

3 May 2005

Appeal (Civil) 2997 of 2005 (Arising out of S.L.P.(C.) No. 21968 of 2004)

The Judgment was delivered by : A. K. Mathur, J.

Leave granted.

1. This appeal is directed against an order passed by learned Single Judge of the High Court of Delhi at New Delhi in Civil Miscellaneous Main No. 328 of 2003 on July 23, 2004 whereby the order dated April 24, 2003 passed by the Rent Control Tribunal which dismissed the appeal of the respondent herein arising out of the order of the Additional Rent Controller, Delhi who decreed the eviction of the respondent under Section 14(1)(h) of the Delhi Rent Control Act 1958(hereinafter to be referred to as "the Act") was set aside and the case was remitted back to the trial Court. Aggrieved against this order, the present petition by way of special leave petition was filed. It may be relevant to mention here that the plaintiff filed a suit for eviction of the respondent from the premises under his tenancy in the House No. 11/8, Sarvapriya Vihar, New Delhi under Section 14(1)(h) of the Act. The premises in question having one drawing room, one bedroom, kitchen, bath room and one W.C. situated on the second floor was let out to the respondent on a monthly rent of Rs. 2200/- by the appellant. No rent agreement was executed. The respondent was residing in the said premises along with his family since the inception of the tenancy. It was alleged that the wife of the respondent purchased a flat bearing No.A-35/D situated in D.D.A. Flats Complex at Munirka, New Delhi by an agreement of sale on March 15, 1995 under a general power of attorney of the same date and got the said flat converted in to freehold property and a conveyance deed dated September 5, 2000 was registered before the Sub-Registrar on September 6, 2000 vide document No. 12663, Additional Book No. 1, Volume No. 343 at pages 156-157 in the name of the wife of the respondent. It is also alleged that the wife of the respondent was a house-wife and she had no independent source of income. It was also alleged that the respondent has acquired this D.D.A. flat through his wife. Under these circumstances, the appellant prayed that the respondent- defendant be evicted from the premises in question.

2. Summonses were issued and the same were served on the respondent i.e. through process server and through registered post with acknowledgment due. But none appeared for the respondent before the Additional Rent Controller and therefore, the suit was decreed ex parte. The appellant examined number of witnesses and exhibited certain documents. Learned Additional Rent Controller after review of the evidence on the record accepted the evidence as none has appeared to rebut the same and granted a decree for eviction on being satisfied that all the ingredients of Section 14(1)(h) of the Act stood established by Order dated 21st November, 2002. Thereafter, an application was filed by the respondent under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure for setting aside the ex parte decree dated November 21, 2002. This application was dismissed by the Additional Rent Controller by its order dated March 5, 2003. This order rejecting the application filed under Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree was not challenged and it attained finality. However, the respondent thereafter filed an appeal being R.C.A. No. 179 of 2003 before the Additional Rent Control Tribunal, Delhi against Order and Decree passed by the Additional Rent Controller on 21st November, 2002. Though the appeal was barred by time yet the delay in filing the appeal was condoned. Learned Tribunal after considering the facts and law on the subject dismissed the appeal by its order dated April 24, 2003. It was held by the Tribunal that the wife of the respondent has already acquired an alternative residential accommodation bearing No.A-35/D, D.D.A. Flat, Munirka, New Delhi and has further observed that the decree was granted ex parte and that ex parte order has not been set aside. Therefore, learned Tribunal did not feel persuaded to interfere in the appeal and consequently the same was dismissed. Aggrieved against this order passed by the Tribunal on April 24, 2003, a writ petition under Article 227 of the Constitution was filed by the respondent before the High Court of Delhi. Learned Single Judge of the High Court after considering the matter observed that without going into the intricacies of the material produced and without going into the legality of the ex parte order not being challenged, learned Single Judge felt persuaded that an opportunity of hearing should be given to the writ petitioner- the respondent herein and as such set aside the order and granted leave to defend the suit. Aggrieved against this order passed by the learned Single Judge of the High Court of Delhi on July 23, 2004, the present Special Leave Petition was filed.

3. We have heard learned counsel for the parties and have also gone through the order of the learned Single Judge of the High Court. The first and foremost point is when the summonses were served on the re

spondent and he did not appear, he has to thank himself for serious lapse on his part. Both learned Additional Rent Controller as well as the learned Rent Control Tribunal have found that the summonses were served by registered post with acknowledgment due as well as through the process of the Court. Despite that the respondent has chosen not to put in appearance. Therefore, there was no option left on the part of the Additional Rent Controller to proceed against the respondent. It examined the ex parte order on merit and held that the plaintiff has successfully proved his case under Section 14(1) (h) of the Act. It was also held that an application for setting aside the ex parte decree was filed, but that application was dismissed on March 5, 2003. The respondent did not take up this matter before the higher forum and felt satisfied with the order dated March 5, 2003 dismissing his application for setting aside the ex parte order under Order IX Rule 13 of the Code of Civil Procedure.

4. Therefore, the ex parte decree passed by the learned Additional Rent Controller became final. Against this order of the Tribunal, a writ petition under Article 227 of the Constitution was filed and the learned Single Judge only felt persuaded to remand the case back to the Additional Rent Controller for disposal. We fail to understand how can learned Single Judge exercises extraordinary jurisdiction under Article 227 for the benefit of a person who himself has not pursued his application under Order IX Rule 13 of the Code of Civil Procedure which was dismissed. The Rent Control Tribunal both on facts and law has found that the view taken by the Additional Rent Controller is correct as the wife of the tenant-respondent has purchased a flat and they have alternative accommodation. We do not see any ground for giving this latitude to the respondent. We are of the view that the view taken by the learned Single Judge of the High Court appears to be not sustainable in view of the concurrent finding by the courts below i.e. the Additional Rent Controller as well as the Rent Control Tribunal. No reasons are disclosed in the order of the High Court for holding that the alternative accommodation acquired was not for residential purpose. We do not see any reason for the High Court to have interfered with the matter. Hence, we allow this appeal and set aside the impugned order dated July 23, 2004 passed in Civil Miscellaneous Main No. 328 of 2003 by the High Court of Delhi and affirm the orders passed by the Additional Rent Controller as well as the Rent Control Tribunal. There shall be no order as to costs.

Appeal allowed