

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

% **Date of decision: 24th August, 2017**

+ **CM(M) 1256/2012**

NAWAL KISHORE

..... Petitioner

Through: Mr. Rajat Aneja, Ms. Nisha Sharma and Ms. Chandrika Gupta, Advs. with petitioner in person.

Versus

MOHD. YAKUB

..... Respondent

Through: Mr. Rajeet Saxena, Ms. Sophiya Salim and Mr. Manish Khurana, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns; (i) the order dated 13th January, 2011 in E No.159/2007 of the Court of Additional Rent Controller (ARC) (Central), Tis Hazari Courts, Delhi; and, (ii) the order dated 9th August, 2012 in RCT Appeal No.10/2011 (UID No.0240IC0048672011) and RCT Appeal No.13/2011 (UID No.0240IC0056402011) of the Court of Rent Control Tribunal (RCT), Delhi of dismissal of the appeal preferred by the petitioner and allowing the appeal preferred by the respondent, against the order dated 13th January, 2011 supra
2. The petition was entertained and notice thereof ordered to be issued and the Trial Court record requisitioned.
3. The counsels have been heard.

4. The petitioner instituted a petition for eviction of the respondent from a shop in property No.3743-44, Gali No.19, Ragharpura, Karol Bagh, New Delhi-110005 on the grounds provided under Section 14(1)(a),(b) & (j) of the Delhi Rent Control Act, 1958.

5. The learned ARC (Central), Tis Hazari Courts, Delhi vide order dated 13th January, 2011 in the said petition pending as E No.159/2007, while allowed the petition for eviction under Section 14(1)(a) of the Act, dismissed the petition for eviction in so far as under Section 14(1)(b) & (j) of the Act.

6. On appeals preferred to the RCT, by the petitioner as well as the respondent, the RCT had vide the impugned order dismissed the appeal of the petitioner thereby confirming the order of the ARC of dismissal of the petition for eviction under Section 14(1)(b)&(j) of the Act and allowed the appeal of the respondent, thereby reversing the order of the ARC allowing the petition for eviction under Section 14(1)(a) of the Act.

7. The counsel for the petitioner, on enquiry, states that this was a case of first default in payment of rent within the meaning of Section 14(2) of the Act.

8. I have at the outset enquired from the counsel for the petitioner as to the scope of the petition under Article 227 of the Constitution of India; though the Act as it was in existence prior to the amendment with effect from 1st December, 1988, besides providing for first appeal under Section 38 of the Act against the order of the Rent Controller to the RCT, also provided for a second appeal under Section 39 thereof

to the High Court albeit on a question of law only, by amendment of the Rent Act with effect from 1st December, 1988, Section 39 has been deleted and the appeal to the RCT under Section 38 has been made only on a question of law. It has thus been enquired that once the legislative intent is to do away with a second appeal, to what extent in exercise of jurisdiction under Article 227 of the Constitution of India, this Court can continue to interfere. It cannot certainly be within the same parameters as was permitted under Section 39 of the Act which has been deleted and if it were to be held so, it would amount to rendering nugatory the deletion of Section 39.

9. The counsel for the petitioner agrees that the scope of challenge under Article 227 of the Constitution thus has to be narrower than the scope under the erstwhile Section 39 of the Rent Act. However, the counsel for the petitioner, on enquiry, states that to his knowledge, there is no judgment of this Court considering the said aspect or laying down the parameters of the jurisdiction under Article 227 of the Constitution against the orders of the RCT. The counsel for the respondent also has not cited any judgment in this respect.

10. I however find the High Court of Andhra Pradesh in ***Shaik Abdul Haq Vs. Aiswarya Nilaya Chit Fund Pvt. Ltd. and Ors.*** Manu/AP/ 0194/2005 to have in the context of Section 102 of the Civil Code of Procedure, 1908, amended with effect from 2002, taking away the remedy of second appeal against a judgment and decree when the subject matter of the original suit is for recovery of money not exceeding Rs.25,000/-, to have held that if petitions under Article

227 of the Constitution are entertained against the judgment and decree of the first Appellate Court, it will amount to exercising the appellate jurisdiction which has been prohibited by the legislature and by the Supreme Court in *Yeshwant Sakhalkar Vs. Hirabat Kamat Mhamai* 2004 6 SCC 71, *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta* AIR (1975) 1 SCC 858 and in *Ranjeet Singh Vs. Ravi Prakash* (2004) 3 SCC 682. I also find the High Court of Rajasthan to have in *Municipal Council, Sawai Madhopur Vs. Civil Judge (S.D.), Sawai Madhopur* 2003 SCC OnLine Raj 432 expressed a similar doubt. As far as this Court is concerned, I however find a Co-ordinate Bench in *Jasbir Singh Vs. Manjit Kaur* MANU/DE/4346/2013 to have held that a petition under Article 227 to be maintainable but without this Court in the garb thereof acting as a Court of appeal. It was held that interference there under is only to keep authorities and the Courts in the supervisory jurisdiction of this Court within their bounds and where it results into manifest miscarriage of justice and not in all cases, to correct mere errors. It was yet further held that the powers under Article 227 of the Constitution are discretionary in nature, to be exercised where the lower court ignores material piece of evidence or considers some evidence which should not be considered and resulting into injustice. It was held that where there are two views possible and the view adopted by the lower court is reasonable and a plausible one, this Court would not be justified in interfering in such cases merely to arrive at different view in the matter.

11. I thus proceed to examine the challenge with the said parameters in mind.

12. As far as the ground of eviction under Section 14(1)(a) is concerned, it is not in dispute (i) that the respondent is an old tenant in the premises, earlier under the mother namely Prabhati Devi and brother Puran Chand of the petitioner; (ii) that the petitioner claims to have become the owner/landlord of the premises in the tenancy of the respondent under a Family Settlement dated 12th April, 1989; (iii) however the respondent continued to pay rent to Prabhati Devi and Puran Chand till 30th June, 1993 and notwithstanding the Family Settlement of 12th April, 1989, the petitioner allowed Prabhati Devi and Puran Chand to collect rent; (iv) that the petitioner for the first time claimed rent from the respondent vide legal notice dated 4th November, 1993; though it was claimed therein that even prior thereto oral request for payment of rent with effect from 1st July, 1993 were made to the respondent; (v) that the respondent gave a reply dated 13th December, 1993 to the legal notice dated 4th November, 1993 of demand of rent and in which the respondent though did not dispute the oral demand claimed to have been made by the petitioner for rent but stated that the petitioner inspite of being asked to furnish the documents of his entitlement to rent, had not furnished the same; (vi) that the respondent on 22nd December, 1993 i.e. well within two months of the date of legal notice dated 4th November, 1993, deposited the rent with effect from 1st July, 1993, till December, 1993 under Section 27 of the Rent Act.

13. What emerges is, that the respondent, within two months of the notice of demand dated 4th November, 1993, tendered the rent by deposit of the same under Section 27 of the Act and there was thus no

default in payment of rent within the meaning of Section 14(1)(a) of the Rent Act.

14. Notwithstanding the same, the learned ARC held the ground of eviction under Section 14(1)(a) to have been made out, for the reason of the respondent/tenant though having deposited the demanded rent, having not deposited the interest thereon. It was thus held that the deposit under Section 27 of the Act was not a valid deposit, being not inclusive of the interest due on the arrears of rent.

15. The RCT in appeal has set aside the finding aforesaid of the ARC, reasoning that since the petitioner in the notice of demand of rent had not demanded interest on arrears of rent, the respondent could not be said to be in default of what was not demanded.

16. The provision for interest also was introduced in the Rent Act with effect from the amendment aforesaid with effect from of 1st December, 1988 by amending Section 26(1) thereof which now reads as under:

“26. Receipt to be given for rent paid.—(1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable and where any default occurs in the payment of rent, the tenant shall be liable to pay simple interest at the rate of fifteen per cent, per annum from the date on which such payment of rent is due to the date on which it is paid.”

17. However no corresponding amendment has been carried out to Section 14(1)(a) of the Act which continues to provide for eviction for non-payment of rent, without mentioning the word 'interest' and without making default in payment of interest demanded a ground of eviction. I have thus enquired from the counsel for the petitioner, as to how default, even if any in payment of interest on arrears of rent, can constitute a ground of eviction.

18. The counsel for the petitioner has referred to ***Prof. Ram Prakash Vs. D.N. Srivastava*** 126 (2006) DLT 6 where a Co-ordinate Bench of this Court held that the words "whole of the rent legally recoverable from" the tenant would include in their ambit the interest accrued on the contractual amount as rent for use and occupation of the premises. The same learned Judge followed the same view in ***Harvans Kumari Vs. Sharda Aggarwal*** 128 (2006) DLT 299.

19. I have however further enquired from the counsel for the petitioner, that the Legislature in Section 26(1) of the Rent Act having made the tenant liable for interest only when "any default occurs in the payment of rent", whether the respondent can be said to be in default in payment of rent from 1st July, 1993 to 30th September, 1993 when the petitioner had not even demanded the same and when according to the petitioner also the first demand in writing was by legal notice dated 4th November, 1993.

20. The counsel for the petitioner has sought to correct by contending that the rent was due till 30th October, 1993.

21. I am unable to agree. Vide Section 26(1) of the Act, in the absence of a contract to the contrary, rent for the month becomes due and payable by a tenant by the fifteenth day of the succeeding month and thus the rent for the month of October, 1993 cannot be said to be due and payable on 4th November, 1993 when the notice was issued. Thus, the default in pursuance to the notice dated 4th November, 1993 can only be for the months of rent of July, August and September, 1993. It is not the case of the petitioner that there was any contract for payment of rent at any earlier point of time.

22. The counsel for the petitioner in response to the query aforesaid has argued that the respondent was liable to pay the rent for the months of July, August and September, 1993 and if none was coming forward to receive the rent, the respondent ought to have deposited the rent for each month in the Court, month by month, when the rent became due for each month and without having made such deposit, the respondent would in any case remain liable for interest.

23. It is also argued that as per the Rent Deed dated 15th December, 1978 executed by the respondent, the rent was payable in advance for each month.

24. However, on enquiry, it is stated that the said Rent Deed though a bilateral document, has not been registered. Once it is not registered, it cannot be seen for any purpose and no reliance can be placed thereon. Be that as it may, for the present purpose, it makes no difference, whether the rent was due till the month of September, 1993

or till the month of October, 1993, as the outcome is not dependent thereon.

25. I am unable to agree with the contention of the counsel for the petitioner, of the respondent being liable to deposit the rent under Section 27 of the Act, month by month. The deposit of rent under Section 27 of the Rent Act or as was then the practice under Section 31 of the Punjab Relief of Indebtedness Act, 1934 was optional and it is only vide dicta of the Supreme Court in *Atma Ram Vs. Shakuntala Rani* (2005) 7 SCC 211 that it has been held that deposit under the provisions of the Punjab Relief of Indebtedness Act, 1934 is not a valid tender under the Rent Act. Similarly, it is only vide in *Sarla Goel Vs. Kishan Chand* (2009) 7 SCC 658 it was held that the deposit under Section 27 of the Rent Act cannot be accepted by the Rent Controller, if for a period of more than one month. Till prior thereto, the prevalent practice was of deposits under Section 27 of the Rent Act being made for several months, if not years, together. The reason therefor was that a tenant like in the present case paying rent @ Rs.60/- per month cannot be expected to incur the effort and money and lawyer's costs and court fees in deposit of rent month by month putting unnecessary burden on the tenant. Reference in this regard can be made to *Jitender Kumar Vs. Inderpreet Singh* MANU/DE/2949/2008.

26. I am therefore unable to agree that the respondent was liable to deposit the rent for the month of July, 1993 on 15th August, 1993 and for August, 1993 by 15th September, 1993 and so on and if did not do

so, became liable to pay interest under Section 26(1) of the Rent Act thereon. Moreover till that time, the petitioner was nowhere in picture and the deposit, even if had been made would not have enured for the benefit of the petitioner. It thus cannot be said that the respondent was in default in payment of rent to the petitioner till the petitioner asked the respondent to pay rent to the petitioner and which admittedly, for the first time was vide notice dated 4th November, 1993.

27. The counsel for the respondent has in this regard drawn attention to Ex.AW1/14 on the Trial Court record being a letter dated 3rd January, 1994 of Prabhati Devi and Puran Chand aforesaid asking the respondent to pay rent to the petitioner. It is contended that even till the date of notice dated 4th November, 1993, the said Prabhati Devi and Puran Chand who were the landlords of the respondent had not asked the respondent to pay rent and to attorn to the petitioner as landlord.

28. The Legislature, while amending Section 26 of the Rent Act, has made the tenant liable for interest not in all situations where rent remains in the pocket of the tenant but only where the default occurs in payment of rent and which default vis-a-vis the petitioner cannot be said to have occurred, for the rent demanded by the petitioner from the respondent vide demand notice dated 4th November, 1993, to be held to be inclusive of interest in terms of ***Prof. Ram Prakash*** supra.

29. Thus, *de hors* the reasoning given by the RCT, I am for the reasons aforesaid of the view that no case for allowing the petition for eviction under Section 14(1)(a) of the Rent Act was made out.

30. Though in the case of the RCT reversing the judgment of the ARC, as in the present case qua Section 14(1)(a), the scope of examination by this Court under Article 227 of the Constitution of India may be larger as would be evident from the detailed discussion hereinabove but where the RCT has confirmed the findings of the ARC, as qua Section 14(1)(b)&(j), in my view, this Court would be more circumspect in interfering under Article 227 of the Constitution. It cannot be lost sight of that the grounds of eviction as under Section 14(1)(b) & (j) are factual in nature and concurrent findings of fact cannot ordinarily be interfered with.

31. The counsel for the petitioner, with respect to the ground of eviction under Section 14(1)(j) of the Rent Act has argued (a) that the respondent in reply dated 13th December, 1993 supra to the legal notice dated 4th November, 1993 denied that there was any construction of basement and *dochhatti* or any addition or alteration carried out by him in the premises as contended in the legal notice; (b) however in the written statement filed to the petition for eviction, the respondent admitted the existence of the basement and *dochhatti* but pleaded that the same had been constructed with the consent of Prabhati Devi and Puran Chand and were part of the strengthening of the foundation of the building to enable Prabhati Devi and Puran Chand to convert the property, in a shop on the ground floor whereof, the respondent is a tenant, from a two storey building to a four storey building; (c) that the onus to prove such consent was on the respondent; (d) however the ARC and the RCT have held that it was for the petitioner to have examined his mother and brother Prabhati

Devi and Puran Chand in this respect and which best evidence had been suppressed by the petitioner; (e) that the construction of a basement and *dochhatti* by fixing girders in the walls of the premises per se amounts to damage to the property without requiring any further proof; (f) that Puran Chand died in the year 1996, Prabhati Devi died on 27th October, 2000, while recording of evidence in the petition for eviction instituted in or about January/February, 1994, commenced only in 2007.

32. On enquiry, it is stated that the recording of evidence was delayed owing to an application for amendment of the petition for eviction filed by the petitioner and qua which the parties went till the Supreme Court.

33. Section 14(1)(j) of the Rent Act entitles the landlord to evict a tenant if the tenant has caused or permitted to be caused substantial damage to the premises. Section 14(10) of the Rent Act provides that no order for the recovery of possession of any premises shall be made on the ground specified in Section 14(1)(j) if the tenant, within such time as may be specified in this behalf by the Controller, carries out repairs to the damage caused to the satisfaction of the Controller or pays to the landlord such amount by way of compensation as the Controller may direct.

34. The counsel for the respondent has in this regard argued that the petitioner did not dispute that the property was converted from a two storey building to a four storey building. He has contended that for the same, the foundations had to be strengthened and which was the

reason why the floor of the shop in the tenancy of the respondent was also permitted to be lowered. It is the case of the respondent that the said changes were made in the year 1987, while according to the petitioner, the said changes were made in October, 1993.

35. If the changes were made in the year 1987 then it is evident that Prabhati Devi and Puran Chand who were the then landlords did not object thereto. I find it against the preponderance of probability that the petitioner, who on 4th November, 1993 through an advocate got issued a legal notice, if the changes were taking place in October, 1993 would not have immediately objected or filed a suit for injunction or complained to the various authorities about the same. For this reason, I am of the view that no error apparent on the record qua the said ground is found and no case for interference is made out.

36. In my view, Section 14(1)(j) of the Rent Act essentially remains a question of fact and qua which there are concurrent findings of the ARC and RCT and no ground for interfering therewith in exercise of powers under Article 227 of the Constitution of India is made out.

37. The ground of sub-letting/parting with possession without the consent of the petitioner within the meaning of Section 14(1)(b) of the Rent Act was on the plea of the respondent having allowed one *kolki*, earlier forming a part of his shop, to form part of the tenancy premises of a tenant in an adjoining shop and on the ground of the respondent having allowed his son to carry on business from the shop.

38. The counsels are *ad idem* that the respondent also was earlier carrying on business of sale of meat as his son is now carrying on.

39. The counsel for the petitioner has argued that the respondent in his evidence has admitted that his son only opens and closes the shop and carries on business therefrom.

40. The counsel for the respondent states that it is the evidence of the respondent that while his other son is carrying on business from another shop, one son is carrying on business from the subject shop and the respondent is involved in business of both the shops and assists in the said business.

41. As aforesaid, the finding of sub-letting or unauthorisedly parting with possession is also essentially a finding of fact and no case of any error apparent in reading the evidence or in drawing wrong legal inference from the evidence on record is made out vis-a-vis the said ground either.

42. There is thus no merit in the petition.

43. Dismissed.

No costs.

AUGUST 24, 2017

‘BS/R’

(Corrected & released on 3rd October, 2017)

RAJIV SAHAI ENDLAW, J.