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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 03.02.2016

Judgment delivered on : 05.02.2016

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CM(M) 621/2012

ASSOCIATED TRADERS AND ENGINEERS P LTD

..... Petitioner

Through Mr. Anil Sapra, Sr. Adv. with Mr.
Sunil Magon, Ms. Ashna Abrol
and Ms. Deepika Shrivastava,
Advocates.

versus

GIRISH KUMAR JOSHI & ORS

..... Respondents

Through Ms. Gian Mitra, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This petition is directed against the impugned judgment dated 02.01.2012 delivered by the Rent Control Tribunal (RCT) wherein the findings of the Additional Rent Controller (ARC) dated 08.03.2010 had been reversed. The aggrieved petitioner is the landlord before the Trial Court.

2 Record shows that an eviction petition had been filed by M/s

Associate Traders and Engineers Ltd against its tenant Jagdish Chander Joshi (the respondent) under Section 14 (1)(i) read with Section 22-A of the Delhi Rent Control Act (DRCA). The suit premises bear municipal No. 3624, Mori Gate, Delhi. The premises were let out in the year 1967 to the respondent who was an employee of the petitioner. The respondent had retired from the service on 09.06.1998 but he did not surrender the premises to the petitioner. Eviction petition was accordingly filed. In para 19 of the eviction petition, it has been stated that this suit premises was owned by the Delhi Wakf Board and the petitioner himself is a tenant in the premises.

3 Written statement/reply to the pending eviction petition was filed. The defence of the respondent was that there was no relationship of landlord-tenant and as such the petition under Section 14 (1)(i) of the DRCA is not maintainable. Further submission was that a criminal complaint No. 214/1998 had been filed by the petitioner against the respondent under Section 630 of the Companies Act in which the respondent stood acquitted and that judgment having become final on 25.04.2003, the present petition is also barred under the principle of res-judicata. The petitioner is not the owner of the premises and he has no

legal title; the respondent is living with his family in this premises since the last 47 years in his own right. In para 7 in the reply on merits, it is categorically stated that the premises is owned and possessed by the respondent. It was denied that the premises was allotted to the respondent while he was in service in the year 1967; he is in possession of the suit premises since the year 1943.

4 Replication was filed by the landlord. He denied the averments contained in the reply/written statement and reiterated the averments made in the eviction petition.

5 Issues were framed and the matter went for trial. On behalf of the landlord two witnesses were examined. AW-1 was Hari Om Sachdev who was authorized to institute and pursue the eviction petition in terms of Resolution dated 30.06.2004 (Ex. AW-1/2) of the company M/s Associate Traders and Engineers Ltd. He had proved the site plan Ex.AW-1/3. He reiterated that the respondent was an employee of the petitioner company and had been allotted the premises in 1967; he retired from the service on 09.06.1998 and he was asked to surrender the premises but he had failed to do so. The petitioner himself is a tenant of Delhi Wakf Board vide rent note dated 10.07.1961. In his cross-
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examination, he admitted that he had joined the petitioner company in 1979. This statement of AW-1 has been vehemently harped upon by the learned counsel for the respondent to substantiate a submission that premises having been let out to the respondent in the year 1967 and AW-1 having been joined the service of the company in 1979, it is clear that this testimony is hearsay and it is liable to be rejected on this count alone. AW-1 further admitted that the petitioner had not issued any letter of allotment to the respondent.

6 The second witness of the landlord was Nabibl Hasan who had produced the summoned record from the Delhi Wakf Board. His testimony was to the effect that this property had been let out by the Delhi Wakf Board to the petitioner in the year 1961 and he had brought the original rent note dated 10.07.1961 proved as Ex.AW-2/1. In his cross-examination, he admitted that this rent note was not executed in his presence. He denied the suggestion that the petitioner was not a tenant of the Delhi Wakf Board.

7 Per contra, the respondent had produced one witness in defence. He was Grish Joshi, the son of Jagdish Chander Joshi as by this time Jagdish Chander Joshi had expired and his legal representative i.e. his

son had been brought on record. He had deposed that he was living along with his father in the suit property along with his family members and there is no relationship of landlord-tenant between the petitioner company and the respondent and no such accommodation had been allotted by the petitioner to his father Jagdish Chander Joshi. Further submission being that this property had been handed over to his father by his maternal grandfather Mathura Dutt Tiwari who was an employee of Indian Express. In his cross-examination, he stated that his maternal grandfather Mathura Dutt Tiwari was in fact the owner of the suit premises but he did not know when it was purchased. Admittedly he and his predecessor have never paid any house tax qua this property. He admitted that his father was an employee of the petitioner and they were getting electricity from the petitioner who used to deduct electricity charges from the salary of his father. He admitted that his father retired in the year 1998. He admitted that he did not have any documentary proof that his maternal grandfather was living in the suit property since 1943 as was his submission.

8 The ARC vide which judgment dated 08.03.2010, on the basis of oral and documentary evidence adduced by the respective parties, had

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decreed the eviction petition in favour of the landlord.

9 The RCT i.e. the Appellate Court had reversed this finding.

10 On behalf of the respective parties, arguments have been heard in detail.

11 Learned senior counsel for the landlord/petitioner submits that the order of the RCT suffers from an illegality. There was no document on record with the RCT who have given a finding in favour of the tenant especially there was a categorical admission by the tenant that he had no documentary proof to show as to in what capacity they were living in the suit property since the year 1943; submission being that the tenant was blowing hot and cold and whereas in one version (another statement) he had set up a submission that he was the owner of the suit property yet in his cross-examination (when examined as RW-1) he had not whispered a word on this count although in his cross-examination he admitted that he is the owner of the suit premises. The status of the respondent as to in what capacity he was living in the suit premises is not known. Further submission being that to maintain an eviction petition under Section 14 (1)(i) of the DRCA, it is the landlord tenant relationship which is essential and the status of the landlord not

necessarily to be that of the owner and for that proposition, he has placed reliance upon a judgment of a Bench of this Court reported as AIR 2007 Delhi 147 Kamla Rani and Ors Vs. M/s Texmaco Ltd.. Impugned judgment is liable to be set aside.

12 Per contra, learned counsel for the respondent submits that the order of the RCT suffers from no infirmity. The petitioner himself was a tenant in the property and as such this eviction was not maintainable. Reliance has been placed upon a judgment reported as 2009 (2) RCR 344 Rishab Chand Bhandari (D) BY Lrs. And Anr Vs. National Engineering Industry Ltd. wherein the proposition was that an agent of the owner of the premises cannot file a suit for eviction of the tenant although he has authority to collect rent from the tenant. This proposition is wholly inapplicable to the factual scenario as it is not the case of the petitioner that he is the agent of the owner of the suit premises. His case is that he is a tenant in his individual capacity of the Delhi Wakf Board.

13 Record has been perused. Arguments have been heard.

14 The petitioner in the eviction petition has categorically stated that he is the tenant of Delhi Wakf Board and the rent note Ex.AW-2/A
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dated 10.06.1971 which has proved by AW-2 who had produced the summoned record from the Delhi Wakf Board establishes the submission of the landlord that the landlord was a tenant in the suit property since the year 1961. There is no gainsaying of the settled legal proposition that to maintain an eviction petition under Section 14 (1)(i) of the DRCA, the landlord-tenant relationship has to be seen by the Court and the status of the landlord need not be seen. The judgment relied upon by the learned counsel for the petitioner in Kamla Rani lays down this ratio. A petition by a landlord even if he is not the owner can be maintained.

15 The categorical version of AW-1 is that Jagdish Chander Joshi was an employee of the petitioner company and was allotted the premises in 1967. He had retired from the service on 09.06.1998. The fact that he retired on 09.06.1998 is an admitted position and has been so stated by RW-1 also. The further fact that the respondent was the employee of the petitioner company is also an admission made by RW-1 who had stated that in the premises, the electricity was being given to them by the petitioner who used to deduct the electricity charges from the salary of his father. Thus the fact that the respondent was the

employee of the petitioner company and he was getting salary from them stands admitted. The statement of the respondent that he was living in the suit premises since the year 1943 was never established. RW-1 had categorically admitted in his cross-examination that he had no documentary proof to this effect and there is no evidence to show that he and his predecessor were living in the suit property since the year 1943 which was his submission. Moreover in what capacity they were living in the suit property has not been answered. His submission that his maternal grandfather was the owner of this property and he had given this property to his son-in-law (father of the respondent) was nowhere substantiated by any document. These admissions of RW-1 were noted by the ARC in its correct perspective. Further defense of the respondent taken in his written statement that they are the owners of this property was also not established. RW-1 did not know when this property was purchased by Mathura Dutt Tiwari who had allegedly given/gifted this property to his father. No such document has seen the light of the day. Admittedly no house-tax was ever deposited either by the respondent or his predecessor. They also had no individual electricity or water connection. Electricity was being given to them by the petitioner

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company and as per the admission of RW-1 water was also drawn by them directly from the MCD tank. There was no separate water connection.

16 The findings of the ARC on no count suffer from any infirmity. The RCT had committed a gross illegality by relying upon the evidence of the respondent which were in fact clear and candid admissions and to the effect that RW-1 had no document to show as in what capacity they were living in the suit property and the plea that they were the owners of the suit property. The judgment delivered by the Metropolitan Magistrate in proceedings under Section 630 of the Companies Act would also not operate as res-judicata. Res-judicata would apply only when the matter in issue is the same and it is heard and decided on merits and the judgment delivered in the first 'matter' would then have a binding effect on the later 'matter'. It would only then that the principle of res-judicata could be applicable. Admittedly, criminal proceedings under Section 630 of the Companies Act which involve mens-rea on the part of an employee of an employer to retain the premises of the company would not encompass the same issue as contained in Section 14 (1)(i) of the DRCA where the landlord is seeking eviction of his

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tenant on the ground that the property had been given to him in his capacity as an employee and he has over-stayed; mans-rea is not an ingredient in civil proceedings. This argument of the learned counsel for the respondent is thus bereft of force.

17 Admittedly, the parties had been relegated to civil proceedings and a suit had also been filed by the petitioner company against the respondent which was decided on 19.01.2005. This was a suit for perpetual injunction. While disposing of issue No. 1 i.e. as to whether the plaintiff had any locus standi to file the present suit, the Trial Court had adverted to a lease deed qua this property which had been executed by the Delhi Wakf Board in favour of M/s Associate Traders and Engineers Ltd. It had arrived at a categorical finding that the plaintiff company was a lessee/tenant in the property bearing No. 3624, Mori Gate, Delhi owned by the Delhi Wakf Board. It had also returned a finding that defendant No. 1 Jagdish Chander Joshi was an employee of the plaintiff company and as such while disposing of this issue, it was held that the plaintiff did have the locus standi to file the present suit. This judgment had become final.

18 The impugned order calls for an interference. It is set aside. The

petitioner/landlord is entitled to a decree in terms of Section 14 (1)(i) of the DRCA. The order of the ARC is restored.

19 Petition disposed of in the above terms.

INDERMEET KAUR, J

FEBRUARY 05, 2016

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