

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

+ **C.M.(M) No.898 /2014 & C.M.Nos.16278/2014 (Exemption),
16279/2014 (u/S 151 CPC), 16280/2014 (Stay)**

% **26th September, 2014**

YOGENDER KUMAR JAISWAL & ORS. Petitioners

Through: Mr.Amit Sharma with Mr.Dipesh
Sinha, Advocates.

VERSUS

SHASHIBALA & ORS. Respondents

Through: Mr.Ravinder Seth, Sr.Advocate with
Mr.S.N.Chaodhary and Mr.Puneet
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No.860/2014

Since appearance has been put in on behalf of the respondents/caveators, the caveat stands discharged.

CM(M) No.898/2014 & C.M.Nos.16278-16280/2014

1. There are some cases which indicate not only heights but extraordinary heights of *malafides*. The present petition is one such petition filed by the tenants. This I am observing because a *bonafide* necessity

eviction petition is decreed by the Additional Rent Controller after trial. The judgment of the Additional Rent Controller dated 15.3.2014 was challenged before this Court by filing of a rent control revision petition being RC.REV No.222/2014, and which petition after hearing the petitioners/tenants, was dismissed by a detailed judgment on 04.9.2014. This judgment was thereafter challenged before the Supreme Court by way of an SLP and the Supreme Court dismissed this SLP on 17.9.2014 by making the following observations:-

“ The learned counsel for the petitioners sought permission to withdraw the special leave petition with liberty to move before the appropriate forum.

Liberty is granted, if permissible under the law, to file such case, without any liberty to challenge the very same impugned order before this Court.

The special leave petition is dismissed as withdrawn.

Signature Not Verified.

Digitally signed by
Rajni Mukhi
Date: 2014.09.17
16:56:49 IST
Reason:

(Rajni Mukhi)
Sr.P.A

(Usha Sharma)
Court Master”

2. The petitioners/tenants claim that in accordance with the liberty which was granted by the Supreme Court, the Additional Rent Controller was

approached for reviewing of the judgment on the ground that the judgment notes that the oral arguments took place, whereas no oral arguments took place, and actually the case was only decided as per the written arguments, and which as per the petitioners is therefore an error apparent on the face of the record requiring passing of a fresh judgment.

3 (i). Nothing can be more absurd than the argument which is being urged on behalf of the petitioners/tenants that the judgment passed in a *bonafide* necessity eviction petition should be set aside only because one clerical/typing error appears in the same i.e the oral arguments were addressed when oral arguments were assumingly not addressed. I am using the expression 'assumingly' because it is stated on behalf of the respondents that oral arguments did take place on behalf of some of the parties i.e on behalf of the landlords and sub-tenant, and consequently there is no typing error. However it bears note that merely because a typing error assumingly exists cannot mean that a judgment which is passed on merits discussing all the aspects can be sought to be set aside in a review petition. Review petition is with respect to merits of a case. Merits of a case, if are decided by the judgment, then the merits of the judgment are challenged in a review and not

a so-called typing mistake that the Additional Rent Controller below has wrongly stated that oral arguments were addressed when they were not.

(ii) Not only the Additional Rent Controller passed a detailed judgment on merits, thereafter, arguments on merits which had to be addressed by the petitioners/tenants but allegedly were not addressed could well have been surely addressed before this Court when the judgment of the Additional Rent Controller was challenged before this Court in RC.REV.No.222/2014, and detailed arguments of both the parties were heard before passing of the judgment dated 04.9.2014 dismissing the rent control revision petition. Therefore taking that oral arguments were not urged before the Additional Rent Controller, that cannot mean that the judgment of the Additional Rent Controller which has been sustained by this Court, and the SLP dismissed, can be challenged by filing a review before the Additional Rent Controller, and for which really no liberty was granted by the Supreme Court and the review contemplated by the order of the Supreme Court dated 17.9.2014 was a review before this Court.

4(i). It is not the case of the petitioners/tenants that certain arguments were made on behalf of the petitioners/tenants when the rent control revision petition was dismissed by this Court on 04.9.2014, and that such arguments

are not noted in the judgment. Therefore, the petitioners/tenants had obviously enough opportunity to re-argue their case on merits before this Court before the judgment dated 04.9.2014 was pronounced by this Court and the rent control revision petition was dismissed. As stated above, this order has achieved finality because SLP against this petition has been dismissed by the Supreme Court on 17.9.2014 and the liberty given by the Supreme Court in the present case is extremely limited and conditioned by the expression “if permissible under the law”. The Supreme Court by its judgment dated 17.9.2014 made the strict observations of “if permissible under the law” because obviously review as per Section 25B(9) of the Delhi Rent Control Act, 1958 (in short ‘the Act’) is not permissible before the Additional Rent Controller before whom the petitioners/tenants have wrongly filed the review petition because the judgment of the Additional Rent Controller merged with the judgment passed by this Court dated 04.9.2014. Section 25B(9) of the Act reads as under:-

“ Where no application has been made to the High Court on revision, the Controller may, exercise the powers of review in accordance with the provisions of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908)”.

(ii) The Additional Rent Controller has thus rightly dismissed the review petition by referring to Section 25B(9) of the Act, which states that a review

petition cannot lie before the Additional Rent Controller once the judgment of the Additional Rent Controller merges with the judgment of this Court dated 04.9.2014 dismissing the challenge led by the petitioners/tenants against the judgment of the Additional Rent Controller dated 15.3.2014.

5. A review petition would also not lie before this Court because a review petition only lies if there is an error apparent on the face of the record or certain most important aspects have been recently discussed which can change the judgment which is passed, but, none of these aspects are pleaded in the present case.

6. It is high time that some wholly frivolous litigations must be dealt with by sending a very stern message. I have already observed above that the present petition is surely the height of *malafides*. The petitioners/tenants may have a right to approach the court, however such an approach to a judicial process must be reasonably exercised. It cannot be that judicial process can be repeatedly accessed for totally frivolous and baseless reasons.

7. In view of the above, there is no merit in this petition against the impugned order dated 23.9.2014 by which the Additional Rent Controller has dismissed the review petition filed by the petitioners/tenants. In view of the facts of the present case, this petition is dismissed with actual costs and

the respondents will file certificate of fees of their lawyers with respect to today's hearing and the amount mentioned in the certificate of fees will be the costs payable by the petitioners to the respondents in this petition. Certificate of fees be filed on behalf of the respondents within two weeks and costs be paid by the petitioners to the respondents within a period of two weeks thereafter.

VALMIKI J. MEHTA, J

SEPTEMBER 26, 2014

KA