

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

% *Judgment pronounced on: March 21, 2014*

+ **CM(M) No.691/2013 & C.M. No.10403/2013**

SHRI AMARJEET ATHOTRA & ANR Petitioners
Through Mr.J.C.Mahindro, Adv.

versus

SHRI MANINDER SINGH & ANR Respondents
Through Mr.M.L.Mahajan, 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 petitioners have assailed judgment dated 1st May, 2013 passed by learned Appellate Court in an appeal filed by the petitioners against the eviction order dated 22nd January, 2013 in respect of two shops on the ground floor of property No.837/1 Janpura Road, Bhogal, New Delhi (hereinafter referred to as the “tenanted premises”)

2. Brief facts are that the respondents filed an application for eviction on 10th December, 2003 of the shops occupied by the petitioners in respect of the tenanted premises under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short, called the “Act”) on the ground of non-payment of rent. The respondents claimed themselves as the owners and landlords of the tenanted premises. They have purchased the said part of the property from one Ravinder Kumar, Surender Kumar and Hari Kishan. The rent of the tenanted premises was Rs.160/- per month.

3. As per the case of the respondents, initially there was a wooden door dividing the shop into two portions. The petitioner No.1 was carrying on his business in one portion and the petitioner No.2 was carrying on his business in another portion. The respondents after purchasing the said property had carried out extensive repairs and improvements. It was a single tenancy, the rent of the tenanted premises was being paid by petitioner No.2 to respondent No.1 @ Rs.160/- per month. He used to sign counterfoils of the rent receipts when he paid the rent and obtained the rent receipts. In view of the extensive repairs and improvements carried out, the petitioners verbally agreed to raise the rent from Rs.160/- per month to Rs.1,000/- per month. In pursuance of the verbal agreement, petitioner No.2 on his behalf and on behalf of petitioner No.1 had paid the rent in the sum of Rs.1,000/- per month for the month of June, 2002 to the respondents. He obtained the rent receipt for the said amount from respondent No.1 and put his signature on the counterfoil of the said rent receipt. Thereafter, the petitioners have stopped making the payment of rent with effect from 1st July, 2002. The respondents thereafter served the legal notice dated 12th September, 2003 by registered post as well as through UPC asking them to clear the arrears of rent. As petitioners had neither replied the said demand notice nor they paid the rent or tendered the whole of arrears of rent legally recoverable from them, the respondent left with no option but to file the eviction petition under Section 14(1)(a) of the Act.

4. The petitioners contested the petition inter alia on the objections taken in the written statement that the rate of rent is Rs.160/- per month. The respondents have not issued the requisite notice and filed the eviction in the incorrect names of the petitioners. The petition is not maintainable. Even as

per agreement relied upon by the respondents the rate of rent was to be enhanced after three years of the date of agreement, however, an enhanced rent was claimed from 1st July, 2002. The receipt filed by the respondents for the month of June 2002 for the enhanced rent @ Rs.1000/- is obtained from the petitioner No.2 by misrepresentation. The petitioners never paid the rent @ Rs.1000/- for the month of June 2002. Even the agreement is contrary to scheme of Delhi Rent Control Act.

5. In course of the proceedings, the learned Trial Court passed an interim order under Section 15 (1) of the Act directing the petitioners to pay or deposit the rent at the rate of Rs.1,000/- per month. The petitioners filed an appeal against the said order. The learned Appellate Court while disposing the appeal and the cross-appeal filed by the respondents, modified the interim order and reduced the amount of rent to Rs. 160/- per month to be deposited by the petitioners by an order dated 28th January, 2005.

6. Before the learned trial Court of Rent Controller (South), Saket Courts, New Delhi, the respondents examined two witnesses in support of their case. Similarly, two witnesses, i.e. petitioners were examined in support of their case.

7. Respondent No.1, who appeared as PW-1, in his evidence by way of affidavit he proved the site plan as Ex.PW1/1 and deposed that the respondents are the owners of two shops shown in red colour in the site plan filed along with the petition. Respondent No.1 (PW-1) also deposed that initially, the petitioners were paying rent @ Rs.160/- per month and since lot of money was spent by the respondents in carrying on the improvements/repairs in the tenanted premises, the rate of rent was enhanced to Rs.1,000/- per month. He also deposed that petitioner No.2 on

his behalf as well as on behalf of petitioner No.1 tendered a sum of Rs.1,000/- as rent for the month of June, 2002. He further deposed that he had given rent receipt to petitioner No.2 who signed the counterfoil of the said rent receipt which is proved as Ex.P3.

8. He also deposed about the failure of the petitioners to pay the rent @ Rs.1,000/- per month with effect from 1st July, 2002 and also the service of legal notice being Ex.P5. The original postal receipts were proved as Ex.P6 and Ex.P7. Two A.D. Cards were proved as Ex.P8 and Ex.P9 and original UPC was proved as Ex.P10. In his cross-examination, PW-1 admitted the photocopy of the rent agreement which was exhibited as Ex.PW1/D1. He also admitted that the respondents had undertaken not to raise the rent for the period of three years from the date of said agreement, i.e. 30th March, 2000.

9. PW-2 Chaman Lal, Civil Nazir in the Court of learned Senior Civil Judge, Tis Hazari Courts, Delhi, deposed that in no case, the rent has been disbursed to Maninder Singh and Sardool Singh for whom the rent has been deposited.

10. Petitioner No.1, namely, Amarjeet Athotra who appeared as RW1 before the learned trial Court, deposed that he along with his brother Ravinder Kumar Athotra are the tenants in the tenanted premises. He referred the agreement being entered into whereby the respondents agreed to carry out the necessary renovation and construction in the tenanted premises. He deposed that the respondents played a fraud with him and his brother when the rate of rent was mentioned at Rs.1,000/- per month in the receipt for the month of June, 2002 without any consent. He also deposed that this mischief was brought to his notice and he filed a civil suit

challenging the said false receipt and its counterfoil. As per RW-1, he has deposited the rent under Section 31 of the Punjab Relief and Indebtedness Act up to 30th June, 2004. He denied the service of the notice of demand from the counsel of the respondents. In his cross-examination, RW-1 stated that he could not tell the contents of his affidavit as he is not educated. However, he admitted his signatures on Ex.P9 and admitted his address to be correct as shown on the AD Card Ex.P8.

11. Petitioner No.2 Ravinder Kumar Athotra appeared as RW-2 who corroborated the testimony of RW-1 and reiterated that his signatures on the counterfoil of rent receipt showing rate of rent as Rs.1,000/- per month was obtained by the respondents by misrepresentation. The eviction petition was put up for trial.

12. The learned Rent Controller (South) after considering the evidence of the parties has come to the conclusion that the respondents have proved their petition under Section 14(1)(a) of the Act and passed the order dated 15th September, 2010 whereby the order under Section 15(1) of the Act passed in the case was modified and the petitioners were directed to deposit in Court arrears of rent @ Rs.1,000/- per month from 1st July, 2002 till the date of the order. While extending the benefit of Section 14(2) of the Act, further directions were passed that the petitioners shall continue to pay rent @ Rs.1,000/- per month to the respondents by the 15th day of each succeeding month.

13. The petitioners on 29th November, 2010 challenged the said order dated 15th September, 2010 before the learned Addl. Rent Control Tribunal by filing of an appeal. Along with the appeal, an application for condonation of delay as well as an application for staying the operation of

the impugned order was also filed. However, the petitioners did not comply with the direction in the judgment dated 15th September 2010 of payment/deposit arrears of rent at ₹ 1,000/- per month within one month. The petitioners before the appellate tribunal filed an application on 2nd April, 2011 for seeking permission to deposit the arrears of rent in view of the execution proceedings having been filed by the respondents before the learned Addl. Rent Controller, Saket, New Delhi. The learned Addl. Rent Control Tribunal, Saket, New Delhi on 20th April, 2011 passed the order without prejudice to the rights and contentions of the parties directing the petitioners to comply with the order dated 15th September, 2010 within a week from that date, but had also granted permission to the respondents to withdraw the arrears of rent calculated @ Rs.160/- per month till further orders. Relevant extract of the order is reproduced as under:

“I am afraid the question as to what is the rate of rent with which the tenant is to be held liable is still wide open in the appeal pending before this court. The question at this stage is not whether there has been failure on the part of the tenant to comply with the order and if there has been failure, whether it is liable to be condoned or not. Those questions will have to be addressed in the judgment whereby appeal is to be decided. For the present, the appellant/tenant wants to account for the liability. While I am inclined to grant the relief prayed in the application, it must be observed that the belated deposit of the arrears in terms of the impugned judgment cannot be construed as due compliance as the question whether the appellant could have avoided compliance within the time granted by the Rent Controller remains to be answered.

In above view, the appellant/tenant is allowed to deposit the arrears of rent at the rate of Rs. 1000/- (Rupees One Thousand) per month in the court of Rent Controller in terms of directions in the impugned judgment dated 15.09.2010 which deposit shall be without prejudice to the contentions of both

sides. The appellant shall comply with this order within a week from today. Given the contentions raised, it is further ordered that the respondent shall not be permitted to withdraw arrears of rent calculated more than Rs. 160/- (Rupees One Hundred Sixty) per month, till further orders.”

14. At the time of deciding the main appeal, the learned Appellate Court vide order dated 18th October, 2011 though upheld the findings of the learned Trial Court about the rate of rent being Rs.1,000/- per month. The petitioners being in default of the payment thereof, however, it was observed that the learned Trial Court had committed an error by passing a composite order whereby the learned Trial Court had accorded, without inquiry, the benefit of Section 14(2) of the Act. It was observed by the learned Appellate Court that the petitioners had rushed to the Appellate Court with the said appeal without compliance being made with the modified order within the period allowed and that it was only after securing in appeal the order dated 20th April, 2011 that some amount had been deposited. The learned Appellate Court though upheld the judgment dated 15th September, 2010, the matter was remanded back to the learned Trial Court for examining whether the order had been duly complied with or not, so as to decide the issue of entitlement to the petitioners the protection under Section 14 (2) of the Act.

15. In the proceedings conducted after remand, the respondents submitted before the learned Trial Court that there was no power vesting in him to consider the submission for condonation of delay. Accordingly, the learned Trial Court rejected the prayer of condonation of delay and proceeded to pass eviction order against the petitioners vide judgment dated 5th May, 2012.

16. The petitioners again preferred an appeal against the said judgment and the learned Appellate Court, while deciding the same vide judgment

dated 15th October, 2012, allowed the contention of the petitioner that the Trial Court had necessary jurisdiction to examine the question as to whether there was a case made out for condonation of delay in compliance of the order. The matter was remanded for such purposes to the Trial Court.

17. The learned Trial Court by judgment dated 22nd January, 2013 considered the said application seeking condonation of delay in compliance with the order under Section 15(1) of the Act wherein it was stated that the delay in deposit of rent was on account of filing of the appeal and the stay application and that immediately on direction of the learned Appellate Court, the rent was deposited in the Court, however, the learned Trial Court did not accept the said explanation for the default. The learned Trial Court observed that the petitioners were not prevented from depositing the rent in terms of judgment dated 15th September, 2010 and that the petitioners had failed to show bonafide or sufficient reason for non-compliance within the time specified in the said judgment. It was further observed that the petitioners have been negligent and careless and that mere filing of appeal that too after the time off depositing the rent had already expired, would not provide sufficient ground for condonation of delay.

18. An appeal against the judgment was filed and it was contended that it is necessary for the learned Trial Court to examine as to whether the delay was intentional, deliberate or contumacious. The petitioners contended that there was no finding to such effect and so the order passed by the learned Trial Court ought not be sustained and that the delay be condoned and the protection under Section 14(2) of the Act be granted. The said appeal was contested by the respondents.

19. The learned Appellate Court vide order dated 1st May, 2013 dismissed the said appeal filed by the petitioners and observed that the approach taken

by the learned Trial Court cannot be faulted. It was also observed that the judgments cited by the petitioners did show that the Trial Court had the necessary powers to examine as to whether there was a case made out for condonation of delay in compliance with the order under Section 15 (1) of the Act and that is precisely why the matter was remanded for re-consideration. However, the Trial Court had considered the grounds put forth as justification and in opinion of the learned Appellate Court, there was no error in the view taken that mere filing of the appeal with an application for stay would not provide grounds for justifying non-compliance with an order with which the petitioners were bound, particularly when even the appeal was not preferred within the period of limitation. The learned Appellate Court, on submissions of the petitioners, also observed that though there had been a deposit of rent made after direction in the order dated 20th April, 2011, there had been no tender or deposit of interest that had been accused in view of the decisions of this Court in this regard. Though the petitioners pleaded that they may be given an opportunity to deposit the interest in terms of the statutory liability under Section 26(1) of the Act, the learned Appellate Court observed that it was too late at this stage to offer compliances with the statutory obligation, as the consequences on account of default had already accrued in favour of the respondents.

20. In view thereof, the decision of the learned Trial Court with regard to the issue of condonation of delay was upheld by the learned Appellate Tribunal and the appeal was dismissed vide the impugned judgment dated 1st May, 2013 and aggrieved thereof, the petitioners have filed the present petition under Article 227 of the Constitution of India for quashing of various judgments including dated 22nd January, 2013 and 1st May, 2013.

21. I agree with the learned counsel appearing on behalf of the respondent that the only point before the Courts below was whether the application for condonation of delay makes out a sufficient ground for condoning the delay and whether the order dated 22nd January, 2013 passed by the Rent Controller, South, New Delhi, rejecting the application and the confirmation of the said order by the Additional Rent Control Tribunal, South, dated 1st May, 2013 is sustainable or there is any manifest error which has crept in two orders of the courts below.

22. Learned counsel appearing on behalf of the respondents has not disputed the proposition of law that the learned Additional Rent Controller has a power to condone the delay if sufficient case of non-deposit of rent is made out by the tenant. He also agrees that a large number of decisions have been rendered by this Court under which power of Controller to condone the delay in complying with the order under Section 15(1) of the Act has been upheld. In the case of **Rakesh Kumar vs. Gandharv Singh**, 155 (2008) DLT 750, a Single Judge of this Court after referring to the judgment of the Supreme Court in the case of **Ram Murthy vs. Bhola Nath**, AIR 1984 SC 1392, held as under:

“..... A perusal of aforesaid observations in the judgment would clearly show that the learned Additional Rent Controller or for that matter Tribunal is not powerless to condone the delay in a given case which may occur on account of the reasons which are beyond the control of the tenant to physically make the deposit within a period of one month as stipulated in law. The said paragraph gives various illustrations under which the tenant may be unable to deposit the rent. In all such contingencies the ARC would not be powerless to condone the delay. Therefore, in the light of the aforesaid facts, it could not be said that the learned Tribunal or the ARC did not have the power to condone the delay. However, so far as the question of actually delay being condoned in the present case is concerned, that aspect has to be

seen as to whether the delay could have been condoned or not. In the instant case, there was no application filed by the petitioner for condonation of delay nor was such an application filed before the learned Additional Rent Control Tribunal therefore the delay could not be ipso facto condoned automatically by the learned Additional Rent Controller or by the Tribunal without there being an application. To that extent, I feel that the order of the learned Additional Rent Controller as well as that of the Tribunal cannot be found fault with.”

In the case of *Smt. Anit Maharishi vs. Sh. Shashi Bhushan*, decided by Valmiki J. Mehta, J., on 19th April, 2011, while referring to the judgment of the Supreme Court in the case *Ram Murthy vs. Bhola Nath* (supra) and *Rakesh Kumar vs. Gandharv Singh* (supra), this Court has held that the Controller has got the powers to condone the delay in case the tenant is able to show that the delay was on account of reasons which were beyond his control.

23. While disposing of the main petition under Section 14(1)(a) in his judgment dated 15th September, 2010, the learned Rent Controller (Sough) in para 6 has after considering the evidence led by the parties arrived at a finding against the petitioners on merit. The same is reproduced as under:

“6. Respondents have indirectly admitted that petitioner are their landlord with respect to the tenanted property. Testimony of RW 2 is relevant in this regard wherein RW 2 deposed that after execution of agreement Ex.PW1/D1, they had started paying the rent to the petitioner. The rate of rent according to the petitioner is Rs.1,000/- per month while the contention of respondents is that rate of rent is Rs.160/- per month. RW 1 as well as RW 2 have admitted the original signature of RW 2 on the counter foil Ex.P3. The said counterfoil mentions the rate of rent as Rs.1,000/- per month. Once RW 2 admitted his signature of PW 3, it was for the respondents to explain how this document Ex. P3 is a false or fabricated document. Respondent has miserably failed to prove that Ex.P3 which

shows the rate of rent as Rs.1,000/- is a fabricated document. RW 1 and 2 have admitted service of notice of demand issued by the petitioners to them. Interestingly, both these witnesses denied the service of notice of demand in their evidence by way of affidavit. In other words, RW 1 and RW 2 deposed falsely with respect to very vital fact of the case i.e, service of notice of demand on the respondent. Therefore, their testimony becomes doubtful and cannot be relied upon. The reliance on agreement Ex.PW1/D1 is misplaced as petitioners have proved that the said agreement was superceded by the agreement by the agreement whereby the respondent have agreed to increased the rate of rent to Rs.1,000/- per month. It is clear from the above discussion, the petitioners have proved their petition filed u/s. 14(1)(a) of Delhi Rent Control Act. The order u/s. 151 (1) of DRC Act passed in this case to be modified. Respondent shall pay to the petitioner or deposit in the Court arrear of rent @ Rs.1,000/- per month from 01.07.02 till the date of this order within one month from the date of this order. Respondent shall continue to pay rent @ Rs.1,000/- to the petitioner by the 15th day of each succeeding month. Since the petitioners have successfully proved the rate of rent @ Rs.1,000/- per month, Petition is disposed of. Benefit of Section 14(2) of DRC is extended to the respondents.”

24. Admittedly the respondents filed an execution application on 10th February, 2011 for issue of warrant of possession against not complied with the order dated 15th September, 2010 of Section 15(1) of the Act passed by the Rent Controller so the decree follows. On receiving the execution application the trial court asked for the report from the Nazir and also issued notice to the petitioners/tenant to find out whether the petitioners/tenant has complied with the order of deposit or not. The Nazir made a report that the rent has not been deposited by the petitioner/tenant in compliance with the order dated 15th September, 2010.

25. The petitioners filed an appeal under Section 38 of the Act before the Appellate Tribunal against the judgment dated 15th September, 2010, however, the same was not filed within the time prescribed.

26. The petitioners/tenant on receiving notice of the execution of decree moved an application before the Rent Tribunal for deposit of rent and for stay of execution and by order dated 20th April, 2011, the Court of Additional Rent Control Tribunal, South, Saket, New Delhi who allowed the application of the petitioners/tenant to deposit the arrears of rent without prejudice to the contention of both the parties. It was also held that grant of relief for belated deposit cannot be construed as due compliance. However, the matter was remanded back to decide the application for condonation of delay on merits. Admittedly, the petitioners did not challenge the order dated 20th April, 2011 passed by the Appellate Tribunal. The petitioners thereafter filed an application for condonation of delay under Section 5 of the Limitation Act read with Section 151 CPC.

27. By order dated 22nd January, 2013 the Rent Controller, South, dismissed the application of condonation of delay holding that no sufficient ground or reason has been made out for condoning the delay and accordingly passed an eviction order.

28. With regard to the objection taken by the petitioners that name of the petitioners/tenant has wrongly been mentioned as Amarjeet Alhotra instead of Amarjeet Athotra, in the petition the name of the petitioner and their father has been correctly mentioned except the surname and that will not have any effect as the Court of Additional Rent Control Tribunal by order dated 18th October, 2011 in paras 17 and 18 held that identity of petitioners has been correctly identified and they have appeared and contested the proceedings.

29. The judgment delivered by the Appellate Tribunal on 18th October, 2011 was not challenged by the petitioners.

30. The only point before this Court is whether the application for condonation of delay makes out sufficient grounds for condoning the delay and whether in the judgment dated 22nd January, 2013 passed by the Rent Controller, South, New Delhi, rejecting the application and by judgment dated 1st May, 2013 passed by the Additional Rent Control Tribunal, South, whereby the said order was confirmed, any manifest error has crept.

31. It is well settled principle of law that the High Court while exercising its power under Article 227 of the Constitution of India, cannot proceed to act as a Court of appeal by interfering in mere errors of finding fact which requires re-appreciation and re-weighing of evidence unless it results in manifest miscarriage of justice as a Court of appeal. The said power under Article 227 of the Constitution of India has to be exercised sparingly and circumspectly to ensure that decision making done by lower Court and tribunal below is within their bounds and limits.

32. The said power under Article 227 of the Constitution of India being supervisory in nature cannot be equated with the powers of appellate Court and the jurisdiction under Article 227 could not be exercised as a cloak of an appeal in disguise.

33. Scope of interference in a petition under Article 227 of Constitution of India is discussed in the following judgments :

- (i) In ***Waryam Singh and Another vs. 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) 1(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 ***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.”

- (v) In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta*, AIR 1975 SC 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. The Supreme Court speaking through Bhagwati J. as his Lordship then was observed thus:

“If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as a Court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate Court or tribunal final on facts” (**Emphasis supplied**)

The Supreme Court in the case of *Babhut Mal* (supra) approved the dictum of Morris L., J. in *Res v. Northumberland Compensation Appellate Tribunal*, 1952 All England Reports 122.

- (vi) In the case of *State of Maharashtra vs. Milind & Ors.*, 2001 (1) SCC 4, the Supreme Court observed:

“The power of the High Court under Article 227 of the Constitution of India, while exercising the power of judicial review against an order of inferior tribunal being supervisory and not appellate, the High Court would be justified in interfering with the conclusion of the tribunal, only when it records a finding that the inferior tribunal's conclusion is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence or the inferior tribunal has no jurisdiction at all or that the finding is such, which no reasonable man could arrive at, on the materials on record.” (Emphasis supplied)

(vii) Again in the case of *State vs. Navjot Sandhu*, (2003) 6 SCC 641, the Supreme Court observed:

“Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.

However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent

statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.” (Emphasis supplied)

- (viii) The decisions of *Babhut Mal* (supra), *State vs. Navjot* (supra) and *State vs. Maharashtra* (supra) have been approved by Hon’ble Justice C.K. Thakkar as his Lordship then was in the case of *Shamshad Ahmad & Ors. vs. Tilak Raj Bajaj (D) By LRs. & Ors.*, 2008 (9) SCC 1.
- (ix) The Apex Court in *Sarla Ahuja versus United India Insurance Company Ltd.*, reported in AIR (1999) SC 100, where the petitioner who was a widow wanted to shift her residence from Calcutta to New Delhi to occupy her own building which was in the possession of her tenant M/s United India Insurance Company Limited. Though she got an order of eviction from the Rent Controller under Section 14(1)(e) of the Delhi rent Control Act 1958 (for short “the Act”), a single Judge of this Court non-suited her by reversing the order which she challenged before the Supreme Court by way of Special Leave to Appeal. It was held by the Supreme Court that:-

“6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different

fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

34. Upon careful reading of observations in the above referred cases, it can be safely said that the scope of judicial interference under Article 227 is well settled and the Court ceased of the proceedings under Article 227 cannot act as a Court of appeal and should interfere with the decision of the inferior tribunal or Court only to keep the authorities and Courts within their bounds and in the cases where it results into manifest miscarriage of justice and not in all other cases to correct mere errors. The power under Article 227 is thus discretionary in nature and can be exercised in the cases where the lower Court ignores material piece of evidence or considers some evidence which it ought not to have considered resulting into injustice and not in cases where there are two views possible and the view adopted by lower Court is reasonable and plausible one and the High Court would be unjustified to interfere in such cases merely to arrive at different view in the matter as this would be re-appreciating the evidence on finding of facts which is the role of the appellate Court and not the supervisory Court acting under Article 227 of the Constitution of India.

35. The petitioners have admittedly had not deposited the rent within one month of the passing of the order dated 15th September, 2010. The same was deposited only on 25th April, 2011. There was a delay of about 181 days as admitted by the petitioners in compliance with the order. It was argued by the counsel for the petitioners that it

happened due to a wrong advice given by the previous counsel. Otherwise, it was not willful or contumacious default committed by the petitioners who thought that the filing of an appeal against the order was continuation of the proceedings.

36. It is not denied by the learned counsel for the petitioners that the two courts below have given their finding against the petitioners and did not condone the delay in deposit of rent after the expiry of 181 days. Arguments were addressed by the petitioners' counsel that High Court while exercising its power of superintendence under Article 227 of the Constitution of India can condone in the cases of grave injustice to the party concerned.

37. I do not agree with the submissions of the counsel for the petitioners. Firstly, the petitioners ought to have deposited the rent in view of order dated 15th September, 2010 even without their prejudice to file their appeal against the order. Secondly, the appeal was not filed in time. Even in the stay application filed along with the appeal, no order to stay the operation of impugned order was passed. The justification given by the petitioners about the wrong advice does not help the case of the petitioners in view of the nature of the case in hand. The long delay occurred in compliance of order under Section 15(1) of the Act is a serious matter which cannot be condoned in routine matter as compared to other civil cases, otherwise the very purpose of provisions of the Act would be frustrated. Thus, the petitioners in the present case have not been able to make out a case of condonation of delay in depositing the rent as the same was to be deposited within a period of one month as stipulated in law although

Rent Controller is not powerless to condone the delay in a given case which is beyond the control of a tenant to physically make the deposit.

38. In view of the above said reasons, there is no merit in the petition. The same is hereby dismissed.

39. In the case of ***Mohd. Ayub Vs. Mukesh Chand***, (2012) 2 SCC 155 it was observed that *the hardship Appellants would suffer by not occupying their own premises would be far greater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.*

40. Considering the admitted fact that the petitioners are occupying the tenanted premises for the last 59 years and the same is a commercial property, the hardship shown by the petitioners and in the interest of justice, equity and fair play, the petitioners are granted one year's time from today to vacate the tenanted premises. During this period, the petitioners shall not sublet or create any third party interest in the tenanted premises and after the expiry of said period, the petitioners shall hand over the peaceful and vacant possession of the same to the respondents.

41. No costs.

(MANMOHAN SINGH)
JUDGE

MARCH 21, 2014