

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

+ **CM(M) No. 1292/2012 & CM No. 20020/2012 (stay)**

% **26th August, 2014**

MOHD. ARIF ANSARI Petitioner
Through: Mr. I. Ahmed, Advocate for Mr.
S.D.Ansari, Advocate.

VERSUS

NASREEN ALIAS CHHOTI & ORS. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. On the first call, an adjournment was sought in this matter. Adjournment was declined on account of the earlier order sheets of this case and details of which are given hereinafter. Thereafter, a pass-over was sought and which was allowed by observing that the counsel for the petitioner may appear and argue the case subsequently. The main counsel however did not subsequently appear to argue the case. Counsel who appears and who sought adjournment as also the pass-over is a counsel who

regularly appears in the cases of the main counsel. I have therefore perused the record and am proceeding to pass judgment.

2. At the outset, let me refer to the order sheets which show that adjournments were/are unnecessarily being sought including for today's date. This case first came up way back on 30.11.2012 when at the request of the petitioner it was adjourned to 5.3.2013. Again on 5.3.2013, on the request of the petitioner it was adjourned to 5.7.2013. On 5.7.2013, again at the request of the petitioner, it was adjourned to 12.9.2013. Once again, the case was adjourned on 12.9.2013 to 23.10.2013. On 23.10.2013, no one appeared for the petitioner when the petition was dismissed in default. It may be noted that no notices were issued to the respondents till 23.10.2013 when the matter was dismissed in default and even till today. The petition was restored in terms of the order dated 25.11.2013 when it was again listed for hearing on 3.2.2014. On 3.2.2014 it was again adjourned for today and which is a date of about six months. In view of these facts, I have declined the request for adjournment and after perusing the record, am proceeding to pass a judgment.

3. The challenge by means of this petition under Article 227 of the Constitution of India is to the impugned judgment of the first appellate court

dated 31.8.2012. The Rent Control Tribunal by the impugned judgment dated 31.8.2012 dismissed the first appeal filed by the present petitioner against the order dated 11.1.2012 passed by the trial court/Additional Rent Controller/executing court which allowed the objections filed by Sh. Aas Mohd. and his wife Mst. Nasreen to be put back into possession of the premises and which possession was taken over in execution. Objections were allowed because possession was taken from Sh. Aas Mohd and Mst. Nasreen of the premises with respect to which no eviction order was passed.

4. The facts of the case are that the petitioner obtained an eviction order with respect to the premises bearing No. K-41, Killa Qadam Sharif, Nabi Karim, New Delhi-55 vide judgment dated 1.6.1999. Eviction petition was filed for non-payment of rent under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short 'the Act') and which was decreed but no eviction was ordered as benefit of Section 14(2) of the Act was given to the respondent one Mohd. Yunus. The petitioner preferred an appeal before the Rent Control Tribunal being RCR 777/99 which was allowed and eviction order passed against Mohd. Yunus on the ground that Mohd. Yunus did not comply with the order passed under Section 15(1) of the Act for payment of *pendente lite* rent and therefore he could not get the benefit of Section 14(2)

of the Act. Petitioner filed an execution petition and took possession of the premises through court bailiff and police aid on 16.7.2012.

5. Objectors/respondent nos. 1 and 2 filed objections in the execution petition and claimed that they were illegally dispossessed from a different premises bearing no. 6833, Qila Kadam Sharif, Nabi Karim, New Delhi-55 under the garb of execution of the decree with respect to the premises no. K-41, Qila Kadam Sharif, Nabi Karim, Delhi. Objectors stated that the eviction petition was filed in collusion with Mohd. Yunus who was never a resident in the property bearing No. K-41, and in fact he was living in part of the property no. 6833 which was a very large premises.

6. Evidence was led in the objection petition and objectors examined themselves as PW-1 and PW-3 besides examining two other witnesses Mohd.Idris as PW-2 and Syad Sayeed Ahmed as PW-4. The decree-holder examined himself as DHW-1, Sh. Narender Kumar as DHW-2, Sh. V.K.Sharma, bailiff as DHW-3 and Sh. Narender Kumar Dabas, Naib Nazir, Nazarat Branch as DHW-4.

7. A reading of the impugned judgment of the Rent Control Tribunal shows that an eviction decree was taken against Mohd. Yunus who never was a resident of premises which were taken possession of in

execution, and the objectors were in fact dispossessed from the property no. 6833 and not Mohd. Yunus. Mohd. Yunus was still found to be living in a different part of the property no. 6833, Qila Kadam Sharif, Nabi Karim, New Delhi. Objectors duly filed and proved various documents to show that they were in fact living since i.e for almost the last 14 years in premises no. 6833 viz. the voter I. Card (Ex.PW1/a), ration card (Ex.PW1/b), electricity bill (Ex.PW1/c) and birth certificate of children (Ex.PW1/d). It was deposed by the objectors that there were about 40 houses in the property bearing no. 6833.

8. The relevant observations of the Rent Control Tribunal are contained in paras 9 to 12 of the impugned judgment dated 31.8.2012 and which read as under:-

“9. Per contra, learned counsel appearing for the respondent No.1 and 2 submitted that eviction petition filed by the appellant/petitioner against Mohd. Yunus was collusive, inasmuch as in his written statement Mohd. Yunus had admitted entire case of the petitioner and no document was filed on record to show that there was any relationship of landlord and tenant between them. Though the eviction order was passed against Mohd. Yunus in respect of No.K-41, Nabi Karim, Delhi-55, but decree holder/appellant got evicted the property bearing 6833 Nabi Karim, Delhi-55 of respondent no.1 and 2, by playing fraud upon the Court. Ld. Addl. Rent Controller correctly appreciated the evidence adduced on record and had rightly passed the impugned order. It has been submitted that there is no infirmity in the impugned order and as such, appeal is liable to be dismissed.

10. I have given my considerable thoughts to the respective contentions of the parties counsel and have perused the record carefully.
11. I have carefully perused the impugned judgment. In my opinion, learned Addl. Rent Controller has appreciated the evidence in a reasonable manner and has returned a finding which is borne out from evidence led on record. Objectors Aas Mohd. PW1 has testified that he was the permanent resident of the address bearing No. 6833, Qilla Kadam Sharif, Nabi Karim, New Delhi-55 for the last about 14 years since his marriage and in support he proved his voter I.Card as Ex.PW1/a, Ration Card as Ex.PW1/b, electricity bill Ex.PW1/c, birth certificate of his children from the suit premises as Ex.PW1/d. According to his deposition, when he was illegally evicted from his house only then, he came to know that decree holder in connivance with the judgment debtor got his property evicted illegally. He has categorically stated that property No. K-41, Qilla Kadam Sharif, Nabi Karim, New Delhi is a distinct and separate property and has nothing to do with the property No. 6833 Qilla Kadam Sharif, Nabi Karim, New Delhi. There are about 40 houses in property bearing no. 6833 Qilla Kadam Sharif, Nabi Karim, New Delhi. One of the gates of the property no. K-41 Qilla Kadam Sharif, Nabi Karim, New Delhi was adjoining to the property No. 6833 Qilla Kadam Sharif, Nabi Karim, New Delhi and the second gate is after leaving about 4-5 houses. On the lines are the depositions of PW2, PW3 and PW4.
12. Decree holder (appellant herein) in his affidavit Ex.DHW1 stated that objectors had been occupying and residing adjacent to the property No.6833, Qilla Kadam Sharif, Nabi Karim, New Delhi. The property in question is bearing No.K-41 Qilla Kadam Sharif, Nabi Karim, New Delhi and property No.6833 Qilla Kadam Sharif, Nabi Karim, New Delhi is huge property and having 20 units. He admitted in his cross examination that he had not placed any document while filing eviction petition against Mohd. Yunus to show that the suit property bears property No.K-41 Quilla Kadam Sarif, Nabi Karim, Delhi, nor he had placed any rent receipt or any rent agreement to show that Mohd. Yunus was his

tenant. The house of Mohd.Yunus where he is still residing is H.No.6833, which is at a distance of around 100 metres from his house. He admitted that Mohd.Yunus is still residing with his family. It is the case of the decree holder (appellant) that father in law of objector was tenant and had taken the premises from him in pursuance of rent agreement dated 5-1-89 but he had left & surrendered the premises to him in 1990 and thereafter he had let out the premises to Judgement debtor. However, in his cross examination he made following statement which belies his own version :-

“After the death of father of Nasreen, he got the possession of the suit premises. He (father of Nasreen) had not handed over the possession of the suit premises during his life time, neither he surrendered the same.”

Admittedly, the eviction order was passed against the judgement (respondent No.3 herein) Mohd. Yunus but as per own admission by DHW1 in his cross examination, he had taken possession from the objector Aas. Mohd through police Aid. The judgement debtor was Mohd. Yunus who is still residing in H.No.6833, Quilla Kadam Sarif, Nabi Karim, Delhi alongwith his family. DHW3 Shri V.K.Sharma, Bailiff has also admitted in his cross examination that possession of the suit premises was taken from Shri Aas Mohd., his wife Nasreen and his children, who were in possession of the suit premises. Their belongings, household articles and furniture was also lying there. J.D. Namely Mohd. Yunus was not found at the suit premises. The disputed/.suit property where he had gone alongwith the decree holder with police aid, is situated in a very congested areas and there were 5 to 6 private persons from the side of decree holder to remove the articles from the suit premises. He also stated in the cross examination that Aas Mohd., Nasreen present in the suit premises had told them (bailiff and decree holder etc.) that decree holder had nothing to do with the suit premises and eviction order is not against them. There was no number plate

or any other identity mark on the suit premises to show that this was the property of which he (bailiff) had gone to take the possession. This witness also admitted that in the site plan there is no direction shown as to which portion is East, West, North and South. The site plan does not show the number of property adjacent nearby to the property in question.”
(underlining added)

9. A reading of the aforesaid paras, and especially the underlined portions, shows that the petitioner played a fraud upon the objectors because the eviction petition was filed against Mohd. Yunus, who never contested the petition and in fact admitted to the case of the petitioner. Petitioner in the execution of the decree against property no. K-41 dispossessed the objectors Sh. Aas Mohd. and Mst. Nasreen from a separate premises bearing no. 6833. The premises bearing no. 6833 had about 40 different portions and in fact Mohd. Yunus was still living in a part of the property no. 6833. Warrants of possession were got executed not against Mohd. Yunus, who was said to be living in property no. K-41, but against objectors Sh. Aas Mohd. and Mst. Nasreen who were dispossessed from their premises in property no. 6833. Clearly therefore, a fraud was played upon the objectors and consequently, both the courts below were justified in restoring possession of that part of the premises no. 6833 which were in possession of

the objectors and from which they were dispossessed in execution of a decree against Mohd. Yunus.

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

AUGUST 26, 2014
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VALMIKI J. MEHTA, J.