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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.1160 of 2008 & C.M. Appl. No.14476 of 2008

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09.04.2010

ABDUL SAMAD

.....Petitioner

Through: Mr. Ashok Aggarwal & Mr. V.K. Mishra,
Advocates.

Versus

SMT. PANCHI THRU. L.R.S

.....Respondent

Through: Mr. Rai K. Mittal & Ms. Geeta Malhotra,
Advocates.

Date of Reserve: 23rd February, 2010

Date of Order: 9th April, 2010

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?

J U D G M E N T

1. By this petition, the petitioner has assailed an order dated 27th May, 2008 passed on an application under Order IX Rule 13 CPC made by legal heirs of the respondent for setting aside an order of eviction dated 10th November, 2005 on the ground that it was an ex-parte order.

2. Briefly the facts relevant for the purpose of deciding this petition are that the petitioner has filed an eviction petition against respondent under Section 14 (1) (a) of Delhi Rent Control Act (hereinafter referred to as 'the Act'). This petition was contested by Smt. Panchi and an eviction order was passed on 17th May, 2005. However since it was a case of first default, benefit under Section 14 (2) was granted and respondent was given one month time to clear arrears of rent. The respondent, Ms. Panchi had stopped

appearing in the court and compliance of order under Section 15 (1) even was not done. The petitioner thereafter made an application that the order of eviction be passed since the respondent had not complied with order giving benefit under Section 14 (2) of the Act and had also not complied with order under Section 15 (1) of the Act. On this application, a report was called from Nazir by learned Additional Rent Controller about deposit of rent and the Nazir reported that no rent was deposited. The learned Additional Rent Controller observed that the application was made under Section 15 (7) of the Act but the contents of the application suggest that the application was made with a prayer that eviction order be passed because the respondent had not complied with the order of the court under Section 15 (1) of the Act and had not deposited rent and was not entitled to benefit under Section 14 (2) of the Act. After receiving confirmation from Nazir about non deposit of rent, trial court passed an eviction order on 10th November, 2005.

3. Legal heirs of respondent made an application before learned Additional Rent Controller on 18th September, 2006 alleging therein that Smt. Panchi had died on 2nd November, 2005, that is, about eight days before passing of order and the eviction order passed by learned Additional Rent Controller was passed against a dead person and was a nullity. Other allegations made in the application were that Smt. Panchi was old and sick and unable to move from bed and the counsel engaged by her joined hands with the petitioner in procuring eviction order and counsel for Smt. Panchi did not inform her about the proceedings. It was submitted that even if an application under Order 15 (7) of the Act was made by the petitioner, learned Additional Rent Controller could not have passed an order of eviction because learned Additional Rent Controller was to consider whether the ground of eviction under Section 14 (1) (a) of the Act was made out or not and was required to give a finding about maintainability of the petition since in the

written statement an objection about maintainability of the petition was also raised. The legal heirs of the respondent pleaded that they were ready to deposit the arrears of rent as passed under Section 15 (1) of the Act and the same were being deposited with the application. It was also submitted that learned Additional Rent Controller had no jurisdiction to pass an order under Section 15 (1) of the Act and then to pass an order under Section 14 (1) (a) of the Act and should recall the order passed ex-parte against a dead person.

4. Learned Additional Rent Controller vide impugned order recalled the order dated 10th November, 2005 holding that death of respondent was not in dispute and only bone of contention was whether the trial was already over on 10th November, 2005 when eviction order was passed or not. Learned Additional Rent Controller observed that in his own opinion, Nazir report though was received after pronouncement of the final judgment on 17th May, 2005, the subsequent proceeding regarding consideration of Nazir report was pending and, therefore, it cannot be said that proceedings were over and the matter was covered under Order 22 Rule 6 CPC. He observed that the order against dead person was a nullity and it was not a simplicitor case where judgment was reserved after hearing the arguments. He, however, observed that though the provisions of Order IX Rule 13 CPC were not applicable but since the order was against a dead person, it was a nullity. He, therefore, recalled the order dated 10th November, 2005.

5. A perusal of record shows that the eviction petition under Section 14 (1) (a) of the Act was contested by the respondent Smt. Panchi. She had filed written statement and had taken number of objections and the learned Additional Rent Controller after considering evidence led in the case had come to a conclusion that the requirements of Section 14 (1) (a) of the Act were satisfied and the landlord had been able to prove that it

was a case of non-payment of rent despite sending a demand notice. Learned Additional Rent Controller after holding this, allowed eviction petition of the petitioner under Section 14 (1) (a) of the Act, however, since this was a case of first default, he gave benefit of Section 14 (2) of the Act to the respondent and passed an order under Section 15 (1) of the Act directing the respondent to pay to petitioner or deposit in the court entire arrears of rent with effect from 1st December, 1997 within one month from the date of the order. When this eviction order was passed on 17th May, 2005, the respondent was very much alive. No appeal was preferred against this eviction order and this became final. The eviction order is a reasoned and detailed eviction order where the evidence led by the petitioner and cross-examination of the respondent and documents have been discussed. All objections raised by the respondent were also discussed by the learned Additional Rent Controller. After the eviction order was passed, the respondent was supposed to deposit arrears of rent within the time prescribed by the court in order to take benefit of Section 14 (2) of the Act. The respondent did not deposit arrears of rent and the petitioner thereafter moved an application under Section 15 (7) of the Act. It only seems that in the heading of application the petitioner wrongly mentioned it as one under Section 15 (7) of the Act. However, the prayer made by the petitioner was that since the arrears of rent had not been deposited benefit of Section 14 (2) of the Act cannot be given and decree for eviction as envisaged under Section 14 (1) (a) the Act should follow. When this application was made, the respondent was very much alive. Learned Additional Rent Controller called a report from Nazir if the rent as directed by the learned trial court has been deposited or not. The Nazir gave its report on 22nd October, 2005. Thus, after the Nazir gave its report, the only thing to be done by the learned Additional Rent Controller was to pass an order in accordance with law of the eviction of the premises for not availing benefit under Section 14 (2) of the Act. No proceedings were

pending. Learned Additional Rent Controller wrongly came to the conclusion that some proceeding was pending between 22nd October, 2005 and 10th November, 2005 when he actually passed the order. The ground, on which the learned Additional Rent Controller recalled its order dated 10th November, 2005 thus did not exist at all. Order 22 Rule 6 CPC, therefore, would have come in operation and learned Additional Rent Controller was competent to pass order dated 10th November, 2005, even if the respondent had died. Order 22 Rule 6 CPC reads as under :-

“6. No abatement by reason of death after hearing –
Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

6. It has been held in *N.P. Thirugnanam (D) by L.R.s Vs. Dr. B. Jagan Mohan Rao & Ors.*; AIR 1996 SC 116 that where arguments are already heard and judgment is reserved by the time when party died, decree passed by the court against dead party was not a nullity. In this case, the application made by the petitioner for passing decree of eviction had already been entertained and report of the Nazir had been called and received on 22nd October, 2005. Thus, no hearing was pending between 22nd October, 2005 and 10th November, 2005. The only thing pending was passing of order by the court. Thus, the order passed by the court on 10th November, 2005 could not have become a nullity because of death of Smt. Panchi on 2nd November, 2005.

7. The plea taken by the respondent that the court had not considered the objections of the respondent were all found to be false since court had passed a detailed judgment on 17th May, 2005 holding that ground under Section 14 (1) (a) of the Act was made out.

The court did not pass eviction order only to give benefit under Section 14 (2) of the Act. Thus an eviction order was liable to be passed by the court, the moment court was informed that this benefit under Section 14 (2) of the Act had not been availed. Since the court was informed on 27th September, 2005 about non-compliance of the order of the court under Section 14 (2) of the Act and the court verified non-compliance on 22nd October, 2005, the eviction order which ensued on 10th November, 2005 could not have been said to nullity because the respondent died on 2nd November, 2005. Even otherwise, it is not a case where an ex-parte decree was passed without service of summons on respondent. It is a case where the respondent Smt. Panchi had contested the petition. Initially an order under Section 15 (1) of the Act was passed which was not complied with and later an order under Section 14 (1) (a) of the Act was passed by the court giving her benefit of Section 14 (2) of the Act. If she was ill, her legal heirs were supposed to take care not only of her but also of depositing rent as they were all living in the tenanted premises. Legal heirs cannot be oblivious to the fact that they were living in a tenanted premises let out to their mother. If the mother, being ill had died, the obligation was on them to pay the arrears of rent and to comply with the orders of the court.

8. The allegations against the advocate of mixing up with the petitioner cannot be believed because the respondent had not preferred any complaint against the advocate for mixing up with the opposite side.

9. The trial court did even consider that the contentions raised by the respondent were on the face of it false and untrustworthy. The trial court wrongly came to the conclusion that even if the application under Order IX Rule 13 CPC was not maintainable, he could set aside the order because it was a nullity as some proceedings

were left. In fact, trial court has not even spelled out what proceedings were done by the trial court after 22nd October, 2005 when the Nazir report was received and 10th November, 2005 when he passed the order. If the trial court had not done any proceedings except passing of order, the trial court could not have held that the decree passed by him was a nullity because of death of Smt. Panchi on 2nd November, 2005.

10. I, therefore, allow this petition. The order dated 10th November, 2005 of the trial court is restored.

SHIV NARAYAN DHINGRA J.

APRIL 09, 2010
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