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

Date of Decision : 15.02.2013

+ CM(M) 623/2012 and C.M.No.9531/2012 (stay)

VK BHATNAGAR & ANR

..... Petitioners

Through: Mr.Surender Chauhan, Advocate.

versus

CHARANJIT LAL MEHRA & ORS

..... Respondents

Through: Mr.N.P.Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

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PRATIBHA RANI, J. (ORAL)

1. This is a petition under Article 227 of the Constitution of India filed by the petitioners impugning the order dated 07.02.2012 passed by the learned Addl. Rent Control Tribunal, Saket, New Delhi in Appeal No.33/2011.

2. The petitioners before this Court filed eviction petition No.E-292/09(1987) on the ground of subletting, assigning or parting with possession of the suit premises bearing No.A-1, Gurdwara Road, N.D.SE., Part-I, New Delhi.

3. The learned Addl. Rent Controller vide the impugned judgment allowed the eviction petition thereby passing eviction order against the respondents in respect of the suit premises. Feeling aggrieved, the

respondents/tenants availed their remedy by filing an appeal under Section 38 of the Delhi Rent Control Act before the learned Addl. Rent Control Tribunal, Saket, New Delhi. After hearing the learned counsel for the parties, the learned ARCT set aside the impugned order and the matter was remanded back to the learned ARC, observing as under:-

11. While the respondents deny the creation of any such document, on the basis of evidence led it required to be examined and adjudicated upon by the ARC as to whether such a document had been brought into existence on 01.05.1974 as has been claimed. The document has been discarded from consideration by the learned ARC on the solitary ground that Ex. RW 1/A purports to be a document evidencing grant of lease for a period of five years and since there is no evidence showing its registration as per the requirement of Section 17(1)(d) of the Indian Registration Act, it cannot be looked into for purposes of “determining” the tenancy in view of the restriction contained in Section 49 of the Indian Registration Act. But then, the appellants have also sought the proviso to Section 49 of the Indian Registration Act to be pressed in aid for the said document to be looked into as evidence of “collateral transaction”. In this context, they would also refer to provisions of Section 14(1) as well as (4) of DRC Act to use this document as evidence of not only “consent in writing of the landlord”, but also as material additional to the other evidence led showing their presence on the premises since 01.05.1974 to the knowledge of the landlords. Noticeably, both respondents have not appeared in witness box, not even at the stage of evidence in rebuttal. Further, it is the lament of the appellants that the respondents herein would avoid coming to court even for the short purpose of admission/denial of the documents and for no valid explanation took the cover of their advocate undertaking this exercise which is not fair. The argument of the appellant is that this should result in adverse inference being drawn.

12. In the given facts and circumstances, the approach of the learned ARC in discarding the document Ex. RW 1/A from total consideration on account of absence of registration was not proper. By excluding the document Ex. RW 1/A, the ARC has not even proceeded to consider the other submissions of the appellant based on this and the other material. A clear finding as to whether the document had been brought in

existence by the respondents herein on 01.05.1974 required to be reached first and the effect thereof could be looked into only thereafter.”

4. Jurisdiction of this Court has been invoked by the petitioners by filing the present petition under Article 227 of the Constitution of India on the ground that under Section 38 of the Delhi Rent Control Act, appeal against the order of the Rent Controller would lie only on the question of law. Referring to the observations made by learned ARCT in para-10 of the impugned order, learned counsel for the petitioner submitted that the learned ARCT ignored that the appeal does not lie on the question of facts. In para-10, the learned ARCT observed *“In the facts and circumstances, a crucial question of fact arose as to whether the documents Ex.RW 1/A and Ex. RW 1/B had been executed under the signatures of respondent no.1 and 2 herein.”*

5. Learned counsel for the petitioner further submitted that the learned ARCT also committed a grave error in observing that the documents Ex.RW-1/A has not been considered by the learned ARC whereas certified copy of the order passed by the learned ARC negates it. Referring to the observations of learned ARC in respect of document Ex.RW-1/A, in para-21 of the order dated 25.04.2011 (which was impugned before the ARCT), it has been contended that the learned ARC has given a clear-cut finding in para-22 of the impugned judgment that in view of the provisions contained in Section 49 of the Indian Registration Act, the lease deed Ex.RW-1/A cannot be considered for ascertaining the fact of creation of tenancy being inadmissible. Attention of this Court was also drawn to para-14 of the impugned judgment, wherein the learned ARCT has specifically recorded the submissions of the parties that the parties have also led their evidence in

entirety and did not wish to adduce any further evidence.

6. It has been vehemently argued before this Court that when no evidence is to be recorded by the learned ARC, the document Ex.RW-1/A i.e. the lease deed has already been considered by the learned ARC, there was hardly any necessity to remand the case when no question of law was involved.

7. I have carefully considered the submissions made by learned counsel for the petitioner and also gone through the impugned judgment.

8. The learned ARCT has duly considered the fact that the lease deed Ex.RW-1/A has been dealt with by the learned ARC, but the grounds on which the matter has been remanded are incorporated in para-11 of the impugned judgment which have been extracted above. The learned ARCT has categorically observed that “....*But then, the appellants have also sought the proviso to Section 49 of the Indian Registration Act to be pressed in aid for the said document to be looked into as evidence of “collateral transaction”. In this context, they would also refer to provisions of Section 14(1) as well as (4) of DRC Act to use this document as evidence of not only “consent in writing of the landlord”, but also as material additional to the other evidence led showing their presence on the premises since 01.05.1974 to the knowledge of the landlords.....*”

9. It is settled law that mere wrong decisions without anything more is not enough to attract jurisdiction of the High Court under Art. 227 but the Court will interfere only when an error of law is apparent on the face of record which has resulted in gross injustice.

10. The ground on which matter has been remanded by learned Addl.

Rent Controller, do not warrant any interference by this Court in exercise of power under Article 227 of the Constitution of India.

11. Finding no illegality, infirmity or perversity in the impugned judgment, the present petition is dismissed.

PRATIBHA RANI, J

FEBRUARY 15, 2013
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