

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

+ CM (M) NO.1474/2007

% **Date of decision:15.12.2009**

MAN SINGH

....Petitioner

Through: Mr. Anil Gaur with Mr. Badri Prasad Singh
& Mr. Devesh Pratap Singh, Advocates

Versus

**KAUSHALIA DEVI (SINCE DECEASED) THROUGH
L.R. VIJAY KUMAR BHASIN**

... Respondents

Through: Mr. Anand K. Mishra with Mr. Karan
Khanna, Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 227 of the Constitution of India arises from the order of eviction of the petitioner/tenant under Section 14(1)(b) of the Delhi Rent Control Act, 1958. The statutory appeal under Section 38 of the Act preferred by the petitioner/tenant to the Tribunal has also been dismissed.

Both the courts below have returned a concurrent finding of fact of the petitioner/tenant having sublet /assigned and/or parted with possession of the tenancy premises and thus having incurred liability for eviction under Section 14(1)(b) supra.

2. Notice of this petition was issued to the respondent/landlord on 16th November, 2007 and the operation of the order of eviction stayed. On 15th September, 2008, the counsel for the petitioner informed that the petitioner had died in the first week of August, 2008 and application for substitution of legal representatives shall be filed. On the next date i.e. 18th December, 2008 though CM No.17836/2008 for substitution had been preferred but this Court held that the application for substitution had been filed beyond the prescribed time and the petition preferred to this Court stood abated in the absence of any application for setting aside of the abatement. The petition under Article 227 of the Constitution of India was thus dismissed as having abated.
3. Even though the order dated 18th December, 2008 had been made in the presence of the counsel for the petitioner but the legal representatives of the petitioner, after waiting for more than three months of the dismissal of the petition, on or about 9th or 10th April, 2009 filed applications being CM Nos. 5228/2009 & 5229/2009 before this Court for setting aside of the abatement and for condonation of delay in moving the said applications.

The said applications came before this Court first on 16th April, 2009 when notice thereof was ordered to be issued to the respondents for 21st October, 2009. On 21st October, 2009 the applications as well as the CM(M) was ordered to be listed for 27th October, 2009. On 27th October, 2009 the counsel for the petitioner as well as the counsel for the respondent informed that the order of eviction had been executed on 21st October, 2009 itself and the respondent had taken over possession.

4. It is significant that even though the order of eviction had admittedly been executed on 21st October, 2009 but the legal representatives of the petitioner till the matter was taken up before this Court on 27th October, 2009 had not taken any steps for restoration of possession or of any other nature whatsoever.
5. Be that as it may, the counsels have also been heard on the merits of the CM(M) petition.
6. As aforesaid there are concurrent findings of fact of the courts below as to the petitioner/tenant having sublet, assign or parted with possession of the premises and having thus incurred liability for eviction. This Court in ***Hriday Bhushan Doomra Vs. Jeevan Industries Pvt. Ltd.*** 139 (2007) DLT 619 has held that concurrent finding of fact of sub-letting by the Additional Rent Controller and the Rent Control Tribunal cannot be questioned in a petition under Article 227 of the Constitution of India in this Court save

when it is established that any material evidence has been ignored or a wrong conclusion has been drawn from the admitted evidence. The Supreme Court recently in *Sneh Gupta Vs. Devi Sarup* (2009) 6 SCC 194 has held that the High Court while exercising the said jurisdiction has a limited role to play. It is not the function of the High Court while exercising its supervisory jurisdiction to enter into the disputed questions of fact. Only if the High Court holds that the findings arrived at were preserve and/or in arriving at the said findings the relevant factors have been ignored or irrelevant facts have been made basis thereof would the High Court be entitled to interfere. Similarly in *Dipali Dey Vs. Mira Das* 2009 (9) SCALE 461 also the High Court was not held justified in interfering with concurrent orders of the courts below. A little earlier in *Radhey Shyam Vs. Chhabhi Nath* (2009) 5 SCC 616, it has been held that Article 227 of the Constitution of India vests the High Court with the power of superintendence which is to be very sparingly exercised to keep Tribunals and Courts within the bounds of their authority; the orders can be examined only in very exceptional cases where manifest miscarriage of justice has occurred; such power is not to be exercised to correct a mistake of fact or law.

7. Seen in the aforesaid light, it would be seen that the petitioners in this case have been highly negligent. First they did not take steps for substitution

within time leading to the petition before this Court being dismissed as abated; but even thereafter they slept over the matter for over three months. There being no stay, the order of eviction was executed. Even thereafter they did not make any application for restoration. All this lends support to the concurrent finding of fact of the courts below of the petitioners having divested themselves of the tenancy premises. These proceedings appear to be at the instance of the sub-lettee / assignee or the person in possession of the premises, leading to the delays at each and every step.

8. The contention of the counsel for the petitioners however is to be noted. It has been contended that both the courts below negated the plea of the deceased petitioner of the tenancy being not only of the deceased petitioner but also of the person to whom the petitioner was alleged to have sublet/ assigned or parted with the possession of the premises. The counsel for the petitioner has contended that the courts below merely by holding such sub-lettee to be not a tenant have passed an order of eviction, without further returning a finding as to whether the petitioner had in fact sublet, assigned or parted with the possession of the premises or not. Reliance in this regard is placed on *Kala Vs. Madho Parshad Vaidya* (1998) 6 SCC 573 and *Dipak Banerjee Vs. Lilabati Chakraborty* (1987) 4 SCC 161 to contend that the mere presence of a stranger in the tenancy premises is not enough for an order of eviction.

9. Per contra, the counsel for the respondent/landlord relied on ***N. Balakrishnan Vs. M. Krishnamurthy*** AIR 1998 SC 3222 to contend that the delay in applying for substitution of legal representatives or for setting aside of the abatement cannot be condoned.
10. The courts below have held that the petitioner attempted to set up a false case of the alleged sub-lettee being also a tenant in the premises; that the petitioner had otherwise failed to explain the admitted presence of the alleged sub-lettee in the premises. The controller relied upon the judgment of the Supreme Court in ***M/s Bharat Sales Ltd. Vs. Life Insurance Corporation of India*** AIR 1998 SC 1240 holding that the arrangements of sub-letting/assignment and parting with possession are always hidden from the landlord and behind the back of the landlord and that it is always difficult for the landlord to prove so by direct evidence; that once the landlord has established the presence of the stranger, the onus shifts on the tenant to explain his presence. Similarly, the Tribunal also has held that the presence of the admitted sub-lettee remained unexplained. In my opinion, the very fact that the tenant took a false plea that somebody else other than him was also a tenant in the premises has serious repercussions. Tenancy is an important/valuable right. Normally no tenant would to his detriment plead another also to be having a share in the tenancy rights. The very fact that the deceased petitioner in the present case took such a stand shows the

attempt was to explain the presence of a person other than the tenant in the premises. Once that attempt fails, onus was on the petitioner to justify any other reason for the presence of such a stranger. In the absence of any other explanation, the courts below have rightly returned a finding of a case under Section 14(1)(b) of the Act having been made out.

11. Moreover as observed above, the entire conduct of the petitioner before this Court also does not make out any case of the petitioner/ his legal representatives being left with any interest in the property. There is no merit in the petition. The same is dismissed along with all pending applications. No order as to costs.

December 15, 2009
gsr

RAJIV SAHAI ENDLAW
(JUDGE)