

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

% *Judgment pronounced on: November 18, 2013*

+ **CM(M) 1381/2010 & CM No.19625/2010**

VINAY KUMAR GUPTA Petitioner
Through Mr.R.P. Pandey, Adv.

versus

SMT. SATYA RANI Respondent
Through Mr.Sanjay Dua, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the above mentioned petition under Article 227 of the Constitution of India against the order dated 6th August, 2010 passed by the Rent Control Tribunal in Appeal No.11/2010 arising from the order dated 19th January, 2010 passed by Additional Rent Controller.

2. The brief facts of the matter are that the respondent is a senior citizen. She is a widow lady. She is the owner of the property bearing D-12, Krishna Nagar, Delhi. The respondent let out two rooms of the first floor of the said property to one Sh.Vineet Gupta, son of Sh.N.K. Gupta, 114, Gopal Park, Delhi. In this regard a rent agreement dated 8th March, 2001 was also executed between the respondent and Sh.Vineet Gupta by which the property was let out to him for a period of 11 months with effect from 10th March, 2001. Another rent agreement was executed between Sh.Satya Rani and Vineet Gupta by which the property was let out with effect from 1st April, 2002 for a period of 11 months.

3. The petitioner herein Sh.Vinay Kumar Gupta filed a petition under Section 45 of Delhi Rent Control Act. In the petition, inter alia, the petitioner stated that the authority concerned disconnected the electricity supply and removed the meter for want of payment dues. The respondent filed her reply to the petitioner stating, inter alia, that there is no relationship of landlord and tenant between Vinay Kumar Gupta and the respondent as the property was let out to Vineet Gupta. The tenancy of Vineet Gupta was also terminated vide legal notice dated 23rd March, 2009 and suit for possession in this regard is pending. It was averred that the tenant Vineet Gupta parted with possession and sublet the premises to the petitioner without her consent. It was further stated that the said tenant i.e. Vineet Gupta had not paid the electricity bills and therefore the concerned authority had disconnected the electricity connection.

4. By order dated 19th January, 2010, the petition under Section 45 of the DRC Act was dismissed by the learned ARC holding that the respondent has prima facie shown the existence of landlord tenant relationship between herself and Vineet Gupta. The learned ARC relied upon the pamphlet issued in the name of Saraswati Coaching Centre, which reflects the name of Vineet Gupta and not of the petitioner. The learned ARC thus held that the court was not prima facie satisfied regarding the landlord tenant relationship between the petitioner and respondent.

5. The findings arrived by the Additional Rent Controller on the basis of material placed on record are as under:

“i) the respondent has prima facie shown the existence of landlady-tenant relationship between herself and one Sh.Vineet Gupta by placing on record two rent agreements. These two rent agreements do bear the signatures in the name of Sh.Vineet

Gupta. This fact has not even been touched upon by the petitioner in the replication filed on 20/7/09. Thus prima facie the landlady-tenant relationship between the parties herein is itself in question.

ii) the respondent has also placed reliance on a pamphlet issued in the name of Saraswati Coaching Centre which reflects the name of Sh.Vineet Gupta as the proprietor thereof. This also prima facie establishes the fact that the institution in the name of Saraswati Coaching Centre was being run by said Sh.Vineet Gupta and not by the petitioner Sh.Vinay Kumar Gupta. Hence the respondent has prima facie been able to defy the very relationship of landlady-tenant between the parties herein.”

6. The said order was challenged by the petitioner before the District Judge, (East) cum Additional Rent Control Tribunal, Karkardooma Courts, Delhi, by filing of an appeal, being MCA No.11/2010, who after considering the documents and material placed on record, dismissed the said appeal and came to the conclusion that the petitioner has failed to show anything on record that he was tenant under the respondent who had placed two rent agreements before the learned trial court in order show that there existed relationship of landlady and tenant between the respondent and Vineet Gupta. The specific findings are given by the two courts below are that no documents have been placed on record by the petitioner to show that he is the tenant in the premises in question.

7. Both the parties have made their submissions who have also filed the written submissions in support of their case.

8. The petitioner, inter alia, in the present petition has alleged that the two rent agreements are not admissible in evidence as they are not registered. It is submitted that it is a trite proposition that an unregistered document is admissible for collateral purposes. The unregistered rent

agreement can always be relied upon to see the relationship of landlord and tenant.

9. The petitioner has admitted that Saraswati Coaching Centre was being run from the premises. However, the petitioner has not disputed the pamphlet showing the name of Vineet Gupta and not the name of the petitioner. The reliance of the said pamphlet by the two courts below is thus unassailable.

10. From the material placed on record, it is apparent that there is a concurrent finding against the petitioner by the two learned courts below who have held that in order to succeed in an application under Section 45 of DRC Act, the petitioner is required to prima facie show the relationship of landlord and tenant which is missing in the present case. The petitioner has failed to produce any document in evidence. It also appears from the record that it is the case of the petitioner himself that the electricity has been disconnected and the meter has been removed by the concerned electricity department/BSES on the ground of non-payment of dues. There is no evidence on record to show that there is disconnection by the respondent.

11. I have also been informed by the respondent that the suit for possession filed by the respondent is pending against the tenant as well as the present petitioner.

12. It is a 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.

13. 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.

14. i) 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.

ii) 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)

iii) 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)

15. 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.

16. 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.

17. After having considered the rival submissions of the parties, pleadings and written submissions, I am of the considered opinion that both the orders passed against the petitioner are legally correct and the same do not suffer from any infirmity.

18. In view of the settled law and facts and circumstances of the case, the present petition is totally misconceived, false and frivolous and the same is dismissed with cost of ₹10000/- which shall be deposited by the petitioner with Prime Minister Relief Fund within two weeks from today.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 18, 2013