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THE HIGH COURT OF DELHI AT NEW DELHI

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CM (M) 979/2011

Date of Decision: 23.08.2012

DALJEET SINGH (DECEASED) Th. LRs Petitioner

Through: Mr. Madan Lal Sharma, Adv.

Versus

YOGRAJ DEV SHANDILYA Respondent

Through: Mr. Mohit Madan, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This petition under Article 227 of the Constitution seeks assailing the order dated 23.10.2010 of the Additional Rent Controller (ARC) and the order dated 06.07.2011 of the District Judge-cum-Addl. Rent Control Tribunal (ARCT).

2. The brief facts of this case are noted hereinafter to demonstrate the extent to which a landlord can go in manipulating and abusing the process of law in procuring eviction of a tenant from his premises. The suit premises was let out by the petitioner to the respondent. An eviction petition under Section 14(1)(b) of the Delhi Rent Control Act (for short the 'Act) was filed against the respondent and one Dinesh Yadav on the allegations that the respondent had sublet the tenanted

premises to Dinesh Yadav. The ex parte eviction order was obtained on 29.05.2004 and in the execution thereof, the possession was obtained on 07.05.2005. The respondent filed an application for setting aside the ex parte eviction order, which came to be dismissed by the ARC. He carried the matter in appeal before the ARCT, who allowed his appeal and remanded the matter back to the ARC for consideration on merit with the direction to dispose the application within one year. The trial on the application was commenced by ARC. The respondent led his evidence. The petitioner having failed to lead any evidence despite opportunities, his evidence was closed. He brought the matter to the High Court, which gave him one opportunity to conclude the evidence. Again having failed to avail that opportunity, his evidence was closed. He again brought the matter to the High Court and this time, he was again given an opportunity to conclude his evidence, subject to payment of some cost. Thereafter, the application for setting aside ex parte filed by the respondent was allowed by the ARC on 23.04.2010. He also simultaneously directed restoration of possession of the tenanted premises to the respondent within two months. The petitioner was also directed to issue notice in this regard to the third party occupant, if any, within two weeks. The petitioner challenged the same before the ARCT, which came to be dismissed vide the impugned order dated 06.07.2011. These are the orders of the ARC and the ARCT which are under challenge in the instant petition.

3. The findings of courts below are challenged mainly on the ground that the learned ARC has failed to appreciate the evidence in that the testimony of the petitioner on certain facts remained unassailed and that would amount to admission on the part of the respondent. The learned counsel appearing for the petitioner took me through the deposition of the petitioner in his affidavit as also in his cross examination to contend that his testimony to the effect that the summons were issued to the respondent and were refused, has remained unassailed, and that would be an admission on his part. Learned counsel also submits that the onus was upon the respondent to prove that he did not refuse the summons, and that respondent has not examined either the Process Server or the Postman. It is also his submission that the bald denial of receipt of summons, was not sufficient. The reliance is placed on the decision of the Supreme Court in the case of *Parimal Vs. Veena @ Bharti*, 2011 3 SCC 545. He also submits that in any case, the respondent could not be restituted in the tenanted premises, as the same has already been let out by the petitioner to Anil and Amar, and further proceedings in this regard would involve multifarious litigations. In this regard, reliance is placed on the case titled *Sham Lal Dhingra Vs. Jaswant Kaur & Another*, 17 (1980) DLT 456.

4. On the other hand, the contention of the learned counsel for the respondent is that the ex parte eviction order was obtained by fraud inasmuch as there was no person by the name of Dinesh Yadav in occupation of the tenanted premises, in any capacity. He contends that

Dinesh Yadav was the petitioner's own person and was made a respondent along-with him with the mala fide intention. He submits that even the address of Yadav given on the petition was different than the tenanted premises. He also submits that the petitioner nowhere filed any proof of process fee or postal or AD receipts before the court and if it could be shown even now, the respondent would be out of court. With regard to the plea that the tenanted premises has been let out by the petitioner to Anil and Amar, he submits that this was all sham and bogus inasmuch as it was nowhere disclosed before the ARC or the ARCT or even before this court. He submits that the petitioner had been harassing the respondent and he is bent upon dispossessing him, and earlier also, a suit for injunction had to be filed against him, wherein he made a statement not to dispossess him without due process of law.

5. Since the contentions are raised by the petitioner that the courts below have not appreciated the evidence as also the applicability of Order 9 Rule 13 CPC, I have chosen to peruse the records as also the impugned order. It is noted that before the ARC, petitioner examined himself as PW1 and the respondent examined himself as also P.C.Sharma, an official from the Postal Department and Surender Kumar and Sharif Ahmad, Naib Nazirs of Nazarat Branch. It was undisputed fact that the number of tenanted premises was 194/1 which was on the first floor and was in the tenancy of the respondent. Dinesh Yadav was impleaded as respondent No. 1, alleging him to be subtenant of the respondent. The address of Dinesh Yadav given in the petition is

of 194, which is on the ground floor of the suit premises. This fact was also admitted by the petitioner in his cross examination as PW1. If the alleged subtenant was on the ground floor and not in the tenanted premises on the first floor, there is apparently no case of subletting. Interestingly, Dinesh Yadav was the partner of one Devender Solanki, who was admittedly the close relation of the petitioner. These facts are born from the cross examination of the petitioner as also from the complaint that was made by Mr.Solanki to the police on 16.10.2004. Further, from the testimony of Surender Kumar and Sharif Ahmad, Nazirs of Nazarat Branch, the ARC has noted and rightly so, that the summons which are alleged to have been issued to the respondent, are not even entered in the summons register maintained in the Nazarat branch. Likewise, from the statement of P.C.Sharma, official of postal department, it is noted and rightly so, that the registered envelop booked from the District Court post office was returned back to the court on 27.09.2004 and registered envelope booked on 5.11.2003 was not even received at the receiving post office Nand Nagri till February, 2005 and thus, the delivery of these registered envelopes was apparently doubtful. It has also been noted by the ARC that even the registered envelope was got issued to the respondent, not at the tenanted address, but at A-86, Jagatpuri, Shahdara. From all this, the ARC recorded a finding of fact that the allegations of the respondent regarding non-service of summons and alleged manipulation in service through ordinary as also by the registered post, appears to be correct. There does not appear to be any infirmity or perversity in this finding of fact of the ARC.

6. In this factual matrix, the contention of the petitioner that there was a presumption of service on the respondent by registered post and onus was upon him to prove the same, was highly misplaced. This was not a case of bald statement of the respondent having denied service of summons, but as is noted above, there was no issue of summons at all by any mode to him, and all that was done by the petitioner was manipulation by dubious means. In view of this, the petitioner could not get strength from the decision of the Supreme Court in *Parimal Vs. Veena* (supra). From the ratio of this case, it would rather be seen that the burden of proof of fact of issue and service rested on the petitioner as he asserted the issue and service thereof on the respondent. Section 101 and 103 of the Indian Evidence Act casts obligation of burden of proof of particular fact on the person, who asserts and wishes the court to believe the same at his instance, and not on the party, who denies it.

7. In the instant case, the respondent has been able to establish that not only that there was no service of summons by any mode upon him, but there was a fraud and collusion between the petitioner and Dinesh Yadav (respondent therein). In the given facts, a possibility also cannot be ruled out of the petitioner having colluded with some court officials including the bailiffs. I need not dwell into this aspect, but, however, make a cautious note that it is common knowledge that such collusion can be manipulated by unscrupulous landlords. It is for the courts to be cautious and vigilant of such unscrupulous activities widely known to be prevalent in the system.

8. The learned counsel for the petitioner strongly relies upon the case of Sham Lal Dhingra (supra) of this court to contend that in view of the fact that the petitioner has inducted new tenants Anil and Amar in the tenanted premises, the restitution ordered by the ARC is not possible. He submits that since the tenanted premises cannot be restored to the respondent, the matter should be given a quietous . The reliance placed on Sham Lal Dhingra (supra) as also the submission made by the learned counsel for the petitioner strengthens my feeling that the things which have been manipulated by the petitioner, could not have been, but for the advise rendered by the counsel. Firstly, it is noted that the overruled decision of this court has been cited by the learned counsel. This decision was reversed by the Hon'ble Supreme Court in the case of ***Gurjoginder Singh Vs. Jaswant Kaur***, (1994) 2 SCC 386, which was an appeal against the decision of this court in Sham Lal Dhingra (supra). Reversing the view of this court, the Supreme Court held that the status of a bona fide purchaser in an auction sale in execution of a decree to which he was not a party stands on a distinct and different footing from that of a person who is inducted as a tenant by a decree holder-landlord. A stranger auction purchaser does not derive this title from either the decree holder or the judgment debtor and, therefore, restitution may not be granted against him; but a tenant who obtains possession from the decree holder-landlord cannot avail all the same right as his possession as a tenant is derived from the landlord. When the decree had been set aside, he was bound to restore to the judgment-debtor what he gained under the decree.

9. It may also be noted that in a later decision of this court in ***Rama Saroop Vs. Daljit Singh***, AIR 1995 Delhi 351, the reference was made to the decisions of this court in Sham Lal Dhingra (supra) as also of the Supreme Court in Gurjoginder Singh (supra) and it was held that if the new tenant allegedly inducted in the premises have no right to remain in possession under law, no evidence whether about the new tenancy being bona fide or not was relevant or material, and there could be no occasion for remand of the case for determination of those issues. It was held that the effect of setting aside the ex parte decree was that there was no eviction decree against the tenant and therefore, the landlord could not claim or retain possession of the tenanted premises and further that, even if the subsequent tenancy created by the landlord was proper and not sham, the induction of the new tenant would be liable to be dispossessed as he derived his title to the premises only from the landlord, and if the landlord's own title was defective or not legal, he could not bestow a better title on the alleged tenant.

10. In fact, the plea that after taking possession of the tenanted premises from the respondent, the same has been let out to Anil and Amar by the petitioner, is mischievously designed, as an attempt to escape the consequences of setting aside of eviction order and possible restitution. This was neither the case of the petitioner before the ARC or the Tribunal nor it was before this court in the year 2009, when the petitioner came here twice. So much so, the petitioner could not even tell the ARC, and nor his counsel, on being asked by this court could tell

about the date of letting the tenanted premises to Anil and Amar. This dislodges the claim of the petitioner and makes this court to believe the plea as palpably false and mala fide.

11. The above discussion now takes me to the last point of the restitution of the tenanted premises to the respondent. I have already noted above that the alleged creation of fresh tenancies in favour of Anil and Amar are bogus and sham. Even if the said tenancies were proper and not sham, in view of ***Rama Saroop*** (supra), with which I am in full agreement, the new tenants are liable to be dispossessed, as they derived their rights, if any, only from the petitioner and since the petitioner's own right of taking possession was defective and not legal, he could not have bestowed better rights on the alleged tenants. The effect of setting aside the ex-parte decree is that there was no eviction of decree against the respondent and therefore, the petitioner or alleged tenant Anil and Amar could not claim or retain possession of the tenanted premises.

12. If no remedial measure is taken to set right the wrong which has caused the injury to the respondent at the hands of the petitioner, the Court would earn nothing but distrust and disrespect. The Court cannot be a mute helpless spectator after causing injustice to a party. No amount of error or mistake of Court must cause prejudice to anyone. The Court cannot justify by stating that though the interest of litigants have been harmed by its acts, it cannot undo the wrong as the gainer who got the possession of the property, does not have its possession

now. There may be some cases where the possession may be impossible to be restored, but in that case also something has to be found by the Court capable of removing or at least mitigating the injury. In such a case the Court is called upon to repair the injury with innovations depending upon the circumstances of the case. However, in the instant case that is not the situation. The justice demands that the respondent, who ought to have been in occupation of the tenanted premises, and had been unlawfully dispossessed, but for the wrong order of the Court, an obligation is cast on the court to repair the wrong to the extent possible.

13. Inherent powers under section 151 CPC of the Court can also be used in addition to the law of restitution encompassed under section 144 CPC. The instant case may not strictly fall within the terms of Section 144 CPC, but, the court certainly is under a duty and has the jurisdiction under Section 151 CPC to act rightly and fairly in accordance with the circumstances.

14. In view of my above discussion, while maintaining the order of ARC regarding restitution of the tenanted premises to the respondent herein, I have no doubt in my mind that the petitioner has manipulated to deprive the respondent of his entitlement of rightful use of the tenanted premises for his residential and commercial purposes for more than eight years, thereby uprooting the respondent not only from the tenanted premises, but from the city itself. The trauma and agony which the respondent might have undergone, because of the illegal acts of the

petitioner, would have to some extent shaken his faith in the judicial system. It is the duty of this Court to restore the misplaced trust and faith of the respondent and also try to heal his injury. In the given circumstances, he needs to be adequately compensated by the petitioner for the sufferings as also the losses. Though, all these cannot be compensated in terms of money, but money does give a healing touch and thus, on conservative side it is estimated to be Rs.1,00,000/-. Hence, while dismissing the petition, the petitioner is ordered to restitute the possession of the tenanted premises to the respondent forthwith within a period of one week of this order, failing which the learned ARC would ensure the execution of the eviction order, if required, with the help of police aid. The petitioner is also ordered to pay a sum of Rs.1,00,000/- to the respondent as towards his cost of litigation and compensation. The petition stands disposed of accordingly. Copy of this order be sent to all District Judges for information and necessary action.

M.L. MEHTA, J.

AUGUST 23, 2012

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