

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

% *Judgment Reserved on: 12.10.2018*
Date of Judgment: 12.12.2018

+ **CM (M) 1455/2017 & CM Nos.46698/2017, 37791/2018**

SURINDER KUMAR Petitioner

Through: Mr.Rakesh Tiku, Sr. Advocate
with Mr.Gaurav Kohli and Mr.Sanjeev,
Advocates.

versus

ARVIND NATH PATHAK & ORS. Respondents

Through: Mr. S.N.Choudhri, Advocate with
Ms.Shruti Choudhri, Ms.Sukanya Choudhri
and Ms.Sukreet Khandelwal, Advocates for
R-1 & 2.

Mr. Atul T.N. and Mr. Nitin Kumar,
Advocates for R3.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The petitioner, a sub-tenant, having unsuccessfully pursued his appeal bearing No.RCT-1126/2016 before the Learned Rent Control Tribunal, South-East District, Saket Courts, New Delhi ('Tribunal') by judgment dated 21.09.2017 against order of eviction dated 02.06.2008 passed by the court of learned Additional Rent Controller, Tis Hazari Courts, Delhi ('ARC'),

has moved this Court under Article 227 of the Constitution of India for quashing of both the orders.

2. Bereft of unnecessary details, the facts giving rise to this petition are that the respondent No.1 and 2 have filed two eviction petitions in respect of Shop No.M-64, Kalkaji, New Delhi-110019 (demised shop) before the learned ARC under Section 14(1)(a) and 14(1)(b) of the Delhi Rent Control Act, 1958 ('DRC Act') against the respondent No.3 and the petitioner.
3. The parties being the same, both these eviction petitions were consolidated by the learned ARC for the purpose of trial.
4. The respondents No.1 and 2 had let out the demised shop to the respondent No.3 w.e.f. 01st September, 1992 at a monthly rent of Rs.2,000/-. The respondent No.3 has failed to make the payment of rent from 01.01.1993 to 31.05.1996. A legal demand notice dated 14.05.1993 was served upon respondent No.3. It is claimed that the respondent No.3 had sub-let or otherwise parted with the possession of the demised shop in favour of his brother/petitioner, who is in unlawful possession thereof.
5. In his written statement, the petitioner pleaded that the respondent No.3 was never a tenant in the demised shop which in fact was let out to him at a monthly rent of Rs.500/- in the year 1986 and since then he has been in possession thereof. It is pleaded by him that he dissolved the partnership firm, i.e., M/s.

Kalka Steel Centre, M-64, Kalkaji, by Dissolution Deed dated 20.02.1993, with respondent No.3 who gave him the goodwill and the demised shop was never a partnership property. He denied that the demised shop was rented out by the respondents No.1 & 2 to respondent No.3 w.e.f. 01.09.1992. He denied that the respondent No.3 sublet the demised shop to him and pleaded that the respondents No.1 and 2 have colluded with respondent No.3 and forged the rent receipts. He pleaded to be the tenant of the demised shop since 1986. He denied that he ever surrendered the tenancy. He claimed that he has never been in arrears of rent, which were paid by him from 1986. He is in possession of rent receipts since 1986 till July 1992. He offered rent to respondents No.1 and 2 but they refused to accept whereafter he has deposited the rent @ Rs.500/- per month in the Court of ARC upto December 1993.

6. The respondent No.3 adopted the written statement filed by the petitioner in verbatim.
7. The respondents No.1 and 2 filed replication in which they did not dispute that till 31.08.1992, the petitioner was their tenant @ Rs.500/- per month in the demised shop. However, they pleaded that the tenancy was surrendered by the petitioner on 31.08.1992. They asserted that the said shop was rented out by them to the respondent No.3 w.e.f. 01.09.1992 on rent @ Rs.2,000/- per month.

8. In support of their case, the respondent Nos.1 and 2 examined their father Sh. K.N. Pathak as AW-1 and the respondent No.1 has stepped into the witness box as AW-2. On the other hand, the petitioner had examined Sh. Jawala Prasad as RW1 and one Sh. Parmanand Raheja as RW3. Additionally, the petitioner himself stepped into the witness box as RW2.
9. The learned ARC found that:-
- (i) it was not suggested in cross-examination of AW-1 and AW-2 that the signatures of the petitioner on counterfoil of rent receipt Ex.AW-1/17 or that of respondent No.3 on receipts Ex.AW-1/3 to AW-1/16 were forged or fabricated or obtained on blank receipts;
 - (ii) the petitioner in his cross-examination has admitted the signatures of his brother/respondent No.3 on the rent receipt Ex.AW-1/3 and AW-1/6;
 - (iii) in the previous civil litigation at the instance of the petitioner, his brother/respondent No.3 filed his written statement Ex.AW-1/18 wherein he admitted his signatures on the counterfoil of the rent receipts (Ex.AW-1/3 to AW-1/6);
 - (iv) in his affidavit tendered in evidence the petitioner did not testify that the rent receipt Ex.AW-1/17 dated 31.08.1992 does not bear his signature
 - (v) the petitioner has not specifically denied the execution of counterfoil of the rent receipt Ex.PW1/17;

- (vi) admittedly, the rent was payable in advance by the 7th day of each month; the petitioner claimed that the rent from August, 1992 to December, 1992 was adjusted against the bills of the utensils purchased by the respondent No.1 and 2; the photocopies of the bills placed on record reflect the alleged purchases made in the month of November and December, 1992 whereas the bills were prepared only on 04.04.1993; the bills demolish petitioner and respondent No.3's fabricated story, and
 - (vii) there is no explanation for non-payment of rent by the petitioner w.e.f. August, 1992. Consequently, the Rent Controller found that the respondent No.3 was a tenant w.e.f. 01.09.1992 in the demised shop and the petitioner has been admittedly, in possession thereof and passed the eviction order.
10. Separate appeals being RCT No.1126/2016 filed by the petitioner and RCT No.1127/2016 filed by respondent No.3 were disposed of by the Tribunal vide the common judgment dated 21.09.2017. The Tribunal on re-appreciation of evidence found that :-
- (i) there was not even a whisper in the pleadings or in the affidavit of the petitioner that the counterfoil of the rent receipt Ex.AW1/17 is a forged document;
 - (ii) Ex.AW1/17 is a counterfoil of the rent receipt dated 31.08.1992 issued by the respondents No.1 and 2 to the

petitioner and it specifically bears the name of the petitioner as lessee;

- (iii) the receipt specifically mentions “Final Receipt” in English as well as in Hindi and it bears a handwritten endorsement in Hindi which reads as follows:-

“main Surrender Kumar ne M-64, Kalkaji, New Delhi sthith dukaan (30' x 13') khaali kar di hai aur kabzaa maliko ko 31.08.92 ko de diya. Tathaa 31.08.92 tak ka kirayaa aur sabhi bakaayaa de diya Kuchh bhi lena dena nahi hai”;

- (iv) AW1 was cross-examined extensively but genuineness of Ex.AW1/17 was not seriously challenged except by extending a suggestion that the endorsement on Ex.AW1/17 as referred above is only about rent and not about surrender of tenancy and this endorsement was added in the counterfoil later on;
- (v) These suggestions were denied by AW1 who added that identical endorsement was made on the corresponding rent receipt dated 31.08.1992;
- (vi) the petitioner did not produce the corresponding rent receipt dated 31.08.1992 on the record;
- (vii) the rent receipt Ex.AW1/3 dated 01.09.1992 which bears the admitted signatures of respondent No.3 and it bears an endorsement in Hindi which reads as under:-

“main eek sitamber 1992 ko M-64 kalkaji, new delhi sthit dukkan (30' x 13') ka kabzaa liya. Kiraayaa do hazar rupya prati maah tatha bijli

atirikt tatha sitamber maas ka peshagi kiraayaa diya” ;

and

(viii) in his cross-examination, the petitioner has admitted that the rent receipt Ex.AW1/3 and Ex.AW1/6 bear the signatures of respondent No.3 and there is no reason to suspect the genuineness of the rent receipts Ex.AW1/3-6 issued to the respondent No.3 by the respondents No.1 and 2.

11. Additionally, the Tribunal has also ventured to compare the signature of the petitioner on the counterfoil of the rent receipt Ex.AW1/17 with his admitted signature on the other counterfoil of the rent receipts Ex.AW1/11-13 and found that the signatures of the petitioner on Ex.AW1/17 were his genuine signatures.
12. It was argued before the Tribunal that a Deed of Dissolution of Partnership Ex.RW2/3 between the petitioner and respondent No.3 was executed on 20.02.1993 and as per this document the partnership firm came into existence on 01.08.1986. The Tribunal found that the petitioner as RW-2 testified in para No.18 of his affidavit tendered in evidence that on 02.09.1992 he opened the said shop being the “Proprietor” and it remained unexplained as to how the petitioner became the “Proprietor” of the firm M/s Kalka Steel Centre on 02.09.1992 if the Firm was dissolved much later on 20.02.1993. The Tribunal also observed that one of the recitals of the Deed of Dissolution of Partnership

Ex.RW2/3 stipulates that upon dissolution of the firm, the tenancy of the demised shop would be the sole and exclusive property of the petitioner and it was nobody's case that the tenancy was in the name of the partnership firm M/s Kalka Steel Centre and one wonders as to what prompted the petitioner and respondent No.3 to insert this recital related to tenancy in the Dissolution Deed of the partnership. The Tribunal found that the Dissolution Deed Ex.RW2/3 appears to be a sham document that the petitioner and respondent No.3 created as an artifact of tenancy in favour of the petitioner.

13. As a result the Tribunal has upheld the judgment dated 23.05.2008 passed by the learned ARC.
14. Learned senior counsel for the petitioner contended that the entire case hinges upon the counterfoil of the rent receipt Ex.AW1/17 dated 31.08.1992 whereby the petitioner is alleged to have surrendered his tenancy and upon the rent receipt Ex.AW1/3 dated 01.09.1992 whereby the demised shop was rented out to respondent No.3 at a rent of Rs.2000/- per month and the rent receipts Ex.AW1/3 to Ex.AW1/6 whereby the respondent No.3 as the tenant of the demised shop has paid rent to the respondents No.1 & 2 for the period from 01.09.1992 to 31.12.1992.
15. He argued that in his petition the respondents No.1 and 2 have nowhere pleaded that the petitioner was a tenant since 1986 on rent @ Rs.500/- per month on the demised shop or that the

petitioner had surrendered the tenancy on 31.08.1992 by executing the document Ex.AW1/17. He urged that this plea was taken for the first time in the replication when the petitioner had pleaded in his written statement that it was he who has been the tenant since 1986. He argued that the alleged counterfoil of the rent receipt Ex.AW1/17 for the month of August, 1992 was not even filed along with the petition for eviction.

16. He relied upon a judgment of this court in ***Sudhir Engineering Company Vs. Nitco Roadways Ltd 1995 RLR 286*** to urge that the alleged counterfoil of the rent receipt Ex.AW1/17 has not been proved in accordance with law and the marking of the document as an exhibit is only for the purpose of identification.
17. He emphasised that at the time of admission and denial of the documents the petitioner had specifically denied his signature on Ex.AW1/17. He urged that the respondents No.1 and 2 have not proved the signatures of the petitioner on Ex.AW1/17. He argued that this document has been filled up and endorsement is made in the handwriting of the father of the respondents No.1 and 2 (AW1). He urged that it was no business of the Tribunal to compare the signatures of the petitioner as the Tribunal lacks expertise. He laid emphasis that the Tribunal did not have a magnifying lens to ascertain the character, similarities and dissimilarities of the compared signatures. He further urged that the Tribunal did not mention in the judgment the reasons to

conclude that the signatures of the petitioner on Ex.AW1/17 were similar to the admitted signatures on Ex.PW1/11-13.

18. To buttress his arguments, the learned senior counsel has placed reliance upon para No.21-23 of the Single Bench Judgment of the Karnataka High court in ***Nasreen Pasha Vs. Sri Malik Ahmed 2017 (1) RCR (Civil) 593*** which reads as under:-

“21. It should be borne in mind by the Courts that if there is a positive denial by a person who is said to have affixed his signature or finger impression and where such signature and impression in the disputed document is vague and smudgy or not clear and making it difficult for comparison, the Judge should hesitate to venture a decision based on his own eyes, regarding the disputed signature with that of the admitted signature. Further, in a case where the Court is constrained to take up such comparison, then it should make a through study, with the assistance of the Counsel and a magnifying lens to ascertain the characteristics, similarities and dissimilarities of the compared signature. Necessarily, the judgment should contain the reasons and the efforts made to reach such a conclusion based on comparison of the signature if the Court chooses to record a finding thereon.

*22. Though there has been no legal bar for the Judges using their own eyes for comparing the signature with the admitted signature but the Court should be very cautious and more over as a matter of prudence extreme care has to be taken. The Court should not normally take upon itself the responsibility of comparing the disputed signatures with that of the admitted signature **and it should hesitate to pass its findings with regard to the identity of the signature solely on the comparison made by itself.***

23. The power under Section 73 of the Indian Evidence Act can be exercised by the Magistrate. Section 73 of the Indian Evidence Act can be exercised by the Court normally and generally to test the veracity

of the opinion given by the expert or the other evidence adduced on the point by any of the modes enumerated under the procedural laws. Even if there were to be any difference in the signatures, the Court should not venture upon to examine the same unless expert's opinion is also available on record. Therefore, the Court looking into the facts and circumstances of each case has to venture upon carefully and rarely exercise the powers conferred under Section 73 of the Indian Evidence Act. It can be safely said that it is always hazardous and risky when it is said that the accused in a particular given case has specifically and stubbornly denied his signature or finger impression on the disputed document and also placed certain materials before the Court to establish that the examination of such signature requires expert's opinion."

19. He has also relied upon para No.28 of the Judgment of the Hon'ble Supreme Court in ***Ajay Kumar Parmar Vs. State of Rajasthan (2012) 12 SCC 406***, which reads as under:-

"28. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the court must keep in mind the risk involved, as the opinion formed by the court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The

court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.”

20. Learned counsel for respondent No.3 in his arguments supported the case of the petitioner. He submits that the respondent No.3 was never a tenant on the demised shop and it is the petitioner who has been the tenant therein since 1986 at a rent of Rs.500/- per month. He argued that the respondent No.3 has adopted the written statement of the petitioner before the learned ARC wherein it is pleaded that rent receipt dated 01.09.1992 (Ex. AW1/3) allegedly signed by respondent No.3 is a forged and fabricated receipt. He argued that respondents No.1 and 2 have not examined handwriting expert to prove the counterfoil of the receipt Ex. AW 1/3 and Ex. AW 1/17.
21. *Per contra*, it is argued by the learned counsel for respondents No.1 & 2 that the findings of the learned ARC are based on appreciation of evidence, and the Tribunal after reappreciating the evidence upheld the findings of the learned ARC in its correct perspective. He contended that there is no illegality or perversity committed by the learned ARC or Tribunal and the petition is not maintainable.
22. He argued that the judgments of the Karnataka High Court in *Nasreen Pasha (supra)* and of the Apex Court in *Ajay Kumar*

case (supra) are not relevant wherein it was held that when findings of the Court are based solely on the comparison of the signatures by the Court, it may involve risk and is susceptible to error and not conclusive. He submitted that in the present case there was sufficient evidence apart from the observation of the Tribunal about comparing the signatures of the petitioner with his admitted signatures. He also argued that in his submissions, learned counsel for respondent No.3 has failed to explain as to why he did not appear at the time of admission/denial of documents before the learned ARC. He has also not explained the admission made by respondent No.3 admitting the receipts Ex. AW 1/3 to AW 1/6 in his written statement filed by him in an earlier litigation initiated by the petitioner. He urged that the petitioner and respondent No.3 are colluding in order to protect the possession of the petitioner in the demised shop.

23. I have heard the learned counsel for the parties.
24. In ***Achutananda Baidya Vs. Prafulla Kumar Gayen, (1997) 5 SCC 76*** the Hon'ble Supreme Court while dealing with the powers of superintendence of the High Court under Article 227 of the Constitution of India has opined that power of superintendence is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 of the Constitution of India is essentially to ensure that the courts and tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the

High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse. If the evidence on record in respect of a question of fact is not at all taken into consideration and without reference to such evidence, the finding of fact is arrived at by inferior court or tribunal, such finding must be held to be perverse and lacking in factual basis. In such circumstances, in exercise of the jurisdiction under Article 227, the High Court will be competent to quash such perverse finding of fact.

25. This judgment has also been recently followed by the Hon'ble Supreme Court in *Ajay Singh and another Vs. State of Chhattisgarh and another (2017) 3 SCC 330*. In view of the interpretation of Article 227 of the Constitution of India by the Hon'ble Supreme Court as mentioned above, this Court can

interfere only in cases where the subordinate Court or Tribunal rendered its findings on erroneous assumption or acted beyond its jurisdiction or refused to exercise jurisdiction held in it or committed error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material or resulting in manifest injustice.

26. Admittedly there was no averment by respondents No.1 & 2 in the rent petition that the petitioner surrendered the tenancy on 31.08.1992. It is admitted at the bar that the replication was permitted to be filed by the learned ARC which was accordingly taken on record and therefore, it forms part of the pleadings. The Hon'ble Supreme Court in ***K. Laxman Vs. Thekkayil Padmini and others (2009) 1 Supreme Court Cases 354*** held "*pleadings as we understand under the Code of Civil Procedure, 1908 (in short 'the code') defined under the provision of Rule 1, Order 6 of CPC consist only of a plaint and a written statement and that the plaintiff could have filed replication in respect of the plea raised in the written statement, which if allowed by the Court would have become the part of the pleadings but mere non-filing of replication does not and could not mean that there has been admission of the facts pleaded in the written statement.*"

27. Moreover, Order 8 Rule 9 of the Civil Procedure Code, 1908 ('CPC') provides that no pleadings subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same. In view of this provision subsequent pleading i.e. replication cannot be filed by the plaintiff except with the leave of the court and once it is taken on record it becomes part of the pleadings. The Rule further provides that the defendant may with the permission of the Court file additional written statement to rebut those additional pleadings filed by the plaintiff.
28. The petitioner had surrendered the tenancy from the demised shop on 31.08.1992 which was rented out to respondent No.3 w.e.f. 01.09.1992 and the respondents No.1 and 2 could not have any reason to anticipate that the petitioner would continue to claim to be the tenant. Moreover, once the respondents No.1 and 2 filed replication having been taken on record by the learned ARC alleging surrender of the tenancy by the petitioner on 31.08.1992, the averments relating to the surrender of tenancy cannot be treated as beyond pleadings. Therefore, the ball was in the court of the petitioner to seek permission of learned ARC to file additional written statement or amend his

written statement to rebut the pleadings of the respondents No.1 and 2 qua the surrender of the tenancy which the petitioner has failed to exercise.

29. In his cross-examination while appearing as RW2, the petitioner has admitted that all the rent receipts used to be filled up by the father of respondents No.1 and 2 (AW1). To prove the counterfoil of the rent receipt Ex.AW1/17, the respondents No.1 and 2 have examined their father Sh. K.N. Pathak as AW1 who testified that *“the petitioner used to issue rent receipts to Surinder Kumar when he was a tenant in the shop. The counterfoils were signed by Surinder Kumar in my presence. The counterfoils of the receipts issued by the petitioners to the respondent No.2 are signed by Surinder Kumar at point Z-1 to Z-6 in my presence. I identify his signatures. The same are Ex.AW1/11 to Ex.AW1/17. At the time when Surinder Kumar handed over the vacant possession to the petitioners there was writing of vacation on 31.08.1992 of the shop in the last rent receipts which is Ex.AW1/17.”* He deposed that *“respondent No.2 had surrendered his tenancy and had handed over the physical possession of his tenanted premises to the petitioners on 31.08.1992. Counterfoils Ex.AW1/17 was executed in my presence. I identify the sign of respondent No.2 on it as he had signed in my presence”*. He deposed that *“I used to prepare the rent receipts as well as counterfoils. Signatures on the rent receipts used to be obtained from the petitioner No.2”*. He

admitted *“the contents in Ex.AW1/17 were filled by me in my hand.”* It is nowhere suggested by the petitioner that the counterfoil of the rent receipt Ex.AW1/17 does not bear the signatures of the petitioner. Rather it was suggested to AW1 in his cross-examination by the petitioner that *“Ex.AW1/17 is only about rent and does not about the surrender.”* It was further suggested to AW1 in his cross-examination that *“endorsement in Hindi in Ex.AW1/17, which is now encircled and marked at point ‘A’ was added to the document later on”*. The petitioner further suggested to AW1 in his cross-examination that *“the words ‘Final Receipt’ on Ex.AW1/17 has also been added later on”*. Both these suggestions were denied by AW1. This line of cross-examination, on the part of the petitioner, clearly indicates that execution of the counterfoil of the rent receipt Ex.AW1/17 or signature of the petitioner thereon were not disputed and the petitioner only claimed that endorsement of surrender of tenancy and the words ‘Final Receipt’ were added later on in Ex.AW1/17. If it was so, the best evidence available to the petitioner was the original rent receipt of which the counterfoil is Ex.AW1/17 dated 31.08.1992 and there is no explanation by the petitioner as to what prevented him in not filing the original receipt of Ex.AW1/17.

30. AW2 Arvind Nath Pathak (respondent No.1) inter alia testified that *“in the evening of 31.08.1992, respondent No.2 had vacated the tenanted shop and handed over its possession to*

myself and my brother. A rent receipt as well as counterfoil were prepared at that time. On the body of which factum of surrender of possession to petitioner was endorsed. Said counterfoil is Ex.AW1/17. It bears sign. Of respondent No.2 which he had put in my presence. My father was also present at that time besides petitioners No.2. Respondent No.1 was also there. The very next date i.e. on 1.9.92 we had re-let the same shop shown bounded in red colour in Ex.AW1/2 to respondent No.1 @ 2000/- per month excluding electricity charges. No rent agreement was executed with him. The rent receipt was however given to him. Respondent No.1 had signed the counterfoil Ex.AW1/3 in my presence. The petitioner No.1 paying rent only upto December 1992 against receipt. Counterfoil whereof are Ex.AW1/3 to Ex.AW1/6.” The petitioner in cross-examination of AW2 did not dispute his signatures on Ex.AW1/17 and no suggestion was given to him that he did not sign on Ex.AW1/17 or it is forged document.

31. The petitioner while appearing as RW2 tendered his affidavit dated 22.01.2003 in evidence but he did not testify in his affidavit that the counterfoil of the rent receipt Ex.AW1/17 is a forged document and does not bear his signature.
32. The petitioner claimed that there were regular rent receipts prior to 31.07.1992 and beyond pleadings he claimed in his affidavit tendered in evidence *“the rent for Aug, 1992 to Dec, 1992 as per the ledger extract which is Ex.RW2 has been adjusted by the*

deponent and balance amount of Rs.390 is recoverable from the petitioner”. However, in his cross-examination, he changed his stand and stated “ *I have received the receipt till 31.07.1992 but regarding the month of August, 1992, I have given the utensils from my shop to the petitioner in lieu of rent on specific understanding that the same shall be adjusted towards the rent and the receipt will be issued later on*”. Apparently, the testimony of the petitioner as mentioned in his affidavit tendered in evidence and his testimony in the cross-examination is different and contradictory. While re-appreciating evidence, the Tribunal observed that the ledger extract Ex.RW2/10 was not tendered in evidence and photocopy thereof reflects an entry of April 1993 in the name of the respondent No.1 Mahender Pathak. The Tribunal also observed that the copies of few challans in the name of respondents No.1 and 2 were issued in the month of November and December 1992 and photocopy of certain bills of April 1993. The Tribunal rightly observed that though these copies were not proved on record yet it does not inspire confidence that in August, 1992, the parties knew that in the months of November and December 1992, the respondents No.1 and 2 would purchase some utensils from the petitioner for which the bills would be raised in the month of April 1993 and for that purpose the petitioner would stop paying rent from August, 1992 onwards.

33. There is no force in the arguments of the petitioner that mere putting exhibit on the counterfoil of the rent receipt Ex.AW1/17 would not prove the document. Here it would be profitable to refer a judgment of the Hon'ble Supreme Court in ***R.V.E Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Another (2003) 8 SCC 752*** wherein it was held that the objections with regard to the *“admissibility of the document in evidence, if not taken can, be raised even at a later stage even in appeal or revision but objections as to “mode of proof” should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit cannot be allowed to raise at any stage subsequent to the marking of the document as an exhibit”*. Para No.20 of the aforesaid judgment reads as under:-

“20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In

the first case, merely because a document has been marked as “an exhibit”, an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court.”

34. This judgment was reiterated by the Hon'ble Supreme Court in later judgment in *Dayamathi Bai (Smt) Vs. K.M. Shaffi (2004)* **7 Supreme Court Cases 107.**
35. In the present case admittedly the counterfoil of the rent receipt Ex.AW1/3 was not a document which was inadmissible in evidence. The only objections which could have been taken at the time of putting exhibit as Ex.AW1/17 was with regard to the mode of proof which was not taken by the petitioner. Even otherwise the signatures of the petitioner were identified to be in his handwriting by AW1 as well as AW2 which was not challenged in their cross-examination and this amounts to admission. The petitioner while appearing as RW2 stated that "*Ex.AW1/11 to Ex.AW1/16 bears my signature*". He also stated that "*all the receipts used to be filled up by the father of the petitioner. Again said, most of receipt used to be filled by the father of the plaintiff.*" It indicates that AW1, who is the father of the respondent Nos.1 & 2 was acquainted and aware of manner of writing/signatures of the petitioner and was competent to identify his signatures on Ex.AW1/17.
36. There is no force in the arguments of the petitioner that the Tribunal was not empowered to compare the signatures of the petitioners on Ex.AW1/17 with his admitted signatures on the other counterfoil of the rent receipt Ex.AW1/11-13. In *Ajay Kumar Parmar's case* the Hon'ble Supreme Court has held that when the findings are recorded solely on the basis of signatures

and handwriting, the Court must keep in mind the risk involved, as the opinion formed by the court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. Here it is a case which is not solely based on the findings of comparison the signatures. The petitioner has not denied his signatures on the counterfoil of the rent receipt Ex.AW1/17 in his pleadings and affidavit tendered in evidence. He has also not disputed his signatures in cross-examination of AW1 and AW2. Rather, the line of cross-examination of AW1 indicates that the execution of the counterfoil of the rent receipt was never consciously disputed but it was suggested that the words “Final Receipt” and endorsement in Hindi about surrender of tenancy in Hindi was added later indicates admission of the execution of the receipt/document Ex. AW1/17. Moreover, the signatures of petitioner on the document Ex.AW1/17 were proved by the deposition of AW1 and AW2 who have identified his signatures within the meaning of Section 47 of the Indian Evidence Act, 1872 (IEA). Apart from that Section 73 of IEA confers the power on the Court to compare the signature of a person, which has been proved to be the signatures of the same person whose authenticity is in question. The Hon’ble Supreme Court in ***Lalit Popli Vs.Canara Bank & Ors. 2003 (3) SCC 583*** while laying down the scope of the court’s power to compare a person’s signatures to test its authenticity held as under:-

“It is to be noted that under Sections 45 and 47 of the Evidence Act, the court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three sections of the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 of the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the handwriting expert, the court can compare the admitted writing with the disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of the handwriting expert need not be invariably corroborated. It is for the court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when an expert's evidence is not there, the court has power to compare the writings and decide the matter. (See Murari Lal v. State of M.P. [(1980) 1 SCC 704 : 1980 SCC (Cri) 330).”

37. The petitioner has proved the counterfoil of rent receipts Ex.AW1/3 to Ex.AW1/6 for the period from September 1992 to December, 1992 which were signed by the respondent No.3 after surrendering of the tenancy by the petitioner on 31.08.1992. The petitioner has himself admitted the signatures of his brother i.e. respondent No.3 on the counterfoil of the rent receipt Ex.AW1/3 and Ex.AW1/6 and he did not dare to deny the signature of respondent No.3 on the other two counterfoil of

rent receipt Ex.AW1/4 and Ex.AW1/5. In previous litigation at the instance of the petitioner, the respondent No.3 had filed his written statement wherein he admitted that the rent receipt Ex.AW1/3 to Ex.AW1/6 were signed by him but innocently. The respondent No.3 did not dare to step into the witness box to explain his stand. It is noted by the learned ARC that the respondent No.3 did not turn up for admission and denial at the relevant stage and these receipts were held deemed to be admitted and that order of the learned ARC, having not been challenged, has attained the finality. Moreover, in the cross-examination of AW1, the petitioner did not challenge the genuineness of these rent receipts Ex.AW1/3 to Ex.AW1/6 from the period September 1992 to December, 1992. The first counterfoil of the rent receipt dated 01.09.1992 Ex.AW1/3 with admitted signatures of respondent No.3 bears the endorsement that the physical possession of the said shop was taken by him on rent @ Rs.2,000/- per month against advance payment of rent of Rs.2,000/-. The factum of surrender of the tenancy by way of execution of counterfoil of the rent receipt Ex.AW1/17 having endorsement of surrender of tenancy on 31st August, 1992 by the petitioner in favour of respondents No.1 and 2 followed by the rent receipt Ex.AW1/3 dated 01.09.1992 by which the possession of the said shop was taken by respondent No.3 at a rent of Rs.2000/- per month further corroborates the stand of the respondents No.1 and 2.

38. While viewing the case of the petitioner on the touchstone of the principles as enunciated in *Achutananda Baidya's case (supra)* and *Ajay Kumar Parmar's case (supra)*, no case is made out so as to persuade the court to take a different view.
39. In view of this discussion, I do not find that the findings of the learned ARC or the Tribunal are erroneous or without evidence or perverse or based on no material evidence in any manner. The petition is dismissed with no order as to cost accordingly.
40. In view of the above, the applications being CM Nos.46698/2017 & 37791/2018 also stand dismissed.

(VINOD GOEL)
JUDGE

DECEMBER12, 2018

"shailendra" & "sandeep"