

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

% *Judgment Pronounced on: November 18, 2013*

+ **CM(M) No.1490/2010**

SUNSTAR OVERSEAS LTD Petitioner
Through Mr.Arvind Kr. Shukla, Adv. with
Mr.Amit Shukla, Adv.

versus

PREM CHAND SHARMA Respondent
Through Mr.Rakesh Srivastava, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed order dated 11th October 2010 passed by the Additional Rent Control Tribunal dismissing the appeal of the petitioner against the order and judgment of the Additional Rent Controller dated 5th February 2010 whereby the eviction petition filed by the petitioner under Section 14(1)(i) of the Delhi Rent Control Act, 1958 (in short, called the “DRC Act”) was dismissed.

2. Brief facts as per the case pleaded by the petitioner before the Addl. Rent Controller are that:-

(a) The tenanted premises is bearing No.LP-27-C, LIG flat, Pitampura, Delhi. The petitioner is the landlord and respondent is the tenant of the said flat as mentioned in the petition. The premises are residential in nature.

- (b) The premises were given to the respondent for residence on account of employment and no rent was charged from the respondent, however, the petitioner has been paying ₹2500/- per month as rent to the landlord Sh.Rakesh Aggarwal.
- (c) It is further mentioned in the petition that the premises were given to the respondent with effect from 15th June, 1995 but no agreement in writing was executed as the premises were given on account of respondent being in the employment of the petitioner-Company.
- (d) After taking on rent the premises, the petitioner allowed the respondent to use the premises for his residence and for residence of his family members on account of the respondent being in employment of the petitioner-Company with effect from 15th June, 1995. The respondent has ceased to be in the service of the petitioner since 19th May, 1997 but the respondent has not vacated the premises and as such the respondent is liable to be evicted under section 14(1)(i) of the DRC Act.

3. The respondent has filed written statement in which it is mentioned that there is no relationship of landlord and tenant between the parties. However, it was admitted in the written statement that the respondent took the suit premises on rent from Sh.Rakesh Aggarwal on 15th June, 1995 at a monthly rent of ₹500/- only excluding electricity and water charges to be paid by the respondent directly to the concerned department. He had paid the rent to the landlord Sh.Rakesh Aggarwal, who is the Managing Director of the petitioner-Company, upto 14th December, 1997. He did not issue any rent receipt and thereafter the respondent deposited the rent in the court. As Rakesh Aggarwal tried to dispossess the respondent from the suit premises

forcibly, the respondent had no option but to file a suit for permanent injunction against him, in which stay order was granted not to dispossess him without due process of law. Subsequently, the Company has filed the eviction petition though he was the tenant of Sh.Rakesh Aggarwal. It was admitted in the written statement that Sh.Rakesh Aggarwal is the Managing Director of the petitioner who let out the premises to respondent. He later on, in order to evict him, created a story with connivance of the petitioner about the leasing of the suit property in favour of the petitioner by manipulating the document, i.e. Ex.PW-2/1 of the suit premises.

4. It was denied in the written statement that the premises were given to respondent for residence on account of employment by the petitioner. The suit premises were purchased by Sh.Rakesh Aggarwal independently with the help of respondent and in fact, he was the owner/landlord of the suit property. The premises was let out by Sh.Rakesh Aggarwal to respondent on 15th June, 1995 @ ₹500/- per month excluding electricity and water charges and not ₹2500/- as claimed by the petitioner who is neither the landlord nor the owner of the suit premises.

5. In the replication, it was specifically stated that Sh.Rakesh Aggarwal after purchasing the flat/premises in question let out the same to M/s Sunstar Overseas Ltd. i.e. the petitioner with effect from 10th June, 1995. The respondent being in employment of the petitioner was given the premises in question for his residence and his family members and no rent was being charged from the respondent.

6. It was admitted that Sh.Rakesh Aggarwal is the Managing Director of the petitioner-Company who has actually let out the suit premises and not Sh.Rakesh Aggarwal. The premises was let out to the respondent on

account of his being in employment of petitioner. It was also admitted that the respondent was paying the rent to Sh.Rakesh Aggarwal. The flat in question was taken by the petitioner on rent from Sh.Rakesh Aggarwal. Thus, the petitioner is the landlord of the property and there being a relationship between the petitioner and the respondent as landlord and tenant.

7. During the pendency of proceedings, the matter was referred to mediation cell for settlement and in mediation the respondent filed some papers showing the outstanding amount against the petitioner. The petitioner from these papers came to know that the respondent had made some additions and alterations to the suit premises and alleged the same to be illegal, unauthorized, contrary to the building bye-laws and without any sanction or permission. Pursuant to the knowledge of the said additions and alterations, the petitioner filed another eviction petition under section 14(1)(j) read with section 14(1)(i) of the DRC Act against the respondent.

8. The petitioner examined two witnesses, PW-1 Rohit Aggarwal and PW-2 Rakesh Aggarwal who also reiterate the statement made in the eviction petition and the replication. The respondent has also examined two witnesses, i.e. the respondent himself as RW-1 and RW-2 Kanwar Lal.

9. PW-1 Rohit Aggarwal deposed in chief examination that he is the director of petitioner-Company. It is further stated by him that flat No.LP-27-C, Pitampura, Delhi was taken on rent from Sh.Rakesh Aggarwal by company and said flat was given to Sh.Prem Chand Sharma i.e. respondent for use as residence on account of his being an employee of petitioner-Company and the respondent is no more the employee of petitioner-Company as he left the services of the petitioner-Company since 19th May,

1997. In cross examination PW-1 stated that he became one of the director of the petitioner-Company about six or seven years back. It was also stated in cross examination that Sh.Rakesh Aggarwal is maternal uncle of PW-1 and Sh.Rakesh Kumar is the Managing Director of petitioner-Company. PW-1 also stated that he was already managing director of company when he joined as director of petitioner-Company and at that time when he joined the petitioner-Company as director, the respondent was not in possession of the suit premises. PW-1 admitted that lease deed dated 6th June, 1995 was not signed by the parties in his presence.

10. PW-2 Sh.Rakesh Aggarwal filed his evidence by way of affidavit which is Ex. PW2/A, in which it is mentioned that he is the Managing Director of petitioner-Company. PW-2 stated in the cross examination that the lease deed Ex.PW2/1 dated 6th June, 1995 was prepared by legal department and he signed the same after reading but the stamp papers were not purchased by him and it was not typed in his presence. He further stated that he does not remember whether he was receiving the rent from the company in cash or by cheque and volunteered that for the last six or seven years he is receiving the rent by cheque and receiving the rent annually from the company. PW-2 also stated that the respondent was his employee and while purchasing the flat, the respondent did not help him. He denied the suggestion that he let out the suit premises to respondent on 15th June, 1995 on monthly rent of ₹500/-. He also denied the suggestion that he visited the suit premises on 15th June, 1995 and collected the rent of ₹500/- for the period 15th June, 1995 to 14th July, 1995 from respondent in presence of Sh.Kanwar Lal and also denied the suggestion that he himself had handed

over the keys of the flat to the respondent at the time of letting out the premises to him.

11. The respondent was examined as RW-1 and has filed his evidence by way of affidavit which is Ex.RW1/A. In cross-examination, RW-1 stated that he joined the petitioner-Company in 1991 and left the petitioner-Company in May, 1997 and admitted that he was sacked from the company in 1997. RW-1 stated that he cannot show any rent receipt as Sh.Rakesh Aggarwal had not issued the same and he has never demanded any rent receipt. He never issued any notice to Sh.Rakesh Aggarwal for issuance of rent receipt and RW-1 further stated that he has not filed any petition under the provisions of DRC Act demanding the rent receipt and volunteered that he has friendly relations with Sh.Rakesh Aggarwal. RW-1 stated that he cannot show any document that he is tenant of Sh.Rakesh Aggarwal and he is not having any rent receipt or any rent agreement.

12. While dismissing the eviction petition, the main reasons given by the learned Addl. Rent Controller are that a serious doubt has been created as to whether the tenanted premises was let out to the respondent by the petitioner or Sh.Rakesh Aggarwal and it was found that the petitioner-Company and Sh.Rakesh Aggarwal are hand-in-glove with each other. The reason of doubt was that the lease deed Ex.PW2/1 was executed on a stamp paper of ₹2/- which is the deficient stamp duty, though as per the statement of PW-2, the said lease deed was prepared by the legal department and that shows that the said document was executed/prepared/manipulated in order to oust the respondent from the tenanted premises under the garb of provisions of Section 14(1)(i) of the DRC Act.

13. The order passed by the Addl. Rent Controller (North-West), Rohini, Delhi was challenged by the petitioner by filing of an appeal under Section 38 of the DRC Act. While deciding the said appeal, the learned Appellate Court observed that under section 38 of the Act, the Court is to act as an appellate court only on a question of law. The learned appellate court opined that a question of law is a question which must be answered by applying relevant legal principles, by an interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference of facts and evidence, and inferences arising from those facts. The matter was not discussed on merit at all on the basis of grounds stated in the appeal. The appeal filed by the petitioner was dismissed.

14. Having heard the learned counsel for the parties as well as having perused the pleadings produced before this Court and the two orders dated 5th February, 2010 passed by the learned Addl. Rent Controller and dated 11th October, 2010 passed by the Addl. Rent Control Tribunal, it is evident that there are certain admissions made by the respondent/tenant who has stated in the written statement as well as in his evidence that that he was an employee of the petitioner-Company. He joined the company in 1991. The flat in question was let out to the respondent on 15th June, 1995. He ceased to be in the service of the petitioner since 19th May, 1997 and after his removal from the service, he is still in possession of the suit premises and not paid up-to-date rent as alleged by him, either to the petitioner or to Sh.Rakesh Aggarwal. The respondent could not show or produce any documentary evidence that he is the tenant under Sh.Rakesh Aggarwal. He could not file on record as proof any rent receipt, rent agreement, notice, complaint or deposit of rent as provided under Section 27 of the DRC Act,

since 1995 the date when he was inducted as a tenant. He has admitted in his pleadings that he was removed/terminated from the services of the petitioner-Company on 19th May, 1997.

15. No doubt, burden lies with the petitioner in the eviction petition to prove against the respondent. The petitioner in order to discharge its burden has specifically stated in its pleading as well as in the evidence that no doubt, the flat in question was taken on rent from Sh.Rakesh Aggarwal who is the Managing Director of the petitioner-Company and used as residence by the respondent on account of his being an employee of the petitioner-Company. As already stated, he was inducted as a tenant in the suit premises on 15th June, 1995. The lease deed Ex.PW2/1 dated 6th June, 1995 for the period of three years in favour of the petitioner was produced before the learned trial Court. The copy of the Income Tax Return of PW-2 Sh.Rakesh Aggarwal was also placed on record which was duly exhibited and proved by Sh.Rakesh Aggarwal, showing that the petitioner-Company was paying rent of the suit premises to Sh.Rakesh Aggarwal.

16. It has also come on record that the respondent has made additional construction in the suit premises which is not only unauthorized but also contrary to the provisions of building bye-laws, as no one is permitted to construct additional room(s) in a LIG flat without consent/sanction or approval of MCD, otherwise it would amount to violation of the building bye-laws. Such construction invites penal prosecution besides demolition and sealing of the suit property. It is also a matter of fact that the statement made by PW-1 Rohit Aggarwal is in consonance with the statement made by PW-2 Sh.Rakesh Aggarwal. There is no dispute between the Director and Managing Director either with themselves or with the company. The

respondent at the same time failed to prove that he is the tenant of Sh.Rakesh Aggarwal and not of the petitioner-Company, rather there is a presumption in favour of the petitioner because of the fact that he was the employee of the petitioner-Company during the relevant time.

17. There might be some defect with regard to the deficient stamp duty in the lease deed, but there was no dispute between the Company and Sh.Rakesh Aggarwal about the validity of the lease deed which can even otherwise be examined by the Court for collateral purposes.

18. In view of the above said reasons, it appears to the Court that the petitioner was able to discharge the primary burden and thereafter, the burden shifts to the respondent who in his evidence has totally failed to produce the documentary evidence that he was the tenant of Sh.Rakesh Aggarwal and not of the Company. He failed to produce the rent receipt, rent agreement or even to file any application for discovery of record of Sh.Rakesh Aggarwal in order to prove his case that Sh.Rakesh Aggarwal was receiving the rent from him. He even failed to prove his case from the oral evidence also that he was a tenant under Sh.Rakesh Aggarwal. Even on suggestion from the learned counsel for the petitioner at the time of cross-examination, he has denied that he has issued any notice to Sh.Rakesh Aggarwal for demanding the rent receipt as provided under the DRC Act.

19. In this context reference may also be made to *Shyam Kishore vs. M.C.D.*, AIR 1992 SC 2279 of the said judgment the Supreme Court took note of the fact that ordinarily the High Court will not entertain a petition under Art. 226 of the Constitution when alternate remedy of appeal is available to the party but it must be said that the High Court has the jurisdiction to grant such a relief if it thinks proper to do so in the

circumstances of any case. It is settled law that if there is case of a manifest error, error in exercise of jurisdiction on the facts on record or an order being per se void, the High Court may interfere with such an order without insisting on alternative remedy being availed of. The discussion to follow will show that the impugned order in the present case is manifestly illegal and is contrary to the clear and settled position of law. It amounts to refusal to exercise jurisdiction vested in the Additional Rent Controller, inasmuch as he failed to ensure that the landlords are put in possession of their premises forthwith on their approaching the Additional Rent Controller for that purpose. It also results in grave miscarriage of justice and grave and irreparable injury inasmuch as it embroils the petitioners in prolonged and indefinite litigation and in the process deprives them of the possession of the suit premises contrary to the statutory assurance and protection. For all these reasons I am of the view that the present petition under Art. 227 of the Constitution is maintainable.

20. In *Nagendra Nath Bora vs. Commissioner of Hills Division Etc.*, AIR 1958 SC 398 while dealing with the power of the High Courts regarding the Common Law writ of certiorari, the Supreme Court observed that the purpose is to determine on an examination of the record whether the inferior Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer.

21. For the above said reasons, I am of the view that merely on presumption of doubt as the lease deed was not properly stamped, the said document could not have been brushed aside by the learned trial Court, particularly, in view of failure on the part of the respondent to produce any

evidence of any nature to prove that he was the tenant of Sh.Rakesh Aggarwal and not the Company, and more so, he failed to discharge his burden. Thus, there is a legal defect in the order dated 5th February, 2010.

22. As far as the order dated 11th October, 2010 passed by the Addl. Rent Control Tribunal is concerned, it appears from the reading of the entire order that the Tribunal has not considered the matter on merits, nor decided the question of law raised in the grounds of appeal. The only finding given by the Tribunal is that under the scope of Section 38, since legal question is not involved in the matter, therefore, the appeal filed by the petitioner is dismissed. The legal issue in the matter was definitely involved in the matter.

After the petitioner having discharged the burden of proof of this case, it was the turn of the respondent to discharge his burden who totally failed to discharge the same. Thus, the findings of the Tribunal to the effect that no question of law is raised in the appeal are incorrect when the legal questions were involved in the matter as it is admitted position that the petitioner has discharged its burden to prove its case, then the burden clearly benefits to the respondent to prove his version. He failed to prove his case as pleaded by him.

23. Not a single evidence was produced by him in view of defence taken by him in the written statement. He has already enjoyed the tenanted premises for the last more than 18 years. Not a single rupee was paid by him either to the petitioner or Mr. Rakesh Aggarwal. From the very beginning he was raising flimsy defences. He is not the owner of the property as admitted by him in the Court. He legally failed to establish his case. Both courts

below failed to examine the matter carefully. Only the touchable approach was taken by the Addl. Rent Controller.

24. The appeal ought to have been allowed by the Tribunal in view of the reasons mentioned above. The finding of Tribunal is merely on legal points. The case on merit has not been discussed at all though legal issues were involved in the matter.

25. Under these circumstances, both the orders are quashed/set-aside. The present petition is allowed.

26. The respondent is granted six months time to vacate the tenanted premises, i.e. bearing No.LP-27-C, LIG Flat, Pitampura, Delhi. During this period, the respondent shall not sublet or create third party interest in the suit property and shall also pay the agreed rent to the petitioner.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 18, 2013