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

+ CM(M) 1284/2017

IQBAL SINGH

..... Petitioner

Through: Ms. Vasudha V. Indurkar, Advocate

Versus

JAGDISH PRASAD

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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14.11.2017

CM No.41052/2017 (exemption)

1. Allowed subject to just exceptions.
2. The application is disposed of.

CM(M) 1284/2017 & CM No.41051/2017 (for stay)

3. This petition under Article 227 the Constitution of India impugns the order [dated 5th July, 2017 in RCT No.52/2016 of the Court of District & Sessions Judge, South District, Saket Court, New Delhi] of dismissal of the appeal under Section 38 of the Delhi Rent Control Act, 1958 filed by the petitioner against the order [dated 16th September, 2016 in E-6043/2016 of the Court of Additional Rent Controller (South), Saket Courts, New Delhi] finding the respondent to have made out a case under Section 14(1)(a) of the Act against the petitioner.
4. I have, at the outset, enquired from the counsel for the petitioner, whether the petitioner has been granted a benefit of Section 14(2) of the Act.

5. The counsel for the petitioner replies in the affirmative.
6. The counsel for the petitioner is arguing the matter as an appeal. The counsel has been reminded that though the Rent Act vide Section 39 thereof provided for the remedy of Second Appeal to this Court against the order of the Rent Control Tribunal, albeit on a question of law only, but the said Section 39, vide amendment to the Rent Act with effect from 1st December, 1988, has been deleted and the appeal from the order of the Rent Controller to the Rent Control Tribunal under Section 38 of the Act which prior to the said amendment was on facts as well as law, has been limited only on questions of law. The legislature having deleted the provision for Second Appeal, though a petition under Article 227 of the Constitution of India would still lie against the order of the Rent Control Tribunal, but the same cannot be substitute for a Second Appeal, provision wherefor has been deleted. Thus, the ground for interference under Article 227 of the Constitution of India has to be much more limited than the ground for interference in an appeal. In a proceeding under Article 227 of the Constitution of India, the evidence cannot be appreciated and re-appreciated unless the findings reached by the courts below are found to be perverse, that is, which no reasonable person on the basis of material on record could have reached.
7. The counsel for the petitioner has then argued that the petitioner was a tenant in the premises under one Devinder Singh and has been paying rent to Devinder Singh even after the date when the respondent claims to have acquired the property.

8. I have enquired from the counsel for the petitioner, whether the petitioner, after institution of the petition for eviction from which this petition arises, issued any letter to Devinder Singh informing him of the claim made by the respondent adversely to the said Devinder Singh and whether Devinder Singh has taken any action in pursuance to such notice, if any issued.

9. The answer is in the negative and no action has been initiated by Devinder Singh asserting his right, title and interest in the property.

10. The counsel for the petitioner however states that after Devinder Singh stopped accepting the money orders towards rent sent by the petitioner, the petitioner instituted a civil suit and in which suit, Devinder Singh was proceeded against *ex parte* and the petitioner was permitted to deposit the rent in the Court.

11. Supreme Court, in *Atma Ram Vs. Shakuntala Rani* (2005) 7 SCC 211, followed by this Court in *Harish Ahuja Vs. S.P. Minocha* 159 (2009) DLT 551 has held that owing to Section 27 of the Rent Act, it is not open to a tenant to file a civil suit to deposit rent as is claimed to have been filed and such deposit if any is not to be treated as a valid payment of rent.

12. I have perused the order of the Additional Rent Controller and find the Additional Rent Controller to have held, that the respondent in his evidence had proved Agreement to Sell, General Power of Attorney, Will, Affidavit, Special Power of Attorney, Receipt of Sale Consideration executed by Devinder Singh in favour of the respondent and on the basis thereof, the Additional Rent Controller has concluded the respondent to be the landlord of the petitioner.

13. The counsel for the petitioner has argued that there is no sale deed from Devinder Singh in favour of the respondent and the petitioner has never attorned to the respondent as landlord.

14. Supreme Court, in *Shanti Sharma vs. Ved Prabha* (1987) 4 SCC 193 held that even for a petition for eviction under Section 14(1)(e) of the Act, which requires the person filing the petition for eviction to be not only the landlord but also the owner of the premises, absolute ownership is not essential and a title better than that of the tenant suffices. Section 14(1)(a) of the Act, under which the respondent filed the petition for eviction from which this petition arises, does not even require the person filing the petition to be the owner and what it requires is only the existence of relationship of landlord and tenant. The same principle as held in *Shanti Sharma* (supra) would apply and the respondent, if has a title better than the petitioner, would become the landlord of the petitioner.

15. As far as the contention of the counsel for the petitioner of having not attorned to the respondent as landlord is concerned, I have recently in judgment dated 6th September, 2017 in RC REV. No.422/2017 titled *Vijay Sharma Vs. Namita Aggarawal* on the basis of earlier judgments reiterated that an act of attornment is not essential and attornment is under the law. Though the same was held in the context of transfer of title but once transfer of landlordship is the only requirement, the said principle would apply.

16. The next argument of the counsel for the petitioner is that the respondent, prior to the filing of the petition for eviction from which this petition arises, had filed an earlier petition for eviction against the petitioner, also under Section 14(1)(a) of the Act and on the basis of a notice dated 10th

May, 2000 and which petition for eviction was withdrawn; hence the second petition, without liberty to file afresh, was not maintainable and was barred.

17. The said argument is again made without regard to law and facts. As per the impugned judgments, the petition for eviction from which this petition arises was premised on a notice dated 4th July, 2010 of demand of rent and it has been held in *M/s Moti Mahal Delux-II Vs. Kiran Dutta* (2015) 217 DLT 356 and *Mirajuddin Vs. Mohammad Habib* 2014 SCC OnLine Del 3803 that the grounds of eviction specified under proviso to Section 14 of the Act are recurring causes of action and merely because an earlier petition was withdrawn would not bar the respondent from, by issuing a fresh notice and file a fresh petition for eviction.

18. The only other argument is that the respondent knew of the Suit aforesaid filed by the petitioner against Devinder Singh.

19. The same is not a material factor for the controversy.

20. There is no merit in this petition.

21. Dismissed.

RAJIV SAHAI ENDLAW, J

NOVEMBER 14, 2017
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