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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16th January, 2020

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CM(M) 1352/2017

JAI DEV AGARWAL

..... Petitioner

Through: Mr. B.K. Singh & Mr. P.K. Jaiswal,
Advocates (M-9811167195)

versus

VIJAY KUMAR ANGRISH

..... Respondent

Through: Mr. Rohan Dewan, Advocate (M-
9810120000)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The Petitioner is aggrieved by the impugned order dated 5th August, 2017, passed by the Id. Rent Control Tribunal (*hereinafter*, “RCT”) dismissing the appeal of the Tenant – Mr. Jai Dev Agarwal (*hereinafter*, “Tenant”) against the order dated 6th December, 2016, passed by the Id. Rent Controller (*hereinafter*, “RC”), dismissing the Tenant’s application under Section 19(2) of the Delhi Rent Control Act, 1958 (*hereinafter*, “DRC Act”).
2. The brief background of the litigation is that the Respondent/Landlord – Mr. Vijay Kumar Angrish (*hereinafter*, “Landlord”) filed an eviction petition against the Tenant under Section 14(1)(e) of the DRC Act in respect of property bearing no. B-3/83, Ashok Vihar, Phase II, Delhi-110052 (*hereinafter*, “tenanted premises”). The said petition was filed on 2nd February, 2011. Vide order dated 26th October, 2012, the Tenant’s application seeking grant of leave to defend was rejected by the Id. Additional Rent Controller (*hereinafter*, “ARC”) and a decree for eviction was passed. The said eviction order was upheld by a Id. Single Judge of this Court in Revision, being RC. Rev. No. 39/2013, vide order dated 27th September, 2013.

3. The matter was carried by way of SLP to the Supreme Court and on 17th December, 2013, the following order was passed in SLP (Civil) No. 37049/2013:

“We see no reason to interfere with the impugned order. The special leave petition is dismissed.

However, as prayed for, four months' time is granted to vacate the premises subject to filing usual undertaking in the Registry of this court within four weeks from today, stating that the petitioner will not create any third party rights, will clear all the rent in the meanwhile and will peacefully vacate the premises concerned at the end of four months.”

4. Subsequent to the order of the Supreme Court, on 8th August, 2014, the Tenant handed over possession of the tenanted premises to the Landlord, as recorded in the order of the Executing Court dated 29th August, 2014.

5. The Tenant did not rest there. On 22nd August, 2016, he filed an application under Section 19(2) of the DRC Act seeking re-entry on the ground that despite taking possession of the tenanted premises, the Landlord had failed to occupy the said property. Thus, the Tenant claimed that he is entitled to re-enter the tenanted premises. This application was dismissed by the RC on 6th December, 2016. The Tenant then filed an appeal before the RCT, which was also dismissed by the impugned order dated 5th August, 2017.

6. The submission of ld. counsel for the Tenant is that the decree was under Section 14(1)(e) of the DRC Act and the eviction was on merits as the Supreme Court had dismissed the SLP. It is submitted that despite the fact that an undertaking was filed before the Supreme Court, the Tenant does not lose the right to claim re-entry under Section 19(2) if the Landlord does not

occupy the tenanted premises as per the time prescribed in law. He further submits that the Tenant had even placed electricity bills on record to show that during the period from August, 2014 till October, 2014, the Landlord has not consumed any electricity which itself proves that the tenanted premises was left empty.

7. On the other hand, ld. counsel for the Landlord submits that the Tenant lacks *bona fides*. The order of the Supreme Court was clear and an undertaking was given by the Tenant that he would vacate the tenanted premises. Ld. counsel submits that the RCT has clearly arrived at the finding that the Tenant surrendered possession of his own volition. In view thereof, the right under Section 19(2) does not exist for the Tenant. Ld. counsel further submits that even conducting renovation works in the tenanted premises would amount to occupation by the Landlord. He vehemently urges that the Tenant in question is a habitual litigant and has been convicted of contempt by this Court in another litigation proceeding against the Indian Institute of Finance. Ld. counsel places on record the order dated 22nd January, 2009 passed by this Court in CS (OS) No.1978/2008 titled *Indian Institute of Finance v. M/s Shakti Towers Pvt. Ltd. & Ors.* and order dated 5th March, 2009 in contempt case being Cont. CAS(C) No. 280/2008, titled *Shakti Towers Pvt. Ltd. v. Prof. J.D. Agarwal*. On the strength of these orders, it is submitted that the Tenant is a habitual violator and grabber of property belonging to third parties and thus, does not deserve any indulgence of this Court.

8. This Court has perused the record and heard the ld. counsel for the parties. The first and foremost question is whether Section 19(2) of the DRC Act would apply in the facts of this case. For the purpose of deciding this

issue, the order of the Supreme Court dated 17th December, 2013 has to be perused. In the first portion of the order, the Supreme Court has dismissed the SLP against the eviction decree. However, what is important is the second portion of the order where it is categorically recorded that the Tenant was given four months' time to vacate the tenanted premises "*as prayed for*". Upon dismissal of the SLP, the Tenant had the option to simply vacate the tenanted premises, however, he sought the indulgence of the Supreme Court to retain possession of the tenanted premises for a further period of four months, which was granted, following which the Tenant admittedly filed an undertaking before the Supreme Court to vacate the tenanted premises.

9. When a tenant prays for and is granted further time to remain in possession of the tenanted premises after the dismissal of an SLP/appeal against the execution decree, the tenant invokes the discretionary jurisdiction of the Court. While on a simple dismissal, the right to move under Section 19(2) of the DRC Act may have been available to the Tenant, once the Tenant prayed for and was granted further time to vacate the property and thereafter the tenant even filed an undertaking to vacate, the same was with the indulgence of the Court and constituted a voluntary undertaking to handover possession. Since the Tenant availed of the four months' additional period and filed the abovementioned undertaking, the tenanted premises would not be considered to have been recovered through the legal process but through a voluntary undertaking.

10. The RCT has arrived at the same conclusion in its order dated 5th August, 2017 by placing reliance on the Supreme Court's judgment in *Smt. Vidhya Dhir Bhagat vs. Allahabad Law Journal*, AIR 1990 SC 1015. The relevant portion of the judgment is as follows:

“6. It will be convenient if at this stage, we read sub-section (1) of Section 19 of the Act:

“19(1). Recovery of possession for occupation and re-entry.— Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to sub-section (1) of Section 14 (or under Sections 14-A, 14-B, 14-C, 14-D and 21), the landlord shall not, except with the permission of the Controller obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.”

7. Sub-section (1) refers to recovery of possession of any premises from the tenant in pursuance of an order made under Section 14(1)(e) or under Sections 14-A, 14-B, 14-C, 14-D and 21. The landlord shall not re-let such premises within three years from the date of obtaining possession from the tenant without the permission of the Controller.

8. Sub-section (2) of Section 19 is more important and must be set out in full:

“19(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the

Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.”

9. This sub-section again operates in favour of the tenant who has suffered an order of eviction under Section 14(1)(e) or under Sections 14-A to 14-D and 21. If the landlord after recovering possession of the premises does not occupy the same or it is not occupied by the person for whose benefit the premises are held, within two months of obtaining such possession, the tenant may move the Controller for a direction against the landlord to put him in possession of the premises or to pay him such compensation as the Controller thinks fit. Not merely that, the tenant has a further right to move the Controller for such reliefs if the landlord has at any time within three years from the date of obtaining possession, re-let the premises to third party without obtaining permission of the Controller under sub-section (1) of Section 19, or the possession of such premises is transferred to another person not bona fide. This right of the tenant to re-enter the premises is, however, restricted only in cases where the tenant is ordered to be evicted either under Section 14(1)(e) or under Sections 14-A to 14-D and 21. If the possession is recovered under any order other than those referred to in sub-section (1) the tenant has no right to invoke the provisions of sub-section (2) of Section 19.

10. With these requirements of the statute, it may now be examined whether the tenant has a right to seek re-induction into the premises under sub-section (2) of Section 19.

11. From the narration of facts it will be seen that the parties entered into a compromise in Suit No. 330 of 1977 by which the tenant has willingly surrendered possession with payment of Rs 6000 to the appellant as arrears of rent. On that day there was no execution of the decree for eviction obtained in Suit No. 288 of 1977. It

was, however, contended that the tenant willingly surrendered possession of the premises without waiting for the execution of the eviction decree in Suit No. 288 of 1977 and there is no such bar for surrendering of possession under Section 14(7) of the Act. We could have accepted this submission if there was only a decree for possession in Suit No. 228 of 1977, but that is not so in the instant case. **The possession was actually delivered to the appellant by the tenant as per the compromise recorded in the suit based on arrears of rent under Section 14(1)(a) and delivery of such possession cannot therefore, be referable to the decree for eviction under Section 14(1)(e). In fact, that decree for eviction in Suit No. 288 of 1977 was not put into execution and it was perhaps found unnecessary to execute that decree since the tenant has surrendered possession of the premises as per the compromise in Suit No. 330 of 1977 based on arrears of rent. The application filed by the tenant under sub-section (2) of Section 19 of the Act was, therefore, clearly not maintainable.**”

11. The submission of the Tenant that he is entitled to re-entry as the Landlord did not occupy the tenanted premises within the prescribed period in law is also without any merit inasmuch as the RCT has rightly observed that in view of the judgment of the Supreme Court in **Ramniglal Pitambardar Mehta v. Indradaman Amratlal Sheth, AIR 1964 SC 1676** even conducting renovation of the property would constitute occupation. The relevant portion of the judgment reads as under:

“12. We agree with the Courts below that the respondent's case falls under clause (g) when he bona fide requires the premises for his own occupation. The mere fact that he intends to make alterations in the house either on account of his sweet will or on account of absolute necessity in view of the condition of the house, does not affect the question of his requiring the house bona fide and reasonably for his occupation,

when he has proved his need for occupying the house. There is no such prohibition either in the language of clause (g) or in any other provision of the Act to the effect that the landlord must occupy the house for residence without making any alterations in it. There could not be any logical reason for such a prohibition. Under ordinary law, the landlord is entitled to eject his tenant whenever he likes, after following certain procedures except in cases where he has contracted not to eject him before the happening of a certain event. The Act restricts that general right of the landlord in the special circumstances prevailing in regard to the availability of accommodation and the incidental abuse of those circumstances by landlords in demanding unjustifiably high rents.

13. The Act has provided sufficient protection to the tenants against being harassed by threat of ejectment in case they are unable to satisfy landlords' demands. Various restrictions have been placed on the right of the landlord to eject the tenant. Section 12(1) provides that the landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy insofar as they are consistent with the provisions of the Act. Section 13 provides exceptional cases in which the landlord can eject the tenant even though he had been paying rent regularly or be ready and willing to pay rent. The provisions of Section 13 are for the advantage of the landlord and the various grounds for ejectment mentioned in that section are such which reasonably justify the ejectment of the tenant in the exercise of the landlord's general right to eject his tenant. There is therefore no reason why restrictions not mentioned in the grounds be read into them. We do not therefore agree with the contention that clause (g) will apply only when the landlord bona

bona fide needs to occupy the premises without making any alteration in them i.e. to occupy the identical building which the tenant occupies. There is no justification to give such a narrow construction either to the word “premises” or to the word “occupies” which have been construed by this Court in Krishanlal Ishwarlal Desai v. Bai Vijkor [Civil Appeal No. 804 of 1962, decided on 18-1-1963] referred to later.

14. There are provisions in the Act which ensure that the provisions of clause (g) are not abused. Section 17 provides that if the premises are not occupied within a period of one month from the date the landlord recovers possession or the premises are re-let within a period of one year of the said date to any person other than the original tenant, the Court may order the landlord, on the application of the original tenant, within the time prescribed, to place him in occupation of the premises on the original terms and conditions. This tends to ensure that a landlord does not eject a tenant unless he really requires the premises for occupation by himself.

15. We are therefore of opinion that once the landlord establishes that he bona fide requires the premises for his occupation, he is entitled to recover possession of it from the tenant in view of the provisions of sub-clause (g) of Section 13(1) irrespective of the fact whether he would occupy the premises without making any alteration to them or after making the necessary alterations.

16. The provisions of clause (hh) cannot possibly apply to the case where a landlord reasonably and bona fide requires the premises for his own occupation even if he had to demolish the premises and to erect a new building on them. The provisions of clause (hh) apply to cases where the landlord does not require the premises for his own occupation but requires them for erecting a new building which is to be let out to tenants. This is clear from the provisions of sub-section

(3-A) which provide that a landlord has to give certain undertaking before a decree for eviction can be passed on the ground specified in clause (hh). He has to undertake that the new building will have not less than two times the number of residential tenements and not less than two times the floor area contained in the premises sought to be demolished, that the work of demolishing the premises shall be commenced by him not later than one month and shall be completed not later than three months from the date he recovers possession of the entire premises and that the work of erection of the new building shall be completed by him not later than fifteen months from the said date. These undertakings thus provide for a time schedule for the new building to come up into existence and ensures atleast the doubling of the residential tenements i.e. rooms or groups of rooms rented or offered for rent as a unit: vide Section 5(12) of the Act.”

The principle laid down in **Ramniklal (supra)** has been reiterated by the Supreme Court in **Kusum Devi v. Mohan Law (Dead) By LRs, (2009) 11 SCC 594**. Thus, this Court does not find any merit in the present petition.

12. A reading of the orders passed in the execution proceedings clearly shows that the possession of the tenanted premises had been given on 8th August, 2014. The statement given by the ld. counsel for the Respondent/Decree Holder and the order of the Executing Court clearly shows that the Tenant had handed over possession to the Respondent/Decree Holder voluntarily and not by coercion or by process of law after appointment of a Bailiff. Though the initial decree was under Section 14(1)(e), the handing over of possession was voluntary and hence in terms of the judgement of the Supreme Court in **Vidya Dhir Bhagat (supra)**, Section 19(2) would not be applicable. A provision such as Section 19(2) which deprives the landlord of

the absolute use of his property would have to be interpreted strictly, failing which there are chances of the same being completely misused, resulting in miscarriage of justice.

13. Another important feature of this case are the two judgments concerning the dispute between the Tenant and the Indian Institute of Finance which have been placed before this Court by the Id. counsel for the Landlord. On a perusal of both of these judgments there is no doubt that the Tenant has been convicted of contempt and has also been subjected to strictures by this Court.

14. Under these circumstances, the present petition is dismissed with further costs of Rs.50,000/- in favour of the Landlord. Ld. counsel for the Respondent submits that the earlier costs of Rs.50,000/- which were imposed by the Tribunal have also not been paid. The Tenant is directed to pay a total sum of Rs.1 lakh within a period of four weeks from today. If the same are not paid, the Respondent is permitted to avail his legal remedies to recover these costs.

15. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 16, 2020

Rahul

(Corrected and released on 3rd February, 2020)