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

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Date of Judgment: 14.7.2011

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CM(M) No.1759/2004

BADAR RABBANI QUTBI & ORS. Petitioner
Through: Mr.Himal Akhtar, Advocate.

Versus

SMT.SAIEDAN Respondent
Through: Mr.Abhik Kumar, Mr.Sidharth
Shanker and Mr.Rajesh Kumar
Naidu, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This petition has impugned the order dated 09.9.2004 which was an appeal filed by the tenant to set aside the order of eviction passed by the Additional Rent Controller (ARC) dated 18.12.2002. Vide order dated 18.12.2002 the eviction petition filed by filed by the landlord under Section 14(1)(a) of the Delhi Rent Control Act

(hereinafter referred to as "the DRCA) had been decreed. The appeal had been preferred by the tenant; this was an appeal under Section 38 of the DRCA; the appeal had been allowed; the eviction petition stood dismissed.

2. The landlord has now preferred this petition under Article 227 of the Constitution of India. With the consent of the parties, the matter has been taken up for final disposal.

3. On behalf of the petitioner it is submitted that the appeal under Section 38 of the DRCA can be entertained only on a question of law; the Tribunal is not empowered to reappraise the evidence and to draw a conclusion on his own surmises; this is not within the jurisdiction and domain of the Tribunal. To support his submission reliance has been placed upon a judgment of this Court report in MANU/DE/8943/2006 Baldev Raj Vs. C.Natesan & Ors. CM(M) No.2678/2005 decided on 8.8.2006. It is submitted that the order of the ARC decreeing the eviction petition was passed on sound reasoning and could not have been interfered with on mere conjectures.

4. Arguments have been rebutted. It is pointed out that the order of the Tribunal suffers from no infirmity as the very basis of the maintainability of a petition under Section 14(1)(a) of the DRCA had been disputed.

5. The contention before the Rent Controller was that the alleged tenant was not a tenant of the landlord; he was a resident of premises bearing No.1025 whereas the landlord is claiming his ownership qua premises bearing No.1063 A, Ward No.7, Mehrauli, New Delhi.

6. To rebut this submission learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court reported in 1 SCR 259 Om Prakash Gupta Vs. Rattan Singh & Anr. To support his submission it is contended that a mere denial by the tenant which is so in the instant case would not by itself be sufficient to oust the jurisdiction of the Rent Controller.

7. Record shows that in the written statement filed before the Rent Controller contention of the tenant all along was that he is a tenant of premises bearing No.1025, Ward No.7, Dargah Sharif, Mehrauli, New Delhi; he had denied the very basis of the relationship of landlord and tenant; all averments made in the petition have been denied. It had been denied that rent had ever been paid to the petitioner.

8. Oral and documentary evidence had been led before the ARC. The ARC had relied upon Ex.PW-1/6, Ex.PW-1/7 and Ex.PW-1/8 which were certified copies of the earlier proceedings preferred by the landlord against other persons (admittedly not
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the respondent) wherein it had come on record that the petitioner i.e. Hakim Allamma was the owner of the house No.1063A, Ward No.7, Mehrauli, New Delhi. It is also not in dispute that in an earlier litigation between the parties a Local Commissioner had been appointed to verify the physical status of the property No.1063 A and wherein he had reported that one Smt.Saieda (respondent) is in occupation of portion no.3A as depicted in the site plan prepared by him and annexed with his report (Ex.RW1/P4) which had been filed in that suit.

9. It is relevant to state that that suit was a suit for permanent injunction filed by the petitioner/landlord against the respondent wherein the local commissioner had been appointed; it also not in dispute that the said suit is yet pending decision. It is also undisputed that no interim relief has been granted to the petitioner in that case.

10. Admittedly there is no document of tenancy between the parties; no rent receipt or rent payment has been filed; contention of the landlord being that the tenancy was oral and rent was also being paid by cash. Thus the report of the Local Commissioner (Ex.RW1/4) was the only document which was available before the Rent Controller to hold that the relationship of landlord and tenant does exist between the two parties.

11. In appeal the Rent Control Tribunal had set aside this finding; the question of law raised before the Tribunal was as to whether, in fact, a relationship of landlord and tenant had existed between the parties. The Tribunal had correctly appreciated the fact that the report of the Local Commissioner was of little value as the Local Commissioner had not been summoned in the present eviction proceedings and has not been subjected to any cross-examination; more over the report of the Local Commissioner had been filed in a pending proceedings which was yet pending adjudication which was a suit for permanent injunction where admittedly the petitioner/landlord has not got any interim relief. That apart there was no other document to support the submission of the landlord that Saieda was his tenant. The tenant had categorically and clearly denied this relationship. Her contention being that she was the owner in her own right of her property i.e. the property bearing No.1025.

12. The Tribunal had correctly noted that the finding returned by the Rent Controller was a finding based on no evidence; Ex.PW-1/6 to Ex.PW-8 merely advanced the submission about the ownership of the petitioner qua the suit property i.e. the property No.1063 but did not establish that the defendant was a tenant of the said premises. This finding of the ARC was rightly set aside

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by the Tribunal. The ARC had mis-directed himself to hold that merely because the tenant had failed to produce any document about her ownership of the property i.e. the premises bearing No.1025, it should be presumed that the parties had shared a landlord and tenant relationship.

13. The order of the Tribunal suffers from no infirmity. The Apex Court in Om Prakash Gupta (supra) had noted as follows:

“Ordinarily it is for the Civil Courts to determine whether and, if so, what jural relationship exists between the litigating parties. But the Act has enacted to provide for the control of rents and evictions of tenants, avowedly for their benefit and protection. The Act postulates the relationship of landlord and tenant which must be a pre-existing relationship.”

14. The jurisdiction of the Rent Controller, in fact, is based on a pre- assumption of a landlord-tenant relationship and when this fact is by itself denied, it is for the Civil Court to decide this disputed question of fact. It is also relevant to note that the right of a second appeal has now been abrogated as Section 38 of the DRCA has been amended. Article 227 of the Constitution of India is not a substitute for the said provision. The right of second appeal was admittedly a limited right on a substantial question of law only; interference under Article 227 is warranted only if there is gross perversity or illegality or a gross injustice has been caused which the court in its discretion considers it fit to rectify.

15. No such case is made out. The order of the Tribunal suffers from no infirmity. Dismissed.

INDERMEET KAUR, J.

JULY 14, 2011
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