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

+ CM(M) 1293/2017 & CM No.40553/2017 (for stay)

BIMLA DEVI & ORS

..... Petitioners

Through: Mr. Rohit Minocha & Mr. Chaitanya
Sahoo, Advs.

Versus

LAXMI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.11.2017

1. This proceeding, instituted as an Execution Second Appeal and directed vide order dated 10th November, 2017 to be treated as a petition under Article 227 of the Constitution of India, impugns the order [dated 6th October, 2017 in RCT/8/17 of the Court of Rent Control Tribunal (RCT) (North-East), Karkardooma Courts, Delhi] of dismissal of appeal filed by the petitioners against the order dated 26th July, 2017 in Ex. No.10687/2015 of the Court of Additional Rent Controller (ARC) (North-East), Karkardooma Courts, Delhi.

2. The matter came up before this Bench yesterday, when finding that there was a spate of earlier orders in the proceedings and all of which had not been filed, an opportunity was given to the counsel for the petitioners to produce the same and the matter listed for today. Further, since it was informed that the warrants of possession had already been issued and the matter was placed for yesterday itself before the Administrative Civil Judge (ACJ) for allocation of Bailiff, it was also directed that the Bailiff be appointed for a date and time after today.

3. Though the counsel for the petitioners was also asked to inform the

counsel for the respondent of today's date and the counsel for the petitioners claims to have so informed but none appears for the respondent.

4. The counsel for the petitioners on further enquiry states that the ACJ has posted the matter to tomorrow.

5. The counsel for the petitioners has been heard and copies of the orders filed in terms of yesterday's direction have been perused.

6. What emerges is as under:

- (i) that the respondent Smt. Laxmi filed a petition for eviction of one Sh. Kishan Kumar, impleaded as petitioner no.2 herein, from Flat No.M-20, C-1, Second Floor, DDA Flats, Dilshad Garden, Delhi under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (Rent Act);
- (ii) Kishan Kumar contested the petition for eviction contending that his father Ram Das was the owner in possession of the said flat which was allotted by DDA in favour of his father Ram Das and he was residing therein along with his father Ram Das;
- (iii) Ram Das, father of Kishan Kumar, on the same facts, applied for impleadment in the said petition for eviction;
- (iv) the application of Ram Das for impleadment was dismissed and an order of eviction was passed in favour of the respondent Laxmi and against the petitioner No.2 Kishan Kumar;
- (v) upon the respondent Laxmi applying for execution of the said order of eviction, Ram Das filed objections under Section 25 of the Rent Act, claiming that he was the owner in possession of the flat aforesaid allotted to him by the DDA and that the respondent Laxmi was his wife's sister and the respondent

Laxmi and her husband had got papers i.e. Agreement to Sell, Power of Attorney, Will etc. of transfer of said flat executed from him while he was in a drunken state;

- (vi) Ram Das also filed a Civil Suit for declaration of his rights with respect to the said flat;
- (vii) the aforesaid objections were allowed by the ARC;
- (viii) RCT, in appeal preferred by the respondent Laxmi, set aside the order of the ARC allowing the objections and dismissed the objections of Ram Das;
- (ix) CM(M) No.66/2011 preferred by Ram Das and Kishan Kumar to this Court was dismissed vide order dated 24th January, 2011;
- (x) Ram Das again filed objections to the execution, this time under Order XXI Rule 101 of the CPC and which objections were dismissed summarily by the ARC as not maintainable;
- (xi) however upon appeal being preferred by Ram Das, not to the Court of RCT but to the Court of District Judge, surprisingly, the appeal was entertained though arising from the order of the ARC and the Additional District Judge-01, North-East District, Karkardooma Courts, Delhi to whom the appeal was assigned also, without realising the said fact though realising that the proceedings from which the appeal had arisen were under the Rent Act, treated the matter as under Code of Civil Procedure, 1908 (CPC) and allowed the appeal and remanded the matter to the “Executing Court with directions to hear and dispose of the objections before proceeding further with the execution”;

- (xii) at that stage, Ram Das died and was substituted by his wife, sons and daughters including the aforesaid Kishan Kumar; and,
- (xiii) the learned ARC again dismissed the objections and an appeal was again preferred to the RCT and which has been rightly dismissed vide the impugned order, holding the same to be by way of re-litigation.

7. In the aforesaid scenario, I have enquired from the counsel for the petitioners as to how the petitioners can first have a round of litigation by filing objections under Section 25 of the Rent Act and after the said objections have been dismissed and the said order has attained finality, have a second round under Order XXI Rule 101 of the CPC. Significantly, at each stage i.e. a) in the written statement of Kishan Kumar to petition for eviction; b) in the application of Ram Das for impleadment; c) in the objections of Ram Das under Section 25 of the Rent Act; and, d) in the objections under Order XXI Rule 101 of CPC to execution of eviction order, the same facts as aforesaid were pleaded and which have not met with any success.

8. Though the counsel for the petitioners started by saying that Section 25 of the Rent Act and Order XXI Rule 101 of the CPC confer separate rights but thereafter did not even proceed to demonstrate how, as possibly cannot be under the law.

9. The petitioners / their predecessor, merely by labelling their plea, first as under Section 25 of the Rent Act and thereafter as under Order XXI Rule 101 CPC, cannot have the same plea adjudged twice and have repeated rounds of litigation. Re-litigation, in ***K.K. Modi Vs. K.N. Modi*** (1998) 3 SCC 573 has been held to be abuse of process of Court.

10. This Court, on conspectus of earlier judgements, in ***J.L. Jhamb Vs. Sheela Devi*** (1986) 30 DLT 470 held that to protect / safeguard the interest of a person claiming an independent title, the proviso to Section 25 has been enacted in the Rent Act and in adjudication thereunder, the procedure as prescribed in Order XXI Rules 100 and 101 has to be followed. Thus, after the objections preferred under proviso to Section 25 of the Rent Act have been dismissed and the said order has attained finality, a second round under Order XXI Rules 100 and 101 of the CPC cannot be commenced.

11. The only other argument of the counsel for the petitioners is that the suit of the petitioners is still pending.

12. If the petitioners succeed in the said suit and have claimed the relief, of possession therein and / or other relief which may entitle them to possession, notwithstanding the execution of the eviction order which has attained finality and on dismissal of objections of Ram Das being the predecessor of the petitioners, till the High Court on 24th January, 2011, they would certainly be entitled to get back the possession. It was so held by the Division Bench of this Court in ***Jai Singh Rana Vs. Mohinder Mohan Goel*** ILR (1995) II Delhi 188. It will also be open to the petitioners, to, if entitled in law, in the suit stated to be pending, obtain orders for restraining the respondent Laxmi from, after recovering possession, parting with the possession or dealing with the property.

13. There is no merit in the petition.

14. Dismissed.

15. At this stage, the counsel for the petitioners, under instructions from the petitioners stated to be present in Court states that the petitioners undertake to this Court to, on or before 16th December, 2017 hand over

vacant peaceful physical possession of the entire flat to the respondent Laxmi without prejudice to their rights and contentions in the suit.

16. The counsel also states that he has made the petitioners understand the consequences of breach of undertaking given to this Court.

17. Accepting the aforesaid undertaking of the petitioners and binding the petitioners jointly and severally therewith, it is deemed appropriate to grant time till 16th December, 2017 as sought.

18. Needless to state that in the event of the petitioners being in breach of their undertaking, the respondent Laxmi, besides executing the order of eviction shall also be entitled to proceed against the petitioners for breach of undertaking given to this Court.

19. The ACJ, North-East District, Karkardooma Courts, Delhi is requested to issue warrants of possession and appoint the Bailiff for 17th December, 2017 at 10:00 AM, for the warrants of possession to be executed with police aid and by breaking open the locks and doors, in the event of the petitioners being in defiance of their undertaking.

20. Since this order has been made without hearing the respondent, the respondent shall have option to apply for variation / modification if so desires.

21. The petition is disposed of.

No costs.

Dasti under signature of the Court Master.

RAJIV SAHAI ENDLAW, J

NOVEMBER 16, 2017

‘gsr’..