

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

% *Date of Judgment: 23.02.2012*

+ CM(M) 1158/2011 and CM No. 18454-56/2011 & 19678/2011

MODI SPINNING & WEAVING
MILLS CO LTD

..... Petitioner

Through: Mr.A.K.Matta, Sr. Adv. with Mr.
Avijeet Bhujbal, Advocate.

versus

KRISHNA WANTI (SINCE DECD) & ANR Respondents

Through: Mr.Sandeep Sethi, Sr. Adv. with
Mr.Prashanto Chandra Sen,
Advocate.

AND

+ CONT.CAS(C) 792/2011 & CM Nos.19707-08/2011

MODI SPINNING & WEAVING MILLS
CO LTD & ANR

..... Petitioners

Through: Mr.A.K.Matta, Sr. Adv. with Mr.
Avijeet Bhujbal, Advocate.

versus

TEJINDER SINGH

..... Respondent

Through: Mr.Sandeep Setthi, Sr. Adv. with
Mr.Prashanto Chandra Sen,
Advocate

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. This order shall dispose of two petitions which have been filed by

the tenant-M/s. Modi Spinning and weaving Mills Co. Ltd. (hereinafter referred to as 'the tenant') against the impugned order of the Additional Rent Control Tribunal (RCT) dated 10.08.2011. Two petitions have been filed as they relate to two different portions of the suit premises; the bungalow is property bearing No. G-11, Maharani Bagh, New Delhi. These proceedings have in fact arisen from the eviction petitions E13/1997 and E 14/1997; E 14/1997 relates to the tenanted portion comprising 2-1/2 storeyed bungalow consisting of one drawing room, one dining room, one bed room, one kitchen with pantry, store and bathroom on the ground floor, three bed rooms with attached baths and verandah as also open terrace on the first floor and one bed room with attached bathroom and open terrace on the second floor along with the open front lawn. Eviction Petition No. E-13/1997 relates to the tenanted portion described as one garage situated on the right hand side of annexee building, besides two quarters/rooms alongwith the bathroom and the verandah on the second floor of the annexe building and the entire lawn at the back side of the bungalow, as also the tube well in the left hand corner near the northern boundary wall of this bungalow.

2. The said two petitions were filed under Section 14(1)(b)(h) and (j)

of the Delhi Rent Control Act (DRCA). By a common judgment dated 30.07.2005 prayers for eviction under Section 14(1)(b) and (j) of the DRCA were dismissed; ARC had however decreed the eviction petition under Section 14(1)(h) of the DRCA.

3. Relevant would it be to state that before the Rent Controller there were two persons arrayed as tenants. M/s. Modi Overseas had been arrayed as respondent No. 1 and had been described as the tenant, it was stated to be a division of the Company-M/s. Modi Spinning & Weaving Mills Co. Ltd. who had been described as an independent entity incorporated under the Indian Companies Act and had been arrayed as respondent No. 2. A common written statement was filed by both the respondents.

4. After the ARC had decreed the eviction petitions of the landlord under Section 14(1)(h) of the DRCA, M/s. Modi Overseas had preferred an appeal before the RCT; the same was dismissed by the RCT on 06.12.2006 holding the same to be not maintainable as M/s Modi Overseas was not an independent entity but only a division of M/s. Modi Spinning & Weaving Mills Co. Ltd. A petition under Article 227 of the Constitution of India was preferred against this order dated 06.12.2006

in CM (M) No. 652/2007 by M/s. Modi Overseas which was withdrawn on 09.09.2009. The relevant extract of the order of the High Court reads as under:-

“After some arguments on instructions from the petitioner and the instructing counsel for the petitioner, Mr. Ravinder Sethi, learned Senior Advocate, states that the petitioner would withdraw this petitioner subject to the respondent/landlord not executing the eviction order against the petitioner on the ground that the appeal preferred by the petitioner has been dismissed and on the landlord undertaking that they shall await to decision of the appeals preferred by M/s Modi Spinning and Weaving Mills Limited which are pending before the Rent Control Tribunal, Mr. Sethi states that the petitioner shall henceforth not contend in any proceedings that the petitioner M/s Modi Overseas is a legally independent entity. He further states that the petitioner accepts the position that it is a division of M/s Modi Spinning and Weaving Mills Limited. Learned counsel for the respondent/landlord Mr. Vasisht undertakes on behalf of his client that the respondent shall not execute the eviction order against the petitioner, which is only a division of M/s Modi Spinning and Weaving Mills Limited till such time as the eviction order passed against M/s Modi Spinning and Weaving Mills Limited attains finality.

In view of the aforesaid statements, which shall continue to bind the parties, the petition stands disposed off. The appeals preferred by M/s Modi Spinning and Weaving Mills Limited shall be heard by the Tribunal on their merits.”

5. Thereafter, the RCT vide judgment dated 10.08.2011 endorsed the findings of the ARC dated 30.07.2005 holding that the landlord is

entitled to a decree of eviction under Section 14(1)(h) of the DRCA. This judgment is the subject matter of the present petition.

6. Vehement arguments have been addressed by the respective parties. On behalf of the petitioner a first submission has again been made that M/s. Modi Overseas is a distinct entity and in fact it was a 'tenant' and falls within the meaning of Section 2(1) of the DRCA; in this view of the matter the impugned judgment decreeing the eviction petition against M/s. Modi Spinning & Weaving Mills Co. Ltd. suffers from an illegality. This submission of the petitioner is worthy of no merit as the extract of the order of the High Court (reproduced supra) is clear and categorical; M/s. Modi Overseas had given up its right to contest the appeal and it was M/s. Modi Spinning & Weaving Mills Co. Ltd. which had been granted permission to contest the appeal pending before RCT. This argument has thus not been pressed any further.

7. The next submission of the learned counsel for the petitioner is that a petition under Section 14(1)(h) of the DRCA was in fact not maintainable; eviction petition was admittedly filed on 28.01.1997; the averments contained in the eviction petition are to the effect that the tenant has acquired an alternate accommodation which is a property at

12 Friends Colony (West), New Delhi; this was a limited tenancy created under Section 21 of the DRCA; further contention being that the second alternate accommodation at 46 Friends Colony (East), New Delhi has also been acquired by the tenant which was again a limited tenancy equated under Section 21 of the DRCA; submission of the tenant being that these premises had admittedly been acquired by the tenant on 07.08.1977 and on 01.11.1980 respectively but the same were returned back to the landlord on 09.09.1995 and 31.07.1996 respectively and although admittedly this did not form a part of the defence of the tenant in his written statement filed before ARC; yet before the RCT the landlord through his counsel had made a categorical statement which was to the effect that on the date of the filing of the eviction petition (which was on 08.09.1997) these alternate premises [i.e. 12 Friends Colony (West) & 46 Friends Colony (East)] were no longer with the tenant. This statement reads as under:-

“STATEMENT

07.11.2009

Statement of Sh.Kalka Prasad Aggarwal, Advocate for the legal heirs of Respondent No.1 without oath.

“I do not dispute that the appellant had vacated the premises

No.12, Friends Colony (West) New Delhi and 46, Friends Colony

(East), New Delhi, that the said premises were vacated before the institution of the eviction petition out of which the present appeal has arisen.”

Submission being that on the date of the filing of eviction petition (28.01.1997) there was no cause of action qua the provisions of Section 14(1)(h) of the DRCA as the aforementioned two premises at 12, Friends Colony (West), New Delhi and 46, Friends Colony (East), New Delhi had already been returned back to the respective landlords; they were no longer with the tenant; action under Section 14(1)(h) of the DRCA was not available; both the courts below endorsing this finding have thus committed an illegality. To support this submission the learned counsel for the petitioner has placed reliance upon the judgment of the Apex Court reported as Ganpat Ram Sharma & Ors. vs. Gayatri Devi reported in 1987 (3) SCC 576; attention has been drawn to para 21; facts of the said case have also been adverted to; submission being that only in the peculiar circumstances of that case where the alternate allotments still remained constructively in possession of the tenant that such an order was passed.

Second submission urged by the learned counsel for the petitioner is that the eviction petition has been filed on 28.01.1997 which is clearly barred by laches and delay; the whole case of the petitioner is founded on the alternate accommodation which had been made available to the tenant on 07.08.1977 and 01.11.1980; eviction petition filed more than 17 years later is barred by limitation; submission being that the provisions of Article 66 of the Limitation Act which is the applicable provision allows a limitation of 12 years for filing such a petition; this argument has also not been considered in the correct perspective by the two courts below; on this count also the impugned judgment suffers from an infirmity and it is liable to be set aside. In support of this submission reliance has again placed upon Ganpat Ram Sharma vs. Gayatri Devi(supra); submission is that Article 66 of the Limitation Act clearly prescribed a period of limitation of 12 years; in that case, the court had noted that the landlord in such type of cases must be quick in taking action after the accrual of the cause of action and if by his inaction the tenant allows the premises to go out of his hands then it is the landlord who is to blame and not the tenant; contention being that in this case the eviction petition having been filed more than 17 years

after the date of the accrual of cause of action in favour of the landlord was clearly barred by time.

8. Record has been perused. Eviction petition has been filed on 28.01.1997. It is not in dispute that on the date of the filing of eviction petition the alternate accommodation which had been allotted to the tenant i.e. 12 Friends Colony (West) and 46 Friends Colony (East) (which were limited tenancies under Section 21 of the DRCA) had since been vacated; the landlord through his counsel had made a clear admission on this point; this factum is even otherwise not in dispute. It is thus clear that on the date of the filing of the eviction petition i.e. on 28.01.1997 the aforementioned two accommodations were not in possession of the tenant. The question of applicability of Section 14(1)(h) of the DRCA in this scenario had arisen before the RCT. The RCT had returned a finding that if the ingredients of Section 14(1)(h) of the DRCA have been fulfilled once, the tenant would lose his protection under Section 14(1)(h) of the DRCA and even if he has given up this accommodation or has lost it for one reason or the other in this intervening period, the protective umbrella of Section 14(1)(h) of the DRCA would no longer be available to him.

“(2) Clause (h) of the proviso to sub-section (1) of the section 14 of the Act is as under:

“S. 14(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or controller in favor of the landlord against a tenant; Provided that the controller may on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds: only: namely: (h) that the tenant has, whether before or after the commencement of this Act, built acquired vacant possession of, or been allotted, a residence;

9. A similar question had arisen before the Apex Court in 1989 (3) SCC 72 titled as Mohini Badhwar vs. Raghunandan Saran Ashok Saran.

In this case an alternate accommodation had admittedly been allotted to the tenant who had sold it four days after its occupation and on the date of the filing of the eviction petition the tenant was not in possession of this property; Apex Court had returned a positive finding that this fact that the tenant had lost possession of the alternate accommodation and was not in possession of the same on the date of the eviction petition was not material for the applicability of Section 14(1)(h) of the DRCA. This view was first taken by the Division Bench of this court in AIR 1980 Delhi 1 titled as Hem Chand Baid vs. Prem Wati Parekh which

had quoted with approval the ratio laid down in 2nd 1970 Delhi 1748

Batto Mat's case where the Division Bench held as under:-

“Apart from the fact that the Legislature could not have intended that the right arisen in favour of the landlord could be so easily defeated at the sweet will of the tenant, we are not at all convinced that the mere use of the word ‘has’ can support the argument of the tenant as to the meaning of the proviso (h) to Section 14(1) of the Delhi Rent Control Act, 1958.....” The mere fact that the tenant has subsequently disposed of the residence does not efface the fact that he had once acquired it and thus gave a cause of action to the landlord for filing a petition for eviction..... It cannot be open to the wrongful doer himself to put the aggrieved party out of court by subsequently changing the situation unilaterally.”

10. The Apex Court in Ganpat Ram Sharma (Supra) had also had an occasion to deal with the provision of Section 14(1)(h) of the DRCA. This was an appeal which had been filed by the tenant in the Apex Court against an eviction decree which had fallen into the hands of the landlord under Section 14(1)(h) of the DRCA. In this case the landlord had claimed eviction of her tenant Ganpat Ram who had been allotted a residential quarter at Kirshna Nagar & Seelam Pur; in the course of the evidence it had come on record that although this accommodation had been allotted to the tenant-Ganpat Ram and possession had also been

delivered to him but thereafter on the date of filing of the eviction petition he was not in possession of either of the two properties and somebody else was in its possession. A Bench of this court (against which an appeal had been filed in the Supreme Court) had noted that this factum was immaterial; and once the condition as stipulated in Clause (h) of the Section 14(1) (h) of the DRCA had been fulfilled, the tenant was disentitled to its protection thereafter. This view of the High Court was affirmed by the Apex Court. Relevant extract is produced as under:-

“The landlady claimed eviction of Ganpat Ram, appellant-tenant, on another ground also, namely, that he has been allotted residential quarter at 317, Seelampur III, Shahdara, Delhi. This fact was denied by the tenant. AWI Naresh Chand, an official of the DDA brought the official record relating to the allotment of this quarter. It was proved that the said quarter was allotted to him in 1958 and that possession was delivered to him. It was deposed that it was residential in nature. On behalf of the tenants, it was submitted before the High Court that the same was in possession of Sushila Devi. Sushila Devi had appeared as a witness. She admitted that the said quarter was allotted to the tenant, Ganpat Ram, the appellant. After allotment Ganpat Ram was entitled to occupy the allotted accommodation and possession was delivered to him. According to the said witness, he was not now in possession and somebody else was in possession. Evidence was adduced on behalf of the tenant that he was not in possession and somebody else was in

possession. According to the High Court, it once the condition stipulated in clause (h) was fulfilled by the tenant, he was disentitled to protection under the Act. He cannot thereafter claim that he should be protected. We are of the opinion that the High Court was right.

.....

25. In the premises, we are of the view that the High Court was right and the appeals must fail and are accordingly dismissed with costs.”

11. This judgment having reaffirmed this aforementioned legal position, it is clear that the present tenant i.e. M/s. Modi Spinning and Weaving Mills having been allotted alternate suitable accommodation i.e. the two properties at 12 Friends Colony (West) and 46 Friends Colony (East) and even though they were not in possession of these alternate accommodations on the date of the filing of the eviction petition, this fact would be immaterial; the protective umbrella of Section 14(1)(h) of the DRCA had been lost to such a tenant. This argument of the learned counsel for the petitioner thus has no force.

12. The other argument which has to be answered by this court relates to the question of limitation. In the judgment of Ganpat Rai Sharma (supra), Article 66 of the Limitation Act had been held to be the

relevant provision for seeking possession of immovable property; limitation would run from the date when the plaintiff becomes entitled to the possession by reason of forfeiture or breach of a condition. In the case in hand i.e. in the facts of Ganpat Ram Sharma (supra), the question of limitation was not really disputed as the landlady had purchased this property only on 09.04.1973 and the eviction petition had been filed on 16.04.1975; there was also nothing on record to show that the earlier landlord was aware of the availability of alternate suitable accommodation with the tenant Ganpat Ram.

13. In the present case, positive fact findings have been returned by the RCT which is to the effect that the landlord had knowledge of these alternate accommodation allotted to the tenant only in the year 1993; no knowledge could be attributed to any period prior to 1993; this was after going through the pleadings and the evidence of the parties. Court had returned these fact findings in the aforementioned terms.

“38. I am afraid the submissions of the appellant are based on distorted reading of the pleadings and the evidence. When the decree holder in the civil suit pleaded “common knowledge” respecting the other tenancies, the averment was through a sentence in the ‘present tense’. It nowhere states, as is being submitted that the landlord had been

aware about the other tenancies since beginning i.e. 1977/1980. If at all,

it would show the “common knowledge” related to August, 1996 when the said plaint was verified. The decree holder was cross-examined on 17.11.2003, when he would talk about the knowledge about the acquisition of these properties around ten years ago. It would mean that the knowledge had been acquired some time in 1993. Thus, the knowledge cannot be attributed for any period antecedent to 1993. In this view, the arguments of limitation and laches fall to the ground.”

14. This court is sitting under the powers of superintendence under Article 227 of the Constitution of India; it is conscious of the fact that the provision of Section 39 which is the right of second appeal has since been abrogated and powers of superintendence of the High Court are not the substitute powers of an appellate forum. This court being not a fact finding court it cannot re-examine these fact findings returned by the RCT which are based on an appreciation of the evidence of the parties. Relevant would it be at this stage to state that the question of limitation was also never raised as a defence by the tenant before the ARC; it surfaced for the first time only before the RCT. In his cross-examination, PW1 has clearly stated that he learnt about this alternate accommodation only about 10 years ago; present petition having been filed on 28.01.1997 i.e. within 12 years of knowledge was even otherwise clearly within the prescribed period of limitation.

15. The last submission made by the learned counsel for the petitioner is to the effect that the landlady-Krishna Wanti has not come into the witness box; her attorney Tejinder Singh has alone come into the witness box to substantiate the submissions made by the landlady-Krishna Wanti; attention has been drawn to the cross-examination of PW1-Tejinder Singh wherein he had admitted that he had no knowledge regarding the tenancy; his affidavit is based on documents; contention being that the finding returned by the RCT that Krishna Wanti had knowledge about the alternate accommodations having been allotted to the tenant only from the year 1993 was only within the special domain of Krishna Wanti herself who not having been come into the witness box, testimony of PW1 on this count is unreliable. This submission of the learned counsel for the petitioner is also bereft of all force. Not only was this objection not taken in either of the fact finding courts below the record shows that on the date when PW1 had filed his affidavit, by way of evidence which was in October-November 2003, Krishna Wanti was a dead person. In his affidavit he has clearly stated that during her lifetime of Krishna Wanti had executed a General Power of Attorney dated 27.09.1996 in his favour (Ex. P5); during the pendency of this

petition Krishna Wanti had died leaving behind a Will dated 07.12.1995; probate of the said Will had been obtained in BLA 155/1998 from the High Court at Kolkata; the certified copy of the probate petition, Will and the codicil had been proved as Ex.P6; on the basis of the aforementioned Will and codicil, Tejinder Singh has become the owner of the suit property. There is no dispute to these factual averments.

16. It is thus clear that even during the lifetime of Krishna Wanti, PW1 was prosecuting the litigation on the basis of a power of attorney and during the pendency of the petition; after her death he having been become the owner by virtue of the Will left by the deceased Krishna Wanti he continued to prosecute the litigation. PW1, in these circumstances had deposed on the documentary evidence. This submission raised by the petitioner is also wholly devoid of force.

17. Learned counsel for the respondent has pointed out that this litigation is a classic example of a frivolous and a malicious litigation; it is wastage of the precious time of the court; attention has been drawn to certain orders passed by Court. Record shows that the defence raised by the petitioner all along was that M/s Modi Overseas is an independent tenant of the landlady and M/s. Modi Spinnign & Weaving Mills Co.

Ltd. is not the tenant; this controversy was finally set to rest by an order of this court which was passed in CM (M) NO. 652/2007 on 09.09.2009. This order has been noted in para 4 (supra); vehement contention of the learned counsel for the respondent is that in spite of this specific undertaking having been given by the learned senior counsel appearing on behalf of the petitioner which was to the effect that M/s. Modi Overseas would never contest any proceedings as a separate legal entity; having accepted the position that it is a division of M/s. Modi Spinning and Weaving Mills Co. Ltd.; yet in spite of this specific undertaking having been given to the court on 09.09.2009; this averment was again raised before the RCT.

18. This fact is not in dispute. This contention was raised before the RCT who had dealt with it while disposing the appeal under Section 38 of the DRCA and this argument find mention in para 20 of the impugned judgment. The RCT had again to dwell on to this submission and return findings which did amount to a wastage of its precious time; it chose to flout its own undertaking. So also the same grievance was again raised as a ground of its grievance in the present petition under Article 227 of the Constitution of India and finds mention in grounds d,

e & f. This argument has been noted and averred in the earlier part of this order.

19. It is thus clear that there has been a wastage of the precious time of this court in this long endearing process, the same argument has been pressed before the RCT has again been argued before this court although the petitioner had given an undertaking not to argue this point again. Such kind of frivolous submissions have to be nipped in the bud with an intent to deter litigants from increasing the scope of litigation and maneuvering it into a process of a luxurious litigation leading to a wastage of the precious time of the courts; otherwise the litigant would never learn. This submission of the learned counsel for the respondent having found force and having been substantiated from the record, this petition is dismissed on merits as also for raising frivolous arguments. It is accordingly dismissed with costs of ₹ 50,000/-.

20. Petition disposed of in the above terms.

INDERMEET KAUR, J

February 23, 2012

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