

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

% **Date of decision: 28th August, 2017**

+ **CM(M) 462/2009**

**RAVI NATH SHARMA (DECEASED)
THROUGH LRS**

.....Petitioner

Through: Mr. Arun Batta, Adv.

Versus

**JAGDISH PRASAD SHARMA (DECEASED)
THROUGH LRS & ORS.**

..... Respondents

Through: Mr. D.N. Goburdhan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the order (dated 13th November, 2007 in RCA No.266/02 of the Court of Additional Rent Control Tribunal (ARCT), Delhi) allowing the appeal preferred by the respondent No.1 and setting aside the order (dated 2nd March, 2002 in E-113/2000 of the Court of Sh. V.K. Khanna, Additional Rent Controller (ARC), Delhi) allowing the petition for eviction filed by the petitioner under Section 14(1)(a) and (h) of the Delhi Rent Control Act, 1958.

2. The petition was admitted for hearing and notice thereof ordered to be issued to the respondents. The counsel for the respondent No.1 has been appearing. The respondents No.2 (Smt. Santosh), 3A (Sh. Ajeet Singh), 3B (Sh. Manjeet Singh) and 4 (Smt. Gyatri Devi) failed to appear despite service. The Trial Court record was requisitioned but only the record of the ARCT has been received and the record of the ARC has not been received. However, the matter being already old, it is now not

deemed appropriate to adjourn the hearing for the said purpose. The counsel for the petitioner and the counsel for the respondent No.1 have been heard.

3. The petitioner, on 27th August, 1987 instituted the petition for eviction (from which this petition under Article 227 arises) under Section 14(1)(a) and 14(1)(h) of the Delhi Rent Control Act, 1958 for eviction of the respondent No.1 from property No. 51-B, Main Bazar, Pahar Ganj, New Delhi comprised of four rooms, latrine, bath and chajja on the first floor of the property, pleading (i) that the respondent No.1 was an old tenant in the property at a rent of Rs.42.50 paise per month and had become a tenant of the petitioner and the respondents No.2 to 4 by operation of law, after purchase of the property by the petitioner and the respondents No.2 to 4; (ii) that the respondent No.1 had neither paid nor tendered the whole of the arrears of rent legally recoverable from him within the two months from the day which the notice of demand for arrears of rent was served on the respondent No.1; (iii) that the respondent No.1 had not paid the rent since 1st January, 1982 to 30th April, 1987; (iv) that a demand notice dated 15th December, 1983 was forwarded to the respondent No.1 under registered cover, AD; (v) that the respondent No.1 refused to accept the same; (vi) that the respondent No.1/ tenant had built, acquired vacant possession of or been allotted residence at E-67, Greater Kailash-II, New Delhi.

4. The respondent No.1 contested the petition for eviction aforesaid pleading (i) that the alleged legal notice dated 15th December, 1983 was only in respect of “the portion in the ownership that is the part of the rent

that is rent @ of Rs.13.05 paise was demanded in the legal notice” “since no legal notices have been given for arrears of entire first floor by or other owners, the eviction petition is not maintainable”; (ii) that there was no mention in any of the previous legal notices that the premises was let out for residential purposes; (iii) that the petitioner is estopped from raising the plea of residential letting; (iv) that the respondent No.1 is carrying on business right from the inception of the tenancy as the same was let out for residential-cum-commercial purpose; (v) “that the petitioner has no cause of action against the respondent as the petitioner is neither the landlord nor the owner nor has any cause of action in his favour to file eviction in respect of whole first floor and second floor, of which he is neither owner nor any documentary proof to establish his right to pursue the case for eviction in respect of shop No.55 and 57 of which” the petitioner claims to be the owner had been disclosed; (vi) that the petition is barred by Order I Rule 3 of the Code of Civil Procedure, 1908 (CPC) inasmuch as the owners who had no nexus with the petitioner could not have been made respondents; (vii) that Sh. Waryam Singh, Sarvshri Vishwa Nath Sharma, Sh. Jagdish Chand Sharma and Ravinath Sharma are necessary parties, being co-owners of the tenancy premises; (viii) that permission of Competent Authority under the Slum Areas (Improvement and Clearance) Act, 1956 had not been obtained; (ix) that the permission granted to the petitioner to seek eviction of the respondent No.1 from the entire premises is invalid; (x) that the property in question was let out to the respondent No.1 by M/s Banarsi Das Khandelwal & Sons for residential-cum-commercial purpose and respondent No.1 was using the premises for residential-cum-commercial purpose; the respondent No.1 is

carrying on business of tailoring, whose workers are carrying on tailoring related work in the tenancy premises as well as residing in the premises to the knowledge of the earlier and the present landlords since the inception of the tenancy; (xi) that the petition for eviction under Section 14(1)(h) is thus not maintainable; (xii) that the respondent No.1 constructed residential property at E-67, Greater Kailash-II, New Delhi and the respondent No.1 has been residing in the said property since 1973; (xiii) that the petition for eviction under Section 14(1)(h) is also not within time; (xiv) that no notice of demand was served on the respondent No.1; (xv) that the respondent No.1 had not refused to receive the alleged notice of demand dated 15th December, 1983; (xvi) that the petition for eviction under Section 1(a) of the Act without service of notice of demand of rent is not maintainable; (xvii) that the respondent No.1 has already deposited rent for the period from 9th August, 1982 to 31st July, 1985 @ of Rs. 45/- per month and was not in arrears of rent; (xviii) that the premises in question consists of first floor with open terrace on the second floor alongwith stairs situated above shop No.49-57, Main Bazar, Pahar Ganj, New Delhi; (xix) that M/s Banarsi Das Khandelwal & Sons who were the landlords of the respondent No.1 sold different portions of the property to Sh. Chand Kishan, Smt. Shanti Devi, Sh. Waryam Singh, Sh. Gurdial Singh and Smt. Hira Devi; (xx) that Smt. Hira Devi died leaving Vishwa Nath Sharma, Sh. Jagdish Chand Sharma and the petitioner Sh. Ravinath Sharma as her heirs and legal representatives; (xxi) that Smt. Shanti Devi sold her share to Sh. Babu Ram and Sh. Girdhar Gopal; (xxii) that Sh. Babu Ram died leaving Sh. Surinder Rastogi, Sh. Sushil Rustogi, Sh. Sanjiv Rastogi and Smt. Kanti Kishori Rastogi as his heirs; (xxiii) that Sh.

Girdhar Gopal expired leaving Sh. Navin Rastogi, Sh. Praveen Rastogi, Sh. Arvind Rastogi, Sh. Ravinder Rastogi, Sh. Kuldip Rastogi and Smt. Prem Lata Rastogi as his heirs; (xxiv) that thus all the said persons are the joint and co-landlords of respondent No.1; (xxv) that only portion of shop No.55 and 57 comes to the ownership of the petitioner.

5. The respondents No.2 and 3 also filed a written statement to the petition for eviction pleading (i) that the No. of the property is 49-57, Main Bazar, Pahar Ganj, New Delhi; (ii) that there is no Municipal House No.51B, Main Bazar, Pahar Ganj, New Delhi; (iii) that the respondent No.2 and 3 are the owners of the first floor and open terrace on the second floor of the shops; (iv) that the respondent No.2 Sh. Chand Kishan Rastogi is the owner of shops No. 53 and 54 on the ground floor and the first floor including the open terrace on the second floor; (v) that the respondent No.3 Sh. Gurdial Singh is the owner of shop No. 51 and 52 on the ground floor and first floor above the said shop including the open terrace on the second floor; (vi) that the different portions in occupation of respondent No.1 fall under different owners; (vii) that different owners have shops underneath the tenanted premises and are owners of the portions above their respective shops; (viii) that each owner has his independent, separate portion with separate sale deed; (ix) that the respondent No.2 is entitled to rent of Rs. 13.50 paise per month out of total rent of Rs. 42.50 paise per month; (x) that the respondent No.3 is entitled to Rs. 9/- per month out of the total rent of Rs. 42.50 paise per month; (xi) that previously, respondent No.2 used to collect rent from respondent No.1 on behalf of other owners also and used to distribute the said rent in accordance with entitlement of each of the owners.

6. Respondent No.4 also filed a written statement on the same lines as the written statement of respondent No.2 and 3, claiming her share of Rs.9 per month in the total rent of Rs. 42.50 paise per month.

7. The learned ARC, on the basis of the aforesaid pleadings and evidence, vide order dated 2nd March, 2002 allowed the petition for eviction filed by the petitioner under Section 14(1)(a) and (h) of the Act, observing / recording / reasoning / holding (i) that as per the respondent No.1 / tenant himself, the petitioner is one of the landlords and owners of the premises in his tenancy; (ii) that the legal position is well settled; one of the co-owners / landlord is competent to file the petition for eviction; (iii) that as per evidence led by the petitioner, the rent of Rs. 42.50 paise per month used to be shared by the landlords amongst themselves; (iv) that the respondent No.1 / tenant though at one place in his written statement had denied receipt of demand notice dated 15th December, 1983 but at another place had admitted the same; (v) that though the petitioner in the demand notice had demanded his share of Rs. 13.50 paise per month in the total rent of Rs. 42.50 paise per month but had impleaded the other co-owners as parties; (vi) that the respondent No.1 though had pleaded having deposited the rent up to 31st December, 1986 but had not placed on record any proof thereof; (vii) that since the respondent No.1 had not paid or tendered the demanded rent within two month of service of the demand notice, the petition for eviction under Section 14(1)(a) was allowed giving benefit to the respondent No.1 / tenant of Section 14(2) of the Act; (viii) that admittedly respondent No.1 had been residing in his house at E-67, Greater Kailash-II, New Delhi; (ix) that admittedly there was no rent agreement executed at the time of inception of tenancy; (x)

that in the absence of any agreement, the purpose of letting out has to be inferred from use, locality and surrounding circumstances; (xi) that the respondent No.1 had pleaded that the premises were let for residential-cum-commercial purposes; on the other hand the petitioner had pleaded that the premises was residential; (xii) that the tenanted premises consisted of four room, latrine, bathroom, chajja; (xiii) that it was in evidence that at the time of purchase of property by the petitioner and respondents No.2 to 4, the respondent No.1 was residing in the property; it was also in evidence that the respondent No.1 was running his business from property No.33, Connaught Place, New Delhi in the name and style of Jagdish Chand Tailors and Drapers; (xiv) that the respondent No.1 in his evidence had also stated that the tenancy premises were locked for the last 10 to 15 years since the respondent No.1 had shifted to E-67, Greater Kailash-II, New Delhi; (xv) that the respondent No.1 did not produce the previous owner or any witness to prove letting out of the premises for residential-cum-commercial purposes; (xvi) that the witness of the respondent No.1 in his evidence had admitted that the premises were let out to the respondent No.1 for residential purpose and the respondent No.1 alongwith his family used to reside therein; (xvii) that it was also stated in evidence that there was no electricity and water connection at the tenancy premises; (xviii) that the respondent No.1 had not produced any evidence to show commercial use of the property; (xix) that though the respondent No.1 in his evidence claimed to be in possession of rent receipt but did not produce the same; (xx) that as per the evidence of the respondent No.1 also, only on two rent receipts, the word shop was written; (xxi) that there was however no evidence who had written word shop on only two of the

rent receipts; (xxii) that even otherwise, use of the premises while residing therein for purposes of tailoring does not convert the use of premises from residential to non-residential; (xxiii) that the Competent Authority under the Slum Act was only to examine whether the respondent No.1 / tenant on being asked to vacate would create another slum and it was immaterial whether the application seeking permission under the Slum Act was made by one of the co-owners only; and, (xxiv) hence the petitioner was also entitled to an order of eviction under Section 14(1)(h) of the Act.

8. The ARCT, vide impugned order dated 13th November, 2007, set aside the aforesaid order of the ARC and dismissed the petition for eviction reasoning; (i) that it was the admitted case of the petitioner that the respondent No.1 had shifted his residence from the tenancy premises to E-67, Greater Kailash-II, New Delhi more than 15 years prior to the filing of the petition for eviction; (ii) that the petition for eviction under Section 14(1)(h) of the Act was barred by time as, per Article 66 of the Schedule to the Limitation Act, 1963 and the dicta of the Supreme Court in ***Ganpat Ram Sharma Vs. Gayatri Devi*** (1987) 3 SCC 576; (iii) that in the notice dated 15th December, 1983 of the demand of rent, the petitioner claimed arrears of rent pertaining to his premises even though the share of all the owners of the property had not been separated till then; (iv) that as per ***Habibunnisa Begum Vs. G. Doraikannu Chettiar*** (2000) 1 SCC 74 single tenancy could not be separated by seeking partial ejectment of a tenant from the premises let out under a single indivisible contract of tenancy; (v) that the petitioner as owner of only a part of the premises in the tenancy of the respondent No.1 could not seek eviction of the respondent No.1 from that part only; reliance in this regard was placed on

Niranjan Dass Vs. Trilok Chand 1995 Supp (3) SCC 196; (vi) that though in *Ram Sarup Vs. Sultan Singh* (1977) 2 All India Rent Control Journal 552 and in *India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla* (2004) 3 SCC 178 it had been held that a co-owner was entitled to maintain a petition for eviction but the petitioner in the notice of the demand of rent demanded rent only in respect of the portion falling over the roof of shop No.55 and 57; (vii) that thus the prayer made for eviction could not be considered on behalf of all the co-owners; and, (viii) that the petitioner had not claimed to be a co-owner of the entire property; his claim was restricted to a portion of the property.

9. The ARCT, in para 29 of the impugned order, has crystallized (i) that the petition for eviction under Section 14(1)(h) of the Act was being dismissed as barred by time; (ii) that the petition for eviction under Section 14(1)(a) was being dismissed firstly, owing to the petitioner in the notice of demand dated 15th December, 1983 having not demanded the entire arrears of rent of Rs. 42.50 paise per month but only rent of his share of Rs. 13.50 paise per month and which demand was illegal and invalid; and secondly, because the petition for eviction was for only part of the premises in the tenancy of the respondent No.1.

10. It would thus be seen that the ARCT has not disturbed the findings of fact of the ARC, of the purpose of letting of the premises from which eviction was sought, being residential; and, of the respondent No.1 / tenant having built or acquired or having been allotted a residence within meaning of Section 14(1)(h) of the Act.

11. The counsel for the petitioner / landlord qua the only reason on which the ARCT has reversed the order of eviction under Section 14(1)(h) of the Act, i.e. the petition for eviction having been filed beyond the period of limitation prescribed of 12 years, has argued (i) that admittedly the acquisition of residence by the respondent No.1 / tenant was in the year 1973; (ii) that the tenancy premises are situated in a slum area and the petitioner / landlord could not have filed a petition for eviction without seeking permission from the Competent Authority under the Slum Act; (iii) that the application seeking such permission was filed before the Competent Authority (Slum) on 29th March, 1984; (iv) that the said permission was granted by Competent Authority (Slum) vide order dated 18th March, 1987; (v) that the petition for eviction was filed on 27th August, 1987; (vi) that even if the acquisition of residence by the respondent No.1 / tenant is deemed to be on the very first day of January, 1973, the application filed on 29th March, 1984 for permission under the Slum Act was filed after nearly 11 years and two months; (vii) that the time during which the application seeking permission from the Competent Authority (Slum) was pending is to be excluded from the limitation provided of 12 years for filing a petition for eviction under Section 14(1)(h); (viii) that the petition for eviction was filed within about 5 months from the date the permission was granted by the Competent Authority (Slum); (ix) that thus the petition for eviction was filed before the expiry of 12 years from the date of acquisition of residence by the respondent No.1; (x) that the ARCT erred in not excluding the period when the application for permission under the Slum Act was pending

before the Competent Authority, while computing the limitation for filing a petition for eviction.

12. Per contra, the counsel for the respondent No.1 has argued (i) that this petition under Article 227 of the Constitution of India has been preferred after nearly one and half years of the order of the ARCT impugned in the petition; (ii) that in ***State of M.P. Vs. Bhailal Bhai*** AIR 1964 SC 1006, it was held that though the provisions of the Limitation Act do not apply to the granting of relief under Article 226 of the Constitution of India, however the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be considered; (iii) that this Court also in ***Kishan Swarup Vs. Kishan Devi*** 1972 Rajdhani Law Reporter (Note) 17 held that a petition under Article 227 of the Constitution of India should ordinarily be filed within period fixed for a Revision Petition under Section 115 of the CPC i.e. 90 days; (iv) that in para 38 and 39 of ***Surya Dev Rai Vs. Ram Chander Rai*** (2003) 6 SCC 675, it was held that the jurisdiction under Article 227 of the Constitution of India is not to be used to correct mere errors and is to be used in very exceptional circumstances; (v) that in para 4 of ***Koylerian Janaki Vs. Rent Controller*** (2000) 9 SCC 406, it was held that the power under Article 227 is to be exercised only where it is found by the High Court that due to certain grave errors, injustice has been caused to a party and not in a routine manner; (vi) that the ground of eviction under Section 14(1)(h) was not available to the petitioner because the tenancy was for residential-cum-commercial purposes; (vii) that no

case for interference under Article 227 of the Constitution of India is made out.

13. The counsel for the petitioner, in rejoinder, has contended that there is no limitation prescribed for preferring a petition under Article 227 of the Constitution of India and has also referred to ***Surya Dev Rai*** supra. It is further argued that once notice of this petition was ordered to be issued, the delay even if any in filing of this petition is deemed to have been condoned.

14. I have gone through the copies of the Trial Court record filed in the paper book and as available on the requisitioned file and have considered the rival contentions.

15. I will first take up the ground of eviction under Section 14(1)(h), which on the date of filing of the petition for eviction i.e. 27th August, 1987 was as under:

“14. Protection of tenant against eviction. –

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(h) That the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted, a residence;”

16. What troubles me most is that in the present case it is not in dispute that the respondent No.1 / tenant has in fact built and/or acquired possession of a residence at E-67, Greater Kailash-II, New Delhi and has also shifted his residence from that, earlier in the premises from which his eviction is sought, to the said new residence; in spite of that, the respondent No.1 / tenant continues to hold on to the premises in his tenancy, taking advantage of the low rent of Rs. 42.50 paise per month thereof and the protection afforded by the Rent Control Laws to the tenants from eviction by the landlord. I have wondered, whether not the same amounts to blatant abuse by the respondent No.1 / tenant of the protection. It has also come in evidence that the respondent No.1 / tenant is now not even in use of the tenancy premises. So much so that the ARC has recorded that water and electricity connection to the tenancy premises have been disconnected. The respondent No.1 / tenant is now for several decades merely keeping the tenancy premises locked. The only reason, in spite of having no use of the tenancy premises, for holding on to the same can be to coerce the owner / landlord to illegally gratify the respondent No.1 / tenant for surrendering possession of the tenancy premises. Under the Delhi Rent Control Act, 1958, the respondent No.1 / tenant is not entitled to seek consideration for vacating the tenancy premises and surrendering his tenancy rights therein. Obviously, the consideration, which the owner / landlord will be compelled to pay if this petition were to be dismissed and if were to be interested in reaping benefits of the property purchased by them, would be in a surreptitious manner.

17. I have further wondered whether the Rent Control Laws are to be implemented, especially by the High Court when the lis is brought before

it, to aid and assist a tenant as the respondent No.1 into so holding on to the tenancy premises in total abuse of the reason which prevailed by enactment of the Rent Control Laws putting fetters on the rights of owners of property.

18. In my opinion, no. This Court, being a constitutional Court, cannot be a slave of the laws and is required to do justice as the facts of the case demand.

19. I may in this regard notice that the Rent Act presently in vogue in Delhi is of 1958 vintage and was subjected to substantial overhaul with effect from 1st December, 1988 to keep up with the times. While earlier, the Act applied to all lettings in Delhi, with effect from 1st December, 1988, the applicability of the Act has been restricted only to premises the rent whereof is up to Rs. 3,500/- per month. The premises in tenancy and occupation of the respondent No.1 also is capable of fetching much more than Rs. 3,500/- per month but owing to the letting being of decades earlier, the tenancy rent is only of Rs.42.50 paise per month. Though a further overhaul of the Act was much debated even after 1st December, 1998 and in 1995, a new Act enacted by the Parliament but owing to the Government, for obvious political reasons, having not notified the same to have come into force till now, the Act of 1958 vintage continues.

20. The Act as it exists, also provides for fixation of standard rent of the tenancy premises. The Division Bench of this Court in ***Raghunandan Saran Ashok Saran Vs. Union of India*** 2002 95 DLT 508 was concerned with a challenge to the provisions in the Act relating to standard rent, on the ground of same being violative of Articles 14(1)(g) and 21 of the

Constitution of India. It was found that Rs. 229.59 paise of 1998 had a value equivalent to Rs. 2.97 of 1939 and therefore the landlord, owing to the provisions of the standard rent, in terms of actual money value gets only Rs. 2.97 instead of Rs. 229.59 paise. It was held that the control of rents and evictions, which was initiated in the wake of the partition and population explosion in Delhi, served a salutary purpose in the then prevailing situation but over the years the restrictions and limitations imposed and continued by Rent Control Legislations had curtailed the growth of housing in general and rental housing in particular; even the amendments with effect from 1st December, 1988 had failed to provide solutions to the problem. It was also noticed that Supreme Court in ***Prabhakaran Nair Vs. State of Tamil Nadu*** (1987) 4 SCC 238 and in ***Malpe Vishwanath Acharya Vs. State of Maharashtra*** (1998) 2 SCC 1 had stressed the need for rationalising the Rent Legislations and the need for striking a balance between rival interest of rent and demand in the prevalent economic and social scenario. Finding that the provisions of the Act relating to standard rent to be archaic, the petition was allowed and the said provisions were held to be *ultra vires* the Constitution of India.

21. As far as the argument of the counsel for the respondent, of the delay of one and half years in filing of this petition is concerned, though there is no merit in the argument of the counsel for the petitioner of the delay having been deemed to be condoned by issuance of notice of the petition but I find Supreme Court recently in ***Bithika Mazumdar Vs. Sagar Pal*** 2017 2 SCC 748 to have held that no limitation is prescribed for filing a petition under Article 227 of the Constitution of India; though the petitioner who files such a petition is supposed to file the same without

unreasonable delay and if there is a delay it should be duly and satisfactorily explained but the approach of the High Court of dismissing the petition, observing that the limitation as prescribed for petition under Section 115 of the CPC would apply, cannot countenanced, finding that the only earning member of the family of the petitioner had died, it was held that the petition should have been considered on merits rather than dismissing it on the ground of delay.

22. I have hereinabove already explained how the respondent No.1 / tenant is abusing the Rent Laws and using the same to extract illegal gratification. Dismissal of this petition for eviction would thus lead to grave injustice to the petitioner / landlord. I may also mention that a landlord who is earning a pittance of rent of Rs. 42.50 paise per month from a property cannot be expected to be readily wanting to pump in money in litigation. The expense in filing of the petition alone, leaving apart lawyer's fee, would be equivalent to several years' rent of the property. Moreover, the petitioner here is only one of the co-owners / co-landlords. Considering all these facts, there is satisfactory reason for the delay on the part of the petitioner in preferring the petition.

23. Though the counsel for the respondent is also right in contending that when the legislature has taken away the right of second appeal earlier existing in the Rent Act, it intended to give a finality to the decision of the Rent Control Tribunal and the jurisdiction under Article 227 of the Constitution of India cannot be a substitute for an appeal right whereof has been taken away but in *Koylerian Janki* supra cited by the counsel for the respondent himself, it has been held that the jurisdiction under

Article 227 of the Constitution of India is to be exercised where a grave injustice has been done to a party. I have already, for reasons given herein above, held how grave injustice is being caused to the petitioner / landlord by the order of the ARCT impugned in this petition. Moreover the present is a case of the ARCT in appeal having reversed the order of the ARC. I have in **Nawal Kishore Vs. Mohd. Yakub** MANU/DE/3552/2017 held that in such circumstances, the scope of Article 227 of the Constitution of India is wider.

24. The only reason for which the ARCT has denied the order of eviction under Section 14(1)(h) of the Act is of the petition for eviction on the said ground having been filed beyond the time of 12 years prescribed therefrom.

25. I have recently in **Director Education Vs. Mohd. Shamim** 2017 SCC OnLine Del 10152 held as under:-

*“24. The reason for which it was held that the Rent Controller is not entitled to entertain an application for condonation of delay in applying for leave to defend was that the provisions of Limitation Act, 1963 were held to be not applicable to the Rent Controller which was not a Civil Court. It was so held in i) **Town Hall Municipal Council Athani Vs. Presiding Officer, Labour Court, Hubli** AIR 1969 SC 1335; ii) **Nityanand M. Joshi Vs. Life Insurance Corporation of India** AIR 1970 SC 209; and iii) **Sushila Devi Vs. Ramanandan Prasad** AIR 1976 SC 177 (182). However thereafter Supreme Court in **Ganpat Ram Sharma Vs. Gayatri Devi** (1987) 3 SCC 576 held that a petition for eviction under Section 14(1)(h) of the Rent Control Act is governed by the provisions of Limitation Act and held the said time to be limited to 12 years from the date when the ground of eviction accrued. Though not expressly, Supreme Court vide the said judgment held the Limitation Act to be applicable to the Rent Controller. Thereafter this Court in **Modi Spinning & Weaving Mills Co. Ltd. Vs. Krishna Wanti** 2012 SCC Online 1102 and in **Maheshwar Dayal (Deceased) Vs. Shanti Devi** 2012 (128) DRJ 338 has been applying the provisions of Limitation Act to the proceedings under the Rent Control Act.*

25. I may however notice that subsequently, Supreme Court in **Prakash H. Jain Vs. Marie Fernandes** (2003) 8 SCC 431, in the context of an application for leave to contest under the Maharashtra Rent Control Act, 1999 and without noticing **Ganpat Ram Sharma** supra, held that the Competent Authority constituted under the Rent Act is not a Court and has no power to condone the delay.

26. Supreme Court, in **Prithipal Singh (Prithipal Singh Vs. Satpal Singh)** (2010) 2 SCC 15) supra also noted that it was “not disputed by the respondent / tenant that no application for condonation of delay could be entertained by the Rent Controller as the provisions of Limitation Act, 1963 could not be attracted”. However earlier judgment in **Ganpat Ram Sharma** supra applying the Limitation Act to proceedings before the Rent Controller was not noticed.

26. It would thus be seen that **Ganpat Ram Sharma** supra relied upon by the ARCT is the sole judgment holding the Limitation Act to apply to Rent Controller. Else the consistent view of the Supreme Court has been that the provisions of the Limitation Act are not applicable to the Rent Controller.

27. Once that is so, the sole reason for which the petitioner has been denied the order of eviction under Section 14(1)(h) disappears and the order of the ARCT has to be set aside and the order of eviction on the said ground of the ARC to be restored.

28. I may in this regard also notice that Supreme Court in **Dina Nath Vs. Subhash Chand Saini** (2014) 11 SCC 20 has noticed that the pendulum has undoubtedly swung in favour of the landlord and judicial pronouncement have also liberalised the approach to be adopted qua the landlord's prayers for eviction. The same sentiment was reiterated in **Nidhi Vs. Ram Kripal Sharma** 2017 SCC 640 by observing that the legislations made for dealing with landlord-tenant disputes were pro-tenant but in the process of doing justice, the Court cannot be over zealous

and forget its duties towards the landlord also and ultimately it is the landlord who owns the property and is entitled to the same when proves his *bona fide* beyond reasonable doubt.

29. As far as the argument of the counsel for the respondent No.1 / tenant of the demand of eviction under Section 14(1)(h) being not available for the reason of the letting being for residential-cum-commercial purpose, the finding of the ARC is of the premises being residential and having been let out for residential purposes. The said finding had not been disturbed by the ARCT. The counsel for the respondent No.1 has been unable to show any need for this Court to interfere with the said finding.

30. I may even otherwise notice that unlike under Section 14(1)(e) of the Act as under:-

“14. Protection of tenant against eviction. –

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(e) That the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof , or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.

Explanation.- For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

which expressly required the premises to have been let out for residential purposes, there is no such requirement under Section 14(1)(h). However undoubtedly the view taken thereunder was that the premises should have been let out for residential purpose. The reason was obvious. The tenant of a shop could not be evicted therefrom for the reason of having acquired a residence. However here, even according to the respondent No.1 / tenant, the letting was for residential-cum-commercial purposes and the respondent No.1/tenant was residing in the tenancy premises and shifted his residence therefrom on building and acquiring vacant possession of residence at E-67, Greater Kailash-II, New Delhi. Such a tenant would, in my opinion, certainly be liable to be evicted under Section 14(1)(h) even if letting, besides for residential purpose, was for residential-cum-commercial purposes. The claim of the respondent No.1 / tenant in the present case is of keeping sewing machine and carrying out tailoring work from the premises. Certainly the said work can be done from the new residence as well. Moreover, as aforesaid the respondent No.1/tenant, after shifting his residence, has not even proved to be continuing to carrying on stitching work from the premises.

31. Not only so, the requirement under Section 14(1)(e) which requires letting to be for residential purposes for invocation thereof has in ***Satyawati Sharma Vs. Union of India*** (2008) 5 SCC 287 been held to be

violative of the doctrine of equality enshrined in Article 14 of the Constitution of India in so far as discriminates between premises let for residential and non-residential purposes when the same are required *bona fide* by the landlord for occupation for himself and restrict the landlord to seek eviction for requirement of premises let for residential purposes only. On the same parity, the requirement, if any, imposed on the ground of eviction under Section 14(1)(h) being available only when letting is for purely residential purpose and not when letting for residential-cum-commercial purposes would also be violative under Article 14.

32. The only other aspect which remains to be considered is, whether the petition filed for eviction was bad for being for eviction from only part of the premises in the tenancy of the respondent No.1.

33. I may in this regard notice that though in the petition for eviction against para No.1 requiring the Municipal No. of premises to be mentioned only “51-B, Main Bazar, Pahar Ganj, New Delhi” was mentioned but in para 8 of the petition for eviction requiring details of accommodation, the entire premises in the tenancy of the respondent No.1 / tenant that is four rooms, latrine, bathroom, chajja was mentioned. The defect, if any in the notice of demand of rent preceding the petition for eviction would not come in the way of allowing the petition for eviction in so far as under Section 14(1)(h) which does not require any notice to precede the petition for eviction.

34. As far as the demand for eviction under Section 14(1)(a) of the Act is concerned, no arguments have been addressed by either counsel.

35. The petition thus succeeds, the order of ARCT impugned in this petition, in so far as reversing the order of the ARC qua eviction under Section 14(1)(h) of the Act, is set aside and the order of ARC directing eviction of the respondent No.1/tenant under Section 14(1)(h) of the Act is restored.

36. The respondent No.1/tenant is also burdened with costs of Rs. 1lac of this petition.

RAJIV SAHAI ENDLAW, J.

AUGUST 28, 2017

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(corrected & released on 4th January, 2018)

