

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

+ CM(M) No. 52/2014 & CM Nos. 958-959/2014 & 3491/14 & 17484/14

% **5th November, 2014**

URMILA & ANR. Petitioners
Through: Mr. A.K.Srivastava, Adv.

VERSUS

RAM AVATAR & ANR. Respondents
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The present petition under Article 227 of the Constitution of India impugns the judgment of the Rent Control Tribunal dated 3.12.2013 by which the Rent Control Tribunal has dismissed the two appeals filed under Section 38 of the Delhi Rent Control Act, 1958 (in short 'the DRC Act'). The first appeal was filed against the judgment of the Additional Rent Controller dated 31.10.2011 by which the objections filed by the present petitioners to the execution application filed by the respondents were dismissed. The second appeal which was dismissed was filed by the present petitioner no.1 against the *ex parte* eviction order dated 7.4.1999 by which

the eviction petition on the ground of non-payment of rent under Section 14(1)(a) of the DRC Act was decreed.

2. The facts of the case are that the present respondents filed an eviction petition against the present petitioner no.1 on the ground of non-payment of rent under Section 14(1)(a) of the DRC Act. In these eviction proceedings petitioner no.1 appeared but was proceeded *ex parte* as the petitioner no.1 after appearing had taken time to file the written statement but no one thereafter appeared on behalf of the petitioner no.1. Appearance was put on behalf of the petitioner no.1 on 20.10.1997 and petitioner no.1 was proceeded *ex parte* in the main eviction petition on 2.2.1998. Respondent no.1 thereafter recorded his evidence and an order under Section 15(1) of the DRC Act was passed on 4.3.1998. Once again on 6.4.1998, the petitioner no.1 moved an application to set aside the *ex parte* judgment and which resulted in the *ex parte* proceedings being set aside and the case was then adjourned for the petitioner no.1 to file her written statement, but once again the written statement was not filed and therefore petitioner no.1 was again proceeded *ex parte* on 24.2.1999. Finally, the order under Section 15(1) of the DRC Act was passed on 5.3.1999 and since the order under Section 15(1) of the DRC Act was not complied with, therefore, the eviction decree

was passed against the petitioner no.1 on 7.4.1999. Respondent no.1 thereafter filed execution proceedings and petitioners filed objections in the execution proceedings which were dismissed by the Additional Rent Controller/trial court, as stated above by the judgment dated 31.10.2011. This judgment dated 31.10.2011 was challenged in the first appeal before the Rent Control Tribunal which has passed the impugned judgment dismissing not only the appeal of the petitioners against the dismissal of the objections on 31.10.2011, but the Rent Control Tribunal dismissed even the second/other appeal filed by the petitioner no.1 against the judgment and decree dated 7.4.1999 decreeing the eviction petition under Section 14(1)(a) of the DRC Act and directing eviction on account of non-compliance by the petitioner no.1 of the order passed under Section 15(1) of the DRC Act.

3. Two aspects have to be seen by this Court as to whether objections which were filed by the petitioners in the execution proceedings have been validly dismissed by the order dated 31.10.2011 and secondly whether the Additional Rent Controller has rightly passed the impugned judgment and decree dated 7.4.1999 directing eviction of the petitioner no.1.

4. So far as the filing of objections by the petitioners are concerned, and which are on the ground that the petitioner no.1 is the co-

owner of the property, besides the courts below noting (first appellate court in para 6 of the impugned judgment) that no document or material was placed whatsoever before the court to support the plea of ownership, however, in law, even this ground on merits could not have been urged by means of filing objections in the execution proceedings because all objections of merits have to be taken by contesting the main proceedings and not by means of filing objections in the execution proceedings. Any case on merits had to be urged by appearing and contesting of the same in the main proceedings which were filed under Section 14(1)(a) of the DRC Act, but, the petitioner no.1 did not contest those proceedings and was proceeded *ex parte* as he stopped appearing. Petitioner no.1 was proceeded *ex parte* not once but in fact twice and thereafter as per the evidence led by the respondent no.1 an eviction decree was passed under Section 14(1)(a) of the DRC Act vide judgment dated 7.4.1999. In fact, the objections which were filed by the petitioners were therefore liable to be dismissed *in limine* because petitioner no.1/objector was a party to the main proceedings and having failed to appear and the judgment and decree was passed against her on 7.4.1999 after the respondents had led evidence, was not entitled in law to file objections which were actually in the nature of a defence to the main proceedings under Section 14(1)(a) of the DRC Act.

5. So far as the challenge to the judgment and decree dated 7.4.1999 on merits is concerned, considering that the petitioner no.1 was proceeded *ex parte* not once but twice, and also that respondent no.1 led evidence and proved his case, no fault can be found in the impugned judgment dated 7.4.1999 read with the earlier judgment/order under Section 15(1) of the DRC Act dated 5.3.1999. Therefore, the appeal filed by the petitioners against the judgment and decree dated 7.4.1999 was also misconceived and therefore rightly dismissed by the first appellate court.

6. To complete the narration two aspects are required to be noted and which are that firstly the petitioners had filed an application under Order IX Rule 13 CPC for setting aside the eviction decree dated 7.4.1999 and that application was dismissed by Additional Rent Controller vide his order dated 5.7.2000. Secondly, even if there are civil proceedings pending between the parties, however, it is settled law that the Rent Controller acting under the DRC Act deciding the eviction cases filed under different sub-sections of Section 14(1) of the DRC Act, is entitled to arrive at a decision as to existence of relationship of landlord and tenant, and which decision binds the parties subject to any final decision by a civil court in view of Section 50 of the DRC Act. Once a judgment was therefore passed on

merits under Section 14(1)(a) of the DRC Act and which is to be taken with the non-compliance by the petitioners of the order for payment of rent under Section 15(1) of the DRC Act, the eviction order dated 7.4.1999 is perfectly valid and the petitioners cannot quibble on this aspect.

7. I may at this stage note that there existed a Section 39 in the DRC Act, and which section provided for filing of a second appeal on a substantial question of law, but, this Section was repealed way back by the Act 57 of 1988, and therefore, jurisdiction of this Court under Article 227 of the Constitution of India cannot be invoked as if a second appeal is being filed under Section 39 of the DRC Act. Once there is no provision of second appeal, powers under Article 227 of the Constitution of India are not meant to be substituted for a second appeal, and considering the facts of this case no case whatsoever is made out for exercise of powers under Article 227 of the Constitution of India.

8. Dismissed.

NOVEMBER 05, 2014
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VALMIKI J. MEHTA, J.