

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

+ **C.M.(M) Nos. 903/2004 & 904/2004**

% **11th November, 2014**

1. **C.M.(M) No.903/2004**

SH. MADAN LAL RADHU & ANR. Petitioners
Through: Mr. Manoj Sharma, Advocate with
Ms. Lakshmi Gurung, Advocate.

versus

M/S. ATMA RAM PROPERTIES (P) LTD. Respondent
Through: Mr. Amit Sethi, Advocate with Mr.
Ishan Khanna, Advocate.

2. **C.M.(M) No.904/2004**

SH. MADAN LAL RADHU & ANR. Petitioners
Through: Mr. Manoj Sharma, Advocate with
Ms. Lakshmi Gurung, Advocate.

versus

M/S. ATMA RAM PROPERTIES (P) LTD. Respondent
Through: Mr. Amit Sethi, Advocate with Mr.
Ishan Khanna, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. These two petitions are disposed of by this common judgment inasmuch as the judgment of the first appellate court which is challenged in both these petitions is a common judgment dated 11.5.2004. By the judgment dated 11.5.2004, the first appellate court of the Additional Rent Control Tribunal dismissed two appeals filed by the present petitioners/tenants.

2(i) The first appeal which was filed was against the order dated 30.9.2002, a consequential order under Section 14(11) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') directing eviction of the petitioners for non-compliance of the directions passed in the main judgment dated 7.2.2002 by which a decree was passed in favour of the respondent/landlord under Section 14(1)(k) of the Act. As per Section 14(1)(k) of the Act, in case a tenant is found to be misusing the tenanted premises against terms contained in the lease deed of L&DO/local authority or using the tenanted premises against the user prescribed in the master plan/zonal plan etc, then, such a tenant must stop the misuse and also pay the penalty/misuser charges which are claimed by L&DO, failing which the tenant is evicted pursuant to a consequential order passed under Section 14(11) of the Act.

(ii) The second appeal which was dismissed by the Additional Rent Control Tribunal by the impugned judgment was an appeal filed against dismissal of an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioners for setting aside the *ex parte* judgment dated 7.2.2002 passing a decree under Section 14(1)(k) of the Act.

3. Let me at this stage, reproduce some relevant portions of the main judgment dated 7.2.2002 which records that the petitioners were proceeded *ex parte* not once but twice as they failed to appear in the proceedings and thereafter respondent/landlord led evidence and proved its case under Section 14(1)(k) of the Act and consequentially the petition under Section 14(1)(k) of the Act was decreed. The relevant paras of the judgment dated 7.2.2002 read as under:-

“8. In evidence petitioner examined Sh. Chattar Singh U.D.C. L&DO as AW1 who proved letters dated 16.6.93 & 11.11.93 as Ex.AW1/1 and AW1/2. Sh. Arjun Singh overseer L&DO as AW3 deposed about having inspecting the suit premises on 31.8.86 and 5.2.93 and that demand was raised upon the lessee on the basis of breaches found during inspection. Sh. B.L. Nirman has appeared as AW4 as well as AW8 to prove perpetual lease deed as Ex.AW8/1 besides the letters Ex.AW1/1 & Ex.AW1/2. Sh. Mohan Singh Rawat as AW5 proved certificate of incorporation of present petitioner as Ex.AW5/1, Resolution dated 30.7.94 passed in the meeting of Boards of Directors of petitioner as Ex.AW5/2, site plan as Ex.AW5/3, and sale deed dated 31.3.94 as Ex.AW5/4. Sh. Vinod Mishra has partly been examined in chief as AW6. His testimony however cannot be read as it is in-complete. Sh. S.K. Jain, attorney of original petitioner

4. Once the petitioners do not appear in the main petition under Section 14(1)(k) of the Act and the respondent/landlord led evidence and proved its case, and all aspects have been discussed in detail by the Additional Rent Controller while passing the judgment dated 7.2.2002 as reproduced above, then, in my opinion, no successful challenge can be laid on merits by the petitioners to the judgment dated 7.2.2002. Obviously, petitioners having led no evidence and the respondent/landlord having proved its case by leading evidence, there cannot be any valid challenge on merits either as a first appeal which was filed before the Additional Rent Control Tribunal or as a second appeal in the form of a petition under Article 227 of the Constitution of India to the judgment dated 7.2.2002. Therefore, so far as the petition being C.M.(M) No.904/2004 is concerned seeking setting aside of the judgment dated 7.2.2002 on merits, there is no merit in the same, much less for extraordinary jurisdiction under Article 227 of the Constitution of India to be exercised.

5. That takes us to the second petition and through which two aspects are pleaded. The first is that petitioners' application under Order IX Rule 13 CPC should have been allowed and the second is that even if the impugned judgment dated 7.2.2002 read with the consequential orders under Section 14(11) dated 27.8.2002 and 30.9.2002 are sustained, since the

petitioners are ready to now pay the misuser charges, petitioners should be allowed to pay the same and eviction should not be ordered.

6(i) The prayer for setting aside the judgment and decree dated 7.2.2002 on the basis of the application under Order IX Rule 13 CPC which was filed on 10.2.2003 is without any merit for the reason that in an application under Order IX Rule 13 CPC either the *ex parte* decree is prayed for being set aside on the ground that there is no service of the present petitioners in the eviction petition under Section 14(1)(k) of the Act or the case set up is that the petitioners had sufficient cause for non-appearance.

(ii) The first aspect does not apply because petitioners were admittedly served.

(iii) So far as the second aspect is concerned, petitioners having been served and appeared through Advocate and were proceeded *ex parte* not once but twice, petitioners cannot lay the blame of the fault on their Advocate for simply claiming that they were not aware of the *ex parte* judgment dated 7.2.2002 and hence have sufficient cause for non-appearance. It is not believable that petitioners after instructing the Advocate were never informed by the Advocate, and in any case if they were not informed, yet the petitioners were duty bound to take steps for due

presentation of their defence by remaining in touch with their Advocate, and in the facts of the present case there is no doubt that petitioners are guilty of deliberately not pursuing of their defence in the eviction petition filed under Section 14(1)(k) of the Act because after all petitioners were proceeded *ex parte* not once but twice. There is therefore no reason, in my opinion, to allow the application under Order IX Rule 13 CPC filed on 10.2.2003. Both the courts below therefore have rightly dismissed the application under Order IX Rule 13 CPC.

7. That takes us to the issue as to whether since the petitioners are today ready and willing to deposit the amount of misuser charges and such an offer also having been made before the first appellate court, whether the petitioners should not be evicted from the suit premises being Flat No.106, Plot No.1, H-Block, Connaught Circus, New Delhi and instead they should be directed to pay the misuser charges. In this regard, it would be relevant to refer to para 6 of the judgment of the Supreme Court in the case of ***Curewell (India) Ltd. Vs. Sahib Singh (dead) by LRs. and Ors. 1993 Supp (1) SCC 507*** which reads as under:-

“6. Sub-section (11) of Section 14 reads:

14.(11). No order for the recovery of possession of any premises shall be made on the ground specified in Clause (k) of the proviso to sub-section (1), if the tenant, within such time as may be specified in

this behalf by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to the authority such amount by way of compensation as the Controller may direct.”

This sub-section prevents eviction if the tenant has complied with the condition imposed on the landlord by the government. The sub-section also requires the person in possession, namely, the sub-lessee to pay to the authority such amount by way of compensation as the Controller may direct. It is not in dispute that the original lessee, upon receipt of notice from the government, had in turn issued notice to the sub-lessee, namely, the appellant calling upon him to stop misuser or vacate the premises. If the appellant has, as contended by him, stopped misuser, he is of course not liable to be evicted by reason of the protection given to him under sub-section (11). Nevertheless, for the past misuser, the appellant is liable to pay such charges as are payable in terms of the sub-section. The charges under the sub-section are such charges as are determined by the Controller. The Controller must, therefore, after hearing the parties determine the amount payable by the person responsible for the misuser, namely, the appellant who is the tenant of the original lessee and determine the correct amount.” (underlining added)

8(i) The aforesaid paragraph of the judgment of the Supreme Court in the case of *Curewell (India) Ltd. (supra)* specifically holds, and which ratio arises even from the language of the provisions of Sections 14(1)(k) and 14(11) of the Act, that, it is not enough for a tenant to only stop misuse, and tenant has to also in fact pay the misuser charges which are claimed by the L&DO for the past misuse. Putting it in another words, removal of illegal construction or stopping the misuse, it is not a panacea against eviction of the tenant because the tenant has to very truthfully and consciously pay whatever are the misuser charges which are claimed by the

L&DO with respect to the misuse of the tenanted premises against the terms and conditions of the lease deed executed in favour of the landlord by the L&DO.

(ii). Admittedly the judgment dated 7.2.2002 is final because petitioners for no reason failed to appear and the Additional Rent Controller therefore rightly decreed the petition filed under Section 14(1)(k) of the Act by its judgment dated 7.2.2002. The petitioners admittedly did not comply with the specific directions contained in para 15 of the judgment dated 7.2.2002 and the consequential orders dated 27.8.2002 & 30.9.2002 and which read as under:-

A. “15. In view of the above reasons, petition is dismissed u/s 14(1)(j) while being.... Let notice U/S 14(11) of the D.R.C.Act be sent to L&DO for informing whether they... of damages for breach of the terms of lease deed. The respondents are directed to restore the tenanted premises to its original condition by demolishing the un-authorized construction/shed and by carrying out repairs to the damage caused while so doing within one month. Since the respondents are exparte, let a copy of judgment be sent to them at the address of suit premises through registered post as well as UPC for 18/3/2002.

B. Order dated 27.8.2002

Another adj. prayed on behalf of respondent for submitting objections. Learned proxy counsel for respondent is not even aware as to whether cost imposed on the last date has been deposited or not. Respondent has already availed sufficient opportunities for this purpose. The request is only a pretext to further delay the disposal of case, given the

previous complacent attitude of respondent in this matter. Request is, therefore, declined.

I have heard the matter U/s 14(11) D.R.C. Act on behalf of petitioner and carefully perused the record. The paramount lessor has categorically refused to regularize the breach in the demised premises. There is nothing to perceive that respondents have dismantled the unauthorized shed measuring 14ft X 10.9” in the back portion of second floor of the demised premises in compliance of order dated 7.2.2002. It has been stressed on behalf of petitioner that said order has not been complied with so far. It can be perceived from the correspondence addressed to previous owner/landlord by the L&DO that the unauthorized shed was in existence prior to letting of the suit premises to respondent in 1988. The knowledge of the terms of paramount lease thus can be imputed to respondent only from the date of service of legal notice Ex.AW7/2. Respondent on this part did not comply with the condition of superior lease and thus incurred liability for existence of unauthorized shed in his tenancy premises as he was duty bound to remove the same on being objected to by the landlord as well as paramount lessor.

3. Despite having been offered adequate opportunities respondent did not file objection to the statement of damage charges submitted on behalf of L&DO. It has to be deemed that he has no reservation against the same. Petitioner has not represented against it either as such liability of respondent for damage charges is calculated from 1.1.94 onwards. Accordingly respondent is directed to deposit a sum of Rs.7,20,000/- including proportionate interest with L&DO directly within one month as regularization charges upto 30.9.2002. Rest of the liability assessed by the paramount lessor shall be borne by the petitioner. Needless to observe here is that in case of failure, passing of eviction order against respondent would become inevitable.

Put up on 30.9.2002 for compliance report by the resptd.

C. Order dated 30.9.2002

Sh. Singla has filed his affidavit affirming that respondents have not complied with order of deposit of damages, of the last date. Probably for the very same reason respondents have abandoned this matter. There is nothing to perceive otherwise. Consequently, eviction order

in respect of Flat No.H-106, Plot No.1, H-Block, Connaught Circus, New Delhi as morefully shown in site plan Ex.AW5/3 is hereby passed in favour of the petitioner and against the respondents U/S 14(1)(k) of D.R.C. Act. Petitioners are further held entitled to costs of the petition which is conservatively quantified at Rs.2000/-. File be consigned to record room.”

9. Learned counsel for the respondent is justified in arguing that though the Additional Rent Controller need not have directed sending of the copy of the judgment dated 7.2.2002 to the petitioners because there is no such provision of law and the petitioners were in fact duty bound after they had appeared and contested the case necessarily to be aware of the final judgment and the consequential orders which would be passed. Be that as it may the judgment dated 7.2.2002 was sent by registered post AD and UPC by the court of Additional Rent Controller *suo moto* to the petitioners and which was duly served upon the petitioners as noted in the endorsement made in the judicial record of the Additional Rent Controller besides the order dated 7.2.2002. The endorsement appearing of the office of the Additional Rent Controller besides the order dated 7.2.2002 records issuing of the copy of the judgment dated 7.2.2002 to the petitioners and also receipt of the same by the petitioners by registered AD post. Also there cannot be any doubt that the judgment dated 7.2.2002 was received by the petitioners because even in the application filed by the petitioners under Order IX Rule

13 CPC, petitioners have not categorically stated that they have not received the judgment by the registered AD post and UPC as directed by the Additional Rent Controller in its judgment dated 7.2.2002. Therefore, petitioners failed to comply with the timelines specified in the directions given in para 15 of the judgment dated 7.2.2002 of demolishing the construction and more importantly of not paying the misuser charges within a period of one month from 27.8.2002.

(iii) Learned counsel for the respondent rightly points out that before passing of the operative orders on 7.2.2002 and 30.9.2002 decreeing the eviction petition by directing eviction of the petitioners, there were five dates of hearing before the ARC being 25.2.2002, 4.4.2002, 24.4.2002, 21.5.2002 and 8.8.2002 when presence of the counsel for the petitioners is recorded. Though the counsel for the petitioners tried to argue that their counsel did not inform the petitioners of the proceedings of the case, but considering the facts of the present case where regular Kumbhkaran like sleep of the petitioners is writ large on the face of record, this Court refuses to believe that counsel who appeared for them after 7.2.2002, and till the operative order was passed on 27.8.2002, did not inform the petitioners and which stand is only a make believe story which I reject.

10(i) Learned counsel for the petitioners argues that petitioners have removed the illegal construction and which was stated in para 11 of the application under Order IX Rule 13 CPC but the stand of the petitioners is not acceptable to this Court for various reasons.

(ii) The first reason is that the averments made in para 11 are only self-serving averments and not supported by any documentary evidence of removal of illegal construction. Even assuming the illegal construction was removed and which I take for the sake of argument, then, it was necessary for the petitioners to simultaneously inform the removal of the illegal construction both to the court and to the L&DO because L&DO continues to keep on charging misuser charges till intimation is received by them of removal of the illegal construction. After notice is received by the L&DO for removal of illegal construction, L&DO in fact conducts an inspection to ensure that illegal construction is removed so that no future misuser charges are payable, but in the absence of any notice by the petitioners either to the court or to the L&DO no inspection would have been carried out by the L&DO and therefore L&DO possibly may continue to claim further misuser charges. On this aspect, however, I need not observe anything further because even assuming the construction stands removed as stated in para 11, admittedly the misuser charges which were payable in terms of the ratio of

the judgment in the case of *Curewell (India) Ltd. (supra)*, have not been paid by the petitioners till date.

11(i) The only other aspect which now remains is, as regards the petitioners' prayer for now extending time for payment of misuser charges and whether this Court should extend the period for the petitioners to deposit the misuser charges so that there is no eviction order as against the petitioners. Learned counsel for the petitioners very passionately argues that petitioners have always been ready to deposit the misuser charges and which was stated in para 11 of the application under Order IX Rule 13 CPC, however, the classical expression that “put your money where your mouth is” applies in the present case because except giving a lip service with respect to showing readiness to deposit the amount, direction for payment of which was made in August 2002, till today in the year 2014, petitioners have not deposited the amount either with the court or with the L&DO with whom it had to be deposited for the L&DO to stop claiming further interest and penalty on the misuser charges amount. The issue of extension of time and condonation of delay would only arise if actions of the tenants were *bonafide* and their actions would have been *bonafide* only if the petitioners if not within one month but within the next few months from August 2002, would have actually deposited the misuser charges either in the court or to

the L&DO. But, what to talk of a few months, now over 12 years, except making oral statements of willingness to deposit the misuser charges, the deposit by the petitioners of the misuser charges has not seen light of the day and which misuser charges of Rs.7,20,000/- payable as in August 2002, would have as on date increased considerably by this date in the year 2014.

(ii) Learned counsel for the respondent is therefore justified in placing reliance upon the direct judgment on this aspect of extension of time passed by a learned Single Judge of this Court (Sh. Madan B. Lokur, J., as he then was) in the case of *M/s. Roneo Vickers India Ltd. Vs. Union of India and Anr. 85 (2000) DLT 337* by which it was held that there should not be condonation of delay and extension of time in routine with respect to compliance of the order directing payment of misuser charges. Surely, and as already stated above, some amount of delay could have been condoned, but today there is no question after a period of 12 years after passing of the judgment dated 7.2.2002 and the order dated 27.8.2002, of extending the time for making the payment of the misuser charges alongwith further interest and penalty thereon.

12. A summary of the aforesaid discussion makes the following things crystal clear:-

(i) A decree under Section 14(1)(k) of the Act was passed against the petitioners and which has to be treated as final because petitioners have no reason for seeking setting aside of the *ex parte* judgment dated 7.2.2002 more so because petitioners were proceeded *ex parte* not once but twice in these main proceedings under Section 14(1)(k) of the Act which concluded with passing of the judgment dated 7.2.2002.

(ii) In terms of operative para 15 of the judgment dated 7.2.2002 petitioners had to demolish the illegal construction and had to pay the misuser charges within one month in terms of the order dated 27.8.2002, but admittedly till date except making oral requests the misuser charges which were Rs. 7,20,000/- as in the year 2002 (and would be much much more today) have not been deposited by the petitioners either with the courts or with the L&DO. I must state that today we are in 2014, and the amount which would be claimed by the L&DO from the respondent/landlord on account of misuse of the illegal construction by the petitioners would be far far more than Rs.7,20,000/- because L&DO will in addition to the amount of Rs.7,20,000/- also claim interest and penalty on the same and may be even further misuser charges because there is no communication to them of removal of the offending construction.

(iii) In the facts of the present case, there does not arise any question of extension of time being granted to the petitioners to deposit the misuser charges amount with other charges towards interest and penalty, more so in view of the direct ratio of the judgment of the learned Single Judge of this Court in the case of *Curewell (India) Ltd. (supra)*.

(iv) Petitioners have not only been grossly negligent but I would say deliberately negligent in failing to appear in the main petition in 14(1)(k) of the Act and in fact thereafter even in the proceedings which led to the consequential orders being passed under Section 14(11) of the Act by the Additional Rent Controller on 27.8.02 and 30.9.02, and petitioners seem to believe that throwing a case on the negligence of their Advocate is enough for them to walk away from their own inactions including of failing to comply with operative para 15 of the judgment dated 7.2.2002 and the order dated 27.8.2002.

13. In view of the above, there are no grounds for this Court to interfere even as the first appellate court or the original court, leaving aside exercising of jurisdiction under Article 227 of the Constitution of India which is discretionary and extraordinary.

14. In view of the above, both these petitions are dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

NOVEMBER 11, 2014

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