

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

+ **C.M.(M) No.357/2011 & C.M.No.6420/2011 (Stay)**

% **25th September, 2014**

SH. NAND RAM Petitioner

Through: **Mr.R.D.Chauhan. Madni, Advocate.**

VERSUS

MOHD. NASEEM AHMAD @ NASEEM AHMAD Respondent

Through: **Mr.Gulam Ali Madni, Advocate.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India impugns the concurrent judgments; of the executing court dated 26.5.2007 and the first appellate court dated 07.2.2011; by which both the courts below have allowed the objections of the objector/respondent and has dismissed the execution petition seeking execution of the *ex parte* judgment and decree dated 04.12.2003 obtained by the petitioner/landlord against one alleged tenant Islamuddin.

2. At the outset, I must note that there was a provision of second appeal being Section 39 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'), but this provision was repealed by the Act 57 of 1988, and therefore no second appeal lies. This petition under Article 227 of the Constitution of India therefore cannot be substituted for a second appeal. The scope of hearing of this petition is therefore extremely limited.

3. Both the courts below have allowed the objections on the ground that the respondent/objector was in possession of the suit/tenanted premises from around 18 years (since 1986) prior to passing of the *ex parte* judgment and decree dated 4.12.2003 and the suit for permanent injunction that was filed by the respondent/objector i.e on 21.9.2002 against the petitioner/landlord for injunction against dispossession without due process of law, and in those proceedings the petitioner/landlord concealed the aspect with respect to filing of the eviction petition on the ground of subletting. Both the courts below have held that the respondent/objector was a tenant of the suit property and not Sh. Islamuddin, inasmuch as the mother of the decree holder in 1986 had inducted the respondent/objector as a tenant.

4. In my opinion, the most important aspect for sustaining the impugned judgments is that whereas the respondent/objector stepped into the witness

box and deposed with respect to the tenancy, and also subjected himself to cross-examination, the petitioner/landlord however led no evidence whatsoever and did not step into the witness box in support of his case. The petitioner/landlord therefore had no courage of conviction to stand the test of cross-examination by standing in the witness box. Accordingly, in my opinion the courts below have rightly allowed the objections and dismissed the execution petition.

5. Powers under Article 227 of the Constitution of India are discretionary powers and are meant to be exercised in extraordinary situations where grave injustice is caused. Merely because two views are possible, this Court will not interfere with the impugned judgments, especially the concurrent judgments, merely because two views are possible and one possible and plausible view is taken by the courts below.

6. The following observations have been rightly made by the first appellate court in paras 21 to 24 of the impugned judgment dated 7.2.2011 for allowing of the objections filed by the respondent/objector and which read as under:-

“ 21. In the instant case, objector is claiming himself to be tenant directly under the Decree holder and it is his case that premises were taken on rent by him from Smt. Ram Bai, mother of decree holder in the year, 1986. Initially the rent was Rs.50, which was enhanced from time to time, firstly to Rs.55/- and thereafter to Rs.60/- and it is the case of objector that rent stands

paid upto August, 2002. Initially he used to pay rent to the mother of decree holder during her lifetime and thereafter decree holder started collecting rent and the same was paid upto August, 2002. It is also his case that he has been doing the business under the name and style of M/s Bharat Electric Works in the suit premises for last 14 years and is having valid licence to carry on business and telephone connection is also installed in his name. Factum of objector being in possession of suit premises for last number of years and his carrying on business under the name and style of M/s Bharat Electric Works is not disputed by the decree holder. However, it is his case that objector was employee of Islamuddin and subsequently Islamuddin sublet the premises to objector without obtaining consent in writing of the landlord.

22. It is not in dispute that objector filed civil suit for permanent injunction against the decree holder. A perusal of certified copy of plaint Ex.Ow1/7 goes to show that suit was filed seeking relief against the decree holder from forcibly dispossessing the plaintiff from the suit property inter alia on the allegations that he is tenant under defendant in respect of shop on the ground floor forming part of property No.98/7, where he is running business under name and style of M/s Bharat Electric Works and that he is tenant under the defendant for last about 16 years. This suit was filed on 21.09.02. It is not in dispute that although decree holder claims that tenant Islamuddin did not pay rent to him for a number of years, but prior to filing of this civil suit by the objector, he had not filed any eviction petition or civil suit claiming arrears of rent from Islamuddin. This suit was contested by the decree holder. However, ultimately, on 19.11.03 he made a statement that plaintiff will not be dispossessed from the suit property except by due process of law. In view of this statement of the decree holder, the suit was disposed of as compromised/satisfied. It is pertinent to mention that during pendency of this civil suit, decree holder filed the eviction petition against Islamuddin on 26.02.03 on the allegations that respondent Islamuddin had sublet, assigned or otherwise parted with possession of the suit premises to Mohd. Naseem Ahmed @ Naseeb Ahmed. Despite the fact that civil suit between objector and decree holder was pending yet there was no disclosure of this fact in the eviction petition. There is force in the submission of Id.

counsel for objector that despite the fact that eviction petition was filed on the ground of subletting and in the civil suit the decree holder made a statement on 19.11.03 that he will not dispossess the objector from the suit property except by due process of law, but it was not disclosed that he has also filed eviction petition against Islamuddin on the ground of subletting. Although under normal circumstances in an eviction petition on the ground of subletting, it is not necessary for the landlord to implead sub-tenant as a party to the eviction petition, but things were entirely different in the instant case, inasmuch as, alleged sub-tenant had already filed the civil suit against the landlord and although landlord was making a statement that he will not dispossess the alleged sub-tenant without due process of law, yet there is nothing on record to show that he initiated any legal proceedings against the objector for dispossessing him in accordance with law. The natural course of conduct required that when landlord was making such statement before the Court, the alleged sub-tenant under peculiar circumstances of the case, should have been impleaded as one of the respondent. But that was not done. With the result, the tenant in that eviction petition appeared for two or three dates and sought adjournment on the ground that he was making efforts for compromise and ultimately he failed and was proceeded ex-parte and ex-parte decree was passed. Thereafter, execution was also filed by the decree holder, knowing it fully well that possession of suit premises was with objector and he had already given undertaking before civil judge that he will not dispossess him except in accordance with law, but without honouring that undertaking and without adopting due process of law, he filed execution petition in order to evict the objector, who was in possession of the suit premises. When objector came to know about pendency of the execution petition, then he filed present objections.

23. As stated above, possession of the objector was for a substantial period and he was running business under name and style of M/s Bharat Electric Works, having a valid licence which fact is not even disputed by the decree holder. The objector in order to substantiate his case filed his own affidavit Ex.OW1/A, wherein he averred that he was inducted as tenant in the premises in question by Smt. Ram Bai, mother of decree holder. Initially rent was being paid to mother of decree holder and after her death, same is

being collected by the decree holder. He denied the suggestion that he is in unauthorized occupation of the shop in question. He has examined OW2 Mohd. Tahir and OW3 Rais Ahmed, both of whom corroborated version of objector. DW4 Sh. Fera Ram from MTNL, proved record pertaining to telephone No. 2281726 in the name of Naseeb Ahmed in the suit premises, which was installed on 18.04.96. It is pertinent to note that although objector has taken specific plea that premises were taken on rent by him from mother of decree holder and initially rent was being collected by the mother of decree holder and after her death by the decree holder. In order to refute the testimony of objector, decree holder did not even bothered to appear in the witness box. In fact, he chose not to lead any evidence.

24. Much emphasis has been laid by Id. counsel for appellant for submitting that rent agreement with Islamuddin was by virtue of written note and therefore the oral tenancy could not have been created in favour of the objector. In this regard, it may be mentioned that contract of tenancy can be expressed or implied. The Rent Control Act does not lay down any specific manner of entering into an agreement. That being so, even if rent note was executed between mother of decree holder and Islamuddin that does not ipso-facto gives rise to any presumption that no oral tenancy could have been created by mother of decree holder in favour of the objector. At the cost of repetition, it may be mentioned that decree holder did not file any affidavit nor did he himself appeared in the witness box, to refute the allegations made by the objector. Moreover, possession of objector in the suit premises for substantial period is not even disputed by the decree holder. According to decree holder, Islamuddin was also running business under the same name and style. Objector has proved the licence issued to him by MCD. MCD would not have issued licence to two persons for running the business in the same premises under the same name and style. It is also not disputed that telephone connection is installed in the suit premises in the name of objector. There is no cross-examination of OW4 as to whether any NOC was filed by the objector in the office of MTNL prior to obtaining telephone connection. The decree holder is running his dhaba in the adjacent premises and it seems improbable that for last 18 years objector will run business in the premises unauthorizedly and landlord will

not take objection to the same. As regards plea of the landlord that objector was working as employee of Islamuddin, same has not been proved by the landlord.”

(underlining added)

7. In view of the above, there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

SEPTEMBER 25, 2014
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