

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 01.3.2012*

+ **CM(M) No. 109/2002 and CM No. 1090/2003**

PREM RAJ CHAUDHRY Petitioner
Through Ms. Sushma, Advocate.

versus

R.C.OHRI Respondent
Through Mr. Som Dutt Sharma, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The order impugned before this Court is the order dated 26.09.2001 passed by the Rent Control Tribunal (RCT) which has endorsed the finding of the Additional Rent Controller (ARC) dated 28.04.1998 by virtue of which the objections filed by the objectors under Section 25 of the Delhi Rent Control Act (DRCA) were accepted and the ARC held that the said objectors were not bound by the decree obtained by Prem Raj Chaudhary against them. This finding was endorsed by the RCT in his impugned judgment.

2. Record shows that the landlord Prem Raj Chaudhary had filed an

eviction petition against two of his tenants namely R.C. Ohri and Anil Ohri (legal representatives of deceased Dr. Vimla Devi) under Section 14 (1)(e) read with Section 25-B of the DRCA; premises are property bearing No. 172-D, Second Floor, front portion, Kamla Nagar, Subzi Mandi, Delhi; address of the two respondents in the eviction petition was described as C-177, West Patel Nagar, New Delhi; the alternate address of Shop No. 3/1, West Patel Nagar, New Delhi. Record further shows that this eviction petition was filed on 06.05.1987. Notices were issued to the respondents returnable for 27.07.1987; summons were sent only at the shop address at 3/1, West Patel Nagar, New Delhi and not at the address at C-177, West Patel Nagar. Record further shows that earlier also, the landlord filed two eviction petitions against Vimla Devi; Vimla Devi could not be served by ordinary process; she has been served by publication in 'The Statesman' on 24.02.1986; in the course of these proceedings, the Court was informed about the death of Vimla Devi on 01.10.1984 (her death certificate was filed); it was brought to the notice of the Court that in fact Vimla Devi had died prior to the filing of the said eviction petitions which had accordingly been permitted to be withdrawn.

3. This present eviction petition has been filed against the legal representatives of deceased Vimla Devi namely R.C.Ohri and Vipin Ohri. This petition had been decreed in favour of the landlord on 27.7.1987. In the course of the execution proceedings objections were filed by the present objector namely Kailash Ahuja and Vinod Ahuja under Section 25 of the DRCA; their contention was that Satpal Ahuja was the tenant in the disputed premises since 1954 and after his death in 1976, they had inherited the tenancy and they were in occupation of the suit premises; he had taken these premises on rent from Gokal Chand who was the earlier tenant. After the death of Satpal Ahuja, his wife and son Smt. Kailash Ahuja and Vinod Ahuja inherited the tenancy rights; Vimla Devi never resided in the premises in question; she was a resident of the ground floor from where she was running a clinic about 35 years ago; she had left these premises in 1955. The objectors were living in these premises in their own rights independent of Vimla Devi; the decree holder had falsely stated that R.C. Ohri and Anil Ohri are the tenants in the suit property; they were not bound by the decree dated 27.7.1987; they had an independent title.

4. Reply filed to these objections has also been noted; contentions

were denied. It has made bald denials; vehement submission urged before this Court that Gokal Chand was never the tenant of the landlord and in fact the premises had not been constructed up to the year 1954 and as such the question of Gokal Chand being a tenant of these premises does not arise, admittedly did not find mention in the reply filed to these objections; in fact even in the entire evidence led by the decree holder which comprised of two witnesses no such plea was made; all along the defence of the decree holder (in his reply to the objections) was that Vimla Devi was the tenant and he had a rent deed executed between Vimla Devi and his father; rent receipts had also been issued; in his cross-examination the decree holder (DHW-1) had admitted that he had no documentary evidence to substantiate this submission; neither the rent deed and nor the rent receipts could be located.

5. On behalf of the objectors, 13 witnesses were examined; the officials from the MCD, Food and Supply Department and MTNL were examined as OW-1 to OW-3. The Manager of UCO Bank had proved the account opening form of Kailash Ahuja evidencing her address as 172/D, Kamla Nagar, as Ex.OW-6/1; OW-7 the Head Clerk from the CM(M) No. 109/2002

CGHSS School, Roop Nagar, had proved the admission of Nirmal Kumari D/o Satpal Ahuja in the school in the year 1958 showing the address of the child even at that time as that of the disputed premises. The address of Kiran Ahuja at the disputed premises in July, 1975 had been proved through the version of OW-8; OW-9 related to the admission of Vinod Ahuja in July, 1963 which had also evidenced the address of the disputed premises. Admission of Nirmal Kumari D/o Satpal Ahuja to the school in May, 1955 was proved through OW-13 again evidencing the same address as that of the disputed premises even in the year 1955. The objector Kailash Ahuja examined herself as OW-4; OW-5 was Vinod Kumar Ahuja, the second objector; their testimony was to the effect that the premises had been taken on rent by Gokul Chand from Prem Lal Ahuja in 1950; Dr. Vimla Devi was a tenant in the ground floor; she had remained there for about 1-2 years after which the objectors had come into the possession of the premises; the ration card, electricity bills, gas connection, telephone bills and photocopy of the registration application had been proved as Ex.OW-5/1 to Ex. OW-5/8 evidencing the fact that the premises were in occupation of the objectors right from 1955. OW-10 & OW-11 were the tenants in the

adjoining property; they had deposed that the property was never under the tenancy of Vimla Devi; the objectors were the tenants in the said premises and prior to them, it was their father Satpal Ahuja; OW-11 was in fact living in the property as a tenant since 1957. There was no ulterior purpose as to why these witnesses would depose falsely.

6. Per contra, the decree holder DHW-1 had deposed that the premises had been let out to Vimla Devi on 01.04.1954 and the ground floor had been surrendered but the second floor continued to be retained by her. In his cross-examination, DHW-1 had admitted that a rent deed had in fact been executed between the landlord and Vimla Devi copy of which is not available; he also could not produce any rent receipt to substantiate the submission that Vimla Devi was the tenant in the suit premises; he admitted that the premises were in occupation of the objectors 1981 but he could not say since when prior thereto they were residing. DW-2 was an official from the MCD. He had been examined as DHW-2; in his cross-examination he had admitted that reports Ex.DHW2/01 and Ex.DHW2/02 show that on 09.12.1953 the suit property had a second floor and a barsati in existence. This is also evident from a perusal of this documentary evidence. Thus the

submission of the petitioner/decreed holder that the premises in fact had not been constructed up to November 1953 when he has filed his application seeking construction of the barsati floor is an argument bereft of any merit. Ex.OW-5/16 and Ex.OW-5/17 are the Form-C reports regarding the revision of assessment by the Municipal Corporation of Delhi showing that Satpal Ahuja has been shown as a tenant in the suit premises; both these documents show that inspection had been conducted in the suit premises in September, 1960 where a second floor and a barsati were in existence.

7. Thus on all counts the submission of the decreed holder must fail; the documentary evidence has clearly evidenced the presence of Satpal Ahuja in this premises from the year 1955 onwards; the submission of the decreed holder that Vimla Devi was the tenant in the aforementioned premises has nowhere been established.

8. Fact findings were returned by the ARC on the basis of this oral and documentary evidence. The Court was of the view that various documents placed on record by the objectors substantiating their possession in the suit premises right from the year 1955 had been established; these documents had remained unchallenged; fact finding

was returned that the objectors were occupying the second floor in their capacity as independent tenants under the decree holder since May 1955; there was no explanation as to why in the earlier two eviction petitions filed by the decree holder against Vimla Devi, he had not impleaded the present objectors even though he knew as a fact that the objectors were in possession of the suit premises; this discloses the ulterior and malafide motives of the decree holder.

9. The objections under Section 25 of the DRCA filed by the objectors were rightly sustained; it was held that the decree holder is not entitled to possession of the suit premises as objectors were not bound by this decree; proviso of Section 25 of the DRCA having been adverted to; objectors having proved that they had an independent title in the suit premises. This fact finding was endorsed by the RCT. The RCT while dealing with an appeal under Section 38 of the DRCA has to restrict itself on substantial question of law; nevertheless the whole gamut of the oral and documentary evidence was re-examined by the him and detailed fact findings were returned in favour of the objectors evidencing their prima facie independent title in the suit premises. The proviso to Section 25 of the DRCA was attracted and it was rightly

noted that the decree dated 27.7.1987 was not binding upon the objectors.

10. This Court is sitting in its power of superintendence under Article 227 of the Constitution of India; unless and until there is a patent illegality or a manifest error which is crept in the order of the two fact finding courts below interference by the High Court is not called for. There is no such patent illegality which has been pointed out to this Court. The RCT has re-appreciated the record which included the oral and documentary evidence in the correct perspective and had reaffirmed the finding of the ARC. There is thus no infirmity in the impugned order holding that the objectors were not bound by the decree dated 27.7.1987. Petition is wholly without any merit. Dismissed.

11. Trial court record be returned.

INDERMEET KAUR, J

MARCH 01, 2012
a/nandan