

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

Pronounced on: 24th November, 2014

+ **CS (OS) 3245/ 2014**

AJIT SINGH CHAWLA

..... Plaintiff

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Vijayender
Kumar, Advocate, Mr. Dhruv Kapur,
Adv. and Mr. Sidharth Bhatia, Adv.

versus

RAJINDER PARSHAD ARORA AND OTHERS

..... Defendants

Through:

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CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

1. This suit for declaration and permanent injunction has been filed by the Plaintiff against the Defendants with the allegations that the Plaintiff is the lawful tenant and in possession of premises bearing no. 44-A, Coronation Building, Om Bhawan, Chandni Chowk, Delhi-110006. The premises are owned by Defendant no. 3, which is a Public Limited Company.
2. According to the Plaintiff, Defendant no. 1 claims himself to be the owner of the suit premises on the basis of a Sale Deed dated

13.02.2008 executed by Defendant no. 2, Managing Director of Defendant no. 3 in favour of Defendant no. 1. It is urged that Defendant no. 3 never passed any Resolution authorising Defendant no. 2 to execute the Sale Deed in favour of the Defendant no.1, thus, the Sale Deed dated 13.02.2008 on the basis of which Defendant no. 1 claims himself to be owner of the shops bearing nos. 44-A and 44-B, Coronation Building, Om Bhawan, Chandni Chowk, Delhi-110006 is of no consequence. Consequently, Defendant no. 1 who filed an Eviction Petition on the basis of the Sale Deed dated 13.02.2008 against the Plaintiff claiming possession of the suit premises on alleged *bona fide* requirement and the consequent judgment dated 28.04.2014 is also of no avail. The Plaintiff, therefore, seeks following reliefs:-

“i. Pass a decree of declaration in favour of the Plaintiff and against the Defendants, whereby declaring the judgment/eviction order dated 28.04.2014, passed by Ms. Charu Aggarwal, SCJ-cum-RC (Central) Delhi in Eviction Petition bearing no.234 of 2013 to be declared as null and void;

ii. Pass a decree of declaration in favour of the Plaintiff and against the Defendants, whereby declaring the order dated 02.06.2014, passed by Ms. Charu Aggarwal, SCJ-cum-RC (Central) Delhi in Eviction Petition bearing no.234 of 2013 to be declared as null and void;

iii. Pass a decree of permanent injunction in favour of the Plaintiff and against the Defendants, whereby restraining the Defendants, jointly or severally, and his legal heirs, agents, attorneys and representatives etc. from executing the judgment/eviction order dated 28.04.2014, passed by Ms. Charu Aggarwal, SCJ-cum-RC (Central), Delhi in Eviction Petition bearing no.234 of 2013 qua the premises bearing no.44A, Coronation Building, Om Bhawan, Fatehpuri, Delhi;

iv. Pass an order, thereby directing the Defendants, jointly and severally, to pay the cost of the present proceedings to the Plaintiff and in that behalf;

v. Pass any such further order as this Hon'ble Court may deem necessary in the facts and circumstance of the present case and in the interest of justice."

3. At the time of preliminary hearing of the suit, doubts were raised about maintainability of the suit.
4. Mr. Sudhir Nandrajog, the learned senior counsel for the Plaintiff relying on the judgment of the Supreme Court in *Bindra Watch Company v. Delhi Sikh Gurdwar Board and Anr.*, ILR (1974) 2 Del 219, submits that the provision of Section 43 of the Delhi Rent Control Act, 1958 (the DRC Act) has to be read in conjunction with the provision of Section 50 of the DRC Act. Thus, the question of title can always be gone into by the Civil Court and since the Plaintiff has challenged the Sale Deed itself on the basis of which Defendant no. 1

claims ownership and consequently claims himself to be the landlord of the premises, the said question can be gone into by this Court.

5. Sections 43 and 50 of the DRC Act are extracted hereunder:-

“ 43. Finality of order. –

Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

50. Jurisdiction of civil courts barred in respect of certain matters –

(1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant there from or to any other matter which the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.

(2) If, immediately before the commencement of this Act, there is any suit or proceeding pending in any civil court for the eviction of any tenant from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, such suit or proceeding shall, on such commencement, abate.

(3) If, in pursuance of any decree or order made by a court, any tenant has been evicted after the 16th day of August, 1958, from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, then, notwithstanding anything contained in any other law, the Controller may, on an application made to him in this behalf by such evicted tenant within six months from the date of eviction, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.

(4) Nothing in sub-section (1) shall be construed as prevailing a civil court from entertaining any suit or proceeding for the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises.”

6. Thus, it can be seen that Section 43 of the DRC Act attaches finality to every order passed by the Controller or order passed on appeal under the DRC Act. Section 50 of the DRC Act completely bars jurisdiction of the Civil Court with regard to matters specified therein. Admittedly, sub-section (4) empowers a Civil Court to entertain a suit or proceeding for the decision of any question of title to any premises or any question as to the person or persons who are entitled to receive the rent of such premises.

7. Though there is not even a whisper that since the execution of the Sale Deed dated 13.02.2008, Defendant no. 3 ever claimed any rent or for that matter, the Plaintiff ever tendered or paid the rent to Defendant no. 3, but this may perhaps amount to going into the merits of the case. It may be noted that the DRC Act is a complete code in itself with regard to eviction of tenants who are covered under the DRC Act. It provides the remedy of appeal, revision *etc.* against the order passed by the Tribunal and Section 43 attaches finality to the orders passed by the Controller.
8. For seeking eviction under Section 14 (1) proviso (e) of the DRC Act, the person filing an application before the Controller is required to prove *inter alia* that he is the owner/ landlord of the premises. This finding of the Controller or in any appeal/ revision filed under the DRC Act is to be treated as final as stated above.
9. As per the report of the Supreme Court of the Constitution Bench in *Dhulabhai Etc. v. State of M.P. AIR 1969 SC 78*, jurisdiction of the Civil Court must be held to be excluded if there is adequate remedy to do what the Civil Court would normally do in civil suit.
10. The Plaintiff, therefore, cannot be permitted to say that Defendant no. 1 is not the owner of the premises.

11. *Bindra Watch Company* relied upon by the learned senior counsel for the Plaintiff is not attracted to the facts of the present case as in that case the eviction order was passed upon a compromise which was specifically challenged in the Court on the ground of fraud.
12. It is well settled that a compromise decree if obtained by fraud can be challenged either in the same proceedings or even by a separate suit. In the instant case, it is not the case of the Plaintiff that the decree has been obtained by fraud.
13. It is true that a separate suit is purported to have been filed by Defendant no. 3 against Defendant no. 2 questioning the transaction of the sale of the premises by Defendant no. 2 on behalf of Defendant no. 3 in favour of Defendant no. 1. The Plaintiff was entitled to raise all the pleas herein raised and before the Rent Controller in the eviction petition.
14. Thus, in my view, the jurisdiction to entertain a civil suit in the facts stated is barred under Section 50 read with Section 43 of the DRC Act.
15. All the more, as per the case of the Plaintiff himself, an eviction petition for eviction of the Plaintiff was preferred by Defendant no. 1 under Section 14 (1) proviso (e) of the DRC Act. Upon passing of the eviction order by judgment dated 28.04.2014, the Plaintiff applied for

review of the order by moving an application under Section 25-B (9) of the DRC Act. The said application was dismissed by the Rent Controller by an order dated 02.06.2014. The plaint is completely silent if the Plaintiff availed the remedy of challenging the eviction order by filing any appeal or revision as was permissible in law to the Plaintiff. The fact remains that the issue of Defendant no. 1 being the landlord and owner of the suit premises being one of the essential ingredients of Section 14 (1) proviso (e) of the DRC Act, the Plaintiff would be disentitled to agitate the matter again in view of the principles of *res judicata* enunciated under Section 11 of the Code of Civil Procedure, 1908 read with Explanation 8 to the Section. By introduction of Explanation 8 to Section 11, the finding upon any issue by a court of limited jurisdiction would operate as *res judicata* in the subsequent proceedings irrespective of the fact whether the subsequent suit could be tried or was within the jurisdiction of the Court which first decided the issue. In *Rajendra Kumar v. Kalyan*, (2000) 8 SCC 99, the Supreme Court in paras 18 and 19 of the report held as under:

“18. The appellate court also relying upon Explanation VIII to Section 11 of the Code, negated the contention of the plaintiff-appellant herein. The appellate court very rightly observed that the general doctrine of res judicata could not

be applied as has been so applied by the learned trial Judge but Explanation VIII to Section 11 as stated by the appellate court and rightly so makes the objection disappear by reason of its widest possible connotation. The Explanation VIII as inserted by the Amendment Act of 1976 reads as below:

“Explanation VIII.- An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

19. The expression “court of limited jurisdiction” ought not to be given a limited or restrictive interpretation and as noticed above but widest possible amplitude ought to be given onto the expression above. The High Court upon reliance on various decisions of different High Courts of the country observed:

“We find that merely because in the present case the courts, which decided the earlier suits could not have entertained the present suits, the finding recorded by them would not cease to operate as res judicata, in view of the introduction of Explanation VIII to Section 11 of the Code of Civil Procedure.”

16. Thus, the suit filed by the Plaintiff is not maintainable. The plaint is, therefore, rejected.

**G.P. MITTAL
(JUDGE)**

NOVEMBER 24, 2014

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