

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

+ CM (M) No. 851/2012

Date of Decision: 04.10.2012

SUSHIL KUMAR SOBTI

.....Petitioner

Through: Mr. A.P.S. Ahluwalia, Sr. Adv.
with Mr. Rajeev Saxena, Ms
Urmila Sharma and Mr. S.S.
Ahluwalia, Advocates.

Versus

DINESH CHAND

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition under Article 227 of the Constitution of India is directed against the order dated 07.04.2012 of District Judge/ARCT (West), whereby appeal against the judgment dated 07.02.2008 of Addl. Rent Controller (Rohini), was dismissed.

2. This is another case in the series of cases coming to this court, where the unscrupulous parties have manipulated the process of law in very deceitful manner to the disadvantage of lawful owners of the properties. The respondent Dinesh Chand Jain (landlord) had filed an

eviction petition on 16.11.1989 on the ground of sub-letting against tenant Lavtar Singh as also the petitioner Sushil Kumar Sobti. The said petition came to be dismissed by the then Addl. Rent Controller vide his judgment dated 05.10.1996. The respondent Dinesh Chand Jain carried the matter in appeal before the Addl. Rent Controller Tribunal, who vide his order dated 07.05.2002 remanded the matter back to the Addl. Rent Controller with the permission afforded to the parties to lead additional evidence. The ARC vide her judgment dated 07.02.2008 passed the eviction order against the respondents, Lavtar Singh and Sushil Kumar Sobti (petitioner herein). The petitioner carried the matter in appeal before Addl. Rent Controller Tribunal which came to be dismissed vide the impugned order dated 07.04.2012, which is under challenge in the instant petition.

3. The impugned order has been assailed by the petitioner mainly on the ground that he was the bona fide purchaser of the suit premises from Om Prakash, who in turn had purchased the same from Budh Ram and that Lavtar Singh was not the tenant under respondent Dinesh Chand Jain and in any case, Lavtar Singh had given possession of the suit premises to Om Prakash and thus there was no relationship of landlord and tenant between respondent Dinesh Chand Jain and Lavtar Singh. The impugned order is also assailed on the ground that Lavtar Singh had died during the pendency of the first appeal before Addl. Rent Controller Tribunal and that being so, the order of remand passed by ARCT, as also the judgment dated 07.02.2008 passed by the ARC,

without the substitution of his LRs, were without jurisdiction. The learned counsel appearing for the petitioner submitted that in the absence of LRs of Lavtar Singh brought on record, the eviction order could not have been passed against the alleged sub-tenant i.e. the petitioner herein. The learned counsel seeks to rely upon the case of ***Shankar Lal and another vs. Sakil Ahmed and Others (2001) 9 SCC 342*** and also some other judgments of different High Courts to contend that after the death of Lavtar Singh, there being no substitution of his LRs, the petition as a whole gets abated and thus the judgment of ARC as also the impugned order of ARCT are null and void and without jurisdiction.

4. The submission that is made by Learned Senior Counsel appears to be quite impressive at the outset, but having seen the entire factual matrix, it would be seen hereafter that the instant petition is nothing but a frivolous device to deprive the respondent/landlord of the fruits of the eviction order dated 07.02.2008.

5. The case of respondent Dinesh Chand Jain, as set up in the eviction petition, was that Lavtar Singh was his tenant in the suit premises vide agreement dated 01.08.1983 executed by his father, and thereafter vide renewed agreement dated 10.08.1984 executed by him in his favour. Both the respondents, namely, Lavtar Singh and the petitioner herein filed the written statements on similar lines. Their case, as set up, was that Lavtar Singh had given the premises to its

owner Om Prakash, who in a suit of specific performance, filed against LRs of Budh Ram, had got the sale deed executed in his favour through the ex-parte order of the court, and had in turn sold the suit premises by registered sale deed to petitioner Sushil Kumar Sobti. The ARC as also the ARCT both have categorically recorded the findings of facts that the sale deed executed in favour of Om Prakash as also in favour of petitioner Sushil Kumar Sobti were fraudulent and that the ex-parte decision of the court executing sale deed in favour of Om Prakash, was not binding on respondent Dinesh Chand Jain, as he was not a party to those proceedings. From the evidence available on record, it was recorded by the ARC, and so maintained by the ARCT, that from the various litigations between Lavtar Singh and respondent Dinesh Chand Jain, it was established that Lavtar Singh had admitted respondent Dinesh Chand Jain to be the owner/landlord of the suit premises. Based on the evidence on record, the ARC recorded finding of fact that Lavtar Singh was the tenant under respondent Dinesh Chand Jain in respect of suit premises and that the documents of title placed on record by Dinesh Chand Jain proved him to be the owner/landlord of the suit premises. These findings of facts have been rightly confirmed and maintained by the ARCT, and I do not see any illegality or perversity in those findings. From the evidence available on record, it was also recorded by the ARC that Lavtar Singh was a tenant in the suit premises, and that he has in any case parted with the possession thereof to Om Prakash, without his consent. This finding of fact has also been confirmed and maintained by the ARCT.

6. It is also pertinent to note that after filing of written statement, Lavtar Singh did not choose to contest and was proceeded ex-parte on 29.05.1991. An application U/O 9 Rule 7 CPC filed by him was dismissed in default on 18.08.1992 and he has not chosen to contest the petition since thereafter. Similarly, petitioner Sushil Kumar Sobti was also proceeded ex-parte and his application U/O 9 Rule 7 CPC came to be dismissed vide detailed order dated 24.10.2007. He, however, did not challenge this order and thus, it attained finality. However, even after the remand by the ARCT, he did not lead any evidence before the ARC. He did not contest the eviction petition before ARC nor led any evidence. At no point of time, he ever informed the ARCT or ARC about the death of Lavtar Singh. It was only after the eviction order was passed by the ARC on 07.02.2008, he preferred appeal against this order before the ARCT and for the first time filed application U/O 41 rule 27 for additional evidence. Plea was taken that he could not contest his application U/O 9 rule 7 CPC as he was in Jail from 28.11.2006 till March, 2007 and his counsel did not watch his interest, resulting dismissal of his application U/O 9 rule 7 CPC. This application came to be dismissed by ARC vide order dated 5.2.2009 and this order was maintained by this court vide order dated 17.02.2009.

7. Now from the above, it would be seen that both, Lavtar Singh and the petitioner, did not choose to contest the eviction petition and remained ex-parte. So much so, the petitioner even did not appear and

contest the petition before ARC after the matter was remanded by the ARCT. He has been in unauthorized of the suit premises, and even did not contest the eviction petition and thus, had no locus standi to now take up the plea of abatement of the petition. In any case, the plea that on the death of Lavtar Singh, the suit abated, in the absence of his LRs, is entirely mis-conceived. The reliance placed on the case of **Shankar Lal** (Supra) is highly mis-placed. On the other hand, the decision rendered by the Supreme Court in this case is to the contrary and is against the petitioner. In that case, the defendant had died on 01.03.1974 and his LRs were not substituted and resultantly the suit was held as abated. The suit was held abated under Order 22 Rule 4 sub-rule (3). From this it would be seen that when defendant No.2 had died in 1974, sub-rule (4) was not on the Statute Book, which came to be inserted w.e.f. 01.02.1977. The provision containing rule (4) sub-rule (4) of Order 22 reads thus :-

“4 (4) The court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.”

8. Thus, it would be seen that under the provisions as contained in sub-rule (3), the respondent was required to substitute LRs of Lavtar Singh, failing which the suit was to abate under Rule 4 sub-rule (3) of this Order 22. However, with the amendment and insertion of sub-rule (4) the position is now different. This provision exempts the plaintiff

(respondent herein) from the necessity of substituting the legal representatives of Lavtar Singh since after the filing of the written statement, he failed to appear and contest the petition. This provision empowers the court to proceed with the case and pronounce the judgment in such cases against the deceased, notwithstanding the death of such person. It also provides that such judgment was to have the same force and effect as if it has been pronounced before the death took place. These provisions are directly applicable in the instant case.

9. In view of my above discussion, the petition being frivolous, merits dismissal with cost, which is quantified as Rs.50,000/-, to be deposited with Delhi High Court Legal Services Committee. Ordered accordingly.

M.L. MEHTA, J.

OCTOBER 04, 2012

pkv