

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

+ **CM(M) 156/2015 & CM 3478/2015 (stay)**

% Decided on: 22nd May, 2015

ATUL ANAND & ANR Petitioners
Through Mr. Deepak Agarwal, Adv.

versus

M M BHARDWAJ Respondent
Through Mr. B. Krishan, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the order dated 8th December, 2014 whereby the appeal of the petitioners was dismissed upholding the order of the learned ARC dated 7th August, 2013, the petitioners prefer the present petition.
2. A perusal of the proceedings before the learned ARC would indicate that in Eviction Petition No. 59/2009 filed on the grounds under Section 14(1)(a) DRC Act the petitioners were proceeded ex-parte vide order dated 22th December, 2011. The petitioners filed an application under Order IX Rule 7 read with Section 151 CPC which was allowed for the reason the petitioners submitted that their previous counsel had passed away and for this reason nobody appeared on their behalf. Learned ARC vide the order dated 27th November, 2012 held that though the grounds incorporated in the application were not in consonance with the order sheet and the perusal of the file reveals that time and again petitioners Atul Anand and his wife Smt.

Shellay Atul Anand have been seeking adjournments and they were inducted as tenants vide rent agreement dated 10th January, 2006 @ ₹3100/- per month and ₹5000/- as security and since the petitioners expressed their inability to pay the rent the respondent reduced the same to ₹1100/-, however the same was also not paid, still in the interest of justice application under Order IX Rule 7 CPC read with Section 151 CPC was allowed subject to a cost of ₹10,000/- to be paid to the respondent M.M. Bhardwaj so that the petitioners could be afforded an opportunity of being heard and substantial justice is not denied to them. The petitioners were directed to cross-examine the respondent on the next date of hearing failing which the order dated 22nd December, 2011 would automatically revive and the matter was listed for 2nd January, 2013.

3. On 2nd January, 2013 despite service of Court notice petitioners were not present and an adjournment was sought by the proxy counsel for the petitioners and there was no reason explained as to why they did not come on that date nor whether they intended to pay the cost as directed vide order dated 27th November, 2012. It was directed that if the petitioners fail to appear in person and pay the cost the previous order would revive. On 3rd January, 2013 an application was moved by the petitioners for waiving of the cost as imposed vide order dated 27th November, 2012 while allowing the application under Order IX Rule 7 CPC which was turned down and petitioners were directed to pay the cost that very day by 2 O'clock. By 2 O'clock the petitioners paid only a sum of ₹5000/- and undertook to pay the remaining ₹5000/- within three days. Thus in the interest of justice last and final opportunity to cross-examine Respondent/plaintiff's witnesses on 2nd February, 2013 was granted and it was noted that if the remaining cost was

not paid then the opportunity to cross-examine PWs would be closed. On 20th February, 2013 none appeared on behalf of the petitioners till 1.00 AM on repeated pass-overs. Since the case was of the year 2009 and pertained to a senior citizen, the opportunity to the petitioners to cross-examine PWs was closed and the matter was listed for the petitioner's evidence by way of affidavit on 17th April, 2013.

4. On 17th April, 2013 no affidavit was filed by the petitioners, however in the interest of justice one more opportunity was granted to conclude the evidence and the matter was listed on 9th May, 2013. On 9th May, 2013 though the learned PO was on leave but the petitioners were also not present. Even on the next date fixed i.e. 3rd July, 2013 the petitioners were not present and hence their right to lead evidence was closed and matter was listed for final arguments on 29th July, 2013.

5. An application was again moved by the petitioners under Section 151 CPC for granting them an opportunity to cross-examine the respondent. The facts as noted above were duly noted by the learned Trial Court and the application was dismissed on 7th August, 2013 and vide a separate order of the same date petition of the respondent under Section 14(1)(a) DRC Act was allowed and the petitioners were directed to pay rent with effect from 10th December, 2009 @ ₹3100/- till date along with statutory interest of 15% per annum and thereafter to pay on month-to-month basis. Matter was listed for consideration for the entitlement of the benefit under Section 14(2) DRC Act on 28th September, 2013.

6. An appeal was filed by the petitioners as noted above against order dated 7th August, 2013. The learned Rent Control Tribunal noted all the facts as noted above. The learned Rent Control Tribunal further noted that

the record indicates that the tenanted premises was let out by a written document i.e. lease deed dated 10th January, 2006 exhibited vide Ex.PW-1/H on a monthly rent of ₹3100/- per month. No document has been placed on record by the petitioner to substantiate their claim of the rent @ ₹1100/- per month and thus the appeal was dismissed.

7. Before this Court learned counsel for the petitioners urges that since counsel of the petitioners died during the proceedings, the petitioners could not pursue the proceedings and thus neither they were examined nor they could cross-examine the respondent's witnesses.

8. A perusal of the order sheet would reveal that for the reason that the counsel for the petitioners expired the application under Order IX Rule 7 CPC was allowed. However, thereafter also the conduct of the petitioners was of total non-participation in the proceedings despite repeated adjournments and opportunities. No material has been placed by the petitioners on record to prove that the rent was ₹1100/- per month in contrast to the rent deed exhibited by the respondent showing rent @ ₹3300/- per month. There is no merit in the present revision petition.

9. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 22, 2015
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