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

% Decided on: 04th September, 2019

+ **RFA 802/2019**

JAY KANT MISHRA Appellant

Through : Mr.Sarvajeet Kr Thakur, Advocate
versus

M/S S CHAND & COMPANY LTD & ORS Respondents

Through : NEMO.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

CM APPL No.39841/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RFA 802/2019

1. This appeal is preferred by the appellant against the order dated 22.05.2019 passed by the learned Additional District Judge-12/Central District, Tis Hazari Courts, Delhi (hereinafter referred as the learned 'Trial Court') in CSDJ No.1446/2017 filed by appellant against the respondents, whereby the plaint was rejected under Order VII Rule 11 CPC.

2. The brief facts which culminated into filing of this appeal are the appellant filed the abovesaid suit for declaration, possession, mandatory and permanent injunctions against the respondents in respect of the premises bearing No.19-A, First floor, Radha Madhav Mandir, Ansari

Road, Darya Ganj, Delhi (hereinafter referred as 'subject property') wherein he admitted that two eviction petitions No.*E12/2009* and *E68/2019*, i.e., one under Section 22 of the Delhi Rent Control Act, 1958 (hereinafter referred as 'the DRC Act') and the other one under Section *14(1)(i)* of the DRC Act were filed against him by the respondent in respect of subject property, which were allowed vide common judgment dated 19.11.2011.

3. Feeling aggrieved, the appellant filed appeals being RCT No.*97/2011* and *98/2011*. Though, RCT No.*97/2011* was allowed and order of eviction passed under Section 22 of the DRC Act was set aside; whereas RCT No.*98/2011* against the eviction order under Section *14(1)(i)* of the DRC Act was dismissed vide judgment dated 27.04.2012. Against such dismissal, the appellant filed the CM (M) Nos.*549/2012* and *8445/2012* before this Court which were also dismissed vide order dated 17.07.2013. Again being aggrieved, the appellant filed the SLP (C) No.*35423-24/2013* before the Supreme Court, which were also dismissed on 29.11.2013.

4. In the eviction petitions, the relationship between the respondents and appellant herein, as of landlord and tenant was determined and such finding has now attained finality. The plaintiff has filed the above suit for setting aside the impugned judgment of the learned ARC on the basis of the judgment dated 04.08.2016 passed in Civil Suit No.*229/2013*; thus himself has admitted the parties in the eviction petition and the present suit are the same and the earlier cases have been heard and decided on merits.

5. The main plea of the appellant before this court is the judgment of the learned ARC under Section 14(1)(i) of the DRC Act was procured by the respondents by practicing fraud and the court failed to appreciate the documents viz driving licence of the appellant as also the document of his being in possession of premises since long. He further alleged the respondents are not the owners of the subject premises and that he was the owner of the subject premises since was in possession of the premises since the year 1965 (as his deceased father was in occupation till 1994-95).

6. Before proceeding further, let me see the language of the Section 14(1)(i) of the DRC Act, which read:-

"14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely: —

(a) to (h) xxx

(i) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment;

(j) to (l) xxx"

7. A bare perusal of the above Section would reveal the respondents were only obliged to prove that they were the landlords and the appellant herein being their tenant was in occupation of the premises by reason of his in service of the respondents. Admittedly, the appellant was in service of the respondents and has since retired. Admittedly, the appellant has not proved any document either before the learned ARC, learned RCT, this Court or even Supreme Court qua his *ownership* in respect of subject

premises. Simply, by saying the respondents did not prove their ownership before the learned ARC and hence judgment was obtained by fraud shall not suffice. If the appellant claimed himself to be an owner, he ought to have proved the same before the Ld. ARC. His plea viz, the documents, i.e. sale deeds or qua letting were never proved in eviction proceedings shall not help him to start fresh litigation on issues finally decided.

8. Even otherwise, the respondents were not expected to prove its ownership under Section 14(1)(i) of the DRC Act as the section only require to prove a landlord-tenant relationship between the parties and the tenant occupied such premises because of his employment.

9. Though, the learned counsel for the appellant has raised much hue and cry on the decision dated 0408.2016 in Civil Suit No.229/2013 filed by the respondents herein for recovery of damages, declaration, cancellation of documents, but suffice to say such suit was dismissed, primarily, on the grounds the authorised representative could not prove his authorisation to file such suit as also the respondents failed to substantiate respondent No.2 was a sister concern of respondent No.1.

10. The learned ARC was thus justified in saying the Court of the learned ARC, being a court of limited jurisdiction, per Section 11 explanation VIII CPC, if has decided an issue which is under its jurisdiction, the principle of *res judicata* would apply. Admittedly, the issue of landlord and tenant has since been decided by the learned ARC; having being upheld by the learned RCT; this Court and even by the Supreme Court. In view of above, the principle of *resjudicata* being

applicable in the present case, the suit was rightly rejected under Order VII Rule 11 CPC, being barred.

11. Thus, there exists no illegality in the impugned order passed by the learned Trial Court. Accordingly, the appeal stands dismissed, being devoid of any merits. No order as to costs.

SEPTEMBER 04, 2019

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YOGESH KHANNA, J.

