

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

% *Date of Judgment: 07.3.2012*

+ **CM(M) No.287/2012 & CM Nos.4353-55/2012**

SHAILENDER JAIN Petitioner
Through: Mr.Ankit Khetrapal, Advocate.

versus

SP MINOCHA & ORS Respondents
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

Order impugned is dated 22.11.2011 whereby the first appellate Court had endorsed the finding of the trial Judge dated 27.05.2011 wherein in execution proceedings {pursuant to an eviction decree having been obtained by the landlord under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA)}, the objection of the tenant that the respondent Sailender Jain (mentally challenged person) not having been represented through a guardian before the Addition Rent Controller (ARC) makes the entire decree passed by the ARC dated 23.12.2010 a

nullity and non-est had been dismissed.

Record shows that an eviction petition has been filed by the landlord S.P.Minocha against four respondents/tenants; this was a petition under Section 14 (1)(b) of the DRCA; after appreciation of the oral and documentary evidence, this petition had been decreed in favour of landlord vide judgment and decree dated 23.12.2010. The contention of the tenant that Shailender Jain is a mentally challenged person had been noted in para 24. In this context, the ARC had returned the following finding:-

Respondent number 3 has not been represented by the respondent number 1, 2 & 4 though he has been mentioned several time by the respondent No. 1, 2 & 4. It is further reflected from the record that respondent No. 1, 2 & 4 had raised and taken various pleas on behalf of respondent number 3 however, no such application on behalf of respondent number 3 was ever filed on record. It is further reflected from the record itself and not disputed by the respondent that respondent number 3 is the son of respondent number 1 and brother of respondent number 2 & 4 therefore respondent number 3 cannot be considered as a person of unsound mind unless until he is considered as a person of unsound mind, as per the law. Nor any such proceedings had been initiated by the respondents at any point of time. Thus, such a plea taken by the respondent number 1, 2 & 4 that respondent number 3 is a person of unsound mind cannot be considered as per the law and in the absence of any procedure adopted by other respondents, respondent No. 3 cannot be said to be a person of unsound mind. Respondent number 3 remained unrepresented

and not being supported by any legal assistance despite the fact that respondent number 1, 2 & 4 are his blood relatives. Thus, it is considered that respondent number 3 is having the knowledge of each and every proceeding of this case and has been watching the proceedings of this case, as per the law.

In these circumstances, as already stated above that petitioner has been able to establish his case against the respondents as per the law, therefore, petitioner is entitled for an order of eviction under Section 14(1) (b) of the Delhi Rent Control Act and respondents, Smt. Bimla Devi Jain, Sanjay Jain, Shalinder Jain & Ms. Meena Jain are directed to handover the peaceful vacant possession of suit property bearing number F-14/20, Model Town II, Delhi-110009 to the petitioner.”

This judgment was the subject matter of an appeal under Section 38 of the DRCA. It was dismissed on 20.04.2011. The argument now urged before this Court had also been noted by the first appellate Court and the finding returned was as follow:-

“8. One technical objection is raised on behalf of appellants that appellant no.3 being a mentally retarded person is unable to watch his interest so, by taking recourse to Order 32 CPC, the guardian/next friend of the appellant No.3 should have been appointed before the Ld. Additional Rent Controller, which is not done, so proceedings against appellant no.3 and eviction order against appellant no. 3 is illegal.

9. The above contention is disputed by the respondent/landlord and it is argued that Ld. Trial Court has appropriately discarded the above contentions on behalf of appellants in the impugned eviction order.

10. *Ld. ARC in the impugned eviction order has observed that no application is filed by the respondent nos. 1, 2 and 4 (who are present appellants nos. 1, 2 and 4) for appointment of next friends of present appellant no.3. It was also observed that the respondent no.3 is the son of respondent no.1 and brother of respondent nos. 2 and 4, therefore, respondent no. 3 cannot be considered as a person of unsound mind unless and until, he is considered as a person as such as per law, nor any such proceedings have been initiated by said respondents at any point of time. Thus, the plea taken by the respondent nos. 1, 2 and 4 that respondent no. 3 is a person of unsound mind cannot be considered as per law. It was also observed that though respondent no. 3 remained unrepresented since respondent Nos. 1, 2 and 4 are blood relatives of respondent no. 3, the respondent no. 3 was having knowledge of each and every proceedings of the case and has been watching the proceedings of the case as per law.*

11. *In the present appeal, the application is moved by appellant no. 1 to represent appellant no. 3 as her next friend, which is allowed by me in the first part of the present judgment in appeal. However, I am unable to persuade myself to disturb the finding of Ld. Additional Rent Controller as all the four respondents have filed joint written statement in response to original eviction petition filed in 1995. However, in the amended written statement filed subsequently the present appellant tno.3 has not signed the joint written statement. When all the four appellants are living together and appellant no.1 his mother has represented the appellant no. 3 in the revision petition before Hon'ble High Court arising out of other eviction u/o 14(1)(e) of the Act, and the appellant no. 1 being mother and appellants nos. 2 and 4 being the brother of appellant NO. 3, who is alleged to be a person of unsound mind, had hotly contested the eviction petition before Ld. ARC, there being unity of interest of all the appellants before the Ld. Additional*

Rent Controller in the eviction petition and also in the present appeal, the appellant no. 3, in my view, shall be deemed to have been represented and failure to appoint his next friend by a specific order of Ld. Additional Rent Controller does not go to the root of eviction order passed by Ld. Additional Rent Controller, due to common interest of all the appellants in defending the eviction petition before Ld. Additional Rent Controller and also in the present appeal.”

This appeal was disposed on 20.04.2011 itself.

A petition under Article 227 of the Constitution of India was filed impugning the judgment of the ARC dated 23.12.2010 as also that of ARCT dated 20.04.2011. This petition was dismissed by the High Court on 24.05.2011.

All these facts are borne out from the record. There is no dispute. Execution proceedings were filed. In the course of execution proceedings, this point which has now been urged today was again reagitated by the judgment debtor no.3; his submission being that Sanjay Jain was a mentally challenged person and not having been represented through a guardian, the entire proceedings i.e. decree of the ARC dated 23.12.2010 which was endorsed by the ARCT on 20.04.2011 are non-est proceedings. Before the executing Court, an application under Order XLI Rule 27 of the Code of Civil Procedure (hereinafter referred to as

the 'Code') had also been filed. The executing Court on 27.05.2011 had returned the following finding:-

“The judgment on the basis of which present eviction petitioner is filed, in paragraph number 24, it has been observed that respondent no. 3 was not declared a person of unsound mind nor he was represented by any of the family members, during the pendency of the execution proceedings despite the fact that the eviction petition was filed against the family members. It is further reflected from the record and already observed vide judgment dated 23.12.2010 that all the respondents are family members. In these circumstances, therefore, the submissions, made on behalf of the judgment Debtor no. 3 that he is a person of unsound mind cannot be considered in the eyes of law as no observation to this effect have been given by the Court nor any declaration has been made or sought to be made with regard to the Judgment Debtor no.3 at the time of pronouncing the judgment or during the pendency of the eviction petition. Perusal of the record further reflects that in paragraph number 2 of the objections filed on behalf of the respondent/Judgment Debtor no.3, it has been alleged that Judgment Debtor/respondent no.2 is a lunatic and a person of unsound mind. It is reflected from the perusal of the record that this application has been moved on behalf of Smt. Bimla Devi Jain, who is Judgment Debtor no.1 as well as respondent no. 1, during the proceedings. It is further reflected from the record that Bimla Jain was duly represented through a legal counsel and on behalf of other respondent no. 2 & 4 respectively, however, she did not represented respondent no. 3 by the Bimla Devi Jain at any point of time which is reflected from the judgment dated 23.12.2010. The applicant, however, has not been issued against other Judgment Debtors including Judgment Debtor no.1 except Judgment Debtor no.3. In these circumstances, such an issue seems to have been raised for the first time during the

execution proceedings with regard to which several opportunities were available to other Judgment Debtors including the applicant to take the appropriate steps with regard to Judgment Debtor no. 3 which however, were not availed and taken by the other Judgment Debtors/respondents as per the law. In these circumstances, therefore, the ground mentioned in paragraph no. 2 of the application does not seem to be tenable in the eyes of law. In paragraph number 4, it has been mentioned again by Bimla Jain that Judgment Debtor no. 3 could not be represented properly and other respondents were grossly negligent on their part. It has already been mentioned above and it is a matter of record that applicant, Bimla Devi Jain is one of the Judgment Debtors to this execution petition and respondent no. 1 to the execution proceedings, hence, the plea taken by the applicant, Bimla Jain seems to be contradicting herself for which no explanation has been furnished by the counsel for Judgment Debtor no.2 as to why these contrary pleas have been taken by the Bimla Jain.

Lastly it has been reflected from the record and stated by DH and not disputed by the Judgment Debtor no. 3 that an Appeal has been preferred against the judgment dated 23.12.2010 before Ld. RCT and Hon'ble High Court of Delhi, which has been dismissed upholding the judgment passed on 23.12.2010."

Objections filed by judgment debtor No. 3 had been dismissed.

This matter was again agitated before the RCT which had endorsed the finding of the ARC dated 27.05.2011. The appeal was dismissed on 22.05.2011. The argument urged today was also the same argument urged before the first appellate Court. Finding returned was as

follows:-

“The question of law raised in the present appeal was also dealt with by Ld. ARC in the eviction order dated 23.12.2010 passed u/O 14(1)(b) of the Act. The said eviction order was challenged before this tribunal in the appeal bearing No. RCA 22/2011 by the present appellants. In the said appeal, the present appellant no. 2 in the judgment dated 20.04.2011. So the mentally retarded appellant No.1 was represented in appeal which is extension of the eviction proceedings. The question of non representation of the appellant no.1 being a mentally retarded person in the eviction proceedings was raised before Ld. Trial ARC and was decided against the present appellants. This question was again raised in the appeal RCA No.22/11 and vide reasons given in para 11 of the judgment dated 20.4.2011 in the appeal, the said contention was declined.

6. *Further, the Hon’ble High Court on being approached under Article 227 of the Constitution of India in CM(M) 634/2011 by the appellants has dismissed their petition vide order dated 24.5.2011. Therefore, the question raised in the present appeal was also raised in the eviction proceedings before Ld. ARC, in the appeal against the eviction order passed by Ld. ARC and both decided it against the appellants and said decision was confirmed by Hon’ble High Court also in the petition under Article 227 of Constitution of India. Therefore, in the execution proceedings, the same question cannot be raised afresh, decision on it having attained finality for the simple reason that in the execution proceedings, the Ld. Arc passing eviction order cannot go behind the eviction order passed by it to again decide a matter having attained finality. Therefore, I am unable to go into the contention raised on behalf of appellants and authorities relied upon. The appeal has not merits.”*

This order of the RCT is the subject matter of the present petition. Record clearly shows that this is the second round of objections which have been filed by the petitioner when the matter already stood rested by the order of the High Court dated 24.05.2011 which was an appeal filed against the orders dated 23.12.2010 and 20.04.2011; the argument urged before this Court had been considered by the RCT in its judgment dated 20.04.2011 which was finally dismissed by the High Court on 24.05.2011. The same argument has again been urged in the executing Court. The petitioner has not allowing the matter to rest; the controversy stood rested by the order passed by the High Court on 24.05.2011 and could not have been re-agitated. These submissions now urged already stood decided.

Judgments relied upon by learned counsel for the petitioner reported in AIR 1968 Supreme Court 954 Ram Chandra Arya Vs. Man Singhand another and 49 (1993) DLT 603 Oriental Bank of Commerce Vs/ M/s M.K. Gupta & Co. (P) Ltd. are misplaced; there is no doubt that a decree which is obtained against a mentally challenged person or against a minor without appointment of a guardian is a nullity. In the present case, the ARC had noted as a fact that submissions on behalf of

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Sanjay Jain at all times were being made by the other respondents i.e. his mother and brothers; there was no finding returned by any competent Court that Sanjay Jain was a mentally challenged person.

This is a beneficial provision which has been engrafted in the statute and must operate in favour of a mentally challenged person where the Court finds any one of the parties is suffering from an ailment and cannot proceed to take steps at his own; to safeguard the interest of such a person, a guardian may be appointed. It is not the case of the defendants that they had ever brought to the notice of the Court that Sanjay Jain was a mentally challenged person and he could not be adequately represented except through a guardian; in fact the ARC had noted this submission that this was never the contention of either his mother or brother; in this background, the first appellate Court while rejecting this submission of the respondent/tenant had noted that it was for the tenant to have brought this to the notice of the Court; in this background that this was only a technicality as even presuming Sanjay Jain was a mentally challenged person, his interest was adequately protected by his mother who was his natural guardian (Bimla Devi Jain) and who all along making submissions on his behalf.

This petition is nothing else but an abuse of the process of the Court; the appellant appears to be a chronic litigant and in one way or the other, is trying to circumvent the legal process. This has resulted in wastage of the precious time of the Court. Petition being malafide is dismissed with costs of ₹10,000/-.

INDERMEET KAUR, J

MARCH 07, 2012

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