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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) No.1132/2013

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14th November, 2014

SH. MADAN LAL

.....Petitioner

Through: Mr.Rajesh Gupta with Mr.Harpreet
Singh, Advocates.

VERSUS

SH. ASHOK KUMAR

..... Respondent

Through:

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 is filed by the petitioner/tenant impugning the concurrent judgments of the courts below; of the Additional Rent Controller dated 01.4.2013 and the Rent Control Tribunal/first appellate court dated 28.9.2013; which have passed an eviction decree against the petitioner/tenant under Section 14(1)(j) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') on the ground that the petitioner/tenant failed to repair the damage caused to the tenanted premises within the period of 30 days granted as per Section 14(10) of the Act, by the judgment dated 01.8.2011.

2. The judgment dated 01.8.2011 passed by the Additional Rent Controller contains the following operative portion in para 15:-

“15. In view of the above discussions I am of the considered opinion that the petitioner is able to prove all the necessary ingredients for grant of relief U/S 14 (1)(j) of DRC Act. Accordingly the petition filed by the petitioner under Section 14(1)(j) of DRC Act regarding the tenanted premises No.44, Gali No.9, situated at Khasra No.80, opposite Havelles Industries, Samaipur Industrial Area, Samaipur Badli, Delhi is allowed. However, in compliance of the provision of section 14 (10) of DRC Act no order for recovery of possession of the suit premises shall be passed unless the compliance of Section 14 (10) of DRC Act is done. **Therefore, as per the provision of section 14 (10) of DRC Act the respondent/tenant is directed to carry out the repair to the damage caused within 30 days from the date of passing this judgment. The Ahlmad is directed to prepare the separate misc. file for the purpose of consideration. The respondent is directed to file the affidavit regarding compliance of the direction on or before the next date of hearing.**”

3. The damage which has to be repaired is stated in para no.10 of the judgment dated 01.8.2011, and this para no.10 reads as under:-

“ 10. In the present case the relationship of landlord and tenant is not in dispute between the parties. As per the admitted rent the provision of DRC Act are applicable. It is stated by the petitioner that the respondent is not doing any activity in the suit premises since last 12 years and the premises is in damage and dilapidated condition because of the misdeeds of the respondent. It is stated by the petitioner that the respondent has damaged the entry gate, front wall and back wall of suit premises. It is also stated that the roof of the suit premises is also broken, and animals are wondering in the suit premises. It is also stated that the neighboring persons also started throwing malba and garbages in the suit premises. The petitioner examined himself as PW-1 and deposed on Oath in support of his petition. The petitioner has also placed on record the photographs mark ‘A’ to ‘E’ of the suit premises. During cross-examination PW-1 admitted that he never got any repair work done in the tenanted premises since the date of letting out till date. It is voluntarily stated that the respondent never asked for any repairs.” (underlining added)

4. It is therefore clear that the repair which was to be done was to the damaged entry gate, front wall, back wall and a part of the roof. It is to be noted that the direction was for repair and not for re-construction i.e. whatever patch work and repair which was to be done was for repair of the walls, of the roof and the entry gate ie large scale construction was not envisaged.

5. The petitioner/tenant challenged the judgment of the Additional Rent Controller dated 1.8.2011 before the Rent Control Tribunal, but the Rent Control Tribunal dismissed the first appeal vide its judgment dated 10.1.2013.

6. The petitioner/tenant still in spite of dismissal of his appeal did not carry on the repair work within one month from the judgment of the Rent Control Tribunal dated 10.1.2013, and instead moved an application on 13.2.2013 for grant of further time to carry on repair work allegedly because an architect had prepared the report as asked for by the petitioner/tenant dated 02.2.2013, and as per which report foundation will have to be raised and which work would take “at least” 50-65 days, and therefore time was requested to be extended. This application has been dismissed by the two courts below, and consequently the present petition under Article 227 of the Constitution of India.

7. Before I turn to the arguments on behalf of the petitioner/tenant, two very important aspects have to be noticed.

(i) Firstly, it is noted that there was a provision of second appeal to this Court being Section 39 of the Act, and which provided for filing of a second appeal on a substantial question of law, but that provision was deleted by the legislature from the statute book way back in 1988. Therefore, once there is no provision of second appeal, a petition under Article 227 of the Constitution of India cannot be filed as if a second appeal is being filed, and a petition under Article 227 of the Constitution of India therefore cannot be taken as a basis for re-arguing the cases on merits, once the courts below have taken one possible and plausible view. This Court therefore cannot interfere with the impugned judgments by exercising the extraordinary and discretionary powers under Article 227 of the Constitution of India once the view taken by the courts below is one out of the two possible views. In the present case, the courts below have taken one possible view that time should not be extended in the facts of the present case because the application for extension of time was not moved within 30 days of passing of the judgment by the first appellate court/Rent Control Tribunal on 10.1.2013, and therefore in my opinion this petition under Article 227 of the Constitution of India is in fact liable to be dismissed *in limine*.

(ii) The second reason for dismissing this petition is that the petitioner/tenant has already been evicted from the suit/tenanted premises in execution of the decree on 24.5.2013, and therefore the petitioner/tenant is no longer in possession of the suit/tenanted premises. Therefore this petition after arguments on merits would

really be in the nature of restitution, although it is only a petition under Article 227 of the Constitution of India where there exists concurrent judgments against the petitioner/tenant. Therefore for a premises which were not used or hardly used by the petitioner, and of which possession is taken through due process of law, discretionary and extraordinary powers need not be exercised.

8(i) No doubt, as argued on behalf of the petitioner/tenant, time can always be extended under Section 14(10) of the Act with respect to repair work which has to be carried on by the petitioner/tenant, however, whether the time is or is not to be extended depends upon the peculiar facts of the case and the conduct of a tenant. In the facts of the present case when taken with the conduct of the petitioner/tenant shows that no extension has been rightly granted by the courts below as the tenant was deliberately dilly dallying as noted below. Following are the reasons for which in the opinion of this Court time cannot be extended as prayed for:-

(ii) Firstly, the petitioner/tenant falsely and wrongly defended the case on the ground that he never caused any damage to the suit/tenanted premises, but this defence was rejected by holding that the petitioner/tenant in fact damaged the suit/tenanted premises. The petitioner/tenant is therefore found as per the eviction proceedings, not be an honest person and which original proceedings have achieved finality.

(iii) Secondly, in the facts of the present case, the petitioner/tenant lacks *bonafides* because taking that the petitioner/tenant had a right of first appeal which he exercised, however when the petitioner/tenant after he lost out in the first appeal which was dismissed on 10.1.2013, should have within one month of the judgment dismissing his appeal filed the application for extension of time, but admittedly, the application for extension of time was obdurately moved after one month from 10.1.2013 i.e. on 13.2.2013, although one month is/was sufficient for carrying out the patch work or the repair work that was required to be done. Litigants cannot take the courts for granted, more so when vested rights have accrued in favour of the landlords by virtue of concurrent judgments which are passed by the two courts below.

(iv) Yet another and third reason for the courts below to arrive at a conclusion in rightly refusing to extend the time is that as noticed in para 10 of the judgment dated 01.8.2011 the repairs required to walls, roof and the entry gate would hardly, at best have taken one week or so, because it was not expected from the petitioner/tenant to re-construct the premises. The petitioner/tenant however *malafidely* not only moved the application beyond a period of one month after dismissal of the first appeal on 10.1.2013, but claimed that on the basis of an architect's report further period of "at least" of 50-65 days would be required ie possibly even 65 days would not be enough and which is a false position on the face of it as repair work was required and not large scale reconstruction proposed

by the petitioner/tenant. Also, no undertaking was given for ensuring the compliance of carrying on the minor repair work within a period of 65 days.

Therefore on all the three counts stated above, the petitioner/tenant was not entitled to any discretion of extension of time from the courts below.

9. In view of the above, I do not find any merit in this petition, and the same is therefore dismissed with costs of Rs.25,000/- to be paid by the petitioner to the respondent within a period of four weeks from today. I may note that I am forced to impose costs in the present case because of the conduct of the petitioner as noted above which not only lacks *bonafides*, and also that there is no reason why in a commercial matter, if a landlord has to incur expenses towards litigation, then he should not be adequately compensated.

It is also relevant to note that an eviction decree for *bonafide* necessity had been passed against the petitioner/tenant and in favour of the respondent/landlord herein by the Additional Rent Controller vide a judgment dated 01.8.2011, and against which judgment the next matter being RC.REV.No.12/2012 is listed in this Court. Therefore, the petitioner has also suffered an eviction decree against him on the ground of *bonafide* necessity. That connected petition being RC.REV.No.12/2012 challenging the eviction decree for *bonafide* necessity stands disposed of for the time being in view of the petitioner/tenant not succeeding in

the present petition and the respondent/landlord already having taken possession in the execution proceedings in the subject proceedings.

NOVEMBER 14, 2014/KA

VALMIKI J. MEHTA, J