

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

% *Order pronounced on: October 07, 2013*

+ **CM(M) No.1079/2013 & C.M. Nos.15951-52/2013**

SH. AZAD SINGH Petitioner
Through Mr. Deepak Sharma, Adv.

versus

SH. BABU CHAND Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed judgment dated 6th August 2013 passed by the DJ-CUM-ARCT (West), Tis Hazari Courts, Delhi whereby the appeal filed by the respondent against the order of the ARC dated 7th May 2012, was allowed.

2. Brief facts for the purpose of adjudication of the present matter are that the petitioner had filed an eviction petition against the respondent for non-payment of rent under section 14 (1) (a) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) in respect of one room on the ground floor of the property bearing no. 2400-A/1, Gali No.19, Shadi Pur, Ranjit Nagar, New Delhi (hereinafter referred to as the “suit premises”). While it was the case of the petitioner that rate of rent of the suit premises was Rs. 350/- per month in the year 1989 which had been increased to Rs. 1,000/- per month, but thereafter it had been increased by the petitioner by legal

notice dated 17th May 2007 upto Rs. 3,500/- per month w.e.f. 1st June 2007; on the other hand, it was the case of the respondent that the rate of rent was Rs. 300/- per month initially and that the same is still similar till date.

3. The learned trial court vide order dated 7th May 2012, after considering the rival contentions and the documents relied upon by the parties, opined that the onus to prove that the rate of rent was Rs. 300/- per month was on the respondent but the respondent had failed to prove any documents on record to that effect. Even otherwise, it is not feasible that the rent fixed in the year 1989 shall continue to remain the same for the times to come. On the other hand, as such the petitioner was able to prove that the rate of rent was Rs.1,000/- per month. Further, for the reasons stated therein the learned trial court amended the previously made order of 25th February 2010 passed under section 15 (1) of the Act against the respondent whereby the respondent had been directed to pay arrears of rent w.e.f. 1st June 2007 and during the pendency of the case at the rate of Rs. 300/- per month and modified the same to the effect that the tenant was directed to pay the rent at the rate of Rs.1,000/- per month qua the arrears of rent w.e.f. 1st August 2006 upto the said date within a period of one month subject to the adjustment of the rent already paid.

4. Vide order dated 8th June 2012, when the matter was kept for consideration of benefit under section 14 (2) of the Act, the learned trial court recorded that as per the report of the Nazir that the respondent had not complied with the modified order dated 7th May 2012 under section 15 (1) of the Act which amounted to second default and so the respondent was directed to be evicted from the suit premises.

5. The respondent filed an appeal against the said order contending that the rate of rent was Rs. 300/- per month and that the same had never been enhanced in as much as the requisite notice under section 8 of the Act for enhancement of rent had never been issued and that the learned trial court had not granted adequate time for compliance of the modified order dated 7th May 2012, so the eviction order was liable to be set aside.

6. On perusal of records, testimonies recorded, the witnesses produced and the order dated 7th May 2012, the learned Appellate Court observed mainly that the respondent in reply to the specific query of the learned trial court categorically stated that the signatures on the rent receipt dated 11th December 1992 showing Rs. 480/- as rate of rent, at point A were not of his and that the said signatures at point A are in Hindi and that he never signs in Hindi and signs only in English. Further his statement that signatures on the appeal and on the affidavit annexed thereto at points A and B were his, collectively indicate that the respondent signed only in English at all places. This coupled with the submissions of the respondent that he never paid rent at the rate of Rs. 430/- per month also as averred in ground G of his appeal, the rate of rent for the suit premises was held to be Rs. 300/- per month by the learned Appellate Court. Further, on admission of the parties with respect to the notice of increase of rent having been duly served upon the respondent, under the circumstances of the case was deemed to be the notice for enhancement of rent from the rate of Rs. 300/- to Rs. 330/- per month in terms of section 6 of the Act.

7. With these observations, the learned Appellate Court allowed the appeal vide the impugned order holding that the enhanced rent @ Rs 330/- per month was liable to be paid w.e.f. 1st July 2007 in terms of section 8 (1)

of the Act. Aggrieved thereof, the petitioner has challenged the same before this Court by way of the present petition.

8. 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.

9. 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.

10. 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.

11. 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)

12. 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)

13. 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.

14. 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 resulting 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.

15. The trial court in the impugned order recorded as under:

“Ld. counsel for the appellant Shri Mohd. Ikram who was present was asked to explain the contents of ground G of the appeal Ex.CW1/ A vide which it had been mentioned as follows:

“That the ld. trial Court has not considered the arguments of the appellant / tenant that it was the admitted case of the parties that in the year 1992 the landlord was receiving the rent from the appellant/tenant at the rate of RS.430/per month and from such circumstances it can be easily inferred that the appellant/tenant was inducted as a tenant at the monthly rent of Rs.300/per month”

qua which the appellant in reply to specific query of the ARCT stated that he never paid rent @ Rs.430 per month to the respondent and that he always paid rent @ Rs.300/per month and that he had paid the electricity charged @ Rs.2/Rs3/per unit till the year 2006 whereafter the electricity was disconnected by the respondent. A perusal of the entire available record i.e. the written statement submitted by the tenant i.e. the appellant herein arrayed as respondent to the petition, the affidavit annexed thereto, the affidavit of the tenant as in evidence Ex.RW1/1 with signatures at point A and B, the appeal Ex.CW1/A with signatures at point A of the of the affidavit of the tenant Ex.CW1/B with signatures at points A and B all collectively indicate and also does the application for stay of the impugned Judgment and order filed along with the appeal, that the appellant has signed only in English at all places.

A perusal of Ex.PW1/2 the purported rent receipt placed on record by the landlord in Eviction Petition No. 168/08 shows

that signatures at point A are in Hindi. This ARCT has thus in terms of Section 73 of the Indian Evidence Act, 1872 compared the admitted signatures of the appellant on the records of the Eviction Petition No. 168/08 and the present appeal No. 44/12 and statement of the appellant dated 18.07.2013 and also the submissions made by the appellant and the statement made by the appellant on 18.07.2013 and on consideration of the record is of the considered view that signatures purported to be of the respondent on Ex.PW1/2, the alleged rent receipt dated 11.12.1995 do not appear to be those of the appellant/tenant. In view thereof, coupled with the submissions of the appellant that he never paid rent at the rate of Rs.430/per month also as averred in ground G of this appeal, the rate of rent in the instant case of the tenanted premises is held to be Rs.300/per month and cannot be accepted to be Rs.1000/per month w.e.f. 01.08.2006 as observed by the Id. CCJ cum ARC (West) vide the impugned dated 07.05.2012. However, the record categorically indicates the admission of the appellant /tenant of receipt of the legal notice Ex.PW1/3 dated 17.05.2007 whereby the landlord had issued notice to the tenant calling upon the tenant to increase the rent from the rate of Rs.1000/- to Rs.3500/- w.e.f. 01.06.2007. The receipt of this notice has been admitted by the respondent to the eviction petition i.e. the appellant herein on being cross examined by the Id. counsel for landlord and has also admitted that he had not increased the rent within two months of receipt of the notice Ex.Pw1/3. In view thereof, the said notice to increase the rent having been duly admitted to have have been served upon the tenant i.e. the appellant herein is thus in the circumstances of the case, which is deemed to be the notice for enhancement of rent from the rate of Rs.300/- to Rs.330/- per month in terms of Section 6 of Delhi Rent Control Act, 1958 as amended, the enhanced rent is liable to be paid @ Rs.330/- p.m. w.e.f. 01.07.2007 in terms of Section 8 (1) of Delhi Rent Control Act, 1958 as amended.”

16. In view of above and coupled with the fact that two courts did not accept the argument of the petitioner and there are concurrent findings given by the courts below, no different view is possible.

17. The petition is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

OCTOBER 07, 2013