

VINAY KR. KHAMBATE
v
VINAY KR. AGGARWAL AND ORS.

FEBRUARY 22, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Rent Control and Eviction:

Delhi Rent Control Act, 1958; Ss. 2(1)(ii) and 22(d)/Code of Civil Procedure, 1908; O.XXII R.4:

Eviction petition—Tenant died during pendency of the petition—Landlord filing an application under O.XXII R.4 CPC claiming that son of the deceased tenant could not acquire the tenancy in succession even for a limited period of one year—Allowing the application, Rent Controller passed eviction order on the same day—Appeal dismissed by Tribunal—Challenge to—Dismissed by High Court—On appeal, Held: Rent Controller allowed the eviction petition on the same day in terms of O.XXII R.4 CPC r/w s. 2(1)(ii) of the Act without taking into consideration objection taken by the opposite party—It would have been appropriate for the Rent Controller to permit the son of the deceased-tenant to place material in support of his stand, which was not done—Hence, orders of the Courts below set aside and the matter remitted to Rent Controller to hear the son of the deceased tenant on the question as to his acquiring of perpetual tenancy right from his deceased father-tenant.

Respondent-landlord filed a petition for eviction of the appellant's father-tenant under Section 22(d) of the Delhi Rent Control Act, 1958. The tenant expired. Respondent moved an application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 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 during his life time, as such there was no succession of the son to acquire the tenancy in succession even for a limited period of one year. Rent Controller allowed the application under Order XXII Rule 4 of the Code read with Section 2(1)(ii) of the Act. While deciding the application, the Rent Controller passed the eviction order on the same day by observing that

- A** the appellant-son 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, appellant-son had a right to continue in possession on the suit premises for a limited period of one year only and he cannot take the defence as taken by his father-tenant.
- B** Appellant challenged the said order by preferring an appeal before the Rent Control Tribunal. The Tribunal dismissed the appeal. A petition challenging the orders of the Additional Rent Controller and the Tribunal was filed by the appellant, which was dismissed by the High Court. Hence the present appeal.

Partly allowing the appeal, the Court

- C** **HELD: 1.1.** 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.
[Para 9] [1080-F]

- D** **1.2.** It would have been appropriate for the Additional Rent Controller to permit the appellant, son of the deceased-tenant, to place materials in support of his stand which obviously has not been done. In the above circumstances, order of the High Court confirming the order of the Tribunal and the Additional Rent Controller is set aside and the matter is remitted 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. [Para 10] [1080-G-H]
- E**

1.3. It is clarified that no opinion has been expressed on the merits.
[Para 10]

- F** **CIVIL APPEALATE JURISDICTION :** Civil Appeal No. 895 of 2007.

From the final Judgment and Order dated 2.6.2006 of the High Court of Delhi at New Delhi in C.M. (Main) No. 889/2006.

- G** Chaman Lal Sachdeva, Sanjeev Sachdeva, Preet Lal Singh, Sumesh Dhawan, Chetan Chopra and Saurab Sharma for the Appellant.

Shankar Divate and Dipesh Chaudary for the Respondents.

The Judgment of the Court was delivered by

- H** **DR. ARIJIT PASAYAT, J. 1.** Leave granted.

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

3. A brief reference to the factual aspect would suffice.

4. Respondent filed a petition for eviction of the appellant's father under B
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 C
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 D
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 E
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 F
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.

5. Though several points were taken by the appellant in support of the G
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.

A 6. Learned counsel for the respondents supported the orders passed by lower forums and the High Court.

7. 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:

B “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.”

C 8. The reply to the said petition was filed by the appellant where the following stands were taken:

D “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.

E 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.”

F 9. 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.

G 10. 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

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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. A

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

S.K.S.

Appeal partly allowed.