

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

% *Date of Judgment: 20.12.2011*

**+CM(M) No.1115/2007 & CM Nos.11089/2007,
14404/2007,16909/2007 & 13829/2008**

ASHOK KUMAR & NARINDER PAL Petitioner
Through: Mr.Anil Kumar Gupta and Mr. Vineet
Jain, Advocates.

versus

SHAKUNTALA RANI & ORS Respondents
Through: Mr.R.L.Kohli, Advocate.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

INDERMEET KAUR, J. (Oral)

1. Order impugned is the order dated 18.7.2007 which had endorsed the finding of the trial judge dated 18.12.2002 whereby the eviction petition filed by the landlord Shakuntala Rani and others seeking eviction of her tenant from the suit property (comprising of one room measuring 20 x 10 feet, ground floor of the property no.25/16,Old Rajinder Nagar, New Delhi) under section 14(1)(c) and 14(1)(d) of the Delhi Rent Control Act (DRCA) had been decreed.

2. Record shows that the present eviction petition had been

filed under section 14(1)(a), 14(1)(c) and 14(1)(d) of the DRCA. Contention of the landlord was that the premises had been let out for a residential purpose but were being misused i.e. for a commercial purpose which was a user of the shop; further contention was that the premises were lying unused as a residence for the last six months. Both these contention had found favour with the Additional Rent Controller (ARC) who after discussing the respective evidence both oral and documentary led by the respective parties had decreed the petition of the landlord. The Rent Control Tribunal (RCT) had endorsed this finding. Before the RCT three applications had also been filed along the appeal; the first application was an application filed under Order 41 Rule 27 of the code of Civil Procedure (hereinafter referred to as the Code) seeking permission of the court to lead additional evidence. Contention being that rent receipts which had been produced in the trial court had merely been marked as A, B and C but the original receipts had been filed in a pending eviction under section 14(1)(e) of the DRCA and the said documents are necessary for the disposal of the present appeal. In the second application it had been contended that the documents Ex.PW-1/R-1 to Ex. PW-1/R-3 had been de-exhibited and had been marked as

application these documents having been filed in an earlier pending petition under Section 14(1)(e) of the DRCA the same now be permitted to be exhibited. The prayer in the third application was to the effect that the permission be granted to the tenant to place on the record registration certificate granted to the tenant for running a shop in the suit premises in view of the changed policy of the government.

3. The RCT while dealing with the appeal had dealt with all the aforementioned applications. All the aforementioned applications had been dismissed. RCT had noted that in fact to satisfy its conscience the ARC had summoned the record of eviction petition No.148/89 (which was a petition filed under Section 14(1)(e) of the DRCA) whereby the originals of the purported documents marked A, B and C had been filed but perusal of the said record had evidenced that this was not the correct position and documents marked A, B and C were only photocopies even in the record of the eviction petition no.148/89 and as such this submission of the petitioner that the documents which had been de-exhibited and marked A,B and C should be permitted to be exhibited and additional evidence to the said extent be allowed had rightly been dismissed. Court had also noted that the rent receipts Ex.PW-1/R-1 to Ex.PW-1/R-3 which has initially been exhibited clearly evidenced cuttings and

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over-writings on the aforementioned documents which had created suspicion on the authenticity of the said documents; the word “residence” having been added in different ink in Ex.PW-1/R-1 to PW-1/R-3. The ARC who had thus de-exhibited these documents vide its order dated 02.7.2006 had not committed any fallacy. The first appellate court had accordingly disallowed all the aforementioned three applications. This finding calls for no interference.

4. At the outset the submission of the learned counsel for the respondent is to the effect that the this Court is sitting in its power of superintendence under Article 227 of the Constitution of India; unless and until a gross injustice or manifest error or illegality is pointed out by the applicant no interference is called for in the findings of facts of the courts below. For this proposition reliance has been placed upon 2002(61) DRJ 267 *Sudarshann Khanna Vs. Krishna Kanta Bhasin*; wherein a Bench of this Court had noted that that the provisions of Section 39 of the DRCA have been omitted and Article 227 of the Constitution of India is not an appellate forum; it would venture into an interference only where the findings of the courts below are perverse or are a consequence of the incorrect exercise of jurisdiction.

5. It is in this background that the submissions made by the

learned counsels for the respective parties have been appreciated.

6. PW—1 Roshan Lal had come into witness box. He is the husband of Late Shakuntala Rani and had deposed as her power of attorney holder; his evidence was to the effect that the respondent had been let out the disputed shop for a residential purpose; tenancy was oral; rent receipts were exhibited as Ex. PW—1/6 to Ex. PW—1/8; counter foils had been perused to return a finding that the purpose of letting of the shop has not been mentioned in the said counter foils; the RCT had also noted that before the ARC no question or suggestion has been given to PW-1 (Roshan Lal) in his cross-examination that the counter foils had not depicted the correct picture or the premises had been let out to the tenant for a commercial purpose. This was a serious lacuna and as such the defence sought to be built up by the defendant that the premises had been let out for a commercial purpose was not substantiated.

7. The ARC had de-exhibited the rent receipts vide a detailed order dated -2.7.2006; his finding was to the effect that these rent receipts were only photocopies; he had summoned the record of the eviction petition No.148/1989 to verify the submission of the tenant that the original of the rent receipts had been filed in that eviction petition but the perusal of the record had shown this to

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be an incorrect fact. The lease deed Ex.PW-1/10 had also been proved on record evidencing the fact that the premises could be used only for a residential purpose. The lease deed executed between the original lessor i.e. the DDA and the owner and its relevant clauses (i.e. clauses 6,7 and 8) stated that violation of the terms of the lease deed committed by the lessee would make the property liable for a re-entry which clearly amounted to a misuser within the ambit and scope of Section 14(c) of the DRCA. In this background the submission of the petitioner that the premises had been let out for a commercial purpose and there was no mis-user rightly did not find favour with the finding of the two courts below and the finding of the two courts below on no count suffers from any infirmity.

8. The ground of Section 14(1)(c) was rightly made out. Section 14(5) of the DRCA had also been adhered to. Eviction order could not have been passed unless the misuser was of such a nature that it was a public nuisance or that it was a case of damage to the premises or otherwise detrimental to the interest of the landlord.

9. Admittedly even as per the case of the petitioner the premises are being used as a shop which is contrary to the user for which the premises had been let out; which was for a

residential purpose. Ground under Section 14(1)(d) was also made out.

10. On no count findings of the two courts below suffers from any infirmity. The impugned order suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

DECEMBER 20, 2011
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