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

% *Date of Judgment: 03.01.2012*

+ **CM(M) No. 65/2007 & CM No462/2007**

VINOD BHATNAGAR & OTHERS. Petitioners
Through: Mr.R.S.Sahni, Advocate.

versus

SOHAN SINGH AND ORS. Respondents
Through: Mr.Sudhir Nandrajog, Sr.
Advocate with Mr.Sumit Rajput
and Mr.Dhiraj, Advocates.

AND

CM(M) No. 70/2007 & CM No491/2007

VINOD BHATNAGAR & OTHERS. Petitioners
Through: Mr.R.S.Sahni, Advocate.

versus

SOHAN SINGH AND ORS. Respondents
Through: Mr.Sudhir Nandrajog, Sr.
Advocate with Mr.Sumit Rajput
and Mr.Dhiraj, Advocates.

AND

CM(M) No. 67/2007

TARLOCHAN SINGH Petitioner
Through: Mr.R.S.Sahni, Advocate.

versus

AMARJEET SINGH Respondent
Through: Mr.Sudhir Nandrajog, Sr.
Advocate with Mr.Sumit Rajput
and Mr.Dhiraj, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. CM (M) No.65/2007 & 70/2007

These two petitions have been arisen out of a common order dated 22.11.2006 which has been passed by the Additional Rent Control Tribunal (ARCT) affirming the order of the Additional Rent Controller (ARC) dated 19.4.2003.

2. CM No.67/2007

This petition has impugned the order of the ARCT dated 22.11.2006.

3. The landlord of the disputed premises is Sohan Singh and others.

(a). He had filed an eviction petition against his tenant Vinod Bhatnagar under Section 14(1)(a) of the DRCA; the said petition is E.P.No.85/1990. This order has been assailed in CM(M) No.70/2007.

(b). E.P. No.86/1990 has been filed by the landlord under Section 14(1)(b) & (f) of the DRCA wherein Vinod Bhatnagar had been arrayed as respondent no.1 (tenant) and Trilochan Singh and Harbans Lal had been arrayed as respondents

no.2 and 3 (sub-tenants). This order is the subject matter of CM(M) No.65/2007.

(c). The third eviction petition i.e. E.P. no.84/1990 has been filed under Section 14(1)(a) of the DRCA against Tarlochan Singh for non-payment of rent which had been decreed vide impugned order dated 22.11.2006. This order is the subject matter of CM(M) No.67/2007.

4. In view of the order of this Court dated 28.10.2008 the petition filed by Vinod Bhatnagar i.e. CM(M) No.70/2007 has become infructuous; Vinod Bhatnagar has delivered possession of the room in dispute to the landlord. In this view of the matter this petition is not being pressed having become infructuous.

5. The case of the landlord (in E.P. No.86/1990) is that one shop on the back portion of the HS2, Kailash Colony Market, New Delhi along with one miani over shop no.HS2/1 (as depicted in red colour in the site plan) has been tenanted out to Vinod Bhatnagar; he had in contravention of the agreement between the parties and without the permission of the landlord sublet the miani to respondents no.2 and 3 namely Tarlochan Singh and Harbans Lal . This being without the permission either oral or in writing of the landlord; a ground for eviction under Section 14(1)(b) of the DRCA had been made out. In para 8 of the eviction petition the specific CM(M)Nos.65/2007,70/2007 & 67/2007

description of the premises i.e. one shop and one miani (as detailed supra) have been detailed. Separate written statements have been filed by the respondents. Respondents no.1 i.e. the tenant Vinod Bhagtnagar in the corresponding para of the written statement had not denied the correctness of the averments made in the para 8 of the eviction petition; meaning thereby that he had admitted that this is the suit premises which has been let out to him i.e. one shop and one miani. In the written statement filed by the respondents no.2 and 3; the corresponding para 8 of the eviction petition is again not specifically denied or disputed; it is stated that the accommodation available with the respondents no.2 and 3 who are Tarlochan Singh and Harbans Lal had been correctly shown by the landlord in the site plan filed by him. In this written statement of respondents no.2 and 3 contention is that there has been no subletting, assignment or parting with possession of any portion of the premises to respondents no.2 and 3. Contention being that respondents no.2 and 3 are in possession of this premises i.e. the miani in their own right as tenants.

6. The ARC had decreed all the three petitions in favour of the landlord. As noted supra E.P.No.85/1990 has become infructuous. Petition (E.P. No.84/1990) under Section 14(1)(a) had been decreed for non-payment of rent; since, benefit of Section 14(2) of CM(M)Nos.65/2007,70/2007 & 67/2007

the DRCA had already earlier been granted to the tenant. Petition under Section 14(1)(b) (E.P. No.86/1990) of the DRCA had also been decreed. An eviction order had accordingly been passed in favour of the landlord both under Section 14(1)(a) and (b) of the DRCA.

7. The RCT had affirmed these findings by his impugned orders dated 22.11.2006.

8. There are thus two concurrent finding of fact before this Court. At the outset learned counsel for the respondent has urged that this court is sitting in its powers of superintendence under Article 227 of the Constitution of India; it is not an appellate forum and interference is called for by the High Court under Article 227 only if there is a manifest error or illegality bordered on the point of perversity; which is not so in the instant case.

9. Arguments have been addressed at length. The thrust of the argument of the learned counsel for the petitioner is that in an earlier eviction petition which had been filed by the landlord under Section 14(1)(a) of the DRCA against Vinod Bhatnagar the then ARC had passed an order on 08.6.1964 giving him the benefit of Section 14(2) of the DRCA. The site plan (Ex.RW-1/2) which had been filed along with the said eviction petition has been highlighted. Contention being that the disputed premises has only

been described as one room with an open verandah in front of it; there is no mention about the miani. The present petition and the site plan filed along with it has depicted the disputed premises as comprising of a shop and miani which is not in conformity with the earlier site plan filed in the earlier eviction petition; on this ground the petition is liable to be dismissed.

10. This submission of the petitioner has been dealt with by the ARC. ARC had noted that the present eviction petition has clearly described the suit premises in para 8 as comprising of a shop and miani; in the corresponding para of written statement filed by Vinod Bhatnagar (respondent no.1) there has been no denial, in fact, there has been a clear admission. Attention has also been drawn to the legal notice sent by the landlord to the tenant which is dated 20.10.1989 (Ex.PW-2/3) which was replied by the tenant (vide Ex.PW-2/4) where again the description of the tenanted premises has not been disputed; the tenant has not disputed that what has been let out to him (as has been mentioned in the legal notice) comprises of a shop and a miani. Moreover the first eviction petition (E.P.No.153/1983) had depicted the site plan showing the tenanted premises as one room and a verandah; there was also a mention of the mezzanine floor in the site plan. The submission of the petitioner is that there was no point in

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mentioning the mezzanine in this petition unless this was a part of the tenanted premises and this submission has considerable force. On this issue the RCT vide the impugned order had also noted that in the first eviction petition (i.e. E.P. No.153/1983) which was a petition for non-payment of rent (under Section 14(1)(a) of the DRCA) no specific stand had been taken by Vinod Bhatnagar about the premises which had been let out to him; there was no evidence which has been recorded and the site plan has also not been proved in those proceedings; moreover this was a rough site plan and not a scaled site plan; a scaled site plan has to be as per specific ratio in terms of the accommodation which was not so in the instant case. That petition had been filed by the erstwhile landlord in the year 1983; thereafter the present petitioner Sohan Singh had purchased this property in 1989 by a registered sale deed and the schedule annexed with the registered sale deed also shows that the premises which had been let out to Vinod Bhatnagar comprised of one shop and a minai; at the cost of repetition it would be relevant to state that even in the legal notice sent by the landlord to the tenant Vinod Bhatnagar the property tenanted out to him had been described as one shop and a miani to which reply had been filed by Vinod Bhatnagar not disputing this position; so also in para 8 of the eviction where the

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premises had again been described by the landlord as a shop and miani to which again there was no denial; in fact there was an admission by Vinod Bhatnagar in the corresponding para of his written statement. Moreover Ex.PW-2/5 which was the agreement dated 15.10.1975 having been executed between the erstwhile owner Roshan Lal Bhatia with Tarlochan Singh and Harbans Lal had also described the tenanted premises in Schedule A and both the two fact finding courts have held this document to be an authentic document; in terms of Ex. PW-2/5 the tenanted premises i.e. the portion let out to Tarlochan Singh and Harbans Lal comprises only of one shop; there was no reference of the miani. Vehement contention of the petitioner before this Court is that this document is a forged document which submission cannot be gone into as this Court is not a third fact finding court.

11. Record shows that in eviction petition No.84/1990 filed by the landlord against respondents no.2 and 3 namely Tarlochan Singh and Harbans Lal the suit premises tenanted to the said persons had been described as a shop in the front side of property No.HS2/1 and the observation of the ARC qua the portion which was let out to Tarlochan Singh and Harbans Lal is reproduced herein below:

"After hearing arguments and going through the record in my opinion when respondents are tenant of only one shop in the and admittedly these are private numbers put on the property and not the Municipal numbers then mentioning of number in the as HS2/3 or HS2/1 does not make much difference. The fact that these are Private numbers is also evident from the Judgment proved on record as Ex. PW1/R1. It is pertinent to mention here that it is the document proved by the respondents themselves on record and shows that it is private No. 3 in property No. HS-2, Kailash Colony Market, New Delhi which was let out to the respondents hence this objection that it was No. 1 which was let out to the respondents, in view of this judgment, have no merits.

So far as the extent of tenancy is concerned in the Civil Court pleadings were that respondents are tenant of Shop No. 3 in property No. HS-2, Kailash Colony Market and it was held that both the respondents i.e. Tarlochan Singh and Harbans Lal are tenants of Shop No. 3. There also the respondents does not claim that they are tenants of any portion beyond this shop or in the rear thereof or that there is any Parchatti or Miani also under the tenancy of respondents situated above this shop. In reply to the notice also the respondents does not mention the extent of tenancy. They only state that number of the shop is 1 instead of 3 but does not dispute that they are tenant of only one shop and nothing beyond that. Even in the W.S they does not give the details of the tenanted premises and more particularly in the site plan which they have filed in 2001 only which is Ex. RW1/A that there is Miani also in their tenancy. They have, thereafter, alleged that some portion beyond the front portion of the shop is also under their tenancy but that not supported by any earlier document even in the earlier Civil Litigation between the parties, is in my opinion only an after thought and nothing more than that. I am, therefore, in view of the documents on record, of the considered opinion that respondents are tenant of only one shop in property No. HS-2 which is shown red in Mark B and not any portion beyond that or any Parchatti above this shop."

12. This judgment is a first finding of fact delivered on 19.04.2003 which has been endorsed by the ARCT in its impugned

order. Thus the dispute that the miani had formed a part of the tenancy of Tarlochan Singh and Harbans Lal had been set to rest by two concurrent fact findings. The sub-tenant i.e. Tarlochan Singh and Harbans Lal have admitted that miani is in their possession. Their contention that they are in possession of this part of the premises i.e. the miani in their independent right has thus been repelled by both the two courts below. This Court is sitting in its powers of superintendence and is not a third fact finding Court; unless and until a manifest injustice or perversity is pointed out no interference is called for. This is not one such case. The case under Section 14(1)(b) of the DRCA had thus rightly stood proved by the landlord; he was entitled to the eviction order passed in his favour both under Section 14(1)(b) of the DRCA.

14. It is also an admitted case that benefit of Section 14(2) of the DRCA had already been granted to the tenant in term of the order of the ARC dated 08.6.1984 (Ex.PW-2/2) passed in E.P.No.153/1983. This is admittedly a case of second default committed by the tenant in the payment of rent. Decree under Section 14(1)(a) had to follow.

15. In this back ground the impugned order decreeing the petition of the landlord both under Section 14(1)(a) and 14(1)(b)

of the DRCA does not in any manner suffer from any infirmity. No manifest error, illegality or injustice has been pointed out by the learned counsel for the petition which in any manner warrants interference by this Court under Article 227 of the Constitution of India. The petitions are without any merit. Dismissed.

INDERMEET KAUR,J

JANUARY 03, 2012
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