

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

% *Date of Judgment: 19.09.2011*

+ **CM(M) No. 1086/2011 & CM Nos.17445-46/2011**

PUSHPA DEVI Petitioner

Through: Mr. P.N. Bhardwaj, Advocate.

Versus

LAXMAN SINGH Respondent

Through: Nemo.

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 of the Additional Rent Control Tribunal (hereinafter referred to as the 'ARCT') dated 18.07.2011 which had endorsed the findings of the Additional Rent Controller (hereinafter referred to as the 'ARC') dated 04.01.2008 in MC No.05/2007 which was an objection petition under Section 25 of the Delhi Rent Control Act (hereinafter referred to as the 'DRCA') preferred by the appellant in the course of the execution proceedings. Relevant would it be to state that

vide judgment and decree dated 02.04.1997, the eviction petition of the landlord had been decreed under Section 14 (1)(a) of the DRCA; this was upheld vide the order of the ARCT dated 15.05.2001. The landlord is Laxman Singh and tenant against whom the order of eviction had been passed was Dharampal. The objection petition under Section 25 (a) had been preferred by the wife of the tenant Dharampal; her contention being that she was a tenant in her own individual right and tenancy had in fact been created in her favour right from the very inception; her husband had no interest in the suit premises. Vide the order of the ARC dated 04.01.2008 these objections had been dismissed. They were confirmed by the judgment pronounced on 18.07.2011 by the ARCT. This judgment is now the subject matter of the present petition.

2 Record shows that Laxman Singh is the landlord of the disputed premises; he had described the disputed premises in the eviction petition as property bearing No. 216-B, Village Humayunpur, New Delhi; it comprised of one room and verandah on the ground floor. The contention of the objector is that this property bears No. 216-E; property No. 216-B and 216-E are two distinct properties; the identity of the suit premises not having been depicted correctly in the impugned judgment, it suffers from

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an illegality and perversity on this count. The second contention of learned counsel for the petitioner is that the petitioner has all along stated that she was a tenant in her independent capacity and even in the written statement in the eviction petition filed by her husband Dharampal contention was that this tenancy had been created in favour of his wife. Both these contentions not having been appreciated in the correct perspective, the impugned judgment is liable to be set aside.

3 On the first count i.e about the identity of the suit premises both the fact finding courts had returned concurrent findings in favour of the landlord that the property in dispute is 216-B, Humayunpur, New Delhi which has been so described in the eviction petition; contention of the objector Pushpa Devi she is in possession of the independent property which is property No. 216-E and this property is distinct from property No. 216-B had been repelled. Oral and documentary evidence led by respective parties had been adverted to. The evidence adduced in the eviction proceedings as also the evidence adduced in the objection petition filed by the objector had both been gone into. The objector Pushpa Devi had appeared as OW-8 in the objection proceedings; there was a categorical averment made by her at that time which reads

as under:-

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“I was minor at the time of induction of my husband as a tenant in the premises in question. Voln. I was married at that time.”

4 This admission had been made by the objector herself in her testimony recorded on 28.08.1998; thereafter 10 years later an application under Order XLI Rule 27 of the Code had been filed on 30.08.2008 as also another application under Order 6 Rule 17 of the Code had been filed on 20.10.2010 seeking deletion of the aforestated admission; her contention being that this is a typographical error and on reading of her entire testimony this was clearly evident. The entire gamut of evidence adduced before the executing court as also the evidence adduced by her husband Dharampal in the eviction proceedings had been delved into. The statement of the objector had also been recorded under Order 10 of the Code; this was on 14.03.2008. In this statement, she had confronted with her earlier statement given by her on 28.08.1998 wherein she had made the aforenoted admission (Supra); she had admitted that she had signed this statement and no application had been filed by her to dispute this statement that it was a typographical error or an inadvertent mistake. The inconsistency in the version of the objection had been taken note of; applications under XLI Rule 27 of the Code and under Order 6 Rule 17 of the

Code had been dismissed. The Court had noted that besides this, the applications had been filed one decade later i.e. more than 10 years after this version of the objector had been recorded, even otherwise on all dates i.e. at the time when her statement under Order 10 of the Code was recorded as also at the time the present applications were filed , she was represented by the same counsel. The Court had also noted that there were discrepant versions given by the objector about her age; at one point she stated that is 42 years of age i.e. when her statement under Order 10 of the Code was recorded and at another place she had given her age as 46 years. Viewing it in the background, the appellate court had returned a positive fact finding that she was enured 14 years of age at the time when she got married and her statement that after her marriage an independent tenancy has been created by the landlord in her favour would even otherwise be a void contract as a contract by a minor is not permissible; her shifting stands had defied her credibility.

5 The written statement filed in the eviction petition by her husband Dharampal had made a demur that this tenancy had been created in favour of his wife yet this was never pressed and did not become an issue in the eviction proceedings. The petition

under Section 14 (1)(a) of the DRCA had been decreed in favour of

the landlord on 02.04.1997 which judgment had been upheld by the order of the ARCT on 15.05.2001. On merits up to now, the petitioner has no objection. It has never been contended that the order of eviction passed under Section 14 (1)(a) of the DRCA for non-payment of rent on account of three consecutive defaults suffers from any infirmity; this is not the subject matter of dispute before this Court. The only objection is that the tenancy of the Pushpa Devi was independent and Dharam Pal was in fact not the tenant. Dharam Pal as noted supra had never pressed this issue.

6 The contention of the objector that the tenanted premises were actually bearing No. 216-E had been repelled and for the said purpose documentary evidence produced by the objector as also the record produced from the house tax authority of the MCD which were proved through the version of DHW-3 had been noted. It is relevant at this stage to note that an appeal under Section 38 of the DRCA which is the first appeal against the order of the ARC is only permissible if a substantial question of law has arisen, interference is otherwise not called for. However both the courts below have given positive fact findings and have correctly noted that the property which was the subject matter of dispute was property No. 216-B; there is no perversity in this finding and it in no manner calls for any interfere.

7 This Court is conscious of the fact that the right of second appeal under the DRCA has been abrogated. Petition under Article 227 of the Constitution is not a substitute for an appellate forum; such a Court only has a supervisory power of superintendence and unless and until there is manifest error or a patent illegality on the face of the record, interference is not called for. This is not one such case where interference is warranted. Petition is without any merit.

8 Dismissed.

SEPTEMBER 19, 2011

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INDERMEET KAUR, J.