

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 5.2.2009
Date of Order: February 16, 2009

CM(M) No. 405/2007
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16.2.2009

Nand Kishore & Anr.

... Petitioners

Through: Mr. A.K.Singhla, Sr. Advocate with
Mr. Pankaj Gupta, Advocate

Versus

Vijay Kumar Gupta

... Respondent

Through: Mr. Ram Kishan Saini, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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| 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

By this petition, under Article 227 the petitioner has assailed an order dated 7th March, 2007 passed by the learned Additional Rent Controller Tribunal. This petition is a glaring example how the judicial process can be misused by a litigant and how different forums were used by the petitioner one after another to perpetuate his occupation of property. The petitioner suffered an eviction order in eviction case no. E-96/2003 under Section 14(1)(b) of Delhi

Rent Control Act on 15th September, 2005 at the hands of learned Additional Rent Controller. Against this order, the petitioner preferred an appeal before the learned Additional Rent Control Tribunal. This appeal was dismissed by the learned Additional Rent Control Tribunal vide its order dated 11th September, 2006. Against the order of learned Additional Rent Control Tribunal, the petitioner approached this Court under Article 227 of the Constitution of India by CM(M) No. 1671/2006. The CM (Main) petition was dismissed by this Court vide order dated 18th October, 2006 observing that the order of the learned Additional Rent Control Tribunal did not suffer from illegality or jurisdictional error. After dismissal of this petition by the High Court the petitioner went back to the Additional Rent Control Tribunal and filed a review application of the order dated 11th September, 2006 of the Additional Rent Control Tribunal. This review application was filed on 19th February, 2007 along with an application for condonation of delay. The learned Additional Rent Control Tribunal dismissed the review application on merits vide its order dated 7th March, 2007 and now the petitioner has again approached this Court by way of Civil Miscellaneous (Main) petition challenging the order passed on review application.

2. In M/s Kabari Pvt. Ltd. v. Shivnath Shorooof and Ors. AIR 1996 SC 742, the Supreme Court held as under:

5-B Mr. Nariman has submitted that although special leave petitions are not statutory appeals and exercise of jurisdiction under Article 136 of the Constitution is discretionary with this Court, the fact remains that the orders

*of dismissal of the appeals by the High Court were assailed before a superior Court by filing special leave petitions. x xx
x x x x x x x*

22. In our view, there is force in the contention of the learned counsel of the appellants that the expression “from which an appeal is allowed” appearing in Clause (a) of Order 47 Rule 1 of the Code of Civil Procedure, should be construed liberally keeping in mind the underlying principle involved in Order 47 Rule 1(a) that before making the review applications no superior court has been moved for getting the self same relief, so that for the self same relief two parallel proceedings before two forum are not taken.

3. In view of this judgment of the Supreme Court, no review application could have been filed by the petitioner, nor it could have been entertained by the learned Additional Rent Control Tribunal. The petitioner had already taken recourse to filing of a CM(Main) petition under Article 227 of the Constitution of India before this Court and this Court after considering the order of the Court below, upheld the same.

4. In *Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat* AIR 1970 SC 1, Supreme Court had observed that where a revisional jurisdiction is invoked against the order of the Appellate Court under the Bombay Rents Hotel and Lodging House Rates Control Act and High Court dismisses the revision after hearing the parties, the order of the Appellate Court becomes merged with the order made in the revision, and, thereafter, the appellate order cannot be challenged or attacked by another set of proceedings in the High Court under Article 226 or 227 of the Constitution of India. The principle of merger of orders of inferior Courts would not be affected or inapplicable by making a

distinction between a petition for revision and an appeal. In view of this judgment, the order of the learned Additional Rent Control Tribunal dated 11th September 2006 got merged with the order of this Court when this Court dismissed the petition under Article 227. The learned Additional Rent Control Tribunal had no jurisdiction to entertain a review application against order of this Court because its order had merged with the order passed by the High Court. Once the petitioner had approached this Court had this Court had confirmed the order, learned Additional Rent Control Tribunal became functus officio and had no power to review the order. Thus, the review was beyond the jurisdiction of the learned Additional Rent Control Tribunal and making the review application by the petitioner before the Additional Rent Control Tribunal was not permissible.

5. Even otherwise, it is settled law that Additional Rent Controller is not a Civil Court and cannot exercise inherent power or powers which are not conferred on it by the statute. Power of review is not an inherent power and can be exercised by an Additional Rent Controller or Additional Rent Control Tribunal only if it is provided in the Rent Control Act. No power of review has been conferred on the Additional Rent Controller or on the Additional Rent Control Tribunal under Delhi Rent Control Act and Rent Controller or Rent Control Tribunal cannot exercise this power. In Jagdish Parshad v. Mehar Chand and Anr. 1993(1) RCR 459, Punjab and Haryana High Court had considered the similar issue and observed as under:

5. As the Rent Controller and the Appellate Authority are not Courts, therefore, the power to review exercised by Civil Court under the Code of Civil procedure, cannot be exercised by them. Learned Counsel for the petitioner fairly concedes that the Act contains no provision as to review. In this view of the matter, Appellate Authority rightly dismissed the application for review of the order.

6. Similar is the view of Andhra Pradesh High Court in A. Manmohan Shah v. Gopinath 1999(1) RCR 405. I consider that the power of review since not available under Rent Control Act cannot be exercised either by Rent Control Tribunal or by the Rent Controller.

7. This petition is a gross misuse of the judicial process and is liable to be dismissed with heavy costs. The petition being a frivolous petition is hereby dismissed with costs of Rs.50,000/-

February 16, 2009
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SHIV NARAYAN DHINGRA, J.