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HIGH COURT OF DELHI : NEW DELHI

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CM(M) No.1393 of 2007

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Judgment reserved on: 14.02.2008

Judgment delivered on: 11.03.2008

Shri Darshan Lal Vohra

..... Petitioner

Through: Mr. A.K. Singla, Sr. Advocate
with Mr. Pankaj Gupta &
Mr. J.K. Sharma, Advocates

versus

S.Bhagwant Singh

(Deceased represented through LR's) Respondents

Through: Mr.B.L. Chawla, Advocate

AND

CM(M) No.1396 of 2007

Shri Inder Pal Malhotra

..... Petitioner

Through: Mr. A.K. Singla, Sr. Advocate
with Mr. Pankaj Gupta &
Mr. J.K. Sharma, Advocates

versus

S.Bhagwant Singh

(Deceased represented through LR's) Respondents

Through: Mr.B.L. Chawla, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may
be allowed to see the judgment?

2. To be referred to Reporter or not?

Yes

3. Whether the judgment should be reported
in the Digest?

VIPIN SANGHI, J.

CM No. 14062/2007 in CM(M) No. 1393/2007
CM No. 14081/2007 in CM(M) No. 1396/2007

1. Allowed, subject to all just exceptions.

CM(M) No. 1393/2007 & CM No. 14061/2007
CM(M) No. 1396/2007 & CM No. 14080/2007

2. These petitions under Article 227 of the Constitution of India have been preferred by the respective petitioners viz. Sh. Darshan Lal Vohra (petitioner in C.M. (M) No.1393/2007) and Sh. Inder Pal Malhotra (petitioner in C.M.(M) No.1396/2007) to impugn the common order dated 12.9.2007 passed by the learned Additional Rent Control Tribunal, Rohini, Delhi (ARCT for short) whereby the ARCT has dismissed the appeals filed by the petitioners bearing RCA No.62/2007 and RCA No.63/2007 respectively. The petitioners had filed the said appeals before the Rent Control Tribunal against the common order dated 25.4.2007 passed by the Additional Rent Controller (ARC for short), Rohini, Delhi whereby he had dismissed the objections filed by the petitioners in Execution No.94/2006 filed by the deceased landlord, S. Bhagwant Singh, who is represented through his legal heirs in the present petition. This execution was in respect of an eviction order obtained by S. Bhagwant Singh against the judgment debtors, namely, Smt. Jeet Kaur, Sh. Mahinder Pal Vohra, Sh. Vijay Kumar Vohra and Sh. Mahindra Malhotra, inter alia, on the ground contained in Section 14(1)(b) of the Delhi Rent Control Act (the Act) i.e. on account of subletting of the suit premises consisting of shop No.B-2 (ground floor)

and B-4 (basement) forming part of property No.2/4 Tilak Nagar, New Delhi by the tenant Smt. Jeet Kaur, to Shri Mahinder Pal Vohra, Shri Vijay Pal Vohra and Shri Mahindra Malhotra. The eviction order passed in E-93/96 dated 20.3.2004 was confirmed in appeal before the RCT and challenge thereto before this Court in a petition under Article 227 of the Constitution of India also failed. The said eviction order has, therefore, attained finality and it stands established that the aforesaid premises wherein Smt. Jeet Kaur was the tenant had been sublet to the other three judgment debtors, namely, Shri Mahindra Pal Vohra, Shri Vijay Pal Vohra and Shri Mahindra Malhotra.

3. The petitioners in the present petition, namely, Shri Darshan Lal Vohra and Shri Inderpal Malhotra preferred objections before the executing court claiming independent title in respect of the tenancy premises. While Shri Darshan Lal Vohra claimed to be in physical possession of shop No.B-2 on the ground floor of the property bearing No.2/4, Tilak Nagar, New Delhi by virtue of a rent agreement dated 24.7.1990 executed between him and M/s Ace Associates Private Ltd. through its director Shri Gurpreet Singh, the objector Shri Inder Pal Malhotra claims to be in physical and exclusive possession, use and occupation of shop bearing No.B-4 (basement) in the aforesaid property by virtue of a rent deed dated 10.8.1990 executed between him and M/s Ace Associates Private Ltd. through its director Shri Gurpreet Singh.

4. At this stage it would be relevant to give a few background facts on which there can be no dispute.

5. Late S. Bhagwant Singh, the owner of property bearing No.2/4, Tilak Nagar, New Delhi entered into a collaboration agreement with M/s Ace Associates Private Ltd. acting through its director Shri Gurpreet Singh in respect of the aforesaid property. Under the collaboration agreement it was agreed that M/s Ace Associates Private Ltd shall construct and develop the said property. Out of the developed property, a few shops were allowed to be let out by M/s Ace Associates Pvt Ltd. as per the terms and conditions contained in the agreement. The relevant clauses of the collaboration agreement read as follows:

“8. That in consideration of the second party, building and constructing the entire premises situated at 2/4 Tilak Nagar, consisting of 17 shops as well as residence of the second floor and mumty the first party shall pay the second party by granting him leasing rights in respect of 6 shops and the space under the staircase particularly marked as `B' in the approved plan and specifications attached as Annexure I and the second party shall be allowed to lease/rent these premises on behalf of the first party and recover his consideration out of the advance/security deposit received. It is expressly provided that the second party will be entitled to recover his dues only from the security advance received in respect of the above shops and the monthly rent as well as ownership rights will vest in the first party who will receive the monthly rent. First party has the right to appoint, a full time engineer to supervise the constructions.

9. That thus the arrangement arrived at

between the parties is summarised as under:

- i) The advance amount/security deposit received upon letting out of shops marked 'A' on the ground floor and first floor shall be taken by the first party and the advance amount/security deposit received upon the letting out of the shops marked 'B' on the ground floor and first floor of the said premises shall be taken directly by the second party.
 - ii) That after the completion of the entire building and letting out of the shops so constructed on the said plot and receipt of the security deposit for letting out the shops, the construction project shall be deemed to have been completed.
 - iii) That after completion of the building and letting of the shops in the manner as above and after the settlement of accounts in the manner detailed above, it shall be the sole and exclusive responsibility of the first party to deal with the occupants of the said shops and to deal with the MCD, DDA, L & DO or such other authorities and statutory corporations and the party of the second part shall have no right to interfere in the same in any manner.
 - iv) The rent shall be Rs.900/- per shop on the ground floor and Rs.300/- per shop on the first floor.
 - v) That the first party shall pay house tax and other tax as may be applicable or payable to the statutory authorities etc.
10. That after the construction has been completed and the shops have been let out in the manner as detailed hereinbefore the first party shall have a right to deal without the occupants of all the shops and the rent and any other amount receivable in respect of the said shops, shall be received by the first party upon which the second party shall not have any right to claim any amount or to deal with the tenants after the letting out the said shops."

6. Broadly speaking the agreement between late S. Bhagwant Singh and M/s Ace Associates Pvt. Ltd. was that in consideration of the latter constructing the entire property situated on 2/4, Tilak Nagar, the latter shall be entitled to lease out 6 shops and the space under the staircase, on behalf of the owner S. Bhagwant Singh on the quantum of rent, which was specifically set out in the agreement itself. It is evident that the said transaction was entered into to enable the builder, M/s Ace Associates Pvt. Ltd. to realise the premium (pugree), if any, at the time of first letting of the said 6 shops and the space under the staircase. However, the letting had to be on behalf of the owner S. Bhagwant Singh. This meant that the relationship of landlord and tenant that was to come into existence upon letting as aforesaid areas, was to be between S. Bhagwant Singh as the landlord and the persons inducted as tenant by M/s Ace Associates Pvt. Ltd. Once a tenant had been inducted in the said shops/area, he became a direct tenant under the landlord S. Bhagwant Singh and the builder M/s Ace Associates Pvt. Ltd. had no further right to deal with the tenant and only S. Bhagwant was entitled to deal with the tenant.

7. After the development of the property M/s Ace Associates Pvt. Ltd. let out the aforesaid two shops bearing No.B-2, the ground floor and B-4, the basement to Smt. Jeet Kaur. The rent of shop No.B-2 was Rs.900/- per month and that of B-4 was Rs.300/- per month

besides other charges.

8. Late S. Bhagwant Singh filed a suit for injunction against Smt. Jeet Kaur and on 18.6.1992 orders directing maintenance of status quo were passed against her. However, it appears she committed breach of the same and sublet, assigned and parted with possession of the shops in favour of judgment debtors No.2 to 4. As aforesaid, the said eviction petition was allowed by the learned ARC and that order has attained finality.

9. The objectors who are the two petitioners in these petitions claim that each of them was the respective tenant and that M/s Ace Associates Pvt. Ltd. had inducted each of them as a tenant in respect of the two shops. They relied upon their respective rent deeds in support of their objections to establish their independent title.

10. The learned ARC, and thereafter the learned ARCT dismissed the objections of the petitioners by firstly observing that the two rent deeds respectively set up by the objectors were not registered documents, though they purported to create leases for periods beyond one year, and therefore, they could not be looked into by the Court in view of the bar contained in Section 49 of the Registration Act for any purpose, including for the purpose of determining the relationship of landlord and tenant, and secondly and even more importantly, on account of the glaring and damning admissions made by the petitioners during their cross-examination

before the executing court.

11. The submission of learned counsel for petitioners in both the petitions is that the Courts below have erred in invoking the bar under Section 49 of the Registration Act. It is argued that the rent deeds could have been produced before the executing Court and the executing Court was obliged to look into them even though unregistered, for a collateral purpose viz. to establish the nature of occupation of the objectors of the suit premises, and their status qua the suit premises. It is argued that the establishment of relationship between each of the petitioners and M/s Ace Associates Pvt. Ltd. is a collateral purpose and that it has wrongly been held by the Courts below that the purpose was not a collateral purpose.

12. Learned counsel for the respondent has placed reliance on "**Ganpat Ladha Vs. Shashikant Vishnu Shinde**" AIR 1978 SC 955 to contend that unless a finding as to whether circumstances justify the exercise of a discretion or not, unless clearly perverse and patently unreasonable is, after all, a finding of fact only, which could not be interfered with either under Article 226 or under Article 227 of the Constitution.

13. The respondent has also relied upon a decision of this Court in 135 (2006) DLT 90, wherein this Court in paragraph 9 has observed as follows: -

"9. An important aspect which cannot be lost sight of is that the Legislature in its wisdom

has amended the said Act whereby the appeal to the Tribunal under Section 38 of the said Act has been confined to only a question of law and second appeal to this Court has been abolished. In view thereof the scrutiny by this Court under Article 227 of the Constitution of India is not to review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based. The Apex Court in **Mohd. Yunus v. Mohd. Mustaqim and Ors.** AIR 1984 SC 38 had in fact observed that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India as the supervisory jurisdiction conferred on the High Courts is limited to seeing that an inferior court or tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record much less an error of law. The legal position has been once again expounded in **Surya Dev Rai v. Ram Chander Rai and Ors.**, IV (2003) SLT 810=III(2003) CLT 133(SC)=JT 2003 (6) SC 465”.

14. The respondent has also relied on 2000 RLR 50, wherein this Court has held that the compulsion of registration of a lease deed of more than 11 months is not an empty punctilio or formality. Where the fulcrum of the tenants defence is the document alone which is not registered, it cannot be read in evidence at all. This Court further held that it is incumbent on the Court to sternly deal with frivolous defences.

15. Though there appears to be substance in the submission of the petitioners that the rent deeds set up by each of them ought to have been looked into, even though unregistered, to

examine the nature of their respective occupation (in view of the decisions of the Supreme Court in **Rana Vidya Bhushan Singh V. Rati Ram**, 1969 VJ(SC) 86, **Satish Chand Makan V. Goverdhan Das Byas**, AIR 1984 SC 143 and **Anthony V. K. C. Ittoop & Sons & Others**, (2006) 6 SCC 394), the aforesaid submission of the petitioners, however, becomes immaterial in view of the statements of Sh. Darshal Lal as extracted by the learned RCT as well as the analysis of the statement made by Sh. Inder Pal Malhotra found in the impugned order. The relevant extract from the impugned order reads as follows:-

“11. I have also examined the statement of OW1 Shri Inder Pal Malhotra and OW2 Shri Darshan Lal (appellants). Shri Inder Pal Malhotra has testified in the cross-examination that I have not placed on record any rent issued by M/s ACE Associates Pvt. Ltd. He paid rent to the landlord from August, 1990 up to December, 1991. He cannot show any document to prove that the rent was paid. The rent receipt was never issued. M/s ACE Associates Pvt. Ltd. is a private limited company and such company cannot accept any amount including the rent, without proper account and receipts. The appellants never issued any letter/notice to the landlord for not issuing the rent receipts. OW2 Shri Darshan Lal also testified that he has not filed any proof of payment of rent to the landlord, nor he has maintained any record of such payment. Thus, from the oral statements of the two appellants, they have not been able to convince that the rent was ever paid by them to M/s ACE Associates Pvt. Ltd. Though, the payment of rent by the tenants to the landlord was matter between the two, but such payment of rent to the landlord could have helped the appellants

to establish such relationship to claim merit in their objections. Interestingly, Shri Inder Pal Malhotra has even testified that he rent to late petitioner, Shri Bhagwant Singh on 2-3 times, but he cannot give the details of such payment. Since, there was no relationship between Bhagwant Singh and Inder Pal Malhotra, then it is highly unbelievable that the rent was paid to Shri Bhagwant Singh.

12. It is also interesting to note that the appellant failed to examine any authorized person from M/s ACE Associates Pvt. Ltd., nor have summoned any record from that company. Such oral and documentary evidence could have strengthened the case of the appellant to establish that they are tenants under M/s ACE Associates Pvt. Ltd. On the record, there are statements of only the alleged tenants of M/s ACE Associates Pvt. Ltd. Those very tenants have filed the objections to claim independent right in the property. Their statements are just like one way traffic and without the statements/record from the said landlord, M/s ACE Associates Pvt. Ltd., there cannot be two way traffic to establish the relationship of landlord and tenant between the two.

13. The learned trial court has also rightly found that the objections under section 25 of DRC Act have got no merit and perhaps, the same have been filed just to defeat the fruit of the eviction order, passed against Smt. Jeet Kaur etc. The statement of Darshan Lal is very interesting. He has admitted that JD Nos.2 and 3, namely, Mahinder Pal Vohra and Vijay Kumar Vohra are his real brothers. They all residing together and have cordial relations. The business in the shops in question is being carried out under the name and style of "Mini Gaffar". Amit Vohra, son of JD Mahinder Pal Vohra is running the business. He has also admitted that "it is correct that in the suit premises, the business under the name M/s Jeet Shoes, was being carried out. Mrs. Jeet

Kaur was the proprietor/owner of the said business. Her son, Manjeet Singh was looking after the business.” He has further admitted that “it is correct that Smt. Jeet Kaur was tenant in respect to the shop in question..... It is correct that Smt. Jeet Kaur sublet and parted with the possession of shop to JD Nos.2 to 4, i.e. Mahinder Pal, Vijay Kumar and Mahinder Pal Malhotra, who are my brother and cousin. It is correct that petitioner, Bhagwant Singh then filed eviction case against the JDs. I do not know whether eviction case was decided in favour of petitioner and against the JDs. It is correct that I have filed my objections against the eviction order, passed against the JDs. It is correct that the eviction proceedings against the JDs went on for about 9-10 years. It is correct that the JDs filed appeal against the eviction order. I do not know whether appeal of JDs was dismissed. I do not know whether JDs filed a petition before the Hon'ble High Court and the same was also dismissed. It is correct that I filed the objections after termination of the litigation between the petitioner and the JDs..... It is correct that the documents filed by me on record have been obtained after filing of the present objection. It is correct to say that I have filed the present objections at the instance of JD Nos.2 to 4 in order to save eviction from the shops.”

During the cross-examination, the appellant has also admitted that Shri S.K. Gulati, Advocate, is known to him. Shri Gulati was advocate of Smt. Jeet Kaur and also of the objector.

14. The other appellant, Inder Pal Malhotra has testified that the business of “Mini Gaffar” is a shop of ready-made garments and it is being run by Shri Amit Vohra, son of Mahinder Pal Vohra, who is brother of the appellant. He does not know whether the above-named persons had taken the shop from Smt. Jeet Kaur. The appellant, Shri Inder Pal Malhotra

has deposed that the business of M/s Mini Gaffar is a partnership business. He and Mr. Darshan Lal Vohra are the partners. However, he has not placed on record any partnership deed. He says that there is no bank account of M/s Mini Gaffar. This appellant also does not know whether he filed the present objection after the litigation was over between Bhagwant Singh and Smt. Jeet Kaur.

15. From the statements of the two appellants which they have made on oath, there is no doubt that they are closely related with the JDs. They have filed the objections just to defeat the eviction order and to help the JDs to avoid the eviction. They are neither tenant under M/s ACE Associates Pvt. Ltd., nor they have any independent right or interest in the property.”

16. From the aforesaid it is evident that the petitioners were set up by the judgment debtor Nos.2 to 4/sub tenants and in fact they had no independent title to the tenanted premises.

17. In my view, in this case it cannot be said that the Courts below have not functioned within the bounds of their jurisdiction. Even if the view taken by the Courts below had been erroneous, the same could not be interfered with unless it was clearly perverse or patently unreasonable. As aforesaid, the view taken by the Courts below is perfectly justified and legally sustainable, in the facts stated hereinabove. Moreover, it cannot be said that the exercise of their jurisdiction by the Court below is perverse or that it has resulted in any injustice to the petitioners.

18. The issue whether the respective rent deeds set up by

both the petitioners ought to have been looked into by the Courts below for establishing the relationship of landlord and tenant between them and M/s Ace Associates Pvt. Ltd. has no relevance, not only for the reasons recorded by the Courts below, but also for the reason that even these rent agreements, even if they were to be looked into, purport to create tenancies in their respective favour with M/s Ace Associates Pvt. Ltd. being shown as the landlord. M/s Ace Associates Pvt. Ltd. admittedly did not have any such rights under the collaboration agreement, since it had the right to create a tenancy only once in respect of the specified shops for and on behalf of the owner S. Bhagwant Singh, and not by claiming itself to be a landlord. M/s Ace Associates could not have created a better title in the suit premises in favour of the petitioners than it was itself possessed of. Moreover, it already stands established that the suit premises had earlier been let out to Smt. Jeet Kaur, who had attorned to the landlord Shri S. Bhagwan Singh, and that she had sublet the premises to the judgment debtors. How then, the petitioners could have suddenly sprung up to claim tenancy rights is not established by them. It is evident that the present petitions are a gross abuse of the process of the court. The petitioners were evidently set up by the judgment debtors to somehow delay and defeat the execution of the eviction decree passed on 20.03.2004. In ***Ravinder Kaur vs. Ashok Kumar & another*** (2003) 8 SCC 289, the Supreme Court observed:

“Courts of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name to the judicial system.”

The Supreme Court in ***Salem, Advocate Bar Association vs. Union of India***, AIR 2005 SC 3353, while dealing with the aspect of costs that a Civil Court may award, in such like situations held as follows:

“Section 35 of the Code deals with the award of cost and Section 35-A with award of compensatory costs in respect of false or vexatious claims or defences. Section 95 deals with grant of compensation for obtaining arrest, attachment or injunction on insufficient grounds. These three sections deal with three different aspects of award of cost and compensation. Under Section 95 cost can be awarded upto Rs.50,000/- and under Section 35-A, the costs awardable are upto Rs.3,000/-. Section 35-B for award of cost for causing delay where a party fails to take the step which he was required by or under the Code to take or obtains an adjournment for taking such step or for producing evidence or on any other ground. In circumstances mentioned in Section 35-B an order may be made requiring the defaulting party to pay to other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of the suit or the defence. Section 35 postulates that the cost shall follow the event and if not, reasons thereof shall be stated. The award of the cost of the suit is in the discretion

of the Court. In Sections 35 and 35-B, there is no upper limit of amount of cost awardable.

Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs as awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages filing of frivolous suits. It also leads to taking up of frivolous defences. Further wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the Court in its discretion may direct otherwise by recording reasons thereof. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court-fee, lawyer's fee, typing and other cost in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow."

19. I, therefore, dismiss both the petitions with costs quantified at Rs.50,000/- in each case.

(VIPIN SANGHI)
JUDGE

March 11, 2008
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