

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

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Judgment reserved on : 30.01.2012

Judgment delivered on: 01.02.2012

+ **CM(M) No. 83/2012 & CM Nos.1229-1230/2012, CM (M) No. 92/2012 & CM Nos.1464-65/2012 and CM (M) No. 96/2012 & CM Nos.1513-14/2012**

SAVITRI DEVI GUPTA Petitioner
Through Mr. S.C. Singhal, Adv.

Versus

DHARAM PAL TANWAR Respondent
Through Nemo

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The order impugned before this Court is the order dated 23.08.2011 vide which the Rent Control Tribunal (RCT) had while disposed of three appeals i.e. (i) RCT No. 23/2010 passed in Eviction Petition No. 318/2008 titled Smt. Savitri Devi Gupta Vs. Shri Dharam Pal Tanwar, (ii) RCT No. 24/2010 passed in Eviction Petition No. 317/2008 & (iii) RCT No. 25/2010 passed in Eviction Petition No. CM (M) Nos. 83/2012, 92/2012 & 96/2012

87/2008. These eviction petitions had been filed under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA) and had been decreed in favour of the landlord; premises in dispute relate to property bearing No. WZ-193 & WZ-194, Nangal Raya, Delhi. The ARC had decreed these eviction petitions on 06.05.2009 on the following statement made by the counsel for the parties which reads herein as under:-

“Statement of Sh.Dharam Pal Tanwar S.o Late Sh. Ram Sharma Tanwar, aged about 60 years, R/o WZ-1535, negal Raya, Delhi-46.

On SA

I am petitioner in the present petition. Today the matter has been amicably settled between the parties and as per this settlement, I state that I shall reconstruct the shop in question i.e. WZ-194 and WZ-193-B, Nangal Raya, Jail Road, N.Delhi within three months after the Respondent vacate the hand over the possession to me. I say that I will further let out the said shop to the respondent only after reconstruction.

ROAC

*Navita Kumari
ARC/West THC
06/05/09””*

“Statement of Sh.Dhruv Pratap Singh, Counsel for the Respondent at Bar

I am counsel for the Respondent in the present petition. On instruction from the Respondent today, the matter has been settled and as per the instructions of the Respondent, I state that the Respondent shall vacate and hand over the tenanted

shop to the petitioner within a week for reconstruction and petitioner will further let out the said shop to the Respondent only after reconstruction.

ROAC

*Navita Kumari
ARC/West THC
06/05/09”*

2 These statements were made by the parties when the trial was in progress i.e. at the stage of cross-examination of PW-1.

3 Thereafter on 11.05.2009, a review petition was filed by the tenant seeking review of the order dated 06.05.2009; contention being that his counsel had no authority to make a statement on her behalf; said statement was without her instructions; even otherwise, plans have not been got sanctioned by the landlord in the absence of which it is not possible to construct the suit property and as such the statements noted in the order of the ARC dated 06.05.2009 cannot fructify.

4 This review petition was dismissed by the ARC on 23.03.2010.

5 Against this order, an appeal had been filed before the RCT which was dismissed by the impugned order on 23.08.2011. The impugned order was of the view that the power of review is not available either

with the Rent Controller or with the Rent Control Tribunal.

6 Learned counsel for the petitioner is aggrieved by this finding. He has placed reliance upon a judgment of this Court reported as 22 (1982) DLT 230 Aggarwal Hardware Works Private Limited Vs. C.V.S. Vasantha; submission is that the judgment relied upon by the trial Court reported as 2009 (1) RCR 296 Nand Kishore & Anr. Vs. Vijay Kumar Gupta is distinct on its facts; this judgment has even otherwise not considered the dictum of this court in the judgment of Aggarwal Hardware Works Private Limited (Supra). Learned counsel for the petitioner has also placed reliance upon the judgment of the Apex Court reported in JT 2009 (14) SCALE 672 Prithipal Singh Vs. Satpal Singh (Dead) through LRs; contention being that Rule 23 of the Delhi Rent Control Rules, 1959 has been excluded in its application only for a special class of landlords and the present petition which has been filed by the landlord under Section 14 (1)(a) & (b) of the DRCA is not a special class of landlord; the impugned judgment dismissing his application for review only on the ground that powers of review are not available to the ARC and the RCT suffers from an infirmity.

8 A Bench of this Court in the judgment of Nand Kishore (Supra)

was dealing with a petition filed by the landlord under Section 14 (1)(b) of the DRCA and in this context had noted that no power of review is available either to the Rent Controller or to the Rent Control Tribunal. In this context, the following extract quoted from the judgment of the Apex Court reported in AIR 1970 SC 1 Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatraya Bapat had been extracted which inter-alia reads as follows:-

“5. Even otherwise, it is settled law that Additional Rent Controller is not a Civil Court and cannot exercise inherent power or powers which are not conferred on it by the statute. Power of review is not an inherent power and can be exercised by an Additional Rent Controller or Additional Rent Control Tribunal only if it is provided in the Rent Control Act. No power of review has been conferred on the Additional Rent Controller or on the Additional Rent Control Tribunal under Delhi Rent Control Act and Rent Controller or Rent Control Tribunal cannot exercise this power. In Jagdish Parshad Vs. Mehar Chand & Anr. 1993 (1) RCR (Rent) 459 (P&H), Punjab and Haryana High Court had considered the similar issue and observed as under:-

5. As the Rent Controller and the Appellate Authority are not Courts, therefore, the power to review exercised by Civil Court under the Code of Civil Procedure cannot be exercised by them. Learned counsel for the petitioner fairly concedes that the Act contains no provision as to review. In this view of the matter, Appellate Authority rightly dismissed the application for review of the order.

6. Similarly is the view of Andhra Pradesh High Court in A. Manmohan Shah Vs. Gopinath 1999 (1) RCT (Rent) 405. I consider that the power of review since not

available under Rent Control Act cannot be exercised either by Rent Control Tribunal or by the Rent Controller.”

9 Similar view was expressed by another Bench of this Court reported in 1986 (2) AIRCJ X Chaman Lal Grover VS. Brij Lal Dhamija & another.

10 In the present case, on the statement made by the parties on 06.05.2009, the petition was disposed of as compromised. The following order was passed by the ARC which reads as under:-

“PW-1 partly cross examined. At this stage during the cross-examination the parties have agreed for amicable settlement. The petitioner has submitted that he is ready to get the shop reconstructed if the Respondent vacates the same and after reconstruction of it, within three months of its vacation by the Respondent, he will again hand over the possession of the same to the Respondent and the counsel for the Respondent has agreed for the same who has submitted that he was talked to the Respondent and has got instructions from her to state that as per the settlement Respondent will vacate the shop in question within one week from today for its reconstruction, as the petitioner has agreed to let out this shop to the respondent after reconstruction. The statement of the parties as well as counsel in this regard recorded separately. Parties shall be bound by their statement recorded today. So, in view of the statement recorded today, the resent petition is disposed off as compromised.

File be consigned to the record room. ”

11 The application for review filed against this order had been

dismissed by the ARC on 22.03.2010. This order of the ARC was assailed before the RCT which had been disposed of by the impugned order dated 23.08.2011. The order of the ARC has since merged with the impugned order passed by the RCT. The impugned order had held that not only are the powers of review not available to the Rent Control Tribunal but even on merits, the submission of the petitioner that his counsel was not authorized to make a statement on her behalf did not find favour with the RCT as the Court had noted that although this contention had been raised but yet for more than two years, it appears that no action has been taken against her erring counsel.

12 This Court is bound by the judgment of the coordinate Bench of this Court i.e. Nand Kishore (Supra) which has categorically held that the powers of review are not available to the Rent Controller or to the Rent Control Tribunal; this order was pronounced while dealing with a class of landlords under Section 14 (1)(b) of the DRCA.

13 The judgment of Aggarwal Hardware Works Private Limited (Supra) is distinct on its own facts. This was a petition under Section 21 of the DRCA; the matter had been remanded back by the Tribunal to the ARC; in the review petition before the Tribunal it had been contended

that the sole ground for remand was to determine whether the premises had been let out for a limited period or not; record had been requisitioned by the Tribunal and Tribunal had noted that this point already stood decided by the ARC and because of this glaring factual mistake which was apparent on the face of the record, the Tribunal had noted the order of remand would be an exercise in futility; it was in this context that power of review was exercised.

14 The judgment of Prithipal Singh (supra) was dealing with a special class of landlords i.e. a class of landlord under Section 14 (1)(e) of the DRCA where it was noted that the procedure of Section 25-B of the DRCA being a complete Code in itself is applicable to such a category of landlords. This judgment does not in any manner advance or substantiate the submission of the petitioner.

15 Powers of Rent Controller are contained in Section 36 of the Act and that of Tribunal in Section 38 of the DRCA. The power to correct an arithmetical mistake is given both to the Controller and to the Tribunal under Section 40 of the said Act. If the Legislature had intended to grant the powers of review to the Rent Controller or the RCT, the said powers would have been spelt out.

16 Impugned judgment in no manner suffers from any infirmity.
Dismissed.

FEBRUARY 01, 2012
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INDERMEET KAUR, J