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the fraud etc., may become known even after a number of years and if it is proved to the satisfaction of the University Authorities that a particular candidate had defrauded them and was not, as a matter of fact, eligible to appear in a certain examination, then his result can be quashed and the certificate, which is based upon the result, would automatically be rendered useless and of no significance. Similarly, according to clause (ii), where a mistake is found in the result, then the same can be quashed irrespective of the fact as to when the mistake is discovered and whether the certificate in that particular case has been issued to the candidate or not.

In view of what I have said above, this petition fails and is dismissed, but in the circumstances of this case, however, I will leave the parties to bear their own costs in these proceedings.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua and Shamsher Bahadur, JJ.

SAVITRI AHUJA,—*Petitioner.*

versus

HARBANS SINGH MEHTA,—*Respondent.*

Civil Revision No. 56-D of 1963.

1964

April, 30th

Delhi Rent Control Act (LIX of 1958) Ss. 14 (1)(e) and 50—Order of ejectment passed by the Rent Controller on the basis of compromise between the parties—Order not involving any judicial finding—Whether a nullity—Suit to challenge the order—Whether maintainable—Order or decree of a Court—When can be displaced on ground of fraud.

Held, that when a tenant himself admits the ground on which ejectment is sought, the Rent Controller cannot pass any order but that of ejectment and the consent of the tenant does not substantially make any difference in the result. It, therefore, cannot be said that the Rent Controller fails to apply his mind or that the order is passed in breach of the statutory requirements of the Delhi Rent Control Act. The order of the Controller, though consesual in the sense that it did not involve any judicial finding is based on the satisfaction that the ejectment is ordered in accordance with the statutory requirements of section 14(1)(e) of the Act and cannot be regarded as nullity. The Civil Courts, therefore, have no jurisdiction to entertain a suit to challenge an order of eviction passed in pursuance of an agreement between the parties.

Held, that an order or decree of a Court can be displaced on ground of fraud only when it is extrinsic or collateral to anything which has been adjudicated upon. A party in a legal proceeding is bound to examine the pleas raised against him and when he comes to accept these by a solemn statement made in Court, he cannot be heard later to say that it was induced by some misrepresentation. The test to be applied is, is the fraud complained of not something that was included in what has already been adjudged by the Court, but extraneous to it? Where two parties fight at arm's length, it is the duty of each to question the allegations made by the other and to adduce all available evidence regarding the truth or falsehood of it. Neither of them can neglect his duty and afterwards claim to show that the allegation of his opponent was false.

Petition for revision under section 115 of Act V of 1908, from the order of Shri C. L. Kalra, Sub-Judge, III Class, Delhi, dated the 31st October, 1963, deciding the issue in favour of the plaintiff.

H. R. SAWHNEY, ADVOCATE, for the Petitioner.

R. S. NARULA AND R. L. TANDON, ADVOCATES, for the Respondent.

JUDGEMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—This petition revision raising the question of jurisdiction of the Civil Court to entertain a suit to challenge the order of eviction passed in pursuance of an agreement of the parties has been referred for decision by Gurdev Singh, J. to a larger Bench,

The facts which give rise to the petition are not in dispute and may briefly be narrated. The petitioner Shrimati Savitri Ahuja acquired plot described as 29-A in Friends Colony and a house was constructed on it in the year 1958 while she was in England. The building was leased to respondent Harbans Singh Mehta on a monthly rent of Rs. 800. The lease was for two years commencing from 1st of June, 1958. Col. Ahuja, the husband of the petitioner, having returned to India in 1960 on retirement from service, applied for ejectment of the tenant section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter called the Act, according to which the Controller may make an order for the recovery of the premises on the ground:—

> "that the premises let for residential purposes are required *bona fide* by the landlord for occupation.....and that the landlord or such person has no other reasonably suitable residential accommodation."

In the prescribed form, the premises from which ejectment was sought were described under the fourth column as "residential". In column 12 of the form, it was said that the building had been completed in the month of May, 1958, and the

tenant had shifted to the house in the first week of that month, the rent, however, accrued from 1st of June, 1958. The grounds for ejectment, described in column 18 of the application were two. In the first place, it was stated that both the petitioner and her husband had returned from England on the retirement of Col. Ahuja. Neither the petitioner nor her husband had any other accommodation in Delhi or New Delhi for their own residence and they required the premises *bona fide* "for their own residence." Secondly it was stated that the respondent had not paid a substantial portion of the rent, a sum of Rs. 2,312 only having been paid since the inception of the tenancy. The accommodation which was given on lease is detailed in column 8 of the petition and is stated to consist of three bed rooms with attached bath rooms, drawing-cum-dining study room, reception hall, two stores, kichen-cum-pantry; one garage and two servants' quarters with lawn."

The petition for ejectment which was filed in the first instance on 18th of July, 1960, was later amended by the order of the Court passed on 10th of November, 1960. The case was fixed for 20th of December, 1960, for evidence of the parties, Before the evidence could be recorded the parties compromised the dispute and the respondent tenant made the following statement on 14th of December, 1960:—

> "I admit the petition of the petitioner and an order for eviction on the ground of *bona fide* personal need be passed against me. I will vacate the premises in dispute by 31st of December, 1961. I admit liability for payment of rent up to 31st of December, 1960, at the figure of

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Rs. 9,733 after taking adjustment of all repairs, ect., done by me up-to-date. Two cheques of Rs. 800 were given to the attorney of the petitioner. She has assured me that these have not been encashed. The figure of Rs. 9,733 has been arrived on this assumption... I will continue to pay rent at the rate of Rs. 800 per "month in future and will not be entitled to spend any amount on repairs etc.....".

Mrs. Piki Biddi, who appeared as an attorney of the petitioner, stated:—

"I have heard the statement of the respondent. I agree."

The order was passed by the Rent Controller the same day and the relevant passages may be reproduced:—

"An application for the eviction of the tenant has been filed by the petitioner on the ground that she *bona fide* requires the premises in dispute for her residence and for the residence of her husband. The eviction of the tenant was also sought on the ground of non-payment of rent.

The application was contested by the tenant respondent and the respondent was ordered by my order dated 18th of November, 1960, to deposit Rs. 10,000 the arrears of rent within one month of that order.

The parties have compromised today and the respondent tenant has stated that

an order of eviction be passed against him on the ground of *bona fide* personal need. I hereby pass an order for the recovery of possession of the premises in dispute "In favour of the petitioner against the respondent on the ground of *bona fide* personal need. As agreed by the parties, the respondent tenant will vacate the premises by 31st December, 1961....".

Ten days before he was due to vacate the premises under the order of the Rent Controller, the tenont brought a suit against Mrs. Savitri Ahuja for a declaration that the order for ejectment having been obtained by fraud from the Rent Controller should be declared void and inoperative. A temporary injunction under the provisions of rule 2 of Order 39 of the Code of Civil Procedure was also prayed for to prohibit the defendant from making an application under section 42 of the Delhi Rent Control Act for enforcement of the Order passed by the Rent Controller on 14th of December, 1960. The *ex parte* injunction which was passed was confirmed by order of the Subordinate Judge passed on 4th of June, 1962. A petition for revision was filed by the petitioner to this Court and this is C. R. 399-D of 1962. Subsequently, the preliminary issues framed in the suit itself were decided in favour of the tenant holding that the civil Court had jurisdiction to try the suit. The petition for revision against this order passed on 31st of October, 1962, is Civil Revision No. 56-D of 1963. Gurdev Singh, J. by his order of 25th of March, 1964, has referred it for decision of a larger Bench.

Mr. Hans Raj Sawhney, the learned Counsel for the petitioner, before addressing his argument brought to our notice that the arrears today

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have mounted up to Rs. 23,200. According to the tenant, the accumulation of arrears is due largely to the failure of the petitioner to accept the amount of rent which had been offered to her. The decision of the case, however, does not really turn on these pleas. It is contended by Mr. Sawhney that the civil Court has no jurisdiction to try the declaratory suit in view of the provisions of the Code of Civil Procedure and the Delhi Rent Control Act. Under section 9 of the Code, the civil Courts "shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred." It is contended that the jurisdiction has been ousted by the provisions of the special law relating to the subject in the Delhi Rent Control Act, 1958, Section 43 of the Act provides that:—

> "Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings."

Section 42 of the Act again provides for the exercise of powers of Civil court for execution of orders by the Rent Controller and says that:—

> "Save as otherwise provided in section 41, an order made by the Controller or an order passed on appeal under this Act shall be executable by the Controller as a decree of a civil court and for this purpose, the Controller shall have all the powers of a civil court."

Section 41, to which reference is made in section 42 deals with a case of fines imposed by

the Controller under the Act and their recovery under the provisions of the Code of Criminal Procedure. It is necessary also to notice section 59 of the Act, sub-section (1) of which is as under:—

> "..... no civil court shall entertain any suit or proceedings in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any matter which controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil Court or other authority."

Sub-section (4) of section 50 says that:—

> "Nothing in sub-section (1), shall be construed as preventing a civil court from entertaining any suit or proceeding for the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises."

Clause 23 of the Rules framed under the Delhi Rent Control Act asys that. —

> "In deciding any question relating to the procedure not specially provided by the Act and these rules, the Controller and

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the Rent Control Tribunal shall, as far as possible, he guided by the provisions contained in the Code of Civil Procedure, 1908."

It may be observed that the orders passed by the Rent Controller are subject to appeal under section 38 of the Act which provides for appeal to the Rent Control Tribunal "from every order of Controller made under this Act". The Rent Control Tribunal is also vested with powers of a Court under the Code of Civil Procedure. Section 39 further vests jurisdiction in the High Court to entertain Second appeals involving substantial questions of laws.

Having set out the relevant statutory provisions, the contention raised by Mr. Hans Raj Sawney that the civil Court has no jurisdiction to entertain the suit may now be examined. The argument of the learned counsel is that the order of the Rent Controller was passed "under the Act" and in accordance with its provisions. The ejectment of the tenant could have been and was sought under clause (e) of the proviso to sub-section (i) of section 14 of the Act, whereunder the premises let for residential purposes and required *bona fide* by the landlord for occupation as a residence for himself or for any member of his family, could be ordered to be vacated when the landlord has no other reasonably suitable accommodation. The application was made in the statutory prescribed form and the tenant in the statement which has been reproduced *in extenso* admitted on 14th of December, 1960, "the petition of the petitioner" and agreed on the passing of an order of eviction on the ground of *bona fide* personal need." The tenant undertook to vacate the premises by 31st of December, 1961. The statement with regard to

arrears of rent need not be referred to as it is not relevant for purposes of this petition. The tenant in admitting the pleas of the landlord in the application for ejectment, in other words, conceded the claim for ejectment on the ground enumerated in clause (e) of the proviso to sub-section (i) of section 14 of the Act. The order passed by the Rent Controller on the same day set out the plea raised by the parties and directed the tenant to vacate the premises as agreed by him on 31st of December, 1961. The tenant thus was permitted to remain in occupation of the premises for more than a year and gave up his objections to the petition for ejectment. It is not disputed by Mr. Narula that if no further duty devolved on the Rent Controller to satisfy himself about the validity of the order passed by him, finally would attach to it under subsection (1) of section 50 of the Act which says that no civil Court can entertain any suit or proceeding relating to the fixation of standard rent or to eviction of any tenant therefrom "or to any matter which Controller is empowered by or under this Act" to decide. Mr. Narula suggests that though the tenant had made a statement admitting the plea of ejectment on ground of personal requirement of the landlord, the duty of satisfaction still devolved on the Court to see that the statutory requirements had been met. In Mr. Narula's contention, the Court before passing the order should have put further question to the tenant whether he consented to the order of ejectment being passed on the ground set forth in the proviso to sub-section (i) of section 14 of the Act. In face of the clear statements made by the parties, the order of the Rent Controller, which is sought to be challenged in civil proceedings, could not, in our opinion, be said to have been made in contravention of the statutory requirements. Mr. Sawhney has relied on a recent decision of their Lordships of the Supreme

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Court in *Firm of Illuri Subbayya Chetty and Sons*, v. *State of Andhra Pradesh* (1), for the proposition that even a wrong order passed by an authority which is competent to decide the matter which falls for its determination is one "under the Act" and cannot be challenged. The Supreme Court, in this decision, construed the words "any assessment made under this Act" in section 18A of the Madras General Sales Tax Act, 1939. Chief Justice Gajendragadkar, speaking for the Court, observed at page 324 thus:—

> "The expression "any assessment made under this Act" is, in our opinion wide enough to cover all assessments made by the appropriate authorities under this Act, whether the said assessments are correct or not. It is the activity of the assessing officer acting as such officer which is intended to be protected and as soon as it is shown that in exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment, that clearly falls within the scope of section 18-A."

Section 18-A of the Madras Act provided that no suit or other proceeding shall, except as expressly provided in this Act, be instituted in any Court to set aside or modify any assessment made under this Act. In examining the applicability of section 18-A, the only question to be determined, according to the Supreme Court authority, is : "Is the assessment sought to be set aside or modified by the suit instituted an assessment made under this Act or not?" To reach that conclusion, it would not be necessary to pronounce on the accuracy or

(1) A.I.R. 1964 S. C. 322.

correctness of the order which is sought to be challenged. In dealing with the scope of section 9 of the Code of Civil Procedure, it was observed by the learned Chief Justice that:—

> "In dealing with the question whether Civil Courts' jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind the fact that there is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from him illegally and that such a remedy can be held to be barred only on very clear and unmistakable indications to the jurisdiction of Civil Courts to entertain civil causes will not be assumed unless the relevant statute "contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature."

In our view, the principles set out in the Supreme Court authority are fully applicable to the facts of the present case. All the orders of the Rent Controller can be appealed against and a second appeal is also envisaged on substantial questions of law. The tenant did not choose to appeal against the order which he now says was the result of fraudulent representation made to him. The tenant waited for the period permitted to him under the consent order and filed a suit in the civil Court only when a few days were left for fulfilment of the condition which was imposed on him by agreement. It cannot be said that the Rent Controller failed to apply his mind or that the order was passed in breach of the statutory requirements of the Act. When the tenant himself admitted the ground on which ejectment was sought, the Rent Controller could not have

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passed any other order but that of ejectment and the consent of the tenant did not substantially make any difference in the result.

Mr. Narula has argued that the letting purpose had still to be established before an ejectment order could have been passed. It is worthy of note that the ejectment petition described the premises as residential and the fullest details of the tenancy had been given. When the tenant accepted "the petition of the petitioner" on 14th of December, 1960, it clearly meant that the residential nature of the premises was admitted. The other argument urged by Mr. Narula on this aspect of the case is also lacking in force. It is submitted by him that though the tenant had consented to vacate the premises the order could not be enforced against him. Section 42 empowers the Controller to execute any order passed by it with the powers of a civil Court, and section 43 attaches finality to any order passed by the Controller. It was the anticipated execution of this order which made the tenant file a suit in the Civil Court. A Division Bench decision of Bedi and Pandit JJ. in *Shri K.L. Bansal* v. *Shrimati Kaushalya Devi and others* (2) mentioned by Gurdev Singh J. observed in his order of reference and relied upon Mr. Narula, may briefly be adverted to. Bedi J. observed at page 1095 that the satisfaction of the Court is essential before a valid decree for ejectment could be passed against a tenant and if it is based merely on the statements of parties without the Rent Controller satisfying himself on the merits it is contrary to the statutory provisions of the Act and is a nullity. As I have already said, the decree for ejectment in the present case passed by the Rent Controller on 14th

(2) 1962 P.L.R. 1091.

of December, 1960, though on the agreed statements of the parties, was one about which the Court had satisfied itself that the requirements of the statute had been met. Pandit J., who delivered a separate judgment, in fact stated clearly that "if the tenant clearly admits in the compromise that the landlord is entitled to possession on one of the statutory grounds, the Court can pass an order for ejectment if it is satisfied that the compromise was a genuine and a *bona fide* one." The ratio *decidendi* of this authority cannot, therefore, be used in derogation of the proposition and the result contended for by the learned counsel for the petitioner Mr. Sawhney.

It is next to be seen whether the order of the Controller can be challenged in a Civil Court on ground of fraud? The plea of personal necessity was described as false and fraudulent on the ground that the fact of the employment of the landlord's husband at Khathmandu in the World Health Organisation was not disclosed to the plaintiff. It may be mentioned in passing that Col. Ahuja, according to the pleas of his wife, had accepted an assignment in Khathmandu because he had failed to obtain accommodation in pursuance of the consent order. On the face of it, the plea of fraud strikes one as weak and insincere. It is, however, not the time and place to adjudge the plea on its merits. It has to be rejected on the fundamental principle that an order or decree of a Court can be displaced on ground of fraud only when it is extrinsic or collateral to anything which has been adjudicated upon. What we find in the present case is that the tenant asserts that the statement which he made accepting the pleas of the plaintiff was as a result of the pressure of the "elders of the society" and misrepresentation. A party in a legal proceeding is bound to examine

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the pleas raised against him and when he comes to accept these by a solemn statement made in Court, he cannot be heard later to say that it was induced by some misrepresentation. What was accepted by the tenant was the *bona fide* requirement of the landlord existing at the relevant time and the misrepresentation, if any, or the pressure of the "elders of the society" is neither extrinsic nor collateral to the matter which called for adjudication. Reference may be made to *Chinnavva* v. *Ramanna* (3), which is a Division Bench judgment of the Madras High Court, where it was held that "in order that fraud may be a ground for vacating a judgment, it must be a fraud that is extrinsic or collateral to everything that has been adjudicated upon but not one that has been or must be deemed to have been dealt with by the Court". In order to succeed, the plaintiff has to show that the order of the Court passed on 14th of December, 1960, was made as a result of fraud which was something extraneous to the question which was decided by the Rent Controller. On the showing of the respondent himself, no fraud was practised by the landlord in obtaining the order. As stated by Sadasiva Ayyar J. in the Full Bench authority of *Kadirvelu Nadinar* v. *Kuppuswami Naiker* (4), "the test to be applied is, is the fraud complained of not something that was included in what has already been adjudged by the Court, but extraneous to it?.....where two parties fight at arm's length, it is the duty of each to question the allegations made by the other and to adduce all available evidence regarding the truth or falsehood of it. Neither of them can neglect his duty and afterwards claim to show that the allegation of his opponent was false." The contention

(3) I.L.R. 38 Mad. 203.
(4) I.L.R. 41 Mad. 743.

of Mr. Narula that an allegation of fraud having once been made it was the bounden duty of the Court to investigate into it cannot be accepted in the circumstances of the case. If this view were to prevail, all that need be done to delay the execution of a consent order under the Act would be to file a suit making any allegations of fraud. This would be adding on unwarrantable hazard to the uncertainties of litigation.

We are, therefore, of the opinion that the impugned order of the Rent Controller, though consensual in the sense that it did not involve any judicial finding, was based on the satisfaction that the ejectment order was made in accordance with the statutory requirements of section 14(i)(e) and cannot be regarded as a nullity. We are also of the opinion that the allegation of fraud which is sought to be made a ground for vacating the order of the Rent Controller is not one which can be entertained in a suit of this nature. The Court, therefore, has no jurisdiction and the suit could not have been entertained by the civil Court. In this view of the matter, this petition for revision is allowed and the suit of the plaintiff dismissed with costs. At the request of Mr. Narula, the learned counsel for the tenant-respondent, we allow the respondent time for one month from this date to vacate the premises.

DUA, J.—I agree.

Dua, J.

K.S.K.

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