

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

Date of Reserve: 19th January, 2010
Date of Order: 3rd March, 2010

CM (M) No. 1413/2007

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03.03.2010

Bhagirath Ram

... Petitioner

Through: Mr. Chaman Lal Nayar, Advocate

Versus

Shakuntala Rani (substituted by)

Balvinder Singh & Satinder Pal Singh

... Respondents

Through: Mr. R.L.Kohli, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 26.9.2007 passed by the learned Additional Rent Control Tribunal whereby he dismissed an appeal of the petitioner against order dated 1.9.2007 of the Additional Rent Controller.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner suffered an eviction order under Section 14(1)(k) of the DRC Act on 05.10.2001 in an eviction petition filed by the respondent. This order attained finality. Thereafter the learned ARC held an inquiry under Section 14(11) of DRC Act by calling upon the L&DO to inform about its stand if the misuser was compoundable or not and what were the misuser charges. After L&DO submitted an affidavit, the learned ARC tried the matter and vide order dated 20.7.2005 directed the petitioner to pay misuser charges as determined by L&DO within one month and to stop the misuser. The petitioner did not pay misuser charges, nor stopped the misuser thus, on an application made by the landlord, ARC initiated execution for eviction of the petitioner and passed order dated 1.9.07 against which an appeal was preferred before the learned Additional Rent Control Tribunal. Before learned ARCT, it was pleaded by the petitioner that i) the suit property was let out by the landlord for

commercial purposes, ii) the report submitted by L&DO about measurement of the shop was not correct, and iii) as per Office Order passed by L&DO, a building in rehabilitation colony was allowed to have an area of less than 300 sq. feet for commercial purpose at the ground floor and the same could even be used by a tenant with consent of the lease. It was submitted that the learned ARC did not consider these aspects.

3. The learned ARCT after considering the entire material observed that the learned ARC had gone into the issue of area of the shop and passed an order on 20.7.2005. Since no challenge was made to this order, this order had become final and this issue cannot be re-opened. However, learned ARCT despite this went into the measurement aspect and found that it was more than 300 sq. feet. The other issue raised by the petitioner before the learned ARCT was that since the property had been made freehold, the terms and conditions of lease as imposed by L&DO were not binding on the landlord/respondent therefore the eviction order was bad in law. This issue was also held against the petitioner by both the Courts below.

4. The present petition under Article 227 has been filed by the petitioner assailing order of the learned ARCT on merits. There is no jurisdictional issue raised and thus the present petition is not maintainable. This Court in Ramesh Kumar v. Vikrant Malhotra & Ors. CM(M) No. 831/2007 decided on 7th January, 2009 had observed:

3. Under Article 227, this Court does not act as a Court of second appeal. Second appeal can be preferred by a litigant only if the statute provides and it can be preferred only on the terms and conditions as may be provided by the statute. The policy of legislature has been to set the litigation at rest at some stage and the number of appeals that can lie has been provided by the statute, after considering the importance of each matter. Where no second appeal lies against the order of first Appellate Court, the second appeal cannot be entertained by indirect route. It is settled law that what is not permitted directly cannot be done indirectly. The jurisdiction of this Court under Article 227 is supervisory in nature and the Court has only to see that the Courts/Tribunals subordinate to it, act within the four corners of law, do not exceed their jurisdiction or do not commit a material irregularity. Article 227 cannot be invoked by way of second appeal and this is what has been done in this case.

5. Regarding argument raised by the petitioner of coming into force of a new Master Plan, I consider that this argument was not tenable. There is no dispute

that the property in question was being put to misuse. The L&DO had given report before the ARC about the misuser charges and had also stated that the misuser was to be stopped. Under these circumstances, in case the petitioner failed to clear the misuser charges and failed to stop the misuse, the ARC was bound to execute the eviction order. I find no merits in this petition. The petition is hereby dismissed being not maintainable.

March 03, 2010
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SHIV NARAYAN DHINGRA, J.