

Delhi High Court

Lachhman Bhatia vs N.K. Mehra on 1 September, 1998

Equivalent citations: 76 (1998) DLT 631, 1998 (47) DRJ 834

Author: C Nayar

Bench: C Nayar

JUDGMENT CM. Nayar, J.

1. The present appeal is directed against the order dated September 17, 1983 passed by the Addl. Rent Controller and judgment dated November 2, 1983 passed in appeal by the Rent Control Tribunal, Delhi.

2. The learned Additional Rent Controller disposed of an application filed by the petitioner under Section 45(3) of the Delhi Rent Control Act (hereinafter referred to as 'the Act'), for directing the respondent to restore the electricity supply in the premises i.e. room No. 5A Metro Hotel, N-49 Janpath, New Delhi which are allegedly in possession of the appellant. It is contended that the electricity supply has been withheld without any basis and sufficient cause. The appellant, it is stated, is in occupation of one room in Metro Hotel since the year 1966 and is running an overseas Travels Agency in the said room. It is stated that the appellant has not paid rent/lodging charges to the respondent till date and as per admission of the appellant he deposited Rs. 2520/- under Section 27 of the Act subject to adjustment. The electricity supply has been disconnected long ago and various litigations are stated to be pending between the parties. The learned Rent Controller disposed of the application under Section 45(3) of the Act. The operative portion as contained in paragraph 4 of the order reads as follows:

"Under the circumstances, when the petitioner is in arrears of rent/lodging charges and when the status of the petitioner as a tenant in the demised premises is also disputed, prima facie, no order under Section 45(3) of the D.R.C. Act can be passed in favour of the petitioner. A copy of the licence deed and statement of account have been placed on the record by the respondent. Therefore, I find no merits in this application and the same is hereby dismissed."

3. The appeal against the above said order was dismissed by the learned Rent Control Tribunal on November 2, 1983. Paragraph 12 of the judgment may be reproduced as follows:

"The learned counsel for the appellant in that event, refer me to the Section 45 of the Act alleging that it refers to essential supply and service including the electricity and water and the hotel does supply such essential supply and service and, therefore, the provision of Section 45 of the Act should be made applicable. In my opinion, there is no force in this particular argument. The reason is obvious. It is true that Section 45 of the Act refers to essential supply and service but makes no reference that a person entitled to it can approach the Controller. The person has to be a tenant in the premises and both the ingredients prima facie are missing, therefore, the trial court refused the interim relief."

4. Notice in the appeal was issued as far back as on 27th January, 1984 and it was admitted by order dated February 17, 1984. The appellant has not been granted any interim relief during the pendency

of the present proceedings in this Court.

5. The learned counsel for the appellant has vehemently contended that the appellant is entitled to restoration of electricity as the case is fully covered by the provisions as contained in the Rent Control Legislation. Reference is made to the preamble of the Act which reads as follows:

"An Act to provide for the control of rents and evictions and of rates of hotels and lodging houses, and for the lease of vacant premises to Government, in certain areas in the Union Territory of Delhi."

6. On the above basis it is argued that the benefit of Section 45 is not confined to tenants under the Act but has to be given broad application to cover the case of the appellant. Similar reference is made to the provisions of Section 30 as contained in Chapter V of the Act relating to 'Hotels and Lodging Houses'. The definition of the 'premises' as contained in the Act will include the case of the petitioner who has remained in possession of the room in a hotel. In this background it is submitted that the Rent Controller has exercised discretion with material irregularity.

7. The learned counsel for the respondent on the other hand has argued that firstly the appellant cannot be held to be a tenant and, therefore, is not entitled to avail of the benefit of provisions of Section 45 of the Act and secondly, no relief can be granted as he is in arrears of dues. Reference is made to the judgments as reported in P.P. Kalra v. M.V. Bhatnagar and Anil Sachdeva v. Two Brothers Pvt. Ltd. .

8. The learned counsel has further submitted that the appellant is admittedly a licensee in the premises as he is holding one room in a Hotel. Therefore, he is not entitled to the benefit of the provisions as contained in the Act as there is exclusion of a room in a hotel or a lodging house from the definition of 'premises'. (See Dr. H.S. Rekha v. The New Delhi Municipal Committee). It will not be necessary for this Court to examine the pleas as raised by counsel for both the parties. The reading of the Order passed by the Rent Controller clearly shows that he has only arrived at a tentative decision by declining relief to the appellant under the provisions of Section 45(3) of the Act. The relevant provisions of Section 45 may be reproduced as under:

"45. Cutting off or withholding essential supply or service.

(1) No landlord either himself or through any person purporting to act on his behalf shall without just and sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.

(2) If a landlord contravenes the provisions of Sub-section (1), the tenant may make an application to the Controller complaining of such contravention.

(3) If the Controller is satisfied that the essential supply or service was cut off or withheld by the landlord with a view to compel the tenant to vacate the premises or to pay an enhanced rent, the Controller may pass an order directing the landlord to restore the amenities immediately, pending

the inquiry referred to in Sub-section (4).

Explanation:- An interim order may be passed under this sub-section without giving notice to the landlord.

(4) If the Controller on enquiry finds that the essential supply or service enjoyed by the tenant in respect of the premises was cut off or withheld by the landlord without just and sufficient cause, he shall make an order directing the landlord to restore such supply or service.

....."

9. The reading of Sub-section (3) of Section 45 clearly states that an order can be made to restore the amenities immediately, pending the enquiry referred to in Sub-section (4). This interim relief has been declined to the appellant on the grounds as indicated in the impugned orders. The Controller, therefore, did not adjudicate on the matter finally as it was fixed for the plaintiff's evidence on December 15, 1983 and thereafter the appeal continued to remain pending in this Court. The appellant has, in any case, remained without electricity till date. In this background it will be appropriate that the matter is remanded back to the court of Rent Controller for adjudication of the claim of the appellant in pursuance to the provisions of Section 45, as referred to above. It is ordered accordingly. The parties are directed to appear before the Court of Rent Controller on 15th October, 1998.

10. The appeal is disposed of in the above terms.