

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

% *Order delivered on: September 13, 2013*

+ **CM(M) No.950/2013**

DHANANJAY GUPTA Petitioner

Through Mr.O.P.Verma, Adv.

versus

SUDESH KUMAR JAIN (SINCE DECEASED) THR. LR & ANR

..... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

C.M. No.14339/2013 (exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

CM(M) No.950/2013

1. The petitioner has filed the present petition under Article 227 of the Constitution of India, challenging the order dated 22nd May, 2013 whereby the appeal filed by the petitioner being RCA No.51/2012 was dismissed by the District & Sessions Judge (East)-cum-Addl. Rent Control Tribunal, Karkardooma Courts, Delhi, as well as the judgment dated 10th July, 2012 passed by the Addl. Rent Controller whereby the eviction petition filed by the petitioner under Section 14(1)(b) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) was dismissed after recording the evidence of the parties.

2. The petitioner had filed the eviction petition in March, 2006 against the respondents under Section 14(1)(b) of the Act seeking their eviction from Shop No.4 in the property No.IX/1254, Tikona Park, Subhash Road, Gandhi Nagar, Delhi-110031 (hereinafter referred to as the “Suit Property”). Both the respondents filed a joint written statement in July, 2006 whereby they refuted the averments of the petitioner by raising the defence that respondent No.2 is the nephew of respondent No.1. He is not a sub-tenant, as respondent No.1 has himself been looking after, supervising, controlling and managing all the business activities. He is paying a sum of ₹3,000/- per month to respondent No.2. The business is being run by respondent No.1 who is the sole proprietor. Thus, the question of subletting/assigning or parting with the possession to respondent No.2 does not arise.

3. After recording the evidence of the parties, the impugned judgment dated 10th July, 2012 was passed by the Addl. Rent Controller whereby the eviction petition filed by the petitioner was dismissed. Thereafter, the petitioner filed an appeal against the said judgment. After hearing both the parties, the learned Addl. Rent Control Tribunal dismissed the appeal by the impugned order dated 22nd May, 2013. The said order has been challenged by the present petitioner in the present petition wherein it is prayed that both the judgments passed be set-aside/quashed.

4. It is well settled principle of law that the High Court while exercising its power under Article 227 of the Constitution of India, cannot proceed to act as a Court of appeal by interfering in mere errors of finding fact which requires re-appreciation and re-weighing of evidence unless it results in manifest miscarriage of justice as a Court of appeal. The said power under Article 227 of the Constitution of India has to be exercised sparingly and

circumspectly to ensure that decision making done by lower Court and tribunal below is within their bounds and limits.

5. The said power under Article 227 of the Constitution of India being supervisory in nature cannot be equated with the powers of appellate Court and the jurisdiction under Article 227 could not be exercised as a cloak of an appeal in disguise.

6. In the case of ***Babhut Mal Raichand Oswal vs. Laxmi Bai R. Tarta*** reported in (1975) 1 SCC 858, the Supreme Court speaking through Bhagwati J. as his Lordship then was observed thus:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts” (emphasis supplied)

The Supreme Court in the case of ***Babhut Mal*** (supra) approved the dictum of Morris L., J. in ***Res v. Northumberland Compensation Appellate Tribunal***, 1952 All England Reports 122.

7. In the case of ***State of Maharashtra vs. Milind & Ors.***, 2001 (1) SCC 4, the Supreme Court observed:

“The power of the High Court under Article 227 of the Constitution of India, while exercising the power of

judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record.” (Emphasis supplied)

8. Again in the case of *State vs. Navjot Sandhu*, (2003) 6 SCC 641, the Supreme Court observed:

“Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.

However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under

Article 227 could not be exercised as the cloak of an appeal in disguise.” (Emphasis supplied)

9. The decisions of *Babhut Mal* (supra), *State vs. Navjot* (supra) and *State vs. Maharashtra* (supra) have been approved by Hon’ble Justice C.K. Thakkar as his Lordship then was in the case of *Shamshad Ahmad & Ors. vs. Tilak Raj Bajaj (D) By LRs. & Ors.*, 2008 (9) SCC 1.

10. Upon careful reading of observations in the above referred cases, it can be safely said that the scope of judicial interference under Article 227 is well settled and the Court ceased of the proceedings under Article 227 cannot act as a Court of appeal and should interfere with the decision of the inferior tribunal or Court only to keep the authorities and Courts within their bounds and in the cases where it results into manifest miscarriage of justice and not in all other cases to correct mere errors. The power under Article 227 is thus discretionary in nature and can be exercised in the cases where the lower Court ignores material piece of evidence or considers some evidence which it ought not to have considered which results into injustice and not in cases where there are two views possible and the view adopted by lower Court is reasonable and plausible one and the High Court would be unjustified to interfere in such cases merely to arrive at different view in the matter as this would be re-appreciating the evidence on finding of facts which is the role of the appellate Court and not the supervisory Court acting under Article 227 of the Constitution of India.

11. In the present case, the learned trial Court who has passed the impugned order dated 22nd May, 2013 while dismissing the appeal, has given the reasons in paras 8 to 10 of the said order which read as under:-

“8. In order to prove subletting, landlord is required to prove subletting which means transfer of an exclusive

right to enjoy the property in favour of the third party. To constitute a subletting, there must be a parting or legal possession i.e. possession with right to include and also right to exclude other and whether in the present case, there was subletting or not, it was incumbent upon the landlord to show that the tenant has completely divested himself from the suit premises and has lost control over it.

9. In the present case, in his evidence, landlord has merely deposed that respondent has sublet, assigned or parted with possession of entire premises to respondent No.2 without his content. On the other hand, tenant, RW1 Sudesh Kumar Jain has deposed that he has been running business of readymade garments from the tenanted shop. He has also deposed that respondent No.2 is his employee and that he has been paying salary to him. RW1 has further deposed that he is also a member of Association of Subhash Road and Bada Bazar Wholesale Readymade Garments Market and had been contributing monthly subscription. He has also proved photographs Ex.RW1/4 and Ex.RW1/5, receipt of studio Ex.RW1/5, negatives as Ex.RW1/7 and RW1/8 showing that respondent No.1 had been sitting on the shop in question. RW2 Nitin Jain has appeared in the witness box and has deposed that RW1 is proprietor of the business being run from the shop in question and that he is his employee and has been getting monthly wages from him. He has also deposed that he has no connection or concern with the premises in question. During cross examination to the respondents, question was put to them that identity cards are issued by the Trader Associations of the area to the employees as well as owners. Since it was the case of the petitioner/appellant that I-cards are issued, then he could have produced such evidence which he did not, therefore, an adverse inference is warranted against the petitioner.

10. Respondent No.1 has produced on record photographs and copy of newspaper showing him that he has been sitting in the shop in question. On the other

hand, no cogent and convincing evidence has been produced on behalf of the appellant that respondent No.1 has sublet or parted with possession of suit shop in favour of respondent No.2. Therefore, petitioner/appellant has failed to prove that respondent No.1 has transferred exclusive possession to respondent No.2 by leading positive evidence, therefore, authorities referred to above are not attracted to the facts of the present case.”

12. After having considered both the judgments passed by the learned trial Courts, i.e. the judgments dated 10th July, 2012 and 22nd May, 2013, I am of the view that the petitioner has totally failed to make out any case for interference with the judgments passed by the two Courts who have already examined each and every aspect of the matter.

13. The present petition is, therefore, not sustainable. The same is accordingly dismissed.

C.M. No.14340/2013 (for stay)

Since the main petition has already been dismissed, the present application has become infructuous and the same is disposed of as such.

**(MANMOHAN SINGH)
JUDGE**

SEPTEMBER 13, 2013