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

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Date of pronouncement: 29.11. 2018

+ C.R.P. 34/2016 & C.M. APPL. No.7288/2016

JIYA RANI @ JIYA JOSHI

..... Petitioner

Through

Mr.Harvinder Singh, Advocate along
with petitioner in person.

versus

NARINDER KUMAR DHINGRA & ORS

..... Respondents

Through

Mr.J.M.Bari,Adv. with Ms.Meenakshi
Bari, Adv. for R-1 to 7.
Mr.M.K.Singh, Adv. for DDA/R-8

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This petition is filed under Section 115 of the CPC for setting aside of the order dated 06.11.2015 passed by the trial court whereby an application filed by the petitioner/defendant No. 1 under Order 7 Rule 11 CPC was dismissed.

2. The suit has been filed by the plaintiffs/respondents No. 1 to 7 for declaration and permanent injunction. They have sought a decree of declaration declaring that the plaintiffs/respondents No. 1 to 7 are the occupants under respondent No.8/defendant No.2/DDA and are not the tenants of the petitioner qua the suit premises being one shop with two lofts forming part of the property No. T-420(J-227) forming part of municipal No.1/2-5090, Ward No. XV, Phatak Mishri Khan, Near Khanna Talkies, Main Bazar, Pahar Ganj, New Delhi. A decree of permanent injunction is

also sought to restrain the petitioner/defendant No. 1 from taking possession of the suit premises on the basis of the eviction order dated 14.12.1995 passed by the court of Additional Rent Controller.

3. The petitioner stating herself to be landlord had filed an eviction petition under Section 14(1)(a) & (j) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) against respondents No. 1 to 7. The Additional Rent Controller vide its order dated 14.12.1995 negated the pleas of the plaintiff/respondents No. 1 to 7 and passed an eviction order against the said respondents. The ARC held that there existed a relationship of landlord tenant between the parties. The respondents preferred an appeal against the said order dated 14.12.1995. The same was also dismissed on 26.02.2004 by the Additional Rent Control Tribunal. Against the said order of the Rent Control Tribunal, the respondents preferred a petition under Article 227 of the Constitution of India before this court being CM(M) 433/2006 titled as Surinder Kumar Dhingra vs. Kumari Jia Rani & Ors. The operation of the eviction order was stayed by this court. However, the said petition on 24.11.2006 was dismissed for non-prosecution and the interim order was vacated. In 2013, the petitioner commenced execution proceedings against respondents No. 1 to 7. It was at that stage that respondents No. 1 to 7 filed the present suit.

4. In the suit that is filed by respondents No. 1 to 7, it has been prayed that the lease in respect of the suit premises that was granted in favour of the predecessor of the petitioner was cancelled by the Delhi Improvement Trust on 07.03.1944. A decree dated 29.05.1946 for ejectment and damages was passed by the concerned court in a suit filed by the Delhi Improvement Trust against the said predecessor in interest of the petitioner. An appeal filed by

the predecessor of the petitioner was also dismissed on 23.07.1946. It is further pleaded that Sh. Pritam Das Dhingra, the father of the plaintiff/respondent No. 1 had been in possession of the suit premises since 01.01.1961. A notice was issued to him i.e. Mr. Pritam Das Dhingra under Section 7(3) of the Public Premises (Eviction of Unauthorized Occupants) Act. The Estate Officer directed payment of rent from 01.01.1961 to 31.03.1973 which was duly paid by Sh.Pritam Das Dhingra. It is pleaded that the petitioner was dispossessed from the suit premises by DDA/respondent No. 8 and by getting the attornment in its favour, respondents No.1 to 7 are now in rightful occupation under DDA. Reliance is placed on various demands raised by DDA based on which rent had been paid by Sh.Pritam Das Dhingra the predecessor of respondents No. 1 to 7. Hence, it is pleaded that despite the above position, the petitioner had based on a fictitious rent note filed the eviction petition under Section 14(1) (a) & (j) of the DRC Act. It is reiterated that the plaintiffs/respondents No. 1 to 7 having attorned to the Head Lessor and there is now a relation in existence between the plaintiffs/respondents No. 1 to 7 and DDA. It is also pleaded that the orders of the Rent Control authorities would not be *res judicata* as the same is not a final decision of a competent court regarding right, title and interest in respect of the suit premises. Hence, the present suit.

5. The petitioner filed an application under Order 7 Rule 11 CPC pointing out that present pleas are barred on the basis of the principle of *res judicata* as all these submissions have been duly adjudicated upon by the rent control authority while adjudicating the petition of the petitioner under Section 14(1)(a) & (j) of the DRC Act. It is further pleaded that even otherwise, the present suit would not lie as under Section 47 of CPC read

with Order 21 Rule 101 CPC, all questions arising between the parties are to be determined by the court dealing with the execution and not by a separate suit.

6. The trial court by the impugned order however dismissed the application under Order 7 Rule 11 CPC holding that the finding recorded by the Rent Controller on the relationship between the parties as landlord and tenant is not final. The petition before the Rent Control Authorities cannot be equated as a suit and hence, the ingredients of Section 11 CPC are absent and the same cannot be invoked in the present facts. The application was hence dismissed.

7. I have heard learned counsel for the parties.

8. Learned counsel for the petitioner has relied upon the judgment of the Constitution Bench of the Supreme Court in the case of ***Om Prakash Gupta vs. Rattan Singh & Anr., 1964 (1) SCR 259*** to contend that the Rent Controller has the jurisdiction to decide regarding the relationship of landlord and tenant between the parties. This adjudication having been done once and made by an authority having power in law to do so, the said issue cannot be adjudicated upon again in a civil court after an eviction order has been passed by the Rent Controller. He also relies upon the judgment of the Full Bench of this court in ***Pritam Dass vs. Kumar Jiya Rani, AIR 1981 Delhi 269*** to contend that in a previous litigation between the parties the entire issues raised by the petitioner regarding the relationship of landlord and tenant stood fully settled.

9. Learned counsel appearing for respondents No. 1 to 7 has relied upon the judgment of the Punjab and Haryana High Court in ***Amar Singh Amol Anr. vs. Dalip, AIR 1981 P&H 237*** where the court held that a decision of a

revenue court under the Punjab Tenancy Act upon a relationship of landlord and tenant between the parties would not operate as *res judicata* and would be open to challenge in a subsequent suit or in any other collateral proceedings between the parties.

10. Learned counsel for respondent No. 8/DDA has denied that respondents No. 1 to 7 are its tenant. He relies upon the judgment of the Supreme Court in the case of ***DDA vs. M/s. Anant Raj Agencies Pvt. Ltd., (2016) 11 SCC 406*** to contend that merely because respondents No. 1 to 7 have paid some rent, they do not become tenants of DDA.

11. I may note that in this case in the previous proceedings initiated by the petitioner before the rent control authorities, the ARC vide its judgment dated 14.12.1995 rejected the entire contentions raised by respondents No. 1 to 7 and passed an eviction order in favour of the petitioner and against respondents No. 1 to 7. A perusal of the said judgment would show that the same objections have been raised in the present suit regarding the title/relationship of landlord and tenant that were raised before the Rent Controller. It was strongly pleaded before the Rent Controller that the lease in respect of the suit premises that was granted in favour of the predecessor of the petitioner was cancelled by the Delhi Improvement Trust on 07.03.1944. It was also pleaded that a suit for ejectment and recovery of arrears and damages was filed against the predecessor in interest of the petitioner and the same was decreed on 29.05.1946. An appeal was preferred before the District Judge which was also dismissed on 23.07.1947. Further on 12.03.1974, the Estate Officer passed an order directing respondents No. 1 to 7 to pay rent/damages in respect of the suit premises which the said respondents had paid. Reference was made to various orders whereby the

respondents had paid damages/rents to DDA. Based on these submissions, the plea of the respondents No. 1 to 7 that they have a direct relation now with the superior lessor i.e. DDA was noted. The ARC also noted that the decree that was passed in favour of the Delhi Improvement Trust was never executed by DDA. The eviction order passed by the Estate officer was appealed against before the District Judge. The appeal was accepted by the District Judge. It was also noted in the order of the District Judge that there was an out of court compromise between the Delhi Improvement Trust and the petitioner, pursuant to which, payments were made to the Delhi Improvement Trust and an assurance was given that the decree would not be executed. The decree having not been executed, under the Limitation Act, the period for execution of the decree had lapsed. Hence, the petitioner was never dispossessed by DDA by way of execution of the decree. Hence, the ARC concluded that the payments made by respondents No. 1 to 7 to DDA pursuant to notices were of no avail and that his contractual liabilities with the petitioner stands and he was under an obligation to pay rent to the petitioner. Rejecting the plea of respondents No. 1 to 7/plaintiffs, an eviction order was passed in favour of the petitioner. In appeal, the Rent Control Tribunal upheld the order of eviction and dismissed the appeal. It was reiterated that respondents No. 1 to 7 had no business to deposit any charges with the Estate officer in any proceedings and that respondents No. 1 to 7 were inducted by the petitioner as tenant and were bound to pay rent to the petitioner.

12. As already noted above, a petition under Article 227 of the Constitution of India was filed before this court being CM(M) 433/2006 by respondents No. 1 to 7 against the order of the Rent Control Tribunal. The same

was also dismissed for non-prosecution on 24.11.2006 and the interim order passed earlier was also vacated.

13. I may also note that proceedings in this case had initially started by an application filed by the respondents (petitioner herein) on the ground of non-payment of rent and substantial damages caused to the premises. In the initial petition, the Additional Rent Controller by her order dated 24.01.1977 passed an order under section 15(1) of the DRC Act directing tenant/respondent Nos.1 to 7 to deposit all arrears of rent w.e.f. 01.10.1973 till 31.12.1976 within one month. The matter went up in appeal before the learned Rent Controller. Thereafter, a second appeal was filed by the tenant before this court. On the issue of powers of the Rent Controller under section 15(1) of the DRC Act, the matter was referred to a Full Bench of this court. The Full Bench in the said case of *Pritam Dass vs. Kumar Jiya Rani*, AIR 1981 (Del.) 269 on the pleas raised by the respondents regarding the relationship of landlord tenant held as follows:-

“16. On merit the appellant has no case even on the limited rule laid down in Ram Parkash's case. In the eviction application it was stated that the premises were let out to the appellant on 1.10.1971. The appellant in the reply to the eviction application took the stand that the land underneath the superstructure vested in the Delhi Development Authority and that previously is vested in Delhi Improvement Trust which had cancelled the lease in favor of the respondent on 7.3.1944 and Improvement Trust had entered into possession of the premises. It was further stated that the D.D.A. later on filed a suit for ejectment and obtained a decree against the respondent and the appeal was also dismissed some time in 1947. The further support to this argument was sought to be built up by pleading that on 12.3.1974 Mr. Chakravarty, Estate Officer, D.D.A. had passed an order directing the appellant to pay rent and damages to D.D.A, and that he had paid the entire rent from 1st of January, 1961 up to

31.3 1974 to D.D.A. Thus D.D.A. had a superior title and the respondent could not claim to maintain the eviction petition. There was no specific denial of the fact that he was inducted in pursuance of rent note. We feel that it would broadly be not open to the appellant to challenge the title of the respondent. That apart even the foundation for this challenge fails in view of the Judgment of Mr. P.S.R. Sawhney, District Judge, dated 18.2.1963 against the earlier proceeding taken against the predecessor-in-interest of the respondent under the Public Premises (Eviction of Unauthorised Occupants) Act, by which the learned District Judge noticed that though there was a suit for eviction against the predecessor- in interest of respondent later on there was some kind of compromise and the predecessor-in-interest of the respondent had continued to remain in possession of the land. It was, therefore, held that the D D.A. had kept quiet over the continuous possession of the respondent of land in dispute for 14 years, and the predecessor-in-interest of respondent had even paid the time barred amount. By the said Judgment the possession of the respondent over the land in dispute was held to be proved. Thus the fact that the possession was taken back by the D.D.A. has not been firmly established in the case. But what is of significance is that the appellant does not dispute that he is a tenant of the land in dispute. He, therefore, is not denying his relationship of being a tenant in regard to the premises. In that case even Ram Parkash's case will not come to his aid because in that case where the tenant admitted his tenancy qua the premises and his contention only was that the respondent was not the only landlord it was held that an order under Section 15(4) could be passed because it was a case where what was disputed was as to the person or persons to whom the rent is payable. In the present case the Rent Controller and the Tribunal saw no reason as to why the respondent should be deprived of receiving the rent during the pendency of the proceedings and, therefore, passed an order under Section 15(1). No objection can be raised on merits to such an order.”

Hence, all the pleas as to why there is no relationship of landlord and tenant that are being raised by respondent Nos.1 to 7 in the present suit were

also raised before the Full Bench of this court and were rejected by the said judgment of the Full Bench. The same pleas were raised all over again in the second round of litigation when a petition under section 14(1)(a) of the DRC Act was filed by the petitioner. The same pleas are now sought to be raised by the respondents in the present petition.

14. The main plea of respondents No. 1 to 7/plaintiffs is that the findings of the Rent Controller that a relationship of landlord tenant exists between the parties is not final as the Rent Controller is a court of limited jurisdiction. It is pleaded that the civil court is not bound by such a finding of the Rent Controller. The Constitution Bench of the Supreme Court in ***Om Prakash Gupta vs. Rattan Singh & Anr.(supra)*** held as follows:-

“4. It was argued on behalf of the appellant that the authorities under the Act had no jurisdiction to entertain the proceedings, inasmuch as it was denied that there was any relationship of landlord and tenant between the parties. Consequently, it was further contended, the provisions of s. 15 (7) of the Act could not be applied against the appellant in the absence of a finding that he was the tenant in respect of the premises in question. It was also contended that the delay of one day made in preferring the appeal to the Rent Control Tribunal should have been condoned, and the order refusing condonation was vitiated by applying erroneous considerations. Other contentions raised related to concurrent findings of fact of the Rent Controller and the Rent Control Tribunal and we need not, therefore, take notice of these arguments. The most important question that arises for determination in this case is whether or not the Rent Control authorities had jurisdiction in the matter in- controversy in this case. Ordinarily it is for the Civil Courts to determine whether and, if so, what jural relationship exists between the litigating parties. But the Act has been enacted to provide for the

control of rents and evictions of tenants, avowedly for their benefit and protection. The Act postulates the relationship of landlord and tenant which must be a preexisting relationship. The Act is directed to control some of the terms and incidents of that relationship. Hence, there is no express provision in the Act empowering the controller, or the Tribunal, to determine whether or not there is a relationship of landlord and tenant. In most cases such a question would not arise for determination by the authorities under the Act. A landlord must be very ill- advised to start proceedings under the Act, if there is no such relationship of landlord and tenant. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the Civil Courts, untrammelled by the provisions of the Act. It is only when he happens to be the tenant of premises in an urban area that the provisions of the Act, are attracted. If a person moves a Controller for eviction of a person on the ground that he is a tenant who had, by his acts or omissions, made himself liable to be evicted on any one of the grounds for eviction, and if the tenant denies that the plaintiff is the landlord, the Controller has to decide the question whether there was a relationship of landlord and tenant. If the Controller decides that there is no-such relationship the proceeding has to be terminated, without deciding the main question in controversy, namely the question of eviction. If on the other hand, the Controller comes to the opposite conclusion and holds that the person seeking eviction was the landlord and the person in possession was the tenant the proceedings have to go on. Under s. 15 (4) of the Act, the Controller is authorised to decide the question whether the claimant was entitled to an order for payment of rent, and if there is a dispute as to the person or persons to whom the rent is payable, he may direct the tenant to deposit with him the amount payable until the decision of the question as to who is entitled to that payment. "Landlord" has

been defined under the Act as a person who is receiver or is entitled to receive the rent of the premises (omitting the words not necessary for our present purposes). If the Controller comes to the conclusion that any dispute raised by the tenant as to who was entitled to receive rent had been raised by the tenant for false or frivolous reasons, he may order the defence against eviction to be struck out (s. 15 (5)). Similarly, if a tenant fails to make payment or deposit as required by s. 15 (2), the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application for eviction (s. 15 (7)). Such an order was, as already indicated, passed by the Rent Controller in this case. Now, proceedings under s. 15 are primarily meant for the benefit of the tenant, and the section authorises the Controller after giving the parties an opportunity of being heard, to make an order directing the tenant to pay the amount found on calculation to be due to the landlord or to deposit it with the Controller, within one month of the date of the order. Such an order can be passed by the Controller for the benefit of the tenant, only if the Controller decides that the person against whom the proceedings for eviction had been initiated was in the position of a tenant. Thus, any order passed by the Controller, either under s. 15 or other sections of the Act, assumes that the Controller has the jurisdiction to make the order, i.e., to determine the issue of relation- ship. In this case, when the Controller made the order for deposit of the arrears of rent due, under s. 15 (1), and on default of that made the order under sub-s. (7) of s. 15, striking out the defence, the Controller must be deemed to have decided that the appellant was a tenant. Such a decision may not be res judicata in a regular suit in which a similar issue may directly arise for decision. Hence, any orders made by a Controller under the Act proceed on the assumption that he has the necessary power to do so under the provisions of the Act, which apply and which are meant to Control rents and

evictions of tenants. An order under s. 15 (1) is meant primarily for the protection and benefit of the tenant. If the appellant took his stand upon the plea that he was not a tenant he should have simply denied the relationship and walked out of the proceedings. Instead of that, he took active steps to get the protection against eviction afforded by Act, by having an order passed by the Controller, giving him a locus poenitentiae by allowing further time to make the deposit of rent outstanding against him. The Controller, therefore, must be taken to have decided that there was a relationship of landlord and tenant between the parties, and secondly, that the tenant was entitled to the protection under the Act. It is true that the Act does not in terms authorise the authorities under the Act to determine finally the question of the relationship of landlord and tenant. The Act proceeds on the assumption that there is such a relationship. If the relationship is denied, the authorities under the Act have to determine that question also, because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the Act. True, they are tribunals of the limited jurisdiction, the scope of their power and authority being limited by the provisions of the Statute. But a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act, because the simplest thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the four- corners of the Statute creating them. But within the provisions of the Act, they are tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceedings like a separate suit or application in execution proceedings. In our opinion, therefore, there is no substance in the contention that as soon as the

appellant denied the relationship of landlord and tenant; the jurisdiction of the authorities under the Act was completely ousted. Nor is there any jurisdiction in the contention that the provisions of sub-s. (7) of s. 15 of the Act had been erroneously applied to the appellant. The orders under those provisions were for his benefit and he must be deemed to have invited the Controller to pass those orders in his favour. Otherwise, he should have walked out of the proceedings after intimating to the Controller that he was not interested to contest the proceedings in as much as he was not a tenant, and that a third party was the tenant. This order, of course, will bind only the appellant and no one else, and as he failed to take advantage of the order passed in his favour under s. 15 (7), he cannot make a grievance of it. Whether or not a delay of one day should have been condoned was a matter of discretion with the appellate authority, and it is not for this Court to say that this discretion should have been exercised in one way and not in another. The crucial question is not whether the delay is of one day or more, but whether or not there was any justification for the delay. It is for the appellate authority to determine whether or not the appellant had satisfied it as to the sufficiency of the ground for condoning the delay. This question of condonation of delay is more or less of academic interest only, because the Tribunal not only considered the question of delay but also the appeal on its merits, and on merits also it came to the conclusion that there was no ground for interference with the orders passed by the Rent Controller. Hence, the question of condonation of delay is of no importance in this case. What is of greater importance is the merit of the decision awarding possession to the landlord. In this connection, it may be added that it was a little inconsistent on the part of the appellant to have taken all the advantages the Act affords to a tenant and then to turn round and to assert that the Rent Controller had no jurisdiction in the matter, because he was not

the tenant. The Rent Controller had to determine the controversy as between the parties for the purposes of disposing of the case under the Act. If the appellant really was a tenant, he has had the benefit of the provision of the Act, including the six months' time as a period of grace after an order of the Rent Controller granting the landlord's prayer for eviction. If he was not the tenant, he has nothing to lose by the order of the Rent Controller. These proceedings cannot affect the interest of one who is not a party to the present case. Furthermore, a second appeal lay from the appellate order of the Rent Control Tribunal dismissing the appellant's appeal against the order striking out his defence. No such second appeal was taken to the High Court, though as already stated a second appeal was preferred against the order of the Rent Control Tribunal dismissing his appeal against the order of eviction. The position is that the appellate order of the Rent Control Tribunal, dated March 6, 1962, dismissing the appeal against the order striking out his defence became final between the parties and is no more open to challenge. Hence, it is no more open to the appellant to challenge the jurisdiction of the authorities under the Act.” (emphasis added)

15. A perusal of the above judgment would show that the Hon’ble Supreme Court has held in the given facts and circumstances, a decision by a rent controller may in the given facts and circumstances not be *res-judicata* in a regular suit in which a similar issue may directly arise for decision. However, the orders of a rent tribunal having exclusive jurisdiction are final and are not liable to be questioned in collateral proceedings like a separate suit or an application in an execution proceedings. Hence, in terms of the aforementioned judgment of the Supreme Court, the finding of the rent controller holding that a relationship of landlord tenant exists between the parties could not have been challenged by respondents No. 1 to 7/plaintiffs in collateral

proceedings, namely, the present suit which has been filed by the plaintiff. Clearly, such a suit is barred.

16. I may note that in 1976, Section 11 of the CPC was amended. The amended section now reads as follows:-

“Section 11.*Res Judicata*:- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I: The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II: For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V: Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI: Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII: The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII: An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

17. Hence, now even an issue which is decided by a court of limited jurisdiction shall operate as *res judicata* in a subsequent suit notwithstanding that such court of limited jurisdiction was not competent to try the subsequent suit.

18. In this context reference may be had to the judgment of the Division Bench of the Bombay High Court in the case of ***Prabhakar Atmaram Kale v. Bharat & Ors.***, AIR 1983 Bom. 488, where the court held as follows:

“12. The learned District Judge here did not consider the effect of the finding pronounced by the Rent Controller between the parties or the effect of the application of the principle of *res judicata*, as now adumbrated under Explanation VIII to Section 11 of the Civil P. C. The Rent Controller and the Residency Deputy Collector acting under C. P. and Berar Letting of Houses and Rent Control Order, 1949 (for short hereafter called "the Order"), exercise judicial functions and the Rent Controller is a legal Tribunal and not merely an Executive Officer. (See *Bhailal v. Addl. Deputy Commr.* AIR 1953 Nag 89. Thus the Rent Controller, though a Tribunal of limited jurisdiction, was competent to hear and decide the issue as regards the existence of relationship of landlord and tenant between the parties before

him. The finding pronounced on the issue by the Rent Controller would, therefore, operate in a subsequent suit as res judicata, notwithstanding the fact that the subsequent suit. This precisely is the effect of the Explanation VIII of Section 11 of the Civil P. C. which the learned District Judge failed to take note of. This is also the view taken by this Court in *Laxman v. Rajaram*: AIR 1979 Bom 305.”

19. I may also note that this court has also held that findings recorded by the Rent Controller would bind the parties in subsequent proceedings. This court in *Brahm Prakash vs. Chando Devi and Ors.*, MANU/DE/4414/2010 was also dealing with a case where an Eviction Petition filed by the landlord was dismissed noting that the landlord has not led any evidence. As the relationship of landlord tenant was disputed the said petition was dismissed holding that the petitioner had failed to establish his case. The Successor in interest of the landlord therein again filed an Eviction Petition claiming the arrears of rent. This court noted as follows:-

9. As observed by the Supreme Court in the case of *Dadu Dayalu Mahasabha Jaipur (Trust) vs. Mahant Ram Niwas & Anr.* reported as MANU/SC/7674/2008 : AIR 2008 SC 2187, the principles of res judicata, estoppels and waiver are procedural in nature. However, once it is held that the issues, which arose in the subsequent suit, were directly and substantially, in issue in the earlier suit, Section 11 of the Code will apply. Section 11 of the Code not only recognises the general principles of res judicata, it bars the jurisdiction of the Court in terms of Section 12 thereof. Explanation-V of Section 11 specifically states that any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of Section 11, be deemed to have been refused. For the purposes of application of Section 11, certain conditions as prerequisites are required to be satisfied, which were clearly set out by the Supreme Court in the case of *Sheodan Singh*

vs. Daryao Kunwar reported as MANU/SC/0264/1966 : AIR 1966 SC 1332, in the following manner :-

9 . A plain reading of Section 11 shows that to constitute a matter res judicata, the following conditions must be satisfied, namely-

(i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;

(ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;

(iii) The parties must have litigated under the same title in the former suit;

(vi) The Court which decided the former suit must be a Court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and

(v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the first suit. Further Explanation 1 shows that it is not the date on which the suit is filed that matters but the date on which the suit is decided, so that even if a suit was filed later, it will be a former suit if it has been decided earlier. In order therefore that the decision in the earlier two appeals dismissed by the High Court operates as res judicata it will have to be seen whether all the five conditions mentioned above have been satisfied.

....

12 . The conditions necessary for applying the principles of res judicata are also fulfilled in the present case. The matter at hand in the second case, subject matter of the present petition, was directly and substantially in issue in the earlier petition. The earlier petition as also the second petition are between the same parties, as the respondents claim under Sh. Samey Singh, petitioner in the first eviction petition. Both petitions relate to the same premises. The Court, which had decided the former petition, was a Court competent to try the subsequent petition as well. The matter, directly and substantially in issue in the second petition, was heard by the Rent Controller in the earlier petition and was finally

decided by dismissing the eviction petition in view of failure on the part of Shri Samey Singh to establish the relationship of landlord and tenant between the parties.

....

19. In these circumstances, the decision of the Rent Controller dated 27.01.1998, has to be taken as a decision on the merits of the matter. Merely because a subsequent cause of action has been pleaded by the respondents in the second eviction petition by claiming arrears of rent not only for the period for which the first eviction petition was filed, but also for the subsequent period upto 18.05.2001, cannot be a ground to hold that the second eviction petition was maintainable. The relationship of landlord and tenant between the parties was not established in the earlier proceedings and the same point is directly and substantially in issue in the second petition wherein the foundation to claim the arrears of rent is the stand of the respondents (petitioners therein) that they are the landlords of the petitioner herein. The findings returned by the Rent Controller in his order dated 27.01.1998 passed in the first petition have to be held to be findings on merits and having been adjudicated conclusively, are final in nature and act as a bar of *res judicata* on the second eviction petition preferred by the respondents.”

Hence, this court dismissed the second Eviction Petition.

20. Accordingly, in this case the findings recorded by the Additional Rent Controller and upheld by the Rent Control Tribunal and this court would bind the respondent. The suit now filed by the respondent seeking to raise the same pleas i.e. relationship of landlord and tenant would clearly be barred.

21. Apart from the fact that the present suit is barred on the principles akin to *res judicata*, in my opinion, the suit is nothing but a gross abuse of the process of the court. Respondents No. 1 to 7 have lost in the proceedings before the Rent Controller in two rounds. An appeal filed before this court

was dismissed in the first round in 1981. Their petition under Article 227 of the Constitution of India filed before this court was also dismissed for non-prosecution way back in 2006. Now after an execution petition has been initiated, they have chosen to file the present suit seeking to obstruct the execution of the decree.

22. The suit that was filed by the respondent is clearly a gross abuse of the process of the court and has been filed only to delay and obstruct the Execution Petition that has been filed by the petitioners to execute the order of the Additional Rent Controller dated 14.12.1995.

23. The Division Bench of this court in ***Keshav Chander Thakur & Anr. Vs. Krishan Chander & Ors., 211 (2014) DLT 149*** held as follows: -

“The Division Bench of this court in the case reported as 2012 (127) DRJ 70 Aniruddha Dutta & Ors. vs. Bhawani Shanker Basu & Ors. held as follows:-

"28. A Court of record has every inherent power to prevent the abuse of its process and Order 7 Rule 11 of the Code of Civil Procedure is not the complete reservoir of the power of nip a frivolous suit when it is still in the stage of infancy. The inherent powers of a Court of record, and we highlight that Section 151 of the Code of Civil Procedure does not confer, but saves the inherent power of a Court also constitutes the reservoir of the power of a Court of record to throw out vexatious suits."

41. Similarly the Rajasthan High Court in the case reported as 2008 (1) ILR (Raj) 619 Temple of Thakur Shri Mathuradassji vs. Shri Kanhaiyalal & Ors. in para 16 held as follows:-

"16. ... If the suit is abuse of process of the court and cannot be dismissed under Order 7 Rule 11 CPC then the court is not helpless and can accordingly invoke the powers under Section 151 CPC and can dismiss the suit under Section 151 CPC. Frivolous litigations are required to be nipped in the bud at the earliest possible stage otherwise no relief to the aggrieved party because of the reason that sole

object of the frivolous litigation is to drag adversary in the litigation till it is dismissed consuming several years in trial. If court reaches to the conclusion that suit is frivolous from the totality of the facts brought on record or which have come on record then by not dismissing the suit at earliest, the court virtually declares that a frivolous suit can demand trial of suit and aggrieved party has no remedy against frivolous suit. If there are creases in the law or sometimes is left out or not specifically provided in statute then they are required to be ironed out by the courts by interpreting the law in a manner to advance the cause of justice and no party can be left with no remedy against frivolous suits. At the cost of repetition, it is observed that the continuation of frivolous suit against any person on the ground that it cannot be dismissed since there is no provision under Order 7 Rule 11 CPC is virtually denying an aggrieved party his right to crush the frivolous litigation without suffering the trial of suit."

24. In my opinion, the present suit filed by respondents No. 1 to 7/plaintiff is nothing but a gross abuse of the process of the court. Having lost in three courts including this court in two rounds, the plaintiffs/respondents No. 1 to 7 have chosen now to initiate a fresh suit claiming that there does not exist a relationship of landlord tenant between the plaintiffs/respondents No. 1 to 7 and the petitioner/defendant. The suit has been filed to obstruct the execution proceedings filed by the petitioner. This issue having already been settled in the earlier round of litigation, the plaintiffs/respondents No. 1 to 7 cannot be allowed to re-agitate the same issue all over again. Apart from other legal propositions, in my opinion it was a fit case for the trial court to have dismissed the suit in exercise of its inherent power under Section 151 CPC.

25. The impugned order suffers from material illegality and irregularity. Accordingly, I set aside the impugned order and allow the present petition. The suit filed by respondents No. 1 to 7 stands dismissed.

26. The petition is disposed of. Pending applications, if any, also stand disposed of.

JAYANT NATH, J.

NOVEMBER 29, 2018

rb/v

