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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th July, 2019

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RC. REV. 404/2019, CM Nos. 30140-41/2019

NEELAM DUBEY

..... Petitioner

Through: Mr. A.K. Mishra, Advocate

versus

RANI PANDEY

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI (ORAL)

1. By way of this petition filed under Section 25B(8) of the Delhi Rent Control Act, 1958 ('DRC Act' for short) the petitioner impugns judgment dated 18.01.2019 whereby the Rent Control Tribunal ('RCT' for short) has allowed an appeal, thereby reversing judgment dated 12.04.2017 made by the learned Additional Rent Controller ('ARC' for short) dismissing the eviction petition filed under section 14(1)(a) of the DRC Act. By way of the impugned judgment, the RCT has allowed eviction on the ground available under section 14(1)(a) of the DRC Act, namely non-payment of rent. The premises that is subject matter of the proceedings is property bearing No.5, I-Block, Jaitpur Extension, Badarpur, New Delhi.

2. Although the eviction petition was filed by the respondent/Smt. Rani Pandey claiming to be owner of the subject premises against the petitioner/Smt. Neelam Dubey who was alleged to be the tenant, the petitioner claims that in fact she is the rightful owner of the subject premises; and that the entire proceedings are a culmination of fraud played upon the petitioner by the respondent *inter-alia* forging and fabricating documents.

3. Mr. A. K. Mishra, learned counsel for the petitioner has presented a factual matrix which is somewhat complex and convoluted; and at least at first blush, one would think, somewhat incredible. The factual scenario presented on behalf of the petitioner is as follows:

- (a) the petitioner Smt. Neelam Dubey took a loan of Rs. 50,0000/- from Shri S.N. Pandey, husband of the respondent Smt. Rani Pandey;
- (b) the petitioner gave to the respondent's husband a cheque in the sum of Rs.50,000/- to be held as security against the loan advanced. The cheque carried a signature and an amount but no payee-name;
- (c) the respondent's husband in-turn handed the cheque given by the petitioner to one Mr. K.P. Mishra, who then presented the cheque;
- (d) the cheque was dishonoured resulting in the filing of proceedings under Section 138 of the Negotiable Instruments Act; which proceedings were however dismissed by the concerned court, holding that there was no debt due, and therefore a case under section 138 of the Negotiable Instruments Act was not made-out;

(e) the respondent Smt. Rani Pandey also got certain blank papers signed by the petitioner, upon which certain documents were inscribed comprising a general power of attorney, agreement to sell, affidavits etc. purporting to convey the subject property in favour of the respondent. Counsel contends that all these documents were forged and fabricated;

(f) thereafter, claiming that she was landlady and the petitioner was her tenant, the respondent filed a petition under Section 14(1)(a) of the DRC Act claiming eviction of the petitioner on the ground of non-payment of rent, which petition was dismissed by the learned ARC vide order dated 12.04.2017;

(g) in an appeal filed before the RCT however, the eviction petition was allowed vide order dated 18.01.2019.

4. Against the RCT judgment dated 18.01.2019, the petitioner preferred a civil miscellaneous main petition, being C.M.(M) No.972/2019 before a Co-ordinate Bench of this court, in which she sought to invoke the power of superintendence of the High Court under Article 227 of the Constitution of India to correct an error made by the RCT. As recorded in order dated 03.07.2019 made in C.M.(M) No.972/2019, the petitioner however withdrew that petition with liberty to adopt “alternative remedies as available to the petitioner in law”.

5. As recorded above, the petitioner alleges that there were some transactions between the parties, as part of which certain documents were forged and fabricated; that these documents were styled as general power of attorney, agreement to sell, rent agreement, receipt

and affidavit purporting to transfer certain rights, titles and interests in the subject property from the petitioner to the respondent ; and that these documents form the basis of the respondent's claim to ownership, and thereby to landlordship, of the subject property.

6. Be that as it may, what is relevant for purposes of the present proceedings is that the alleged transactions between the parties led to the filing of an eviction petition under Section 14(1)(a), which proceedings have culminated in passing of the impugned judgment by the RCT.

7. The present revision petition has been filed under section 25B(8) of the Delhi Rent Control Act, 1958, which reads as under:-

“(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.”

8. Section 25B appears in Chapter III A of the DRC Act and was inserted by way of an amendment with retrospective effect from 01.12.1975, to provide, as the title of the Chapter suggests, for ‘Summary Trial of *Certain Applications*’. Section 25A mandates that the provision of Chapter III A are to have over-riding effect notwithstanding anything inconsistent contained in

the Act or any other law for the time being in force. Most importantly, Section 25 B (1) reads as under :

“(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A or under section 14B or under section 14C or under section 14D, shall be dealt with in accordance with the procedure specified in this section.”

9. On a bare reading of the above provisions therefore, it is clear that Chapter IIIA provides for summary procedure only for *certain applications* under DRC Act ; that the procedure so provided over-rides the ordinary procedure under the Act ; that such summary procedure applies to applications seeking eviction *only* on some of the grounds available under the Act, *inter-alia* ground (e) under section 14(1). What is also clear is that the ground available under section 14(1)(a), namely eviction for non-payment of rent, is *not* one of the grounds to which the summary procedure applies. Accordingly, the procedure under section 25B is not applicable to eviction proceedings arising from the ground under section 14(1)(a) of the DRC Act, including therefore, the procedure of a revision petition under section 25B(8). One finds support for this proposition in observations of a Co-ordinate Bench of this court in ***Vijay Sharma vs. Namita Aggarawal*** : MANU/DE/2741/2017 and ***Ravinder Jeet Singh vs. Kanta Vadhera and Ors.*** : MANU/DE/7870/2017.

10. Furthermore, the antecedent transactions relating to the subject premises, whereby the petitioner alleges that ownership documents were forged and fabricated, are in my view irrelevant for purposes of these proceedings, since regardless of what transpired earlier-on, what is impugned by way of the present petition is a judgment allowing an application under section 14(1)(a) ; and this judgment is *not* a culmination of the summary procedure under section 25B but of the ordinary procedure under the DRC Act. The petitioner cannot avail of a *part* of the summary procedure under section 25B, having otherwise gone through the ordinary procedure.

11. Since counsel for the petitioner has made grievance that he cannot be left remediless before the High Court, in the passing, I may briefly also consider whether as per precedent the petitioner has any other remedy against the impugned order before the High Court.

12. Prior to amendment of the DRC Act w.e.f. 01st December 1988, the Act provided for a first appeal under section 38 before the RCT and thereafter a second appeal on point of law under section 39 before the High Court. Section 39 has since been deleted and post the amendment in 1988 there is now only one appeal under section 38 before the RCT. In this backdrop, there is precedent to show that the High Court has entertained petitions under Article 227 to exercise superintendence over the subordinate courts without however such petitions being treated as appeals and purely as a

discretionary remedy. (cf. *Jasbir Singh vs. Manjit Kaur* : MANU/DE/4346/2013 and *Nawal Kishore vs. Mohd. Yakub* : MANU/DE/3552/2017)

13. In view of above discussion, the present petition is dismissed as not maintainable, leaving the petitioner to seek such other remedies as may be available to her under law.

ANUP JAIRAM BHAMBHANI, J.

JULY 12, 2019/Ne

