

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

% *Judgment delivered on: 24th July, 2013*

+ **CM(M) No.1293/2011 & C.M. No.20114/2011**

HEMANT GULATI Petitioner
Through Mr.V.K. Gulati, Adv.

versus

CHANDAN JAIN & ORS Respondents
Through Mr.N.K. Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner Hemant Gulati in the above said matter has filed the present petition under Article 227 of the Constitution of India against the order dated 29th August, 2011 passed by the learned Additional District Judge, Patiala House Court, New Delhi, in Suit No.124/2010, whereby the application under Section 151 CPC filed by the respondent for striking out the defence of the petitioner on the grounds that the petitioner had not complied with the orders of payment of rent and deliberately flouting the orders of the Court.

2. It is the admitted position that the respondent filed suit for possession and recovery of arrears of rent and mesne profits against the petitioner. By order dated 25th March, 2011, the petitioner was directed to make the entire arrears of rent with effect from 1st May, 2010 to 5th March, 2011 by 5th May, 2011. The directions were also passed to the effect that in case the payment is not made of such arrears of rent by the said date, the petitioner will be liable to pay the interest @6% per annum from the date when the said rent

had fallen due till realisation and the petitioner shall continue to pay the rent on or before 5th of each English calendar month till the disposal of the suit. The petitioner admittedly failed to pay the rent due nor paid the subsequent rent upto date as directed by the Court. The respondent No.1 is a widow lady and is only surviving on her rental income. On the other hand the petitioner is avoiding to pay the same for the last more than three years.

3. The learned counsel for the respondent has also submitted that despite of expiry of the lease period, the petitioner has failed to hand over the vacant possession to the respondent. He has simply raised the false and frivolous defence which is nothing in the eyes of law. The defence raised by the petitioner in the suit is that the rent agreement was for a period of 9 years i.e. 1st January, 2009 to 31st December, 2017. Therefore, the suit of the respondent was not maintainable.

4. **Scope of interference in the petition under Article 227 of Constitution of India :**

- (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 SCS 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.”

5. During the course of argument, it was specifically asked to the petitioner to show the registered lease deed for nine years as alleged by him, however, he failed to produce such document. It appears to the Court that the petitioner is deliberately and intentionally not paying the rent due from 1st May, 2010 till date nor has handed over the peaceful possession of the suit property to the respondent. Thus, the question of any inference in the impugned order does not arise.

6. There is no infirmity in the impugned order dated 29th August, 2011 passed by the trial court. Therefore, the present petition is dismissed.

(MANMOHAN SINGH)
JUDGE

JULY 24, 2013