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

+ CM(M) 932/2013

SHIVNANDAN

..... Petitioner

Through: Mr.Prabodh Kumar, Advocate.

versus

VIPIN KAPOOR

..... Respondent

Through: Mr.Rakesh Taneja, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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06.01.2016

CM(M) No.932/2013

1. The petitioner is aggrieved by the order dated 18.05.2013 whereby the learned ARCT dismissed the appeal filed by him impugning the order dated 05.10.2012 as well the contempt application.
2. At the outset, it is necessary to mention that prior to 1st December, 1988 Section 39 existed in the Delhi Rent Control Act which provided for filing of second appeal which can be filed only on the limited ground that there existed a substantial question of law. The provision of Section 39 of Delhi Rent Control Act stands repealed by Act 57 of 1988 with effect from 1st December, 1988.
3. Once second appeal is not allowed a petition under Article 227 of the Constitution of India cannot be filed as a substitute for a second appeal for the reason that if scope of hearing on second appeal was limited to

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substantial question of law only then the scope of hearing in a petition under Article 227 of the Constitution of India is further restricted. It is well settled that power vested in this Court under Article 227 of the Constitution of India is a discretionary jurisdiction to be exercised only if gross injustice has been caused.

4. In the case of ***Jai Singh and Ors. Vs. Municipal Corporation of Delhi and Anr., (2010) 9 SCC 385***, the Apex Court considered the scope of Power under Article 227 of the Constitution of India and held as under:-

“25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of The Estralla Rubber Vs. Dass Estate (P) Ltd., (2001) 8 SCC 97 wherein it was observed as follows:

“The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High

Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

5. Learned counsel for the petitioner does not dispute that it was a case of default in depositing the rent but submits that on equity, the possession of the tenanted shop may be restored to the petitioner/tenant and the impugned order may be set aside.

6. The scope of interference in the impugned order by this Court in exercise of powers vested under Article 227 of Constitution of India has already been referred to above.

7. In the instant case, the learned ARC vide order dated 23.09.2008 directed the petitioner/tenant to deposit the arrears of rent @ ₹600/- per month w.e.f. 01.01.2007 and further to deposit the future rent at the same rate by 15th day of each succeeding month. Thereafter, the learned ARC vide judgment dated 18.04.2012 allowed the eviction petition and modified the order dated 23.09.2008 by directing the petitioner/tenant to pay/deposit the rent @ ₹1500/- per month alongwith interest @ 15% p.a.

8. Vide order dated 05.10.2012 while declining to grant benefit of Section 14(2) of DRC Act, the learned ARC passed the eviction order recording that as per the report of the Naib Nazir, the petitioner/tenant had not complied with order dated 18.04.2012. Thus, the petitioner/tenant was not found entitled to the benefit under Section 14(2) of DRC Act.

9. The appeal preferred before the learned ARCT against the order of eviction has been dismissed observing as under :-

“10. Perusal of record shows that the eviction petition was allowed by ld. ARC vide judgment dated 18.04.2012.

There is no challenge to the judgment and only the eviction order dated 5.10.2012 has been assailed. Record reveals that vide order dated 23.09.2008, the appellant/tenant was directed to deposit the arrears of rent w.e.f. 1.1.2007 @ Rs. 600/- per month and was also directed to deposit future rent by the 15th day of each succeeding month. Thereafter, an application under section 15(7) of the DRC Act was filed by the respondent/landlord for striking off the defence of the appellant/tenant on the ground that he had not complied with order dated 23.09.2008. Report of the Naib Nazir was called which showed that the appellant/tenant had not deposited the rent in time and he was always late in deposit of rent. No explanation was given by the tenant for late deposit of rent, therefore, application was allowed and defence of the appellant/tenant was struck off. It is pertinent to mention that no application for condonation of delay in deposit of rent was moved by the appellant/tenant.

11. Thereafter, vide judgment dated 18.04.2012, Ld. ARC allowed the eviction petition and modified order dated 23.09.2008. The appellant/tenant was directed to pay the arrear of rent @ Rs. 1500/- per month along with interest @ 15% per annum w.e.f. 1.1.2007 within one month. It was observed that if the appellant complied with the order dated 18.04.2012, he would not be evicted. Record further reveals that the report of Naib Nazir was called to ascertain the fact whether appellant/tenant had complied with the directions contained in judgment dated 18.04.2012 or not. Report of the Nazir shows that he was always late in deposit of rent. Report also show that arrears of rent w.e.f. 1.1.2007 was deposited by the appellant on 5.6.2012, but as per judgment dated 18.04.2012, he was directed to deposit the arrears of rent within one month he failed to comply with. Except for the period 1.4.2012 to 30.06.2012, appellant was habitually late in deposit of rent. No application was moved before Ld. ARC for condoning the delay in deposit of either arrears of rent or the monthly rent, therefore, eviction order dated 5.10.2012 was passed.”

10. Since it is an admitted case of the petitioner that he had not complied with the directions given vide order dated 18.04.2012 i.e. to deposit the rent @ ₹1500/- per month alongwith interest @ 15% p.a., the learned ARCT had rightly dismissed the appeal finding the petitioner/tenant to be not entitled to the benefit under Section 14(2) of DRC Act.

11. The contempt application filed by the petitioner/tenant has already been dismissed noting that in the contempt application there is not even an averment that copy of the stay order dated 03.05.2013 was ever provided to the Bailiff or to the landlord before the possession of the tenanted shop was taken over through Bailiff.

12. When the petitioner/tenant himself admits the factual possession i.e. delay in depositing the rent as well absence of averment in the contempt application to the effect that stay order was ever served on the respondent/landlord or shown to the Bailiff at the stage of execution of warrants of possession, the impugned order does not call for any interference by this Court in exercise of powers vested under Article 227 of the Constitution of India.

13. CM(M) No.932/2013 is dismissed.

14. No costs.

CM No.14060/2013

Dismissed as infructuous.

PRATIBHA RANI, J.

JANUARY 06, 2016

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