

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

+ **C.M.(M) Nos. 1095/2012 & C.R.P. No.140/2012**

% **03rd November, 2014**

1. **C.M.(M) No.1095/2012**

SMT. GYANO DEVI Petitioner
Through: Mr. Deepak Tyagi, Advocate with
Mr. K.K. Gautam, Advocate.

versus

SMT. KANCHAN CHOPRA AND ANR. Respondents
Through: Mr. Sam Dutta Sharma, Advocate
with Mr. Pawar Singh, Advocate.

2. **C. R.P. No.140/2012**

SMT. GYANO DEVI Petitioner
Through: Mr. Deepak Tyagi, Advocate with
Mr. K.K. Gautam, Advocate.

versus

SMT. KANCHAN CHOPRA AND ANR. Respondents
Through: Mr. Sam Dutta Sharma, Advocate
with Mr. Pawar Singh, Advocate.

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M.(M) No.1095/2012 and C.M.Nos.17283-84/2012

1. This petition under Article 227 of the Constitution of India
impugns the concurrent judgments of the courts below; of the trial court

dated 10.2.2011 and the first appellate court dated 9.8.2011; by which the application of the petitioner/tenant under Order IX Rule 13 of Code of Civil Procedure, 1908 (CPC) has been dismissed.

2. The respondent no.1/landlady filed an eviction petition against the present petitioner/tenant for non-payment of rent under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'). In the eviction petition, for the date of hearing 7.2.1996, summons which were sent through registered cover, came back with the endorsement of 'refusal' by the postman. The subsequent order dated 1.8.1996 records that son of the present petitioner/tenant appeared in the court and sought time to file the written statement. Written statement was filed by the petitioner/tenant through her Advocate Sh. Ved Pal Singh on 4.9.1996. Since the present petitioner thereafter did not appear in the eviction petition, she was proceeded *ex parte* vide order dated 31.7.1997. An *ex parte* judgment and decree was passed on 24.2.1999 and simultaneously an order was also passed under Section 15(1) of the Act for direction to deposit the rent inasmuch as since the case of default in payment of rent was the case of first default, therefore, the petitioner/tenant in case of compliance of the order under Section 15(1) of the Act would have been entitled to ensure that the

eviction order is not passed on account of protection under Section 14(2) of the Act. Since the petitioner/tenant failed to comply with the judgment and decree dated 24.2.1999 including the order of deposit of rent under Section 15(1) of the Act, thereafter an eviction order was passed against the petitioner/tenant and in favour of the respondent no.1/landlady.

3. In the application, under Order IX Rule 13 CPC filed by the petitioner herein, evidence was led by both the parties, and the impugned orders have been passed considering the evidences which were led by both the parties.

4. As already stated above, as per the record of the Additional Rent Controller which was dealing with the eviction petition under Section 14(1)(a) of the Act, it was found that there was a report of refusal of the postman and therefore in fact the petitioner/tenant was already served for 7.2.1996. Additional Rent Controller however in the interest of justice had directed fresh service and on 1.8.1996 when the son of the petitioner herein appeared and took time for filing the written statement. Written statement was then filed through Sh. Ved Pal Singh, Advocate and who has appeared and deposed in favour of the respondent no.1/landlady as DHW4. Sh. Ved Pal Singh, Advocate in his deposition confirmed that he was engaged by the

petitioner/tenant to defend the case but he stopped appearing as his fees was not paid. The petitioner/tenant had approached Sh. Ved Pal Singh, Advocate through one Sh. Bal Kishan Sharma of South Anarkali and in the cross-examination of Sh. Ved Pal Singh, Advocate, the petitioner/tenant did not put any question to challenge this aspect. In fact on the direction of the court hearing the application under Order IX Rule 13 CPC, the petitioner/tenant appeared in person in court and she was recognized by her Advocate Sh. Ved Pal Singh. The first appellate court below also notes that petitioner/tenant conveniently stated that she came to know of the eviction order through some police official in police station Krishna Nagar but she has not named any such official.

5. Powers under Article 227 of the Constitution of India are extraordinary and discretionary powers. These powers are not meant to be exercised as if for filing of a second appeal through this petition. There was a provision of second appeal being Section 39 in the Act and which was repealed back in the year 1988. Even the provision of second appeal was only on limited ground of existence of questions of law. Once there is no provision of second appeal, unless and until gross illegality is found in the impugned judgments, this court cannot be called upon to exercise its

discretionary and extraordinary jurisdiction under Article 227 of the Constitution of India once the courts below after considering the facts, appraising evidence have come to a plausible and possible view. It is not in the realm of jurisdiction under Article 227 of the Constitution of India to sit as an original or first appellate court and reappraise evidence. However I am in spite of the above legal position still, considering the various arguments which have been urged on behalf of the petitioner/tenant on merits.

6. Counsel for the petitioner/tenant has urged before this court the following arguments:-

(i) The petitioner does not put signatures and only puts thumb impressions and which according to counsel for the petitioner/tenant becomes clear from the fact that the bailiff in the execution report itself found that the report/warrants issued by the court contain the thumb impression of the petitioner/tenant and not signatures of the petitioner/tenant. It is thus argued that a fraud has been played upon the petitioner/tenant because petitioner/tenant had never signed any vakalatnama in favour of Sh. Ved Pal Singh, Advocate or the written statement.

(ii) The vakalatnama filed by Sh. Ved Pal Singh, Advocate shows that the same does not contain any address of Sh. Ved Pal Singh, Advocate, and

therefore the petitioner/tenant was prevented from filing any complaint against Sh. Ved Pal Singh, Advocate in the bar council in the absence of any details of the Advocate in the vakalatnama.

(iii) The trial court in the main eviction proceedings records that son of the petitioner/tenant appeared on 1.8.1996 and sought time to file the written statement but there is no proof that who appeared on 1.8.1996 was in fact the son of the petitioner/tenant.

(iv) The power of attorney holder of the respondent no.1/landlady, and who is the respondent no.2 herein namely Sh. Prakash Chand, was not duly authorized in terms of the power of attorney executed by the respondent no.1/landlady on 5.12.1996 and therefore the evidence led on behalf of the respondent no.1/landlady by the respondent no.2 cannot be looked into and therefore the application under Order IX Rule 13 CPC had to be allowed.

7. Let me take up each of the arguments urged on behalf of the petitioner/tenant and deal with the same.

8. The first argument raised that the petitioner/tenant only puts her thumb impressions and does not sign and that the same is allegedly clear from the cross-examination of the bailiff Sh. Raj Kumar as DHW3

conducted on 28.9.2005, that argument is a misconceived argument because what are the signatures of the petitioner/tenant and whether the petitioner/tenant does not sign at all and only puts her thumb impressions was in the special knowledge of the petitioner/tenant and only she could have led clinching documentary evidence to prove this aspect. The present respondent no.1/landlady could not be asked to prove the negative. I therefore put a specific and pointed query to counsel for the petitioner/tenant as to whether petitioner/tenant has filed any bank account opening form and related documents or any other unimpeachable public record to show that the petitioner/tenant never signed but only puts her thumb impressions, and to which query it is not disputed that no such evidence is led before the trial court that in a bank account the present petitioner/tenant only puts her thumb impressions and does not sign. Also counsel for the petitioner/tenant concedes that no evidence has been led before the trial court with respect to any ration card or any record or any other unimpeachable public/governmental authority which showed that the petitioner/tenant never used to sign but used to put only her thumb impressions. I cannot believe that any public record or any unimpeachable record would not have existed showing that the present petitioner/tenant only used to put her thumb

impressions and did not sign if the case of the petitioner/tenant was true. Therefore, in my opinion, since the respondent no.1/landlady could not have been asked to prove the negative and the petitioner/tenant has in fact concealed vital evidence in her knowledge as to whether any public record contained her signatures or only her thumb impressions and which she was required to bring as per Section 106 of the Evidence Act, 1872, hence in my opinion the petitioner's/tenant's argument has to be disbelieved. The first argument therefore urged on behalf of the petitioner/tenant is without any substance and the same is rejected because it cannot be ruled out that the petitioner/tenant may be putting her thumb impressions in certain places and signatures at other places or may have even deliberately put only her thumb impression on the bailiff's report. These are aspects of evidence and this Court cannot re-appraise evidence under Article 227 of the Constitution of India.

9. The second argument urged on behalf of the petitioner/tenant that no complaint was filed against Sh. Ved Pal Singh, Advocate with the bar council because there were no details with regard to the address contained in the vakalatnama is misconceived inasmuch as even if no details were contained in the vakalatnama with respect to the address of Sh. Ved Pal

Singh, Advocate, however, surely once Sh. Ved Pal Singh, Advocate appeared as a witness of the respondent no.1/landlady as DHW4 and gave details, and it is not the case of the petitioner/tenant that Sh. Ved Pal Singh Advocate is not an Advocate, the very fact that the petitioner/tenant even now has not filed a complaint against Sh. Ved Pal Singh Advocate shows that in fact Sh. Ved Pal Singh Advocate was her Advocate in the eviction petition under Section 14(1)(a) of the Act and through this Advocate the petitioner/tenant had filed her vakalatnama as also her written statement. This second argument is therefore rejected.

10. The third argument urged on behalf of the petitioner/tenant of there being no identity proof of the son of the petitioner/tenant taken by the court on 1.8.1996, is also an equally frivolous argument because courts do not have to compulsorily always ask for identity of persons who appear in courts and in good faith courts do take the statements of the persons who appear as to their relations with the party to the suit. I may note that it is not open to the petitioner/tenant to argue against the judicial record that the person who appeared on 1.8.1996 in the trial court was not her son inasmuch as, as held by the Supreme Court in the case of *State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr. (1982) 2 SCC 463* that unless and until

judicial record is challenged at the earliest by the person against whom such judicial record exists, the judicial record becomes final and the same cannot be challenged in collateral proceedings. In fact this argument now pales into insignificance as the petitioner/tenant is found to have appeared through an Advocate who filed a vakalatnama and a written statement on behalf of the petitioner/tenant and who has deposed before the trial court as DHW4. The third argument is therefore rejected additionally keeping in mind that before the son appeared in the trial court on 1.8.1996 in the main eviction petition under Section 14(1)(a) of the Act, actually there was a refusal report of the postman for the earlier date being 7.2.1996.

11. The final argument urged on behalf of the petitioner/tenant that power of attorney holder of the respondent no.1/landlady i.e the respondent no.2 was not a valid power of attorney holder and therefore his evidence cannot be looked into is a misconceived argument because all the aspects and findings of the courts below are based on the evidence not only of the respondent no.2 herein but also of the evidence of Sh. Ved Pal Singh, Advocate as also of two government officials/court officials. Also, in the present case, the issue really was not only of any evidence on behalf of the respondent no.1/landlady herein but of the evidence to be led by the

petitioner/tenant in her special knowledge as per Section 106 of the Evidence Act, 1872 with respect to whether the petitioner/tenant does not sign and only puts her thumb impressions and which aspect has also been held against the petitioner/tenant in terms of the detailed discussions above.

12. In view of the above, the present petition is wholly frivolous and being an abuse of the process of the law. The respondents/landlords/plaintiffs are being unnecessarily harassed by the petitioner/tenant because actually a connected petition being C.R.P. No.140/2012 has also been today simultaneously decided by this court and which revision petition has been filed by the present petitioner/tenant against the judgment of the trial court decreeing the suit for possession filed by the respondents/plaintiffs under Section 6 of the Specific Relief Act, 1963 because the petitioner/tenant after she was dis-posessed in execution of the judgment and decree obtained by the respondents/landlords/plaintiffs, the petitioner/tenant again took illegal possession of the suit property and therefore the respondent no.1/landlady had to file a suit for possession which was decreed by the judgment and decree dated 28.7.2012 and 13.9.2012 passed by the court of Sh. Raj Kumar, JSCC, ASCJ/G, Judge North-East, Karkardooma Courts, Delhi. The present petition is therefore dismissed

with costs of Rs.50,000/- which shall be paid by the petitioner/tenant to the respondent no.1/landlady within a period of six weeks from today.

+ C.R.P. No.140/2012

13. At the outset, counsel for the petitioner/tenant agreed that the decision/fate of this revision petition will depend upon the decision in C.M.(M) No.1095/2012 filed by the petitioner/tenant and that if C.M.(M) No.1095/2012 is dismissed, this petition will also have to be consequently dismissed. I have by a detailed judgment of today's date dismissed the C.M.(M) No.1095/2012, holding the same to be totally lacking in substance and an abuse of the process of the law. Since the C.M.(M) No.1095/2012 is dismissed, the present petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) challenging the judgment and decree passed by the trial court decreeing the suit for possession filed under Section 6 of the Specific Relief Act, 1963 filed by the respondent no.1/landlady/plaintiff is also dismissed in view of the statement made on behalf of the petitioner/tenant at the commencement of the hearing. This petition is also an abuse of the process of the law and is dismissed with costs of Rs.50,000/- because the petitioner/tenant had the gumption of illegally entering into possession of the suit property although possession was legally taken by the

respondent no.1 /landlady/plaintiff in the execution of the eviction decree passed under Section 14(1)(a) of the Act. Costs be paid within a period of six weeks from today.

VALMIKI J. MEHTA, J

NOVEMBER 03, 2014

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