

Delhi High Court

N.D. Khanna vs Hindustan Industrial ... on 29 May, 1981

Equivalent citations: 20 (1981) DLT 236

Author: S Singh

Bench: S Singh

JUDGMENT Sultan Singh, J.

(1) This revision petition under section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act') is directed against the judgment and order dated February 28, 1977 of the first Additional Controller, Delhi dismissing her petition for eviction on the ground covered by clause (e) of the proviso to sub-section (1) of section 14 of the Act. It has arisen in the following circumstances.

(2) The petitioner as owner landlady let out first floor of property No. 152, Golf Links, New Delhi to the respondent in July 1960 on a monthly rent of Rs. 650.00, besides electricity and water charges. On November 10, 1975 she sent a notice through her counsel alleging that she was the owner landlady of the premises which were required by her bona fide for use and occupation of herself and members of her family dependent upon her and that she had no other suitable accommodation. Finding no response, on January 3, 1976 she filed the eviction petition under section 14(1)(E) read with section 25B of the Act. The ground of eviction as worded in para 18 (a) is as under:- "1. THE petitioner is a qualified M.B.B.S. doctor and is at present residing in one room temporarily vacated by the ground floor tenant for her personal use. She has got barsati with her which is at present lying closed with her luggage. Half of the luggage is still lying at Jhansi, where the petitioner's husband, Col., N.K. Khanna was last posted. 2. The petitioner who is the owner/landlady of the premises in question requires the same for her personal needs and the needs of other members of the family dependant upon her. 3. Col. N.K. Khanna, husband of the petitioner, retired as Asstt. Director Medical Services on 31.1.1975. The last pay drawn by Col. N.K. Khanna was Rs. 2,750.00 p.m. and he had always been living in an accommodation comprising of 8 rooms and 4 bath rooms. Col. Khanna retired on attaining the superannuation age. He is a qualified Doctor and is an eye specialist. Shri Khanna desires to start his practice along with the petitioner. 4. The petitioner has got one married daughter. Smt. Neelam Lal, who is married to Cost Accountant Shri Madan Lal and is now posted at Calcutta. She often visits her mother at Delhi. The petitioner has got one son, Naresh Kumar Khanna, who is a qualified Engineer and M.B.A. and is at present residing at Atlanta in the State of Georgia (U.S.A.). He is married and is desirous of living in Delhi with his parents, in the premises in question. According to the petitioner's status and her husband she requires at least 4 bed rooms, one drawing room, one dining room, one kitchen, one pantry and two bath rooms and two guest rooms. 5. The petitioner has been living with a great difficulty for the past one year in one room, which is not fit for her status to occupy. She along with her husband, Col. Khanna, is not able to practise her profession even though the house in question is planned in such a way that the first floor is meant for residence and the ground floor has been designed to enable the petitioner to maintain her clinic for her medical practice. 6. The petitioner and her husband are both ostracized on account of living accommodation. This has been and is also adversely affecting their status physically, mentally and financially. 7. Col. N.K. Khanna has his widowed mother Smt. Kesra Devi, who is at present residing in Amritsar. She is an old lady and is desirous of staying with her eldest son, Col. Khanna, in Delhi."

(3) The respondent in his written statement pleads that eviction application does not disclose a cause of action as the petitioner does not plead that she has no other reasonably suitable residential accommodation. The respondent contested all the allegations made by the petitioner but it is not necessary to narrate them. The Additional Controller by his order dated February 28, 1977 held that the eviction petition did not disclose a cause of action and therefore dismissed the same. He however held that the premises were let for residential purposes, that she was owner landlady and that she bona fide required the premises.

(4) The petitioner filed an appeal under section 38 of the Act before the Rent Control Tribunal. During the pendency of the appeal the respondent made an application dated November 15, 1977 under Order 7 Rule 7 of the Code of Civil Procedure (hereinafter called 'the Code') alleging that the petitioner had filed a petition against Gedore Tools Limited, and got vacate possession of the ground floor but the said premises were being used by Shri G.G. Sharma, advocate. The respondent made another application dated April 4, 1973 under Order 7 Rule 7 of the Code, alleging that the petitioner and her husband had constructed a house in Chandigarh in sector No. 33-A, Kothi No. 326, that they have shifted and have been residing at Chandigarh, that they obtained a telephone connection No. 38023, that the petitioner has removed all her belongings from 152, Golf Links, New Delhi and has given possession of the room on ground floor in her possession to the new occupant namely, Shri G.C. Sharma, advocate. The respondent thus prayed that the subsequent events be taken into consideration and the eviction application be dismissed. The Tribunal however did not go into those matters as the appeal itself was not maintainable and dismissed the appeal by order dated September 6, 1979. The petitioner then filed the present revision petition under section 25B(8) of the Act.

(5) The learned counsel for the petitioner submits that the judgment and order of the Additional Controller is not according to law. He says that the facts constituting the cause of action have been sufficiently pleaded. He also says that the allegation, "the landlady has no other reasonably suitable residential accommodation" is sufficiently implied in para 18(A) of the eviction application reproduced above. He further says that the notice dated November 10, 1975 which specifically contains the said allegation was incorporated in the application and as such the eviction application discloses a cause of action. In any case, he says that the plea was incorporated in the replication and evidence was recorded without any objection on behalf of the respondent. Section 14(1)(E) of the Act reads as under: "14.(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant : Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:- (a) *** ***(b) (c) (d) (e) that the premises let for residential purposes are required bonafide by the landlord for occupation as residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other .reasonably suitable residential accommodation : Explanation:-For the purpose 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;"

(6) For obtaining an order of eviction a landlord has to plead and prove the following ingredients; 1) that he is the owner landlord of the suit premises; 2) that the premises were let for residential purposes; 3) that he requires the premises for himself or for any member of his family dependent upon him; 4) that he has no other reasonably suitable residential accommodation. Rule 23 of the Delhi Rent Control Rules, 1959 framed under section 56 of the Act provides that in deciding any question relating to procedure not specifically provided by the Act and the Rules, the Controller and the Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908. Thus, it is clear that the provisions of the Code are applicable to the proceedings under the Act. Order 7 Rule 1 of the Code reads as under: "1. THE plaint shall contain the following particulars:- a) the name of the court in which the suit is brought; b) the name, description and place of residence of the plaintiff; c) the name, description and place of residence of the defendant, so far as they can be ascertained; d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect; e) the facts constituting the cause of action and when it arose; f) the facts showing that the Court has jurisdiction; g) the relief which the plaintiff claims; h) where the plaintiff has allowed as set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits."

Clause (e) of this Rule provides that the plaint shall contain the facts constituting the cause of action. Cause of action means all those facts which are necessary to be proved by the plaintiff for obtaining a decree. Thus, it is also clear that if the petitioner landlord seeks eviction of the respondent tenant under section 14(1)(E) of the Act he is required to plead and prove all the four ingredients reproduced above. From para 18 (a) of the eviction application reproduced above I find that the petitioner did not plead; she has not other reasonably suitable residential accommodation." The question for decision is : what is the effect of not pleading this fact which is an essential ingredient of the cause of action ? The answer is provided by Order 7 Rule 11 of the Code which reads as under : "R.11. The plaint shall be rejected in the following cases : (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law : Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

(7) Under clause (a) of this Rule, if the plaint does not disclose a cause of action, it is liable to be rejected. The Rule uses the word "shall" and therefore it seems that it is mandatory to reject a plaint in case it does not disclose a cause of action. Rule 1 of Order 7 of the Code as already stated mentions what should be the contents of the plaint while Rule 11 states what would be the consequences if the plaint lacks the required pleas. Under clause (b) of Rule 11 if the relief is undervalued the Code

requires the Court to give an opportunity to the plaintiff to correct the valuation within a certain time and if he fails to do so, the plaint is to be rejected. Similarly, under clause (c) of Rule 11 if the plaint is insufficiently stamped and the plaintiff fails to supply the requisite stamp paper within a time fixed by the court, the plaint is to be rejected. Thus, it appears that the provision contained in clause (a) of Rule 11 of the Code is mandatory. Under clauses (b) and (c) an opportunity is given to the plaintiff to correct the valuation or to supply the requisite stamp paper within a time fixed by the court and on his failure to do so, the Rule provides that the plaint shall be rejected. Thus, specific procedure is prescribed for different circumstances. In case the plaint does not disclose cause of action, there is no provision that any opportunity is to be given to the plaintiff to remove the defect, on the contrary it provides that the plaint 'shall' be rejected. It therefore appears that if a plaint does not disclose a cause of action, the Court has no option but to reject the same. It also seems to me, that when a plaint is filed, it is the duty of the court to see whether the plaint contains necessary allegations which must be proved before a decree can be given. If necessary allegations are not pleaded, the court is to reject the plaint. This procedure is essential and should be followed in all cases to avoid time and expense of the litigating public and the Courts. Such an objection, it seems should not be left undecided till the time of final argument in the case. In *Kailash Chander v. Tralok Chancier etc.* 1972 Raj. L.R. 125, it is observed that if an application under section 25 of the Act does not disclose a cause of action it should be rejected. In that case the landlord obtained an eviction order against his tenant on the ground covered by section 14(1)(H) of the Act. The occupant filed an application under section 25 of the Act claiming to be in possession as a 'lawful subtenant' since 1952 pleading that he had given notice under section 16(2) of the Act to the landlord of the fact of sub-tenancy when the Rent Act came into force. The landlord denied receipt of that notice. The occupant objector had not alleged that the sub-tenancy was with the written permission of the landlord and due to this omission it was held that the application did not disclose any cause of action and was therefore rejected. Further, in that case. The application for amendment of the main application was also not allowed. In *Sailesh Nath Bisi v. J. Chaudhuri & Ors.* 50 C.W.N. 540, it is observed that the court has no option but to reject a claim and no jurisdiction to allow an amendment where the plaint, on the face of it, discloses no cause of action. It is well known that to enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint alone and nothing else. In *Abdul Hamid and another v. Nur Mohammad*, Air 1976 (Delhi) 328, it is observed that in a petition for eviction landlord must urge all statutory conditions to get an eviction and failure to aver that he had no other suitable residential accommodation bars exercise of jurisdiction to order eviction. This was a case under section 14(1)(E) of the Act. The landlord had not pleaded that he had no other reasonably suitable residential accommodation. In *Hari Mohan Nehru v. Rameshwar Dayal*, Air 1980 Delhi 291, it has been observed that the landlord has to plead the cause of action and in case of bona fide requirement, cause of action is not only the ownership and letting of a residential house but also the averment that the landlord has no other reasonably suitable residential accommodation. Without this averment the application for ejection will not disclose a cause of action. If the plaint discloses no cause of action, the Court cannot pass a decree in favor of the plaintiff. In *Banke Ram v. Saraswati Devi*, 1977 (1) Rgr 595, the full Bench of the Punjab & Haryana High Court dealing with the ground of eviction covered by section 13(3)(A)(i) of the East Punjab Urban Rent Restriction Act, 1949 held that it is imperative for landlord to specifically plead all the ingredients in clauses (b) and (c). Section 13(3) of the East Punjab Urban Rent Restriction Act, 1949 reads as under : "13(1).A tenant in possession of a building or rented land

shall not be evicted the refrom in execution of a decree passed before or after the commencement of this Act or other wise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section or in the pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended. (2)(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession : (i) In the case of a residential building if : (a) he requires it for his own occupation ; (b) he is not occupying another residential building in the urban area concerned ; and (c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area."

(8) The Supreme Court in Onkar Nath v. Ved Vyas, (1980) 82 Plr 638, dealing with the ground of eviction under the said section 13(3)(A)(I) of the East Punjab Urban Rent Restriction Act, 1949 has observed, "the statue benignly designed to protect tenants from unreasonable evictions has taken care to put restrictions which must be rigorously construed to fulfilll the purpose of the statute. A mere affidavit at late stage of the litigative process can hardly be adequate to meet the mandate of section 13(3) of the Act." It was held that pleadings in that case were insufficient to make out a cause of action. Thus, I am of the view that pleading of all the ingredients or the facts constituting the cause of action to claim eviction under section 14(L)(E) of the Act is essential and failure to plead all the ingredients results in rejection of the eviction application under Order 7 Rule 11 of the Code. I may mention that in the instant case the respondent tenant had taken a specific plea in the written statement that the eviction petition did not disclose a cause of eviction. In spite of the objection no action was taken by the Controller. It was the duty of the Controller at the initial stage to see whether the application contained the necessary allegations to enable the petitioner landlord to obtain the order of eviction under section 14(L)(E) of the Act.

(9) The learned counsel for the petitioner refers to various authorities and now I shall deal with the same. In Ram Gopal v. Washeshwar Nath, 16 (1979) Dlt 215, it has been observed that normally all the ingredients are required to be alleged and proved, in a case under section 14(L)(E) of the Act, but it does not mean that the letter of the law and not the spirit thereof must be complied with. It has also been observed that when the petitioner moved the petition under section 14(L)(E) of the Act, it was implied very much that he had no other reasonably suitable residential accommodation. In that case it was admitted on behalf of the landlord that pleading was incomplete and the objection was not taken on behalf of the tenant either before the Controller or the Tribunal and such an objection was not allowed to be raised in the second appeal under section 39 of the Act. Similarly, in Gurdial Nagdev v. Smt. Devi Bai, 1979(1) Rcr 119, a case for eviction under section 14(L)(E) of the Act, the objection was not taken before the Controller that the eviction application did not disclose a cause of action. In that case also the landlord had failed to plead that he had no other reasonably suitable residential accommodation. As this point was not taken before the Controller, the objection was. not allowed to be raised in this Court. In Mrs. Kundan Lal Mehta and others v. Smt. Parkasdwati, 1980(2) Rcj 551, also the objection that the eviction application did not disclose any cause of action, was not taken in the written statement and therefore such an objection was not allowed to be urged in the second appeal. Moreover the eviction in that case was on three grounds. It was therefore not a case that the eviction petition did not disclose a cause of action. If there are more than one ground of eviction and the eviction application contained full facts constituting the cause of action with respect

to one of the grounds of eviction it cannot be said that the eviction application did not disclose a cause of action. In *Kesho Ram v. Jagan* (deceased represented by his Legal .Representatives Om Parkash and Ors.), 1977(1) Rcr 622. The objection was not raised before the trial court that the eviction petition did not disclose any cause of action. In that case it was observed that the revisional court has discretion to allow the petitioner to raise such an objection, but the petitioner was not allowed to raise such an objection.

(10) The learned counsel for the petitioner then submits that the notice dated 10TH November 1975 issued by the petitioner to the respondent contained the averment that the petitioner had no other reasonably suitable residential accommodation and that this notice is incorporated in the eviction petition and therefore it be held that the eviction petition discloses a cause of action. I do not agree. Mere reference of the notice does not mean that there is pleading of facts constituting the cause of action. Para 18(B) of the eviction application only states that the registered notice dated November 10, 1975 terminating tenancy was issued which was duly served. The learned counsel then refers to *8.B. Noronah v. Prem Kumari Khanna*, . It was a case of pleading under section 21 of the Act. In that case the landlord had referred to the lease between the parties while section 21 of the Act refers to the letting 'in writing' and the Supreme Court held that the application read as a whole, implied that there was lease in writing. Then learned counsel refers to *Punjabrao Harbaji Kolhe v. Gajanan Mane and otheis*, . In that case plaint had disclosed a cause of action and the notice was referred only for the purpose of clarifying the pleading.

(11) Next the learned counsel submits that the petitioner in her replication has taken the plea that she had no other reasonably suitable residential accommodation and therefore it should be held that the eviction application discloses a cause of action. To determine whether the application for eviction discloses a cause of action one has to refer only to eviction application and not to other pleadings. If a fact has been pleaded in the replication, there is no opportunity to the opposite party to rebut the same. Order 7 Rule 1 of the Code provides that the facts constituting the cause of action are to be pleaded in the plaint. No provision has been brought to my notice to show that facts constituting the cause of action can be pleaded in replication. The learned counsel refers to *Mrs. Kamla Hazuria v. Mrs. Bimla Wati and anr.*, 1977(2) R.C.R, 362, in which case one of the ingredients that landlord was in occupation of residential premises in residential area was not pleaded specifically in the eviction application but it was pleaded in the replication. It was observed that the replication is part of the pleading. With respect I am of the view that replication may be a part of the pleading but the facts constituting the cause of action must be pleaded in the plaint and not in the replication. He further refers to *Kochukesavan Nari v. Gouri Amma*, 1967 Klt 257, wherein it is observed that the plaintiff may add to his pleas in the replication and that replication is a part of the pleadings. As already stated, I do not agree with this statement of law as I am of the view that facts constituting the cause of action can only be pleaded in the plaint and not in the replication. The learned counsel then refers to *Jag Dutt v. Smt. Savitri Devi*, 1977(1) Rcr 674, wherein the landlord pleaded the ingredients in reply to the written statement. It is observed that the ingredients must be taken to have been pleaded as replication to the written statement is a part of the pleadings.

(12) In view of the various authorities it seems to me that facts constituting the cause of action must be pleaded in the plaint and if the same have been included in replication in reply to the written

statement, the same cannot form part of the plaint. Order 7 Rule 1 of the Code provides what a plaint should contain. This provision seems to be mandatory. Similarly the provision contained in Rule 11 of Order 7 of the Code is mandatory. Thus, it seems to me that if a plaint does not disclose a cause of action, it is liable to be rejected under Order 7 Rule 11 (a) of the Code, specially when the defendant respondent in his written statement has taken a specific plea that the plaint does not disclose a cause of action. Thus, I am of the view that when a plaint or an eviction application is filed it is the duty of the Court or the Controller to see whether the plaint or the eviction application contains the allegations which must be proved before a decree or an order of eviction can be passed. If the allegations in the plaint or the eviction application are insufficient or the facts constituting the cause of action are not disclosed, the Court or the Controller must reject the same.

(13) Reading the eviction application specially the ground of eviction as contained in para 18 of the eviction application reproduced above I am of the considered view that it does not disclose a cause of action. In other words the petitioner does not plead all the facts constituting the cause of action for claiming eviction on the ground covered by clause (e) of the proviso to sub-section (1) of section 14 of the Act.

(14) The learned counsel for the petitioner next contends that she be allowed to amend the eviction petition and for this purpose an application (C.M. 501/81) has been filed seeking leave to add the following to the existing para 18 of the eviction petition ; "(8)that the petitioner has no other reasonably suitable residential accommodation in Delhi. The property in suit is the only residential property owned by petitioner in Delhi."

The question for decision therefore is whether the petitioner can be granted leave to amend the eviction application when it does not disclose a cause of action. Generally the Court has power to grant leave to amend the pleadings if the case is covered by Order 6 Rule 17 of the Code. The learned counsel refers to *M/S. Waticns Mayor & Company, Jullundur City v. Registrar of Trade. Marks, Bombay, 1952 (51) Plr 176*, wherein it has been observed that "however negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. The learned counsel for the petitioner submits that amendments have been allowed to plead all the ingredients with a view to bring the pleadings in accordance with the provisions of law. He relies upon *Maghi Mal v. Sat Pal* 1979 (2) Rcr 265, *Pyare Lal v. Hari Singh*, 1980(1) Rcr 657 and *Smt. Jaswant Kaur alias Amarjit Kaur v. Inder Ram*, 1980(2) Rcr 545. In *Maghi Lal v. Sat Pal* (supra) objection was not taken in the written statement that the eviction application did not disclose any cause of action. The objection was taken for the first time in appeal. Further in that case the eviction was claimed on two grounds. I am of the view that if facts constituting the cause of action with respect to one of the grounds of eviction are properly pleaded, it cannot be said that the eviction application did not disclose a cause of action. The observations in that case are therefore of no assistance to the petitioner. In *Pyare Lal v. Hari Singh* (supra) the counsel for the petitioner himself submitted before the court that the eviction petition required amendment and therefore the amendment was allowed. In *Smt. Jaswant Kaur v. Inder Ram* (supra) there was no objection in the written statement that the eviction petition did not disclose a cause of action. There is no discussion about Order 7 Rule 1 or Order 7 Rule 11 (a) of the Code and therefore it seems that the observations of that case are not applicable to the facts of the

instant case before me.

(15) Next the learned counsel submits that evidence on the said fact though not pleaded was recorded without any objection and must then fore be looked into. It is well known that no amount of evidence can be looked into. on a plea which was not raised. There is thus no substance in this objection also.

(16) In the present case the eviction application was filled which did not contain the necessary facts constituting the cause of action to claim eviction under section 14(L)(E) of the Act. This was a mandatory requirement within the meaning of Order 7 Rule 1 of the Code. When this requirement is not specified, the consequences would be as provided in Order 7 Rule 11 (a) of the Code. In other words if the eviction application does not disclose a cause of action and an objection is taken by the tenant in the written statement, the Controller or the Court has to reject the same. Considering the facts of the present case specially the request of the respondent to take into consideration the subsequent events as contained in the two applications under Order 7 Rule 7 of the Code before the Tribunal, it seems that the eviction petition is liable to be rejected under Order 7 Rule 11 (a) of the