

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

% *Order delivered on: July 25, 2013*

+ **CM(M) No.729/2013 & CM No.11116/2013**

GANDHI TYAGI Petitioner

Through Mr.M.L. Bajaj, Adv.

versus

URMILA (SINCE DEAD) REP BY LRS: SHARDA TYAGI & ORS.

.....Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The brief facts are that the suit premises was let out to the petitioner by one Sh. Hari Ram Tyagi who expired on 1st September, 1988 leaving behind wife and six daughters. He had no son. His nephew Virender Kumar Tyagi filed an eviction petition on the ground of non-payment of rent by the petitioner who had failed to pay or tender the rent with effect from 2nd August, 1993 despite of notice dated 28th April, 1994.

2. The petitioner before the trial court contested the case by taking two pleas. One was that he was adopted son of Sh.Hari Ram Tyagi and second was that Sh.Hari Ram Tyagi executed a Will dated 26th August, 1988 in his favour. As far as second point is concerned, no doubt the proceedings initiated by the petitioner for probate are pending. Both the parties produced their respective evidence before the Additional Rent Controller who after hearing found that in view of the no objection certificate issued by Sh.Hari Ram Tyagi in favour of the petitioner that he had no objection in petitioner

taking electricity connection in the suit premises as the petitioner was tenant which was Ex.AW2/5, the relationship of landlord and tenant stood proved. No objection certificate had been filed by the petitioner in the office of NDPL and the said fact was admitted by the petitioner in his statement in Court. The petitioner had also filed the rent receipt Ex.RW1/A1 issued by Hari Ram Tyagi in his favour in the office of NDPL.

3. The alleged adoption of the petitioner as son by late Hari Ram Tyagi was disbelieved by the Additional Rent Controller on the ground that there was no supporting document. The Will was ignored on the ground that the same was being contested by the objectors in the probate proceedings.

4. The following is the detail which shows that the litigation fought by the petitioner in various forums and ultimately followed by separate order passed by DJ&ASJ-in-Charge(West)/ARCT, Delhi, who dismissed both the appeals filed by the petitioner by order dated 9th August, 2011:

Date	Particulars
27.5.1994	Eviction petition filed by the petitioner Sh.Virender Kumar Tyagi on the ground of arrears of rent under Section 14(1)(a) of Delhi Rent Control Act against the respondent.
7.9.1995	Order of Sh.H.S. Sharma, Addl. Rent Controller, Delhi, in E-151/94, titled Virender Kumar Tyagi v. Gandhi Tyagi. The court declined to pass orders under Section 15(1) of the Act against the respondents and ordered sine die stay of the eviction petition.
26.9.1995	Appeal filed against the order of ARC dated 7 th September, 1995.
3.2.1998	Order by Sh.S.M. Aggarwal, Rent Control Tribunal, Delhi in RCA No.744/95 titled Virender Kumar Tyagi v. Gandhi Tyagi. Appeal accepted and parties directed to appear before trial court on 10.2.1998.

17.10.1998	Order by Sh.Dilbagh Singh, ARC, Delhi in suit No.E-22/98 titled Virender Kumar v. Gandhi Tyagi. The court allowed the application under Order 1 Rule 10 and consequential application under Order 6 Rule 17 CPC and directed the respondent for filing W.S. on 27.1.1999.
24.10.2000	Order by Sh.Dilbagh Singh, ARC, Delhi in E-151/95, titled Virender Kumar Tyagi v. Gandhi Tyagi. The impleadment of Sh. Anil Kumar Tyagi was sought on the ground that Smt. Urmila Tyagi executed GPA in his favour. The court declined his impleadment and the matter was fixed for petitioner's evidence on 7.2.2001.
19.2.2002 & 30.4.2002	Cross examination of AW1, Sh. Anil Kumar Tyagi in the court of Rent Controller, Delhi.
25.9.2002	Cross examination of AW2, Sh. Vinod Kumar in the court of Rent Controller, Delhi.
21.7.2005	Order by Sh. Sanjeev Aggarwal, ARC in Petition Nos.E-151/94 and E-22/98 titled Urmila v. Gandhi Tyagi. The court directed the respondent to pay arrears of rent @Rs.100/- per month w.e.f. 01.08.1993 within a month one from the date of the order. Petition allowed. The matter to come up for compliance of order and ascertaining the entitlement of the respondent on 30.8.2005.
26.8.2005	Appeal filed against the order of ARC dated 21.7.2005 by respondent-appellant in RCT No.34/08 titled Gandhi Tyagi v. Urmila (deceased) represented by LRs Sharda Tyagi and Ors.
5.9.2005	Order passed by learned ARCT according to which the respondent was required to deposit arrears of rent. The certified copy of the said order not filed by the respondent to show whether there is any stay or not. The respondent concealed from learned ARCT the order dated 21.7.2005.
21.12.2006	Order by Ms.Kaveri Baweja, ARC, Rohini, Delhi in petition No.E-237 titled Virender Kumar Tyagi v.

	Gandhi Tyagi. No benefit under Section 14(2) of DRC Act granted to the respondent. Eviction order passed in favour of the petitioner. File to be consigned to record room.
10.1.2007	Appeal filed against the order of ARC dated 21.12.2006 by the respondent-appellant in RCT No.35/08 titled Gandhi Tyagi v. Urmila (deceased) represented by LR's Sharda Tyagi and Ors.
9.8.2011	Separate Orders by O.P. Gupta, ARCT, Delhi in RCT Nos.34/08 and 35/08. Appeals dismissed. Files be consigned to record room.

5. It appears from the above that admittedly the petitioner kept quiet for about more than one year and 11 months when the petitioner's two appeals were dismissed and has now filed the present petition under Article 227 of the Constitution of India for setting aside the orders dated 21st July, 2005, 21st December, 2006 and two orders passed on 9th August, 2011.

6. The learned counsel for the petitioner submits that since the warrant of possession has already been issued against the petitioner, this Court should pass interim order in view of one submission made by him that before filing of the eviction petition by Sh.Virender Kumar Tyagi on the ground of arrears of rent, no notice was issued by the landlord. However, it is not denied by him that before filing of the petition, the notice dated 15th February, 1994 was issued by Sh.Virender Kumar Tyagi on behalf of the owner. He submits that since no power of attorney was proved by the deceased wife before the trial court, therefore, the original eviction proceedings are null and void.

7. I do agree with the argument of the petitioner because of the reason that admittedly Virender Kumar Tyagi was duly authorised by the legal representative of the owner of the suit property. This fact has been recorded

in various orders passed against the petitioner. The petitioner now cannot agitate the same point before this Court after the expiry of more than 19 years. It is the admitted position that in the petition under Article 227 of the Constitution of India, the scope of interference is very limited.

8. Scope of interference in a petition under Article 227 of Constitution of India is discussed in the following judgments :

i. In *Waryam Singh and Another v. Amarnath and Anr.*, AIR 1954 SC 45, the court observed; “This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in-“**Dalmia Jain Airways Ltd. V. Sukumar Mukherjee**”, AIR 1951 CAL 193 (SB) I(B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

ii. In *Mohammed Yusuf Vs. Faij Mohammad and Ors.*, 2009 (1) SCALE 71, *Supreme Court held*; “The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and procedural impropriety”.

iii. In *State of West Bengal and Ors. Vs. Samar Kumar Sarkar*, JT 2009 (11) SC 258 *Supreme Court held*; “10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the

power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.”

iv. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta*, AIR 1975 SC 1297 the Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court’s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.

v. In *Laxmikant Revchand Bhojwani and Anr. Vs. Pratapsing Mohansing Pardeshi Deceased through his Heirs and Legal representatives*, JT 1995(7) SC 400, Apex Court observed; “The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.”

9. No other arguments were addressed by the petitioner in support of his petition. The petition is, therefore, not maintainable and the same is dismissed. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 25, 2013