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

+ **CM(M) 89/2013 and CM No.1213/2013 (Stay)**

% **Decided on: 6th January, 2015**

SURENDER SINGH Petitioner

Through: Mr. Bhupesh Narula, Advocate.

versus

KALA DEVI Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. The present petition arises from the impugned judgment dated 18th August, 2012 whereby the learned Additional Rent Control Tribunal dismissed the appeal of the Petitioner against the order passed by the Additional Rent Controller dated 30th March, 2012 allowing the eviction petition of the Respondent under Clause (a) of the proviso to Sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 (in short 'DRC Act').

2. The Respondent filed an application for recovery of possession of a shop in property bearing No.43/3A/1, East Azad Nagar, Krishna Nagar, Delhi (in short 'the premises') against the Petitioner on the ground mentioned in Clause (a) of the Proviso to Sub-section (1) of Section 14 DRC Act. The Petitioner was paying rent for the said premises @Rs.400/- per month excluding other charges and last paid the rent upto 8th August, 1997. Despite legal demand notice dated 25th April, 1998 through Registered AD neither any reply was sent nor was the rent paid.

3. The stand of the Petitioner in the written statement was that there was no relationship of landlord-tenant between the Petitioner and the Respondent since the deceased husband of Kala Devi (since deceased) had received Rs.30,000/- while entering into an agreement on 8th August, 1998 having sold the premises in question to him. The documents in this regard were exhibited by the Petitioner herein as Ex.RW-1/1. Since the relationship of landlord-tenant had ceased the application was not maintainable and the Petitioner herein had already become the owner of the shop in question pursuant to the agreement dated 8th August, 1998.

4. The Respondent examined Ajay Kumar, legal heir of Smt. Kala Devi, wife of late Shri Purshottam Dass and the Petitioner herein examined five witnesses including himself. Both the Courts below held that in view of the admission of the Petitioner herein that he was inducted as a tenant in respect of the premises on 8th August, 1991 by Purshottam Dass, the relationship of landlord-tenant stands established. Thus the only contention which was required to be considered was whether the Petitioner herein had purchased the premises from Purshottam Dass, late husband of Smt. Kala Devi (since deceased). In view of the documents placed on record and since no registered Sale Deed was produced relying upon Suraj Lamp Industries Pvt. Ltd. vs. State of Haryana and another, AIR 2012 SC 2006 both the Courts below held that the Petitioner has failed to prove that he had purchased the premises. The landlord-tenant relationship having been admitted and having also admitted that he had not paid any rent after 8th August, 1997 despite service of demand notice, the learned Additional Rent Controller directed the Petitioner herein to pay or deposit legally recoverable arrears of rent @ Rs.400/- per month with effect from 1st day of the period of three years

immediately preceding the institution of the petition along with interest @15% per annum and if the Petitioner complied with the order within the time frame he shall not be evicted. The same view was taken in the appeal filed before the Additional Rent Control Tribunal.

5. Learned counsel for the Petitioner before this Court relies upon Section 53A of the Transfer of Property Act, 1882 (in short ‘the TP Act’) and contends that in case of part payment the instrument of transfer is not required to be registered and hence the decision in Suraj Lamp (Supra) is not applicable to the facts of the present case. Section 53A of the TP Act reads as under: -

“[53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

*then, notwithstanding that 2[***] where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has*

taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]”

2. During the course of trial four documents dated 8th August, 1991, 27th June, 1992, 1st June, 1995 and 15th July, 1994 tiled as Ikrarnamas were exhibited as Ex.RW-1/1. The first document, that is, the Ikrarnama dated 8th August, 1991 entered between Purshottam Dass and the Petitioner herein states that Lala Purshottam Dass has taken Rs.30,000/- from Sardar Surender Singh as loan at an interest of 3% per month and the possession of the shop has been handed over. The document notices that the rent of the shop would be Rs.300/- per month and that within six years the amount with interest would be returned. It also notices that in case the loan amount is not returned the said shop will be transferred @Rs.2,000/- Per sq. yards. The next Ikrarnama between the parties dated 27th June 1992 is an acknowledgment by Lala Purshottam Dass of having received Rs.40,000/-. Even this document notes that an interest @3% will be given on the said amount and in case the loan is not returned the property would be sold @ Rs.2,000/- per sq. yards by registered document. The third document dated 1st June, 1995 is a receipt of Rs.8,000/- towards rent received in the Court on the said date. The fourth Ikrarnama dated 15th July, 1994 entered between the parties notices that Lala Purshottam Dass took Rs.80,000/- from the Petitioner herein again on interest @ 3% per month. The document further notices that on return of total amount of Rs.1,50,000/- Lala Purshottam Dass

can take back the possession of the premises and in case the amount is not returned the premises would be sold @ Rs.2,000/- per sq. yards.

7. Thus from the four documents exhibited by the Petitioner it is evident that there was no contract for sale of the property between the parties but the parties contemplate transfer of the premises in case the loan amount was not returned. Thus Section 53A TP Act is not applicable to the present case.

8. Consequently, there is no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

06, JANUARY, 2015
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