard to the facts of the case. We are of the view that the Addl. Rent Controller and the High Court both were in error in refusing to grant leave to the appellant to contest the eviction petition.

Hence we allow this appeal, set aside the order of the Addl. Rent Controller as well as of the High Court and grant leave to defend to the appellant-tenant and remand the matter to the learned Rent Controller for disposal according to law. No costs.