

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

+ CM(M) 538/2014 & CM No.9387/2014

% 10th October, 2014

SH. SHARWAN JAIN Petitioner
Through: Mr. Mukesh M. Goel with Mr. Prem
Grover, Advocates.

versus

SH. RADHEY SHYAM Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Counsel for the petitioner at the outset concedes that the respondent has already executed the impugned judgment and decree whereby possession of the suit/tenanted premises has been taken. Counsel for the petitioner states that in spite of this position, he has instructions to press the petition.
2. The concurrent judgments of the courts below; of the Additional Rent Controller dated 24.11.2012 and the Rent Control Tribunal dated 03.2.2014; decree the eviction petition of the respondent/landlord filed under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the

Act') on the ground of non-payment of rent. Since the default was a case of second default, petitioner has not been granted benefit of Section 14(2) of the Act and eviction has been ordered.

3. The only argument which is urged before this Court, and which is totally frivolous to say the least, is that the benefit under Section 14(2) of the Act ought not to have been denied because the benefit granted under Section 14(2) of the Act vide an earlier order dated 21.7.2009 in an earlier eviction petition under Section 14(1)(a) of the Act is an illegal order because under the Delhi Rent Control Act, no eviction order can be passed on a compromise and the Additional Rent Controller before allowing a petition has to arrive at a finding with respect to the existence of the cause of action as stated in the different sub-Sections of Section 14(1) of the Act.

4. At this stage, let me refer to the relevant para 6 of the impugned judgment dated 3.2.2014 of the Rent Control Tribunal which deals with this aspect and which also refers to the earlier statements and earlier order passed in the earlier eviction petition under Section 14(1)(a) of the Act. This para 6 reads as under:-

“6. As regards the contention raised by the Id. Counsel for the appellant for the benefit U/s 14(2) of 'the DRC Act' granted to the appellant in the earlier petition filed U/s 14(1)(a) being not

lawful, it is relevant to advert to the statements of the parties and the order that followed U/s 14(2) of 'the DRC Act'. To avail the said benefit, the appellant made the following statement :

“I am the respondent in the present eviction petition U/s 14(1)(a) of the DRC Act filed by the Petitioner Sh. Radhey Shyam against me. I state that I have compromised the present eviction petition with the Petitioner. I undertake to pay the rent @ of Rs.300/- per month w.e.f. 01.04.01, the rent @ of Rs.330/- w.e.f 01.04.03, the rent @ of Rs.363 w.e.f. 01.04.06, and the rent @ Rs.400/- w.e.f. 01.04.09 till date minus Rs.7500/- already deposited by me in the present eviction petition in compliance of the orders dated 17.07.08, passed by the Id. Predecessor of this court U/s 15(1) of the DRC Act. I further undertake to clear the entire arrears of rent and to pay the same to the Petitioner against receipt within one month from today and I further undertake to continue to pay the rent to the Petitioner at the aforesaid rate subject to the enhancements as per the provisions of the DRC Act month by month by the 15 of each succeeding month in future. I also admit the receipt of the notices sent by the petitioner to me. As per the compromise, it has been agreed that the benefit U/s 14(2) of the DRC Act may kindly be granted to me on compliance of the aforesaid undertaking given by me.”

Accepting the above-said statement of the appellant, the respondent made the following statement :

“I am the Petitioner in the present eviction petition filed by me U/s 14(1)(a) of the DRC Act against the respondent. I state that I have compromised the present eviction petition with the respondent and I have heard the statement of the respondent in terms of the compromise and I acknowledge the same to be

correct. I have no objection if the benefit of Section 14(2) of the DRC Act is given to the respondent provided he complies with the undertaking given by him today in the court. The present petition may be disposed off in terms of the statements of the parties so recorded today in the court and as compromised/settled.”

Accepting the above-said statements of the parties, the Id.ARC passed the order granting benefit U/s 14(2) of 'the DRC Act' to the appellant, which is as follows :

“21.07.2009

Present: Petitioner in person alongwith counsel

Sh.S.P. Gupta.

Respondent in person alongwith counsel

Sh.S.C. Pandey.

It is submitted by both the parties that the present matter has been compromised and they are ready to get recorded their statements separately. In view of the compromise of the parties statement of the parties have been recorded separately. Respondent has undertaken to pay the rent @ Rs.330/- w.e.f. 01.04.03, the rent @ Rs.363/- w.e.f. 01.04.06, and the rent @ Rs.400/- w.e.f. 01.04.09 till date minus Rs.7500/- already deposited by me in the present eviction petition in compliance of the orders dated 17.07.08, passed by the Id. Predecessor of this court U/s 15(1) of DRC Act. Respondent has undertaken to clear the entire arrears of rent and to pay the same to the petitioner against receipt within one month from today and has further undertaken to continue to pay the rent to the petitioner at the aforesaid rate subject to the enhancements as per the provisions of DRC Act month by month by the 15 of each succeeding month in future. Respondent has also admitted that receipts

of the notices sent by the petitioner to me. Both the parties have agreed that the benefit U/s 14(2) of the DRC Act be given. As such benefit U/s 14(2) of DRC Act is hereby given to the respondent.

Petitioner is at liberty to withdraw the rent deposited by the Petitioner in the present petition.

File be consigned to record room.

Sd/-

A bare perusal of the above-said statements of the parties and the order that followed would show that the appellant by virtue of his statement, not only unequivocally accepted the service of notice but also, the default in payment of arrears of rent, as averred to in the eviction petition. This led to irresistible conclusion that inspite of the service of notice, the appellant had not either paid or tendered the arrears of rent to the respondent as contemplated under Section 14(1)(a) of 'the DRC Act'. In the given situation, when both the legal ingredients for grant of the petition were met with, the order passed in the earlier proceedings granting benefit to the appellant U/s 14(2) of 'the DRC Act' by no stretch of imagination can be said to be illegal. Suffice to say, a petition can be granted on the premise of admissions, which may be made in the pleadings or otherwise. Contention raised to the contrary by the Id. Counsel for the appellant is therefore rejected, being wholly misconceived.”

5. It is clear that the petitioner is trying to be clever by half. The petitioner was entitled to and so had made a statement by agreeing to the decreeing as the earlier eviction petition under Section 14(1)(a) of the Act as per his consent statement. It is not the case of the petitioner that the consent statement was taken by force, fraud or coercion. Once the statement is

voluntarily made and the statement is an admission of a fact, it is not understood how the petitioner can claim that the earlier statement is illegal/null and void whereby he could not have given any benefit to the respondent/landlord under Section 14(2) of the Act. An eviction petition can be decreed on admission of a fact and once there is admission of a fact then no finding is required to be arrived at because there is no disputed question of fact requiring trial and a finding.

6. In view of the above, there is no merit in the petition and the same being totally frivolous is dismissed with costs of Rs.15,000/- which shall be paid to the Delhi High Court Legal Aid Services Committee within four weeks.

7. List before the Registrar General to ensure the compliance of the order with respect to costs on 11.11.2014 and in case costs are not deposited, the Registrar General can initiate proceedings to recover the costs as arrears of land revenue so that same are deposited with Delhi High Court Legal Aid Services Committee.

VALMIKI J. MEHTA, J

OCTOBER 10, 2014

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