

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

+ **CM(M) 544/2013**

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Reserved on: 13<sup>th</sup> January, 2015

Decided on: 21<sup>st</sup> January, 2015

BALMUKAND & ANR ..... Petitioners

Through Petitioners in person.

versus

ANUJ KUMAR ..... Respondent

Through Mr. Sanjeev Sindhwani, Sr. Adv. with  
Mr. Rakesh Saini and Mr. Uday Joshi,  
Advts.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J.**

1. Vide order dated 17<sup>th</sup> July, 2012 the eviction petition filed by the petitioners was allowed under Section 14(1)(d) of the Delhi Rent Control Act, 1958 (for short 'the Act') and an eviction order was passed in respect of the suit premises i.e. two rooms and open courtyard at ground floor at 10343/7784, Gali no. 3, Ram Nagar, Paharganj, New Delhi shown in red colour in the site plan Ex. PW2/11, however the eviction petition to the extent it sought vacation of the suit premises under Section 14(1)(h) of the DRC Act was dismissed as not maintainable.

2. The order dated 17<sup>th</sup> July, 2012 passed by the Ld. Additional Rent Controller (arc) was challenged by the Respondent before the Ld. Rent

Control Tribunal which set aside the order of the Ld. ARC on the ground that the petitioners have not been able to prove that the premises was let out to the respondent for residential purposes. No cross appeal having been filed by the petitioners qua the dismissal of their eviction petition under Section 14(1)(h) of the DRC Act, the decision of the Ld. ARC to the said extent has attained finality. Thus the scope of the present petition is confined to the grounds of eviction available to the petitioners under Section 14(1)(d) of the DRC Act only.

3. The grievance of the petitioners in the present petition is that while setting aside the order of the Ld. ARC and Ld. Rent Controller relied on cash memos, rent agreement, rent receipts which were forged and fabricated and the learned Tribunal failed to notice that the copies of the counter foils of the rent receipts issued in respect of the suit premises were the ones issued for residential tenancies of the petitioner and the Tribunal also failed to notice that the suit premises was lying locked.

4. In the eviction petition, the petitioners herein who are the owners of the suit premises, stated that the premises had been let out for residential use on the monthly rent of Rs. 100/- to Shri Lekh Raj S/o Shri Babu Ram and the respondent herein i.e. Anuj Kumar was made tenant in the suit premises on the request of Shri Lekh Raj. However, in the suit premises, neither the tenant Anuj Kumar nor members of his family resided for a period of six months immediately preceding the date of filing of the eviction petition. It was further stated that the tenant Anuj Kumar acquired or has been allotted vacant possession of a residential accommodation and thus, the eviction

order be passed against Anuj Kumar under Section 14(1)(d) and (h) of the DRC Act.

5. In the written statement, objection was taken on behalf of the respondent that the suit premises was situated in the slum area for which necessary permission by the competent authority had not been obtained prior to the filing of the eviction petition. It was further stated that the premises had been let out solely for commercial purposes and since the very inception of the tenancy, the same is being used for commercial purposes. The site plan filed by the petitioners was not a correct site plan. Though the ownership of the petitioners in the premises was denied but it was admitted that the petitioners were collecting the rent. It was further stated that the respondent had been carrying out the job work of washing/ironing of linen and other clothing etc. of the hotels in the suit premises under the name and style of Anuj Kumar & Company. The rent of Rs. 100/- per month was admitted but it was stated that it do not include the house tax. It was stated that a rent agreement was executed between the parties at the time of letting out the premises by the landlord. It was however denied that the respondent had acquired or has been allotted vacant possession of the residential accommodation. It is stated that the respondent has been residing in property No. 306, Kucha Sanjogi Ram, Naya Bans, Delhi-110006 prior to the inception of the tenancy and continues to reside there.

6. The petitioners examined Shri Ghan Shyam Dass from Slum and JJ Department as PW-1 and the petitioners No.1 and 2 as PW-2 and PW-5. The two other witnesses examined were Shri R.N. Dubey from post office as PW-3 and Shri Shyam Lal, Zonal Inspector, Sadar Paharganj Zone as PW-4.

The petitioners exhibited the letter dated 3<sup>rd</sup> November, 2003 issued by the Slum & J.J. Department, MCD Ex. PW1/1, site plan of the suit premises Ex. PW2/1, copy of the rent receipts Ex. PW2/2, PW2/3, PW2/5, copy of notice for termination of tenancy Ex. PW2/6, photographs along with negatives Ex. PW2/10.

7. On behalf of the respondent, rent agreement was exhibited as Ex. RW1/1 and cash memos as Ex. RW1/2 collectively. The rent agreement dated 1<sup>st</sup> October, 1996 was exhibited subject to the deposit of deficiency in stamp duty and ten times penalty within 15 days. However, neither the said stamp duty nor the penalty was deposited, hence the rent agreement was held to be inadmissible.

8. As regards permission from the competent authority of the Slum and JJ Department is concerned, PW-1 Shri Ghan Shyam Dass from the Slum and JJ Department exhibited a letter dated 3<sup>rd</sup> November, 2003 as Ex. PW1/1 according to which property bearing no. 7780-7786, Arakashan Road, Ram Nagar, Paharganj, Delhi was not included in the slum area. Though the letter did not belong to the property bearing no. 10343/7784, however, it is apparent that since the adjoining property was not included in the slum area therefore, the suit property also did not fall in the slum area and hence, no permission was required. The petitioners having discharged the onus, the respondents herein having not rebutted the same by proving any document, there is no infirmity in the impugned judgments to the extent of the maintainability of the eviction petition on this Court.

9. To succeed in the petition, the petitioners were required to prove that the premises were let out for residential purposes and neither the respondent

nor any of his family members were residing at the tenanted premises immediately six months before the date of filing of the eviction petition.

10. To prove that the tenancy was created for the residential purposes, no rent agreement was filed by the petitioners despite the onus being on the petitioners to prove the same. Though the respondent filed a rent agreement however the same was not duly stamped and having failed to deposit the stamp duty as well as the penalty in time, the Respondent's application under Section 151 of the Code of Civil Procedure, 1908 was dismissed by this Court vide order dated 15<sup>th</sup> January, 2007. Thus, the rent agreement filed by the respondent was also inadmissible in evidence and cannot be relied upon to determine the purpose of letting.

11. The petitioners filed two rent receipts exhibit PW2/2 and PW2/3 to prove that the premises are residential which was the only fact urged before this Court. In the cyclostyled rent receipts, in column no. 2, it is mentioned "number and kism makan". The case of the petitioners is that they have different receipts for tenancies regarding the residential and commercial purposes. In the tenancy for residential purposes, they were issuing receipts wherein the words "kism and makan" were mentioned in column No. 2 thereby saying that the purpose of letting out was residential. No other document was proved by the petitioners. However, a perusal of these documents would show that the same were not sufficient to prove that the tenancy was let out for residential purposes.

12. The learned Rent Control Tribunal thus considered the site plan of the tenanted premises which consisted of two rooms and open courtyard at ground floor at 10343/7784, Gali no. 3, Ram Nagar, Paharganj, New Delhi.

There is no gainsaying that if the premises is let out for residential purposes, a kitchen is essentially required. However, there is no averment either in the eviction petition or the site plan that kitchen was let out. For the first time, in the evidence, the petitioners deposed that kitchen was also let out to the respondent and the same being beyond the pleadings, therefore, the learned Tribunal did not consider the same.

13. Both the petitioners deposed that while letting out the premises, the respondent was not present and the premises were let out at the behest of Shri Lekh Raj and the terms of tenancy were settled with Shri Lekh Raj. However, Shri Lekh Raj was not produced as a witness. Further, the respondent deposed that since his birth, he has been residing in 306, Kucha Sanjogi Ram, Naya Bans, Delhi-110006 and even after taking the premises on rent, he was continuously residing over there. In cross-examination, the petitioner Balmukund admitted that the respondent never resided at the tenanted premises. He further admitted that the petitioner never objected to the Respondent carrying on commercial activity in the tenanted premises.

14. Further, the petitioners to disclose the location of the premises placed on record documents and photographs to show that in the area where the suit property was situated, there were large numbers of hotels. Thus, the area has large commercial activity which fortifies the contention of the respondent that he was doing the work of washing/ ironing for the hotels nearby the premises.

15. The scope of interference in a petition under Article 227 of the Constitution of India is limited. While exercising power of superintendence, this Court would interfere only if there is illegality, or an error of jurisdiction

in the decision of the Court/Tribunal. The view taken by the learned Rent Control Tribunal cannot be said to be perverse as noted above. The petitioners failed to discharge the onus that the premises was let out for residential purpose, thus the finding of the Tribunal warrants no interference.

16. Consequently, the petition is dismissed.

**(MUKTA GUPTA)**  
**JUDGE**

**JANUARY 21, 2015**

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