

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

% *Judgment Reserved on : 19.03.2012*
Judgment delivered on : 21.03.2012

+ **CM(M) No.118/2002 and CM No. 19664/2010**

ZAHEER Petitioner
Through: Mr.B.B. Gupta and Mr. Hari
Haran, Advocate.

versus

SAYEED NAUSHAD ALI Respondent
Through: Mr. Manoj Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. The petitioner is aggrieved by the order of the Additional Rent Control Tribunal (ARCT) dated 14.02.2002 which has endorsed the finding of the Additional Rent Controller (ARC) whereby the application filed by the applicant Zaheer seeking stay of the issuance of the warrants of possession and breaking open the locks of the disputed premises had been dismissed.

2. Record shows that an eviction petition has been filed by Zaheer against Sayeed Naushad Ali under Section 14(1)(e) of the Delhi Rent

Control Act (hereinafter referred to as the DRCA); this eviction petition had been decreed in favour of the landlord on 31.7.1984; review petition against the said order also dismissed by the ARC on 24.11.1988. On the date of the dismissal of the review petition warrants of possession had been ordered qua the disputed premises.

3. The execution proceedings had been initiated by the decree holder on 23.3.1985 but this execution petition was dismissed in default on 31.3.1986. The judgment debtor contended before the ARC that since no execution petition was pending and the decree holder had taken no steps to get the execution petition revived the orders of the ARC directing issuance of warrants of possession qua the disputed property on 24.11.1988 are a nullity could not have been passed; the present execution is barred under Article 136 of the Limitation Act as the decree could not have been executed after more than twelve years of the date of the eviction decree which in this case was 31.7.1984.

4. The impugned order dated 14.02.2012 did not find favour in the arguments of the petitioner; it had reiterated the finding of the ARC.

5. There is no dispute to the fact that Order XXI of the Code of Civil Procedure (hereinafter referred to as the Code) is a complete Code

in itself. Order XXI Rule 11 postulates the manner in which an execution petition has to be filed; for a money decree, there is no bar in preferring this execution petition even orally.

6. Record has been perused. Aforenoted dates are undisputed. Decree obtained by the decree holder is dated 31.07.1984. Execution application had been filed by the decree holder on 23.03.1985 which had been dismissed in default on 31.03.1986. Contention of the decree holder was that a second execution application had been filed. The appeal filed by the judgment debtor against the decree dated 31.07.1984 had been dismissed vide the judgment dated 18.01.1989. The review petition filed before the ARC seeking review of the order dated 31.07.1984 had also been dismissed on 09.12.1988 on which date warrants of possession had been ordered by the ARC. It is also a matter of record that thereafter on subsequent dates ARC had again ordered warrants of possession on 17.02.1989, 08.12.1989 and 09.02.1990; on 09.03.1990 an application seeking police aid for execution of warrants of possession had been filed which had also been allowed on 14.12.1990 which was after recording the statement of the decree holder. On 22.02.1991 after grant of police aid warrants of possession were sought

to be executed; the same could not be executed and fresh warrants of possession were again ordered on 08.03.1991, 31.05.1991, 19.07.1991 and thereafter on 31.05.1991; warrants of possession remained un-executed; decree holder and the judgment debtor both expired; vide order dated 18.08.1993, their legal representatives were brought on record. Warrants of possession in fact continued to be issued by the ARC up to 01.06.1999 when the present application was filed by the applicant seeking stay of the warrants of possession on the ground that in fact there was no execution application pending and in view of the provisions of Article 136 of the Limitation Act, a eviction decree could have been executed only within 12 years which period has long since expired; decree is dated 31.07.1984 and period of 12 years having expired on 30.07.1996, the eviction decree had thus become non-est.

7. Learned counsel for the petitioner has drawn attention of this court to the provisions of Section 42 of the Delhi Rent Control Act; submission being that the provisions of Code of Civil Procedure are fully applicable in proceedings before the ARC while he is executing a decree. There is no dispute to this proposition. Learned counsel for the petitioner has also drawn attention of the Court to the provisions of

Order 21 Rule 11 of the Code; contention being that except in the case of a money decree for the execution of all other decrees a written application has to be filed which is clearly not so in the instant case. Counsel for the petitioner has placed reliance upon the judgments reported in 1969 RCR 174 titled as Sohan Lal Lamba vs. S.L. Kapoor, 1970 RCR 785 titled as Arjan Das vs. Madan Lal, 1972 RCR 400 titled as Deo Raj Gupta vs. M/s. Daulat Ram Public Trust & Ors., (1982) 21 DLT 295 titled as P.N. Bhatt vs. Kaushalya Devi, 46 (1992) DLT 188 titled as Subhash Chand Grover vs. Charanjit Singh, 1994 (30) DRJ 601 titled as Om Prakash Jain vs. Sh. Hans Raj & Ors.; submission being that the provisions of Article 136 of the Limitation Act govern the ARC while he is executing a decree and in this case the period of 12 years having expired, the decree could not have been executed; it is time barred. Reliance has also been placed on 1987 (4) SCC 84 Kashi Ram vs. Rakesh Arora to support the same submission.

8. The applicability of the provisions of Article 136 of the Limitation Act for the execution of a decree by the ARC in terms of Section 42 of the DRCA is an admitted proposition. However, the factual scenario in the instant case is different.

9. It is not as if no execution application had been filed by the decree holder. A written application containing all the ingredients which are required for an execution application had been preferred by the decree holder and which was filed by him on 23.03.1985; on 31.03.1986 this application had been dismissed in default; although the decree holder has contended that second application had been filed by him but the order of the RCT shows that a fact finding had in fact been returned by the RCT that no such second application was on record. This being a fact finding, this court is not inclined to interfere with this finding returned.

10. Both the courts below had in this factual scenario held that warrants of possession which had been ordered by the ARC on 24.11.1988 suffered from no infirmity; review petition filed by the judgment debtor against the judgment and decree dated 31.07.1984 had been dismissed on 24.11.1988 and warrants of possession had been ordered.

11. Even assuming and presuming that the execution application had been dismissed in default on 31.03.1986, yet the perusal of the subsequent orders (as noted supra) which had reiterated and re-affirmed

the warrants of possession, in fact even granting police aid to the decree holder after recording his statement and all opportunities having been granted to the decree holder to get the warrants of possession executed in his favour, the necessary corollary is that the both the courts below and decree holder were all under the bona fide impression that an execution application was pending on which these warrants of possession were continuously being ordered.

12. The Apex court in the judgment of 2003 (8) SCC 648 titled as South Eastern Coalfields Ltd. vs. State of M.P. had the occasion to examine the doctrine of *actus curiae neminem gravabit* which means “the act of the court shall prejudice no one”. The Apex Court in this context had noted inter alia as follows:-

“The court referred to the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage

which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim of the court would not have been passed.

13. This court is sitting in its powers of superintendence under Article 227 of the Constitution of India; this is not an appellate forum; powers to interfere under Article 227 of the Constitution of India are called for only if there is a patent illegality or a perversity of justice which has accrued to one party qua the other; interference on no other count is justified. This is not one such case. In fact the prayer if allowed would cause a grave injustice to the decree holder who was all along under the bonafide and genuine impression that his execution application was pending upon which consistently and continuously orders were being passed by the ARC ordering warrants of possession; his application seeking police aid had also been granted on the same premise. To hold otherwise, in fact would amount to a perversity.

14. Impugned order in this background calls for no interference.

15. Judgments relied upon the learned counsel for the petitioner (supra), would have no application in the factual scenario of the instant case.

16. Petition is without any merit; it is dismissed.

MARCH 21, 2012
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INDERMEET KAUR, J