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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Reserve: November 06, 2008

Date of Order: December 12, 2008

+ CM (M) 323/2007

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12.12.2008

P.C. Jain & Ors.

...Petitioners

Through: Mr. Deepak Dhingra with Mr. Rajesh Kumar, Advocates

Versus

J.K. Soni

...Respondent

Through: Mr. V.K. Goel, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? *Yes*.
2. To be referred to the reporter or not? *Yes*.
3. Whether judgment should be reported in Digest? *Yes*.

JUDGMENT

1. This petition has been preferred by the petitioner against an order of learned Additional Rent Control Tribunal (ARCT) dated 3rd November 2006 whereby he reversed the order of learned Additional Rent Controller (ARC) allowing the eviction petition filed by the landlord (petitioner herein) under Section 14(1)(h) of Delhi Rent Control Act (DRC Act).

2. The facts relevant for the purpose of deciding this petition are that the petitioner filed an eviction petition against the respondent under section 14(1)(a) (c) (j)(h) and (k) of DRC Act. The learned ARC dismissed the eviction petition of the petitioner under Section 14 (1) (a) (c) and (j) and decreed the same under Section 14(1) (h) and (k) vide his order dated 18th January 2001. With respect to Section 14(1) (k) the learned ARC ordered an inquiry which is pending. The respondent preferred an appeal before the ARCT and the learned ARCT vide the impugned order reversed the order of the learned

ARC under Section 14 (1) (h), however, maintained the order under Section 14 (1) (k) of the DRC Act. The petitioner (landlord) has assailed the order of the learned ARCT.

3. The only ground on which the eviction petition was allowed is that the respondent, who is an advocate, had acquired an alternate accommodation at the premises bearing number E-382, Greater Kailash Part-II, New Delhi after commencement of the Act and the respondent was residing there along with his family members. The finding of learned ARC are as under:-

"Section 14(1) (h) of the Act.

10. The case of the petitioners is that the respondent has acquired the vacant possession of the residential house number E-382, Greater Kailash-II, New Delhi after the commencement of the Act and the respondent is residing there along with his mother and family members. The case of the respondent is that his mother has a house t E-382, greater Kailash-II and he resides at the suit premises but only visit merely every day to his mother at that house. AW1 has deposed that the respondent alongwith his family members has been residing I his own housed at E-382, GK-II, New Delhi for the last 15 years and neither the respondent nor any members of his family has been residing in the suit premises. In the cross examination AW1 has deposed that respondent and his family are not residing in the premises for the last 12/14 years and he has attended the Muharat of G.K. house and he had seen the voter list of the suit premises for the current year where the name of the respondent does not feature. EW1 on the other hand has deposed that he did not owned nor built nor acquired any other property in Delhi and only his mother has got her house in South Delhi and has shifted there and she is 85 years of age. The respondent has deposed that he

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did not have any ration card. He admitted that his election card was at the address of E-382, G.K.-II. He admitted that he had Muharat and New year party at E-382, GK-II on 31.12.1974. He also admitted that he got the invitation card printed on the said occasions which is Ex.RW1/A2 and the same was given to the petitioner. He admitted that he has not filed any document of title in favour of his mother in respect of the property no.E-382, GK-II, New Delhi. Why; if his mother was the owner and respondent was not the owner, he could have filed a document of title. Ex.RW1/A2 specify the name of the respondent Shri J.K. Soni and his mother Smt. Sushila Soni. It also specifies that "kind also note the change of our residential address for the future." RW1 also admitted that the presently the address of the passport must be address of residence of his other where also he is having his office. The evidence if read as a whole, goes to show that the respondent has acquired the vacant possession of a residence at E-382, GK-II and the petitioner has discharged his onus and the respondent has failed to prove that his mother and not he acquired the vacant possession of the same house. The title deed of the property was best proof available with the respondent, which he withheld whereas the petitioner has shown that the respondent has admitted that the passport, electoral card are of E-382, GK-II, New Delhi. The petitioner has placed on record Smt. Rama Devi vs. Mool Chand Bhatia 1988 (1) RCR 210, I which it is observed that in case the best evidence is available with the party and the same is not brought on record, then an adverse inference had to be drawn against the party. In Hukam Chand vs. Union of India 34 (1988) DLT 66, it has been observed that ration card and the voter list are usual type of evidence looked for in support of the claim of residence apart from other. In the circumstances, I am satisfied that petition has proved the ingredients of Section 14(1) (h) of the Act. Therefore, an

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order of eviction is passed on this ground in favour of the petitioners against the respondent in respect of the suit premises." (emphasis added)

4. Learned ARCT did not find any fault with the findings of the learned ARC qua factual position, however, the order of the learned ARC was reversed on technical ground that the landlord had earlier filed an eviction petition on the same ground but has withdrawn the same and once he withdrew the same without permission to file the eviction petition on the same ground, the second eviction petition on the same ground was not maintainable.

5. There is no dispute about the fact that the landlord (petitioner) had earlier filed an eviction petition against the respondent on the grounds available under Section 14(1) (c) (d) and (h) of DRC Act. This eviction petition was withdrawn by the landlord on 14th October 1981 as the landlord intended to seek remedy against the respondent as available under law. In response to the earlier eviction petition, the tenant had denied the ownership of the landlord and the relationship of landlord and tenant. In view of these denials, the landlord withdrew the eviction petition under DRC Act with a statement of availing remedy available under law and filed a suit of declaration stating therein that he was the owner of the property and the relationship of landlord and tenant was there between him and respondent. The landlord also sought recovery of arrears of rent. This suit of the landlord was allowed and the landlord was declared as owner of suit premises and a decree of recovery of arrears of rent was also passed. That judgment has become final. Equipped with this judgment, the landlord filed an eviction petition afresh under Section 14(1) (a) (c) (d) (h) and (k) of DRC Act. The learned ARCT observed that the second eviction petition filed by the landlord on the ground of section 14(1) (h) which was a ground taken in the earlier eviction petition,

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was not maintainable. Learned ARCT relied upon 2000 SAR (Civil) 497 Kush Sahgal & Ors vs. M.C. Mitter & Ors which was not a case under Delhi Rent Control Act. Learned ARCT also took support from Kishore Saboo v. Nawabzada Humayun Kamal Hasan Khan wherein provisions of Order 2 Rule 2 of the CPC considered and this Court had observed that if the circumstances did not change between the first and the second suit, the second suit based on the same averments, howsoever cleverly it is drafted, would not be maintainable.

6. I consider that the learned ARCT exceeded its jurisdiction by not considering the fact that the ARC is not a Civil Court and the provisions of CPC are not applicable to the Rent Controller in toto. DRC Act provides for its own procedure for deciding eviction petitions and is a complete code in itself. Rules of procedure have been framed under DRC Act. Order 36 defines powers of the Rent Controller. Section 36 (2), (3) and (4) of DRC Act reads as follows:

"36. Powers of Controller. - (1) the Controller may-

(a) Transfer any proceeding pending before him for disposal to any additional Controller, or

(b) Withdraw any proceeding pending before any additional Controller any dispose it of him or transfer the proceeding for disposal to any other additional Controller.

(2) The Controller shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Issuing commissions for the examination of witnesses;

(d) Any other matter which may be prescribed,

And any proceeding before the Controller shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860), and the Controller shall be deemed to be a civil court within the meaning of section

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480 and section 482 of the Code of Criminal Procedure, 1898 (5 of 1898).

(3) For the purposes of holding any inquiry or discharging any duty under this Act, the Controller may, -

(a) After giving not less than twenty-four hours' notice in writing, enter and inspect or authorise any officer subordinate to him to enter and inspect any premises at any time between sunrise and sunset; or

(b) By written order, require any person to produce for his inspection all such accounts, book or other documents relevant to the inquiry at such time and at such place as may be specified in the order.

(4) The Controller may, if he thinks fit, appoint one or more person having special knowledge of the matter under consideration as an assessor or assessors to advise him in the proceeding before him."

7. A perusal of Sections 36 and 37 shows that the Rent Controller has been vested with certain powers of not only civil court but also powers of criminal nature and the Rent Controller is a separate authority in itself. Order 37 provides the procedure to be followed by the Rent Controller has to be as per the rules made under the Act and the Controller for disposal of the matters before it has to adopt practice and procedure of small causes court. It is nowhere provided that the Rent Controller has to follow the Civil Procedure Code.

8. Even otherwise, the Delhi Rent Control Act is a piece of social legislation and it was enacted in order to protect the tenants from frivolous eviction petitions. At the same time, in order to do justice to the landlord and to avoid placing such restriction on their rights to evict the tenants as to destroy their legal rights to the property, certain salutary provisions have been made by the legislation to give relief to the landlord. Section 14 of the DRC Act gives those grounds on which a landlord can claim possession of the premises and these grounds if subsist at a particular time give a cause of action to the landlord. These grounds can be continuous in nature as per circumstances of each case.

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If the tenant is not paying rent, the landlord can file an eviction petition under Section 14(1) (a) for non-payment of rent despite demands. Once the landlord files an eviction petition on account of non-payment of rent, does not mean that he cannot file a second eviction petition on the ground of non-payment of rent for the subsequent period if the rent is not paid. Every period of non-payment of rent would give a separate cause of action to the landlord and if the rent is not paid, the landlord would have continuous cause of action. The law rather looked second non-payment of rent with a more stringent provisions and no defence is given to the tenant of making payments. Similarly, parting with possession of the premises and user of the premises for the purpose other than for what it was let out are continuous cause of actions. Similarly, non residence of the tenant in the premises and keeping the same locked for six months is also a continuous cause of action.

9. Legislature gave a right to the landlord to get the premises vacated if the tenant before or after commencement of the Act acquired vacant possession of the premises or has been allotted a residence. Where a landlord files an eviction petition and the tenant challenges his right of ownership, the landlord has a right to file a civil suit to prove his ownership and that is what the landlord did in this case. He withdrew his earlier eviction petition with liberty of the Court to take action as per law against the tenant. After the landlord was successful in the civil suit to prove his ownership and relationship of landlord and tenant and he has a right to file an eviction petition under Section 14(1)(h) since the cause of action under Section 14(1) (h) was a continuous cause of action and the acquisition of the vacant possession of the premises by the tenant was proved. Where legislature has taken away an important right of landlords of evicting the tenants by recourse to ordinary law and enacted a special legislation, right granted to the landlord cannot be taken away by recourse to ordinary law applicable to a civil case. If

cause of action persists, the eviction petition cannot be dismissed under Order 2 Rule 2 CPC or on the ground of non-seeking permission under Order 23 CPC while withdrawing earlier petition.

10. While the Courts should see that the tenant is protected from frivolous eviction petition, the courts also must protect the landlords from dubious tenants, as the case is here. In this case, the tenant who is an advocate shifted to his own house about 14/15 years back with his family. This finding of fact as proved by the landlord has not been upset by learned ARCT. He did not vacate the tenanted premises and kept the same under his lock and key and only servants come and visit the premises. Such tenant who occupies the tenanted premises despite acquiring his own premises and shifting to it, must be dealt with sternly by the Courts. The sole purpose of not vacating the premises by such tenants is to hold the landlord to ransom because of the legal proceedings and keep on dragging him in courts for years together and depriving him of his property so that ultimately the landlord is fed up with the litigation and pays money to tenant for vacating the premises. This is actually what is happening. Had the rent controller legislation not been there, the landlord under common law would have the right to evict the tenant either on determination of tenancy or by efflux of time or for default for payment of rent or on other such grounds after giving a notice under Transfer of Properties Act. This right has been curtailed by the Rent Control Legislation only to give protection to the tenants. It was not the intent of the legislation to give a tool in the hands of non genuine tenants to extract money from the landlord by keeping the premises locked despite the fact that they had no use of the premises and because of the fact that rent being paid by the tenant had no monetary significance in the present day circumstances. The provisions of DRC Act should not be construed so as to even destroy the limited relief which it seeks to give to the landlord on such technical ground

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as has been done in this case by the learned ARCT. The Court should always give meaningful interpretation to the provisions of law so as to subserve the legislative intent and to prevent misuse of law. It is well settled that the procedure is handmaid of justice and the procedure cannot be made master of justice.

11. In view of the foregoing facts and discussion, I consider that the learned ARCT went wrong in allowing the appeal of respondent on the technical grounds. The petition is hereby allowed. The order of learned ARCT is hereby set aside. The order passed by learned ARC is hereby restored and confirmed. The eviction petition of the petitioner under Section 14(1) (h) of DRC Act is allowed. The respondent is directed to vacate the premises.

December 12, 2008
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SHIV NARAYAN DHINGRAJ.

- Fresh Rf 337/08 U/o. 47 R.1
- Fresh can 12451/08 U/S. 151 d/c.