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HIRALAL KAPUR

v.

PRABHU CHOUDHURY

FEBRUARY 19, 1988

B [SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.]

Civil Procedure Code, 1908—Section 115—High Court—Powers of revision under Rent Control Acts—Not entitled to enter into merits of factual controversies between parties and reverse findings of fact.

C *Delhi Rent Control Act, 1958—Section 14(i)(e) and section 25 B(8)—Landlord—An advocate—Whether entitled to possession of premises for bonafide personal residential requirement of himself and for setting up an office in a part thereof—Premises let out pursuant to oral agreement—Monthly rent Rs.600 tenant paying rent by two separate cheques—Rs.250 drawn by himself and Rs.350 drawn in the name of* D *trust—Whether there are two separate tenancies.*

The appellant is an advocate. Pursuant to an oral agreement, he let out to the respondent a part of his residential premises comprising of two rooms above the garage, referred to as "servants' quarters" and a hall on the ground floor, in July 1976 at Rs.600 p.m. Since November E **1976 the respondent started paying two separate amounts of Rs.250 and Rs.350 the latter amount by means of cheques in the name of Balkunj, a registered trust, of which he was the Secretary.**

In January 1980 the landlord filed an eviction petition under proviso (e) to section 14(1) of the Delhi Rent Control Act, 1958 on the F **ground that he required the servants' quarters for his servants and the hall for his office and library. The respondent resisted the petition on a number of grounds. The two grounds with which this Court is concerned are that (1) two separate tenancies came to be created in respect of the premises in dispute and hence the petition as filed was not maintainable and (2) the intended use of the hall as office constituted a** G **non-residential use, and therefore outside the purview of proviso (e) to section 14(1).**

The Rent Controller held that there was a single tenancy, that the landlord *bona fide* required the premises for his use, and that setting up his office and library fell within the scope of the relevant H **statutory provision. The High Court in the revision petition under sub-**

section (8) of section 25B of the Act, reversed the findings of the Rent Controller and modified the eviction order passed by him restricting it to the servant's quarters only.

In regard to the first ground, the respondent submits that the fact that the landlord was aware of the use of the hall by the trust and his acceptance of the cheques on behalf of the trust prove that the trust had been accepted as the tenant in respect of the hall. In this connection the respondent relies on the appellant's letter dated 26.11.1978 to the respondent, in which the landlord specifically refers to the fact that five of the dishonoured cheques being returned by him "belong to the trust". The appellant, on the other hand, submits that acceptance of two cheques alone cannot lead to the conclusion that a separate tenancy had been created in respect of the hall between Balkunj and the petitioner. The appellant further relies on the two letters dated 5.8.1977 and 15.1.1978 written by him to the respondent categorically denying the tenancy on behalf of Balkunj. He further submits that the finding of the Rent Controller that there was only a single tenancy was essentially a finding of fact, based on material and circumstances, with which the High Court should not have interfered.

In regard to the second ground the respondent urges that the intended use of the hall by the appellant as office and library could not amount to a residential requirement.

Allowing the appeal this Court,

HELD: (1) It is no doubt true that the rent has been paid by two cheques since November 1976 but the mere payment of rent by two cheques, in the circumstances of this case, cannot mean that there were two tenancies. The landlord was entitled to a rent of Rs.600 p.m. and so long as he got this amount it was immaterial for him whether the amount was paid in a lump sum or by one cheque or more than one cheque and who the makers of the cheques were. It is not unusual to come across cases where a tenant pays the rent not by a cheque drawn by himself but by a cheque drawn by some other concern in which he has an interest such as a partnership concern, a limited company etc. It is also true that the landlord might have been aware that certain activities of Balkunj were being carried on in the hall. But this can only mean that the landlord permitted the tenant to use a portion of the premises for running the activities of the trust. Even assuming that these two facts might have been sufficient to draw any such inference as is suggested, the two letters of the landlord, dated 5.8.77 and 15.1.78

A **place the matter beyond all doubt. The landlord had categorically asserted in these letters that he did not recognize Balkunj as his tenant. [1063G-H; 1064A-E]**

(2) The finding of the Rent Controller that there was only a single tenancy was essentially a finding of fact with which the High Court
B **should not have interfered. Though under Section 25(B)(8) of the Delhi Rent Control Act the powers of the High Court are somewhat wider than similar powers of revision under section 115 of the Civil Procedure Code, it is well established by a series of decisions of this Court that the power of revision under the Rent Control Act does not entitle the High Court to enter into the merits of the factual controversies between the**
C **parties and to reverse findings of fact in this regard. [1064F-H; 1065A]**

(3) Any professional man of standing would necessarily have to set apart a portion of his residence as a study, office or library and the premises do not cease to be his residence because of that. In ascertaining the *bona fide* need of residence, in the case of a lawyer, the fact that
D **a room has to be used as an office cannot be a consideration extraneous to the scope and content of clause(e) of the proviso to s. 14(1). It may be that in a case where a lawyer seeks to evict a tenant on the ground that the entire premises sought to be got vacated are solely needed by him for use as his office and library, his requirement may not satisfy the requirements of clause(e) of the proviso to s. 14(1). [1066A-B; 1065F-G]**

E

(1) *Sheodhari Rai* v. *Suraj Prasad Singh,* AIR 1954 S.C. 758; (2) *Helper Girdharbhai* v. *Saiyed Mohmad,* [1987] 3 SCC 538; (3) *Sushila Devi* v. *Avinash Chandra Jain,* [1987] 2 S.C.C. 219; (4) *Mohanlal* v. *Kondi,* [1979] 3 S.C.R. 12; (5) *Subramania Mudaliar* v. *Kolapur Traders,* [1981] 4 SCC 511 and (6) *Khanna* v. *Batra,* [1966]
F **2 D.L.T. 306, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3015 of 1987.

From the Judgment and Order dated December 11, 1985 of the
G Delhi High Court in Civil Revision (R) No. 47 of 1984.

Rajinder Sachhar, P.C. Mudgal and S.P. Gupta for the Appellant.

Anil Nauria and Mrs. Rekha Pandey for the Respondent.

H

The Judgment of the Court was delivered by

RANGANATHAN, J. The appellant is an advocate. He is the owner of premises No. H-2/6 Model Town, Delhi. He let out a part of this premises comprising a set of rooms above the garage (which may be briefly referred to as 'servants' quarters') and a hall on the ground floor of the building to the respondent. The letting was oral and on a monthly rent of Rs.600 (exclusive of electricity and water charges) from July 1976.

2. In January 1980, the landlord filed an eviction petition under proviso (e) to section 14(1) of the Delhi Rent Control Act. He claimed that he needed the premises *bona fide* for the personal residential requirements of himself and the members of his family. His case was that he was having his office at Chandni Chowk on a first floor but, as he had been advised by the doctor not to climb upstairs, he desired to move the office and library to the ground floor hall of the premises in question. He also claimed that the servants' quarters were required for the use of his servants and their families.

3. The petition was resisted by the respondent on a number of grounds. We are, however, concerned here only with two of the grounds put forward by the tenant. His first submission was that though the premises had initially been taken only for the residential use of himself, subsequently two separate tenancies had been created in respect of premises in dispute. He claimed that he was the tenant only of the servants' quarters and that the hall or the ground floor had been let out to Bal Kunj (a society registered under the Societies Registration Act, 1860) of which he was the Secretary. It was pointed out that from November 1986 onwards, the petitioner was being paid two sums, a sum of Rs.250 by the respondent and another sum of Rs.350 per month by the respondent on behalf of Bal Kunj. It was, therefore, contended that the petition as filed was not maintainable. The second plea taken by the respondent was that the intended use of the ground floor hall as the office of the petitioner-lawyer constituted a non-residential use and was, therefore, outside the purview of proviso (e) to s. 14(1).

4. The Rent Controller rejected the contentions of the tenant. He held that there had been a single tenancy. The premises had been let out by the landlord only to the respondent, Prabhu Chaudhury, on a rent of Rs.600 per month. On the second aspect, the claim of the landlord that he required the entire premises for use by himself and his servants and that the ground floor was needed for setting up his office and library was held by the Rent Controller to fall within the scope of

A the relevant statutory provision. The Rent Controller, therefore, directed eviction as prayed for by the petitioner.

5. The above order had been passed under the provisions of section 25B of the Delhi Rent Control Act. The landlord having succeeded in his eviction petition, the tenant filed a revision petition B before the Delhi High Court under sub-section (8) of that section. The learned Judge who heard the petition reversed the findings of the Rent Controller. He held that the landlord would be entitled to be put in possession only of the servants' quarters and that the petitioner could not claim the use of the hall on the ground floor. In the result, therefore, the learned Judge modified the order passed by the Rent Con- C troller. He restricted the eviction order granted by the Rent Controller to the servants' quarters. We may mention here that, in compliance with the order of the learned Judge, the respondent has since vacated and delivered vacant possession of the servants' quarters to the landlord. The controversy before us is restricted to the hall on the ground floor.

D

6. The first question that arises for our consideration is whether the High Court was right in holding that there were two separate tenancies, one in respect of the servants' quarters and the other in respect of the hall on the ground floor. The position is this. There was oral evidence let in by the petitioner to show that the premises had E been let out to the respondent in July 1976 at Rs.600 p.m. It appears the respondent started paying two separate amounts of Rs.250 and Rs.350 since November 1976. It also appears that the former amount was paid by the respondent and the letter by means of cheques in the name of the trust. It also seems to be common ground that the respondent was occupying the servants' quarters and the Bal Kunj was F occupying the hall on the ground floor though it is not clear at what point of time this happened. Counsel for the respondent relies on these circumstances. He wants to use the fact that the petitioner who was also occupying a hall on the ground floor adjacent to the hall occupied by the trust clearly must have been aware of the use of the hall to submit that the trust had been accepted as a tenant in respect of G the hall at Rs.350 p.m. He also relies on a fact—which he says the Rent Controller completely missed—that in 1978, when a number of cheques given to the landlord had been returned dishonoured, the landlord wrote a letter dated 26.11.1978 to the tenant in which he specifically referred to the fact that five of the cheques "belong to Balkunj." It is submitted that these facts clearly put the matter beyond H all doubt that, though initially the premises had been taken only by the

respondent, it had subsequently been converted into two tenancies. Learned counsel for the landlord on the other hand submitted that the question whether there was a single tenancy or two tenancies is essentially a question of fact. The Rent Controller, after appreciating all the circumstances, had come to the conclusion that there was a single tenancy. There was clear evidence to show that initially, in July 1976, the landlord had let out the premises only to the respondent for a monthly rent of Rs.600. It is true that subsequently, after a few months, the tenant paid the rent by way of two cheques—one drawn by himself and the other drawn on behalf of Balkunj. But, learned counsel submits, relying on the decision in *Sheodhari Rai* v. *Suraj Prasad Singh*, AIR 1954 S.C. 758, this alone cannot lead to the conclusion that a separate tenancy had been created in respect of the hall between Balkunj and the petitioner. Learned counsel also pointed out that the Rent Controller had referred to two important documents, AW 8/18 and AW 8/20. These were two letters dated 5.8.1977 and 15.1.1978. In these two letters the landlord had specifically and categorically denied the tenancy on behalf of Balkunj. What had happened was that the respondent on behalf of Balkunj had written to the landlord making certain claims for repairs etc. in respect of the hall occupied by Balkunj. Immediately the landlord wrote back saying that he had nothing to do with Balkunj, that the tenancy was only in favour of the respondent, and that he did not recognise Balkunj as his tenant. These two letters remained unanswered. Learned counsel for the landlord, therefore, submitted that there was ample material and clinching evidence before the Rent Controller to come to the conclusion that there was a single tenancy and that was between Prabhu Chowdhary and the landlord and that, therefore, there was no question of there being two tenancies as held by the High Court.

7. We are inclined to agree with this submission of the landlord. The initial tenancy was only an oral tenancy. Nevertheless there were two witnesses who deposed that the original tenancy agreement was only between the petitioner and the respondent. At that time, admittedly, there was no question of Balkunj being the tenant in respect of any portion of the premises. All that the respondent says is that subsequently cheques were being issued in the name of Balkunj also and that this must be taken to lead to an inference that the petitioner had accepted Balkunj as its tenant. It is very difficult to accept this argument. It is no doubt true that the rent has been paid by two cheques since November 1976 but the mere payment of rent by two cheques, in the circumstances of this case, cannot mean that there were two tenancies. The landlord was entitled to a rent of Rs.600 p.m. and so

A long as he got this amount, it was immaterial for him whether the amount was paid in a lump sum or by one cheque or more than one cheque and who the makers of the cheques were. It is not unusual to come across cases where a tenant pays the rent not by a cheque drawn by himself but by a cheque drawn by some other concern in which he has an interest such as a partnership concern a limited company or B other entity in which he is interested. So, the mere fact that for some reason the respondent chose not to issue a single cheque for the rent of Rs.600 but that he gave two separate cheques, one for Rs.250 drawn by himself and one for Rs.350 drawn in the name of Balkunj cannot lead to an irresistible conclusion that the tenancy was created in favour of Balkunj with the concurrence of the landlord. The letter dated C 26.11.78, far from "clinching" the respondent's claim, as held by the High Court, does not in our view improve the tenant's case at all. It only evidences the fact that the landlord was receiving the cheques issued in the name of the trust in discharge of the respondent's obligation to pay the rent of Rs.600 p.m. It is also true that, since the landlord was also occupying a part of the ground floor premises, he might have D been aware that certain activities of Balkunj were being carried on in the hall. But this can only mean that the landlord permitted the tenant to use a portion of the premises let out for running the activities of the trust. Even assuming that, standing by themselves these two facts might have been sufficient to draw any such inference as is suggested, the two letters of 5.8.77 and 15.1.78 place the matter beyond all doubt. E The landlord categorically asserted in these letters that he does not recognize Balkunj as his tenant and that the respondent alone was his tenant. There was no reply to these letters from the respondent. In these circumstances there can be no doubt at all that the premises had been let out only to the respondent by the petitioner and that Balkunj cannot be considered to be a tenant of the premises or any portion F thereof.

8. The finding of the Rent Controller that there was only a single tenancy was essentially a finding of fact based on the material and circumstances to which we have adverted and we are also inclined to accept the conclusion of the Rent Controller as the correct one. We G also agree with the landlord that this is a finding with which the High Court should not have interfered. Though under Section 25(B)(8) of the Delhi Rent Control Act the powers of the High Court are somewhat wider than similar powers of revision under section 115 of the Civil Procedure Code, it is well established by a series of decisions of this Court that the power of revision under the Rent Control Acts does H not entitle the High Court to enter into the merits of the factual con-

troversies between the parties and to reverse findings of fact in this regard. It is sufficient, in this context, to refer to the decision of this Court in *Helper Girdharbhai* v. *Saiyed Mohmad,* [1987] 3 SCC 538 which was reviewed earlier decisions. The decision in *Sushila Devi* v. *Avinash Chandra Jain,* [1987] 2 S.C.C. 219 to which counsel for the respondent referred, lays down no different principle.

9. So far as the second point is concerned, learned counsel for the respondent relied upon two decisions of this Court in *Mohanlal* v. *Kondi,* [1979] 3 S.C.R. 12 and in *Subramania Mudaliar* v. *Kolapur Traders,* [1981] 4 SCC 511. In the former, it was held that the profession of a lawyer is "business" within the meaning of S. 10(3)(a)(iii) of the Andhra Pradesh Building (Lease, Rent & Eviction) Control Act, 1960. The latter is a decision to a like effect. These decisions are not of much help in the context of the present case and of the provisions of clause (e) of the proviso to s. 14(1) of the Delhi Rent Control Act. Here the landlord is seeking to recover possession of a residential premises. There is, as we have already held, a single tenancy in favour of the respondent for a residential purpose. Though learned counsel for the respondent invited us to say that, so far as the hall was concerned, the premises were being used by a trust and, hence for a non-residential purpose, we cannot permit him to raise this plea. Such a plea was not taken before the High Court. Against the order of the High Court, the respondent had also filed a special leave petition to this Court which has been dismissed. It is therefore not open to the respondent to urge this point before us. The only point taken before the High Court was that the petitioner could not get relief because the use of the hall by a lawyer as his office and library could not amount to a residential requirement. We shall, therefore, confine ourselves to this question.

10. In our opinion, the contention of the respondent cannot be accepted in the extreme form in which it is urged here. It may be that in a case where a lawyer seeks to evict a tenant on the ground that the entire premises sought to be got vacated are solely needed by him for use as his office and library, his requirement may not satisfy the requirements of clause (e) of the proviso to s. 14(1). But this is quite different from saying that where the premises are sought to be got vacated for use as a residence and, the landlord being a lawyer desires to use a part of such residence as a study, office or library, such use would be a non-residential use. Any professional man of standing would necessarily have to set apart a portion of his residence for such purposes and the premises do not cease to be his residence because

of that. in the present case, the petitioner seeks eviction of the suit premises for his *bona fide* residential requirement and the use of the hall as an office is only incidental to such a requirement. In ascertaining the *bona fide* need of residence, in the case of a lawyer, the fact that a room has to be used as an office cannot be a consideration extraneous to the scope and content of clause (e) of the proviso to s. 14(1).

11. To test our conclusion, we may see what the position would be in the converse case. If, in the present case, the petitioner had stated that he required the hall because he had no living room in the premises which he was occupying as the only room there was being, or had to be, used by him as an office, the petitioner's claim could not have been rejected, for he would then have needed the hall clearly as part of his residential requirement. The decision in *Khanna* v. *Batra*, [1966] 2 D.L. T. 306 illustrates this. There, an advocate, had asked for eviction of a tenant from the first floor as the ground floor premises occupied by him were not sufficient for his needs for purposes of residence and office. The Rent Control Tribunal held that since the appellant intended to convert the existing residential accommodation in his possession into an office and library for the use of his clerk and clients, such a user was not permissible in law. Reversing this conclusion, Grover, J observed:

> "It seems to me that the Rent Control Tribunal was clearly in error in thinking that merely because the appellant wanted to use the accommodation in his possession for professional purposes, he could not claim benefit of the provision contained in clause (e) of the proviso to s. 14(1) of the Act. It was this error which led to the conclusion at which the Rent Control Tribunal arrived upholding the decision of the Controller on the second point, namely the requirement of the appellant on personal grounds. I cannot therefore, accede to the submission of the learned counsel for the respondent that the finding of the Rent Controller Tribunal with regard to the personal need or requirement was one of fact and thus immune from challenge in the second appeal."

12. Should the position is different in this case? Merely because the petitioner has come forward with an honest plea that he intends to use a part of his residence as an office, should a different result follow, particularly in a case like this where ill-health compels him to have his

office at home? Should the result depend on the jugglery of pleadings or the substance of the matter? We think the substance should prevail. In our opinion, where a landlord applies for the possession of his residential premises, his *bona fide* requirement of the premises for his residential purposes will not stand vitiated merely because he intends to use a portion of the premises for purposes of his office, library or study.

13. We are, therefore, of opinion that the High Court should not have interfered with the findings of the Rent Controller on this point as well. This is no doubt a mixed question of fact and law but, for the reasons given earlier, we are inclined to agree with the conclusion of the Rent Controller.

14. In the result, we hold that the High Court was in error in granting relief to the petitioner only in respect of the servants' quarters and in declining to grant the petitioner relief in respect of the hall. We allow the appeal, set aside the judgment of the High Court and restore the order of the Rent Controller that the petitioner is entitled to the possession of the entire premises in question. There will, however, be no order as to costs.

R.S.S. Appeal allowed.