

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

% **Date of decision: 15th December, 2021**

+ **CM(M) 1122/2021 & CM No.44110/2021 (for Stay)**

AHUJA TRADING COMPANY

..... Petitioner

Through: Mr. Pardeep Gupta, Mr. Parinav Gupta, Ms. Mansi Gupta and Mr. Rahul Kumar Choudhary, Advocates

versus

RAMESH CHANDER AGGARWAL

..... Respondent

Through: Mr. Prabhav Ralli and Mr. Shivaz Berry, Advocates

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (ORAL)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 18th November, 2021 passed by the Additional Rent Controller-01, Central District, Tis Hazari Courts, Delhi (hereinafter 'Executing Court') in Execution No. 03/2021, whereby the Executing Court has issued warrants of execution in respect of the order/decreed dated 12th July, 2010 passed in Eviction No.28/2010.
2. Notice was issued in this petition on 08th December, 2021 and the counsel for the respondent has entered appearance.
3. Brief facts leading to the present petition are that:

3.1 Respondent (hereinafter 'landlord') filed an eviction petition bearing Eviction No.28/2010 before the Additional Rent Controller, Central District, Tis Hazari Courts (hereinafter 'ARC') under Section 14(1) (e) read with Section 25-B of the Delhi Rent Control Act, 1958 (DRC Act) seeking eviction of the petitioner (hereinafter 'tenant') from the tenanted premises, being Shop No.3674, Gali Sehtara, Ajmeri Gate, Delhi-110006 (hereinafter 'tenanted premises').

3.2 Vide judgment dated 12th July, 2010, the ARC allowed the eviction petition filed by the landlord as the tenant failed to file the leave to defend. However, in terms of settlement arrived at between the tenant and landlord, ten years' time was granted to the tenant to vacate the tenanted premises. Upon expiry of ten years, the landlord filed the execution petition from which the present petition arises.

3.3 Vide impugned order dated 18th November, 2021 passed by the Executing Court, request of the tenant to file reply to the execution petition was rejected and warrants of execution of the order/decreed dated 12th July, 2010 were issued after noting that no appeal/revision has been preferred by the tenant against the order/decreed dated 12th July, 2010.

4. Counsel for the tenant has made the following submissions:

- (i) In view of Order XXI Rule 22 of the Code of Civil Procedure, 1908 (CPC), since the execution petition was filed more than two years after the date of order/decreed passed by the ARC and also the execution is against the legal representatives of the original respondent, Sh. Ram Nath Ahuja, who had expired after passing of the order/decreed by the ARC, notice was required to be issued to the person against whom execution has been filed, requiring him to show

cause. Reliance has been placed on the judgment of the Supreme Court in *Satyanarain Bajoria Vs. Ramnarain Tibrewal* (1993) 4 SCC 414.

- (ii) The order/decreed passed by the ARC itself was a nullity as the provisions of the DRC Act are not applicable to the locality where the tenanted premises is located i.e. Ajmeri Gate. In support of the said contention, reliance has been placed on the judgment of the Supreme Court in *Sunder Dass Vs. Ram Prakash* (1977) 2 SCC 662 to contend that where there is lack of inherent jurisdiction, it goes to the root of competence of the court to try the case. As a result, the decree which is passed is a nullity and it can be so declared by the Executing Court. To the same effect, is the judgment of the Bombay High Court in *Apple Finance Ltd. Vs. Mantri Housing and Construction Ltd.* 2002 SCC OnLine Bom 97, relied upon by the counsel for the tenant.

5. Counsel for the landlord has made the following submissions:

- (i) The order/decreed dated 12th July, 2010 passed by the ARC was in the nature of a compromise decree as it was passed with the consent of both the sides.
- (ii) The tenant has not approached this Court with clean hands as the earlier orders passed in the execution petition before the impugned order dated 18th November, 2021 was passed, have not been disclosed.
- (iii) Notice to the tenant was issued by the Executing Court on 26th March, 2021 and it has been noted in the order dated 09th November, 2021 that notices have been served on the tenant. In fact, it is further noted in the order dated 09th November, 2021 that despite pass over, none appeared on behalf of the tenant.

- (iv) The present petition under Article 227 of the Constitution of India is not maintainable as the remedy of the tenant would be to file an appeal under Section 38 of the DRC Act. Reliance in this regard has been placed on the judgment of this Court in ***Inder Mohan Sachdeva Vs. Usha International Ltd.*** MANU/DE/1538/2012.
- (v) The tenant in the present case has enjoyed the fruits of the consent decree by continuing to be in occupation of the tenanted premises for a period of ten years and it is only after the expiry of the said period of ten years that he has raised objections with regard to jurisdiction of the DRC Act. Reliance in this regard has been placed on the judgment of the Supreme Court in ***U.P. State Agro Industrial Corporation Ltd. Vs. Ravindra Mehrotra*** MANU/SC/1540/2002 and judgments of this Court in ***Gajender Solanki Vs. Banso Devi*** 2005 SCC OnLine Del 902 and ***Rakesh Rishi Vs. Chetan Vats*** 2009 SCC OnLine Del 160.
- (vi) The judgments cited by the tenant are not applicable in the facts of the present case as the said judgments were not in the context of execution of a compromise decree.
- (vii) Nothing has been placed on record to show that the tenanted premises located in Ajmeri Gate does not come under the ambit of the DRC Act.
6. In rebuttal, counsel for the tenant has contended the following:
- (i) The tenant appeared for the first time before the Executing Court on 18th November, 2021 and sought time to file reply which was not granted. In terms of Order XXI Rule 23 of the CPC, the tenant should have been granted time to file reply.
- (ii) Judgments cited by the landlord are not applicable in the facts of the

present case as the said judgments were in the context of civil courts and not in the context of specially constituted authorities/tribunals, such as the ARC or Rent Control Tribunal under the DRC Act.

- (iii) Since there was no inherent jurisdiction of the ARC under the DRC Act, there is no question of any waiver given by the tenant. Reliance has been placed on the judgment of the Supreme Court in ***Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) Through His LRs***, (1990) 1 SCC 193 in this regard.

7. I have heard the counsels at length.

8. A pointed query was put by the Court to the counsel for the tenant as to when the notice of the execution petition was served on the tenant. In response thereto, counsel for the tenant could not provide an answer but only submitted that Sh. Ram Nath Ahuja, the erstwhile partner of the tenant firm had expired on 6th June, 2020, before the present execution petition was filed.

9. Yet another query from the Court whether the fact of notice having been served on son of Sh. Ram Nath Ahuja has been stated in the present petition, was answered in negative. In response thereto, counsel for the landlord has submitted that notice was served on Sh. Arun Ahuja, who was the son of the deceased Sh. Ram Nath Ahuja and was himself a partner in the tenant firm. He further submits that Sh. Arun Ahuja was a signatory to the compromise deed arrived at between the parties leading to the order/decreed dated 12th July, 2010 passed by the ARC, and had duly received the notice of the execution petition.

10. Having heard the counsels, this Court is satisfied that the tenant has not approached this Court with clean hands. Notice was issued in the

present petition by this Court on the basis that notice in the execution petition was not issued to the tenant. However, the said contention has been completely falsified in view of the submission of the counsel for the landlord as well as the order dated 09th November, 2021 of the Executing Court wherein it has clearly been recorded that notices have been served and no one had appeared on behalf of the tenant before the Executing Court on the said date. Counsel for the tenant submits that fresh notice has been directed to be issued to the tenant vide the order dated 09th November, 2021. However, a perusal of the order dated 09th November, 2021 passed by the Executing Court clearly shows that there was no direction for issuance of fresh notice, only a fresh report was sought from the Nazir with regard to any revision/appeals filed by the tenant against the consent order/decreed. The fact that notice was issued to Sh. Arun Ahuja, the partner of the tenant firm has been deliberately suppressed by the tenant in the present petition.

11. It is settled position of law, that jurisdiction under Article 227 of the Constitution of India is an equitable jurisdiction and a person who approaches the court with unclean hands cannot be granted relief in exercise of jurisdiction under Article 227 of the Constitution of India. Reference in this regard may be made to the judgments of the Supreme Court in ***Ramesh Chand Sankla and Ors. Vs. Vikram Cement and Ors.*** (2008) 14 SCC 58. Though this alone can be a good ground to dismiss the present petition, I have proceeded to examine the case on merits.

12. The undisputed position in the present case is that a consent order/decreed was passed on 12th July, 2010 by the ARC in terms of which, ten years' time was given to the tenant to continue occupying the tenanted premises. The said consent order/decreed is set out below:

“12.7.2010

Present; Petitioner with counsel Sh. Rajan
Respondent through its partner Sh. Ram Nath Ahuja and Sh. Arun Ahuja with counsel Sh. Vikas Mishra

Vakalat Nama has been filed for the respondent by the counsel Sh. Vikas Mishra. As per the report of Ahlmad no leave to defend application has been filed by the respondent.

The present petition has been filed u/s 14(1)(e) r/w section 25-B of DRC Act on the ground of bonafide requirement. As leave to defend application has not been filed by the respondent despite service by way summons on 05.03.2010 and by way of RC on 040.03.2010, therefore, as per section 25-B(4) in the absence of the leave to defend application, the statement made by the petitioner is deemed to be admitted by the respondent and hence an eviction order u/s 14(1)(e) r/w section 25-B of DRC Act is passed in favour of petitioner and against the respondent in respect of one shop in the property bearing no. 3674, Gali Sehtara, Ajmeri Gate, Delh-06 more specifically shown in red colour in site plan Ex.C1 (exhibited today while passing the order). However, the eviction order shall not be executable before the expiry of 6 months from today.

However, at this stage the counsel for the parties submits that the matter has been settled between the parties. In this regard, an application u/o 23 rule 1 and 2 has been filed. It is stated that as per the terms and conditions stated in the application the statement of the parties may be recorded.

The statement of the parties has been recorded separately which is identified by the counsels. The application u/o 23 rule 1 and 2 has been signed by both the parties at point A and B.

In view of above, as both the parties have agreed that the rate of rent of the suit property shall be Rs.1725/- p.m. w.e.f. 01.09.2010 which shall be increased by 15% after 3 years and the petitioner shall not execute the decree till 10 years on the compliance of aforesaid terms and conditions by the respondent and in this regard the statement of both the parties have been recorded separately, the present petition is disposed of as compromised. File be consigned to Record Room.

(B.R. Bansal),
ARC(Central)/Delhi/12.07.2010”

13. At the said point of time, no objection was taken by the tenant that the ARC did not have the jurisdiction under the DRC Act. The tenant continued to enjoy the occupation of the tenanted premises for a period of ten years without in any manner raising any challenge in respect of the consent order/decreed or raising any grounds with regard to the said order/decreed having been passed by the ARC without having inherent jurisdiction. It is only when the period of ten years was over and the tenant did not handover possession of the tenanted premises to the landlord, and the execution proceedings were initiated by the landlord, that the tenant is seeking to raise the aforesaid objection before this Court for the first time. It emerges from the above, that the conduct of the tenant is completely dishonest and reprehensible.

14. Even though, counsel for the tenant has vehemently argued that there is no jurisdiction vested in the ARC to have passed the order/decreed, nothing has been placed on record in support of the said contention. Section 1(2) of the DRC Act which defines the jurisdiction under the DRC Act is set out below:

“1. (2) It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule:

Provided that the Central Government; may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.”

15. In terms of the aforesaid Section, the provisions of the DRC Act are applicable to all urban areas within the limits of Municipal Corporation of Delhi as specified in the First Schedule to the DRC Act. The proviso to the Section provides that the Central Government may, by notification in the official gazette, exclude any area from the operation of the DRC Act. In the present case, no such notification has been placed on record to state that the area of Ajmeri Gate, where the tenanted premises is located, has been excluded under Section 1(2) of the DRC Act. The only submission made by counsel for the tenant in this regard is that in another case between the same parties with regard to premises in Ajmeri Gate, the said issue is pending before this Court.

16. Counsel for the landlord has correctly placed reliance on the judgment of the Supreme Court in *U.P. State Agro Industrial Corporation Ltd.* supra in which the facts were almost identical to the facts and circumstances of the present case. In the said judgment, there was a compromise arrived at between the landlord and the tenant in terms of which tenant was allowed to retain possession of the tenanted premises for a period of ten years and the suit was decreed in terms of the compromise. After enjoying possession of the premises for a period of ten years, an objection was raised by the tenant that a decree could not have been passed against the tenant under the provisions of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and the decree was a nullity. The said objection was rejected by the Executing Court and subsequently, the petition filed under Article 226 of the Constitution of India was dismissed by the High Court. While dismissing the petition filed by the tenant before the

Supreme Court, it was observed as under:

*“11. The question then arises as to whether in exercise of our discretion Under Article 136 of the Constitution of India, we should interfere with the order passed by the High Court? **We have noticed the fact that the Appellant entered into a compromise with the landlord and in terms of the compromise availed of the benefit thereunder and continued as a tenant for 10 long years. It did not challenge the consent decree as being a nullity. It took full advantage of the decree and did not, during the period provided in the decree, raise the objection that the decree was not executable being a nullity. The Appellant continued in occupation of the premises for the full period of 10 years and even paid the enhanced rent to the landlord thus holding itself bound by the terms of the decree. After enjoying the benefit under the compromise decree for the full period of 10 years, it sought to challenge the jurisdiction of the Prescribed Authority to pass that decree. In these facts and circumstances we cannot say that the High Court acted either erroneously or arbitrarily in not exercising its discretion Under Article 226 of the Constitution to grant relief to the Appellant. The High Court has dismissed the writ petition on the ground that having regard to the conduct of the Appellant this was not a proper case in which the Court ought to exercise its jurisdiction Under Article 226 of the Constitution. We find no reason to interfere with that order. This appeal is accordingly dismissed.**”*

17. Similarly, counsel for the landlord has correctly placed reliance on the judgment of this Court in **Gajender Solanki** supra, where this Court was seized of a petition where the tenant once again raised the plea that the compromise decree arrived at between the parties was without jurisdiction as the civil court did not have the jurisdiction in view of the provisions of the DRC Act. Rejecting the petition filed by the tenant, it was observed by this Court as under:

*“3. **The contents of Order 23 clearly show that it is open to the***

parties to arrive at compromise for settlement even in respect of issues which are not the subject matter of the suit. Thus the finding of the appellate court are indeed justified fully by the mandate of Order XXIII Rule 3 CPC. Besides, the petitioner's conduct is such as would dis-entitle him to any equity in his favour. The petitioner gave an undertaking on 28th January, 1999 agreeing to vacate the premises by 30th April, 1999, and utilized the aforesaid time and thereafter has sought to take the plea that the consent decree was passed without jurisdiction only after utilizing the time fully granted by the consent decree.

xxx

xxx

xxx

5. The last plea raised by the petitioner is that the effect of Section 14(1) of the Act is available to him. The appellate Court has rightly recorded that it was not a case of eviction and that the order leading to the vacation of the premises was passed on an undertaking given by the petitioner himself on his own to vacate the premises that too in a Civil Suit filed by the petitioner himself seeking the relief that he should not be dispossessed except in accordance with law. Hence, no cause for interference has been made out. The petition is thus dismissed and stands disposed of.

18. In *Rajappa Hanamantha Ranoji Vs. Mahadev Channabasappa and Ors.* (2000) 6 SCC 120, the brother of the original tenant filed a separate suit against the landlord in order to frustrate the eviction order, eight years after passing of the eviction order. The Supreme Court, while imposing costs on the appellant and dismissing his appeal, observed the following:

“13. It is distressing to note that many unscrupulous litigants in order to circumvent orders of Courts adopt dubious ways and take recourse to ingenious methods including filing of fraudulent litigation to defeat the orders of Courts. Such tendency deserves to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing of exemplary costs. As noticed, despite eviction order having become final nearly a quarter century ago, respondent No. 1 still could not enjoy the benefit of the said order

and get possession because of the filing of the present suit by the brother of the person who had suffered the eviction order. Under these circumstances, we quantify the costs payable by the appellant to respondent No. 1 at Rs. 25,000/-.”

19. As noted above, in the present case, the order/decreed passed by the ARC was in the nature of a compromise decree, terms of which were known to Sh. Ram Nath Ahuja, the erstwhile partner of the tenant firm, as well as Sh. Arun Ahuja, the son of Sh. Ram Nath Ahuja, whose presence has been recorded in the order/decreed dated 12th July, 2010 passed by the ARC. In fact, notice of the execution petition was also issued and was duly served on Sh. Arun Ahuja. But still, he did not appear before the Executing Court on 9th November, 2021. The judgment of the Supreme Court in **Satyanarain Bajoria** supra would not come to the aid of the tenant as in the said judgment, the Supreme Court has noted that the decree holder acted fraudulently and gave no notice of the execution proceedings to the judgment debtor. The decree holder in the case before the Supreme Court, deliberately waited for three years and instituted new execution proceedings after an earlier execution petition filed by him had been dismissed, in order to keep the judgment debtor ignorant of the execution proceedings.

20. As regards the judgments relied upon by the counsel for the tenant in **Sunder Dass** supra and **Apple Finance Ltd.** supra, there is no dispute with the proposition that the Executing Court can go behind the decree under execution if the decree itself is nullity having been passed by a court lacking jurisdiction. However, the aforesaid judgments would not be applicable in the facts and circumstances of the present case, as the aforesaid judgments are not in the context of execution proceedings filed pursuant to a

compromise decree. Further, as noted above, nothing has been placed on record in the present case to demonstrate the inherent lack of jurisdiction in the ARC.

21. In the judgment relied upon by counsel for the tenant in *Sushil Kumar Mehta* supra, the Supreme Court had held that if a Court inherently lacks jurisdiction, the judgment debtor is not precluded from raising the said issue at the time of execution of such an order passed by a Court lacking jurisdiction. It has also been held that defect of jurisdiction cannot be altered by waiver or consent. However, the aforesaid judgment would have no applicability in the facts and circumstances of the present case as in the present case, the petitioner has not been able to place any notification on record to show that the ARC lacked jurisdiction to pass the order/decreed dated 12th July, 2010. Further, the aforesaid judgment was not in the context of a consent decree, whereas in the present case, there is a consent decree between the parties.

22. In view of the discussion above, the position that emerges is that the tenant voluntarily entered into a compromise and pursuant thereto, enjoyed the benefit of staying in the tenanted premises for a period of ten years. Now, at the stage of execution, the tenant cannot raise objections with regard to the jurisdiction of the ARC that recorded the consent order/decreed. The case of the tenant herein was based on concealment of facts and the conduct of the tenant has been dishonest and unscrupulous. As per the compromise entered into between the parties, the tenant should have handed over possession of the tenanted premises in July, 2020, i.e. after passing of ten years of the order/decreed dated 12th July, 2010 passed by the ARC. Despite signing statements to this effect before the ARC under Order XXIII

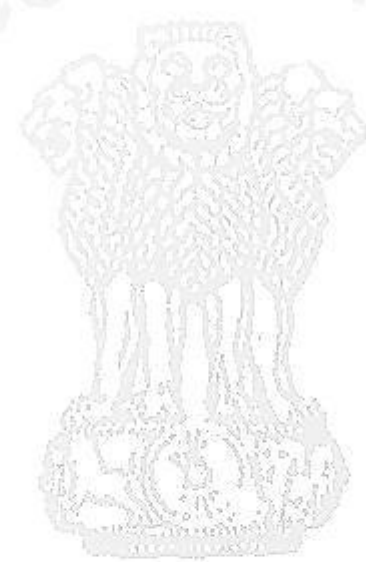
Rules 1 and 2 of the CPC, as recorded in the order/decreed passed by the ARC on 12th July, 2010, the tenant held on to the tenanted premises. In fact, copies of the statements recorded by the parties before the ARC have also deliberately not been filed along with the present petition. Dishonest litigants cannot be allowed to abuse the process of the Court. The conduct of the petitioner itself would disentitle the petitioner of any relief in the present petition.

23. In view of the discussion above, the present petition is dismissed with costs of Rs.50,000/-.

DECEMBER 15, 2021

dk

AMIT BANSAL, J.



सत्यमेव जयते