

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

% *Order delivered on: July 17, 2013*

+ **CM(M) No.549/2012 & C.M.No.8445/2012**

JAY KANT MISHRA Petitioner
Through Mr.Satpal Singh, Adv. with Mr.V.S.
Dubey, Adv.

versus

S. CHAND & CO. LTD. & ANR. Respondents
Through Mr.Diwan Singh Chauhan, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. This petition is arising out of the judgment dated 27th April, 2012 passed by Rent Control Tribunal, Delhi, whereby the appeal, being RCT appeal No.97/2011, filed by the petitioner against the order of eviction on the ground under Section 14(1)(i) of DRC Act was dismissed.
2. The brief facts of the case are that respondents had filed two eviction petitions against the petitioner under Section 14(1)(i) and Section 22 of the DRC Act respectively, inter-alia, alleging that suit premises viz. one room at First Floor forming part of property No.19 Ansari Road, Darya Ganj, New Delhi was allotted to the petitioner by virtue of his employment with respondent No.1 and since he ceased to be employee of respondent No.1 and premises was required for the use of their other employees, eviction of the petitioner was sought in respect of the suit property alongwith three portions encroached by the petitioner illegally and unauthorisedly.

3. The eviction petitions were contested by the petitioner inter alia on the grounds that the respondents were not the landlords/owners of the suit premises. The suit property was distinct as the petitioner was residing in the property bearing address First Floor, Radha Madhav Mandir comprised in property No.4634/1-19-A, Ansari Road, Delhi. In the said Mandir his father late Shri Chandra Kumar Mishra was a Priest, who had played a prominent role in the construction of the said Mandir as he alongwith other members of the community had collected donations from the members of the community. It was also pleaded that the petitioner was in continuous employment of the respondent No.1 from 3rd September, 1992 to 25th June, 2003 when he tendered his resignation. The petitioner's main plea was that the suit premises was not allotted to him by respondent No.1, nor he encroached any adjacent portion as alleged by the respondents.

4. By common judgment dated 19th November, 2011 learned ARC passed eviction order against the petitioner in respect of the suit premises. Feeling aggrieved of the said eviction order, the petitioner filed appeal under Section 38 of the DRC Act. Notice of the appeal was issued to the respondent. During pendency of the said appeal, the petitioner filed an application under Order XLI rule 27 CPC for permission to lead additional evidence. It was alleged by the petitioner when he was preparing for the argument, he came to know of this anomaly which is very material. It was submitted that petitioner be allowed to file and place on record certified copy of the sale deeds alongwith the site plan so as to show that there is variance in the contents of sale deeds and site plan registered with it.

The respondents rebutted the submissions made on behalf of the petitioner. It was submitted by the learned counsel for the respondents that application under Order XLI rule 27 CPC was been filed with mala fide intentions in order to linger on the matter on one pretext or the other. It was submitted that sale deeds which are already exhibited as Ex.PW/13 to Ex.PW1/6 were produced before the Trial Court and proved as per law and the petitioner had not raised any objection. It was submitted that the petitioner had filed an application under Order VIII Rule 1(A) & (3) for producing certain documents which was allowed by trial court vide order dated 1st September, 2008 and said documents were taken on record. Though the case of the petitioner was that he had filed a sale deed dated 9th September, 1994 which was executed in favour of Sachin Kumar and Anup Kumar and another sale deed in favour of Rishi Kumar and another. Therefore, the petitions were not maintainable.

5. The case of the respondents before the trial court was that respondent No.2, who is a sister concern of Respondent No.1, is the owner of property bearing No.19, Ansari Road, Daryaganj, New Delhi and the petitioner was an employee of respondent No.1, who joined respondent No.1 in the year 1992 and tendered his resignation on 14th November, 1997 which was duly accepted by respondent No.1 and accordingly settled his accounts in full and final. However, petitioner again approached the respondent No.1 for employment and considering his request, he was appointed as a Sales Executive by the respondent w.e.f. 1st May, 1998 on fresh terms and conditions.

5.1 The petitioner approached respondent No.1 for allotment of one room accommodation at first floor forming part of property bearing No.19, Ansari Road, Daryaganj, New Delhi for his residence and his

family members and considering the request of the petitioner, respondent No.1 allotted one room accommodation to him. The petitioner illegally encroached upon side room with three partition portions adjacent to room which was allotted to him during the course of his employment. However, since 25th March, 2003, the petitioner absented himself from the service without any permission and intimation to respondent No.1. The respondent sent several letters to petitioner inter alia dated 16th April, 2003, 23rd April, 2003, 7th May, 2003 and 12th May, 2003, but inspite of service of said letters, petitioner did not join the service of the respondent.

5.2 Thereafter, petitioner had filed a frivolous complaint with the Conciliation Officer, Pusa Road, New Delhi. During pendency of the conciliation proceedings, petitioner again tendered his resignation dated 25th June, 2003 which was duly accepted by respondent No.1 and accordingly, payment was made to him as full and final settlement. Since the petitioner ceased to be employee of respondent No.1 and the premises was required for the use of their other employees, respondent No.1 issued a legal notice dated 16th October, 2003 to the petitioner, requiring him to vacate the accommodation which was allotted to him during his service, but neither he vacated the suit premises nor paid the damages.

6. Hence, eviction of the petitioner was sought by filing two separate eviction petitions under Section 14(1)(i) and under Section 22 of DRC Act in respect of suit premises viz. one room at first floor forming part of property No.19, Ansari Road, Darya Ganj, New Delhi and side adjacent room with three portions encroached by the petitioner illegally and unauthorized.

7. In the said eviction petitions the petitioner was served. While denying the averments made in the eviction petitions, it was stated that the site plan filed by the respondents was wrong as the same indicated even the public gali as part of the properties shown in the alleged sale deed. It was also stated that the respondent had earlier approached the petitioner to sell the disputed premises but the petitioner had refused and as the disputed premises is separated by a six feet wide gali, the respondent No.1 had a coveted eyes to encroach the gali after purchasing the disputed premises. It was denied that the respondent No.1 and respondent No.2 are sister concerns. It has been stated that the petitioner was in continuous employment of respondent No.1 from 3rd September, 1992 to 25th June, 2003 when he tendered his resignation. It was alleged that the petitioner is residing in the property bearing address First Floor, Radha Madhav Mandir comprised in property No.4634/1-19-A, Ansari Road, Delhi. It was stated that his father late Sh. Chandra Kumar Mishra was a Pujari/Priest at the said Radha Madhav Mandir since around 1965 and since then he was in possession of the suit premises which is presently in occupation of the respondent. His father had played a prominent role in the construction of the said Mandir, as he alongwith other members of the Community had constructed the said Mandir after collecting donations from the members of the community. It is stated that ground floor and basement of the property above which the property in question is located, is neither in the possession of the respondents, nor do they have any title over the same. When the petitioner wanted to change his address, respondent No.1 refused to change the address of the correspondence of the petitioner to the premises in question and it was openly told by the Management that if he insisted for the change of

address, he would have to resign from the job. As such, the petitioner had to maintain a different address for the purpose of correspondence with respondent No.1 and on 25th June, 2003 he resigned from his job with respondent No.1.

8. After perusal of the two judgments passed by the trial courts, it is evident that all issues raised by the petitioner have been dealt with. The Appeal against the order of eviction passed under Section 14 (1)(i), the learned Rent Control Tribunal has rightly come to the conclusion that it does not suffer from any infirmity which calls for interference. It is clear from the discussion of two judgments passed against the petitioner that the premises was given to him being in the service of respondent No.2. He ceased to be in employment of respondent No.2. The premises was given to him for use as residence.

9. It is not denied that both the judgments have been passed based on facts and courts have arrived at the findings on the basis of material documents placed by the parties. The question now is as to whether the court can interfere with the said findings in the nature of the present case. The simple answer is 'no'.

10. The power under Article 227 is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or wrong decisions made within the limits of the jurisdictions of the Courts below. (See *Essen Deinki v. Rajiv Kumar* (2002) 8 SCC 400, 401 (para 2): AIR 2003 SC 38).

11. Where the special legislation does not provide for second appeal or revision, the petition under Art. 227 would not be maintainable and entertaining the same would be erring on the part of the High Court.

(See *Lakshmikant Revchand Bhojwani v. Pratapsingh Mohansingh Pardeshi* (1995) 6 SCC 576 (para 9).

12. The powers of High Court under Article 227 are in addition to the powers of revision conferred on it by other legislation and it has powers to quash the orders of the tribunals if based on facts arrived at by non-consideration of relevant and material documents considerations of which could have led to an opposite conclusion. (See *Baby v. Travancore Devaswom Board* (1998) 8 SCC 310).

13. In exercising the supervisory power, the High Court does not act as an appellate Court or the tribunal. It is also not permissible to a High Court on a petition under this article to review or reweigh the evidence upon which the inferior Court or tribunal purported to have passed the order or to correct errors of all in the decisions. (See *Sadhana Lodh v. National Insurance Co. Ltd.* (2003) 3 SCC 524, 528 (para 7): AIR 2003 SC 1561. *Ranjeet Singh v. Ravi Prakash* (2004) 3 SCC 682, 683-84 (para 4): AIR 2004 SC 3892).

14. The High Court in exercise of its supervisory jurisdiction will not convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors or mere formal or technical character. (See *Surya Devi Rai v. Ram Chander Rai* (2003) 6 SCC 675, 688-89 (para 38): AIR 2003 SC 3044).

15. Remedy of the writ petition available in the High Court is not against the decision of the subordinate Court, tribunal or authority but is against the decision making process. In the decision-making process, if the Court, tribunal or authority deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant acts and thereby arrived at

erroneous conclusion or has misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Arts. 226 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining. (See *State of A.P. v. P.V. Hanumantha Rao* (2003) 10 SCC 121, 133 (para 30): AIR 2004 SC 627).

16. In view of settled law as mentioned above, this Court is of the opinion not to interfere with the impugned order which does not suffer from any infirmity.

17. The present petition is wholly false and frivolous, thus the same is dismissed with cost of ₹10,000/-. Pending applications are also disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 17, 2013