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

+ CM(M) 451/2022 & CM No.23052/2022, CM No.23053/2022

ARUN CHOPRA Petitioner

Through: Ms.Shobhana Takiar, Adv.

versus

CHANDRA ASSOCIATES PVT LTD Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

18.05.2022

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1. The orders under challenge in the present proceedings, preferred under Article 227 of the Constitution of India, emanate from Eviction Petition 6087/2016 (*Chandra Associates Pvt. Ltd. v. Krishna Gupta & Anr.*). The petitioner Arun Chopra was Respondent 2 in the said eviction petition, Respondent 1 Chandra Associates Pvt. Ltd. ("CAPL Ltd", hereinafter) was the petitioner and Respondent 2 Krishna Gupta was Respondent 1 therein.

2. For ease of reference, the parties shall be referred to by their respective names.

3. CAPL, in its eviction petition, set up a case of the suit property, located at A-15A, Hauz Khas, New Delhi having been previously owned by one Dr. R.K. Gupta. CAPL pleaded that R.K. Gupta had sold the suit property to CAPL by a registered sale deed, and that



Krishna Gupta was, at that time, a tenant in the property. It was further pleaded that, consequent to purchasing the property, CAPL asked Krishna Gupta to hand over possession of the property, but that she failed to do so. It was alleged that, rather, Krishna Gupta had sublet the suit premises to the petitioner Arun Chopra without the consent of the owner Dr. R.K. Gupta on 21st May, 1981.

4. Krishna Gupta did not file any written statement in response to the eviction petition and was, accordingly, proceeded *ex parte*.

5. The petitioner Arun Chopra, as Respondent 2 in the eviction petition, filed a written statement, in which he contended that he was inducted in the suit property on 21st May, 1981 by Krishna Gupta and her husband Tarsem Gupta, who were authorised to do so under a General Power of Attorney (GPA) dated 26th August, 1976, executed by Dr. R.K. Gupta. He submitted that no rent receipt was executed at the time as Dr. R.K. Gupta was out of India.

6. The petitioner contended that, ultimately, on 5th August, 1983, a lease agreement was executed with the petitioner Arun Chopra. Admittedly, the lessor, in this lease agreement, was Krishna Gupta, though Tarsem Gupta is stated to be a witness to the said agreement. Equally admittedly, the GPA dated 26th August, 1976, did not confer any authority on Krishna Gupta to lease out the suit premises. The said authority was conferred, by the GPA, if at all, only on Tarsem Gupta.



7. The petitioner filed a petition for fixing of standard rent under Sections 6 and 9 of the Delhi Rent Control Act, 1958. The petitioner sought to contend, in the said petition, that Krishna Gupta had accepted execution of the lease deed dated 5th August, 1983. Under the said lease deed, therefore, the petitioner claimed to have directly attorned to Dr. R.K. Gupta as his direct tenant, albeit through Krishna Gupta and Tarsem Gupta.

8. It was further submitted by the petitioner, before the learned ARC, that CAPL had not produced any title documents and was, in fact, an unauthorised occupant and a trespasser in the suit property. The allegation of CAPL, to the effect that Krishna Gupta was a tenant in the suit property was also denied. It was reiterated that Krishna Gupta and Tarsem Gupta were GPA holders and representatives of Dr. R.K. Gupta. In his written statement, the petitioner Arun Chopra also denied the assertion, by CAPL, to have purchased the suit property from Dr. R.K. Gupta.

9. CAPL, in its rejoinder in the eviction petition, submitted that the GPA dated 26th August, 1976 did not confer any right on Krishna Gupta to lease the suit property to anyone. It was also submitted that there was no agreement between Dr. R.K. Gupta and Krishna Gupta.

10. In his order dated 25th September, 2019, the learned ARC has, after taking stock of the above facts, observed that CAPL had succeeded in proving the sale deed, whereunder the suit property was sold by Dr. R.K. Gupta to CAPL, which was exhibited as Ex. PW-2/2.



It was observed that, in the said sale deed, it was specifically stated that the first floor of the suit property had been let out to Krishna Gupta and Tarsem Gupta as tenants and that there was no reference, in the sale deed, to the petitioner at all.

11. The learned ARC further observed that CAPL had also proved the certified copy of the proceedings under Sections 6 and 9 of the DRC Act filed by the petitioner Arun Chopra. In the written reply filed by her in response to the said petition, exhibited as Exh.P-7, Krishna Gupta admitted having inducted the petitioner as sub-tenant without the permission of Dr. R.K. Gupta. As such, the learned ARC held that the tenancy of Krishna Gupta as well as the sub-tenancy of the petitioner by Krishna Gupta had been accepted both by Dr. R.K.Gupta as well as by Krishna Gupta.

12. As such, it was only the petitioner who was denying the factum of the said sub-tenancy. Though he was doing so, the learned ARC observed that the petitioner had not stepped into the witness box.

13. Adverting to the GPA dated 26th August, 1976, the learned ARC held that the GPA conferred authority to lease the suit property only to Tarsem Gupta and not to Krishna Gupta. As such, Krishna Gupta had no authority to enter into the lease deed dated 5th August, 1983, which was only between Krishna Gupta and the petitioner Arun Chopra. It was observed that this lease agreement did not state, at any point, that, in executing the lease agreement, Krishna Gupta was acting on behalf of Dr. R.K. Gupta. Rather, the lease agreement



referred to Krishna Gupta as the occupier of the suit property.

14. These facts, seen in conjunction with the fact that rent was accepted by Krishna Gupta, convinced the learned ARC that, in the tenancy created between Krishna Gupta and the petitioner under the lease deed dated 5th August, 1983, Dr. R.K. Gupta was kept out of the picture.

15. Reliance was also placed, by the learned ARC, on the pleadings in the petition preferred by the petitioner under Sections 6 and 9 of the DRC Act. It was observed that, in the said petition, the petitioner had referred to Krishna Gupta as his landlady and had also stated that he had been inducted into the premises by her. It was further observed that, in the said petition, the petitioner had never sought to aver that his induction as a tenant into the suit property, *vide* the sale deed dated 5th August, 1983, was on behalf of Dr. R.K. Gupta.

16. The learned ARC reiterated the fact that the petitioner had failed to step into the witness box so as to prove any document which could substantiate the petitioner's case.

17. Predicated on these findings, the learned ARC held that (i) the sale of the suit property by Dr. R.K. Gupta to CAPL stood proved, (ii) the induction of the petitioner, as a tenant, into the suit property, by Krishna Gupta *vide* the lease agreement dated 5th August, 1983, also stood proved and (iii) the said induction was behind the back and without the authority of Dr. R.K. Gupta, who had not conferred any



authority on Krishna Gupta to induct any tenant, as said authority was, if at all, conferred by the GPA dated 26th August, 1976 only on Tarsem Gupta. Observing that these facts clearly indicated that the petitioner had been illegally, and without the authority and consent of Dr. R.K. Gupta, inducted into the suit property as a sub-tenant, the learned ARC proceeded to decree the eviction petition and direct eviction of the petitioner from the suit property.

18. The petitioner appealed, against the aforesaid order, to the learned RCT, under Section 38 of the DRC Act.

19. The learned RCT observed, at the outset that Section 38 did not empower or authorise the learned RCT to interfere with the findings of fact recorded by the learned ARC or to reappraise the evidence. Nonetheless, the learned RCT noted that, in the sale deed between Dr. R.K. Gupta and Chandra Associates, there was a specific recital that the property was free from encumbrances *except and excluding tenancy litigation*. Reliance was also placed, by the learned RCT, on the pleadings contained in the application filed by the petitioner under Sections 6 and 9 of the DRC Act, in which regard, the learned RCT observes and holds thus:

“9.1 Next document that needs to be looked into is the petition u/sec.-6 & 9 of the DRC Act filed by the present appellant impleading Krishna Gupta, Tarsem Prakash Gupta and Dr. Ramesh Kumar Gupta, as respondents no.-1, 2 & 3. Contents of this petition Ex.P-6 are an admission by the present appellant regarding the status of each of the parties involved. In para no.-3 (a), Mrs. Krishna Gupta, respondent no.-1 has been pleaded to be the landlady. In para no.-18, pleading the grounds of fixation of rent, it has again been pleaded that the petitioner therein i.e. the present appellant



was inducted in the premises by the respondent no.-1 therein Smt. Krishna Gupta, who is the landlady. It has further been pleaded that though the premises was owned by Dr. Ramesh Kumar Gupta, yet the lease agreement was entered into between the petitioner and respondent no.-1 alone. In the written statement to this petition u/sec.-6 & 9 of the DRC Act, respondents no.-1 & 2 i.e. Mrs. Krishna Gupta and her husband filed joint reply, which is Ex.P-7. In para no.-14, thereof, it has been pleaded as under:-

“14. Para No.-14 of the petition is wrong and is denied. It is submitted that the premises were let out to the petitioner by the respondent no.-1 on 21.05.1981 @ Rs.1400.00 p.m. and his sub-tenancy was simply confirmed by her on 05.08.1983. Otherwise no new tenancy was created.”

9.2 In para no.-2 of the preliminary objections of written statement Ex.P-8 to the aforesaid petition by respondent no.-3 i.e. Dr. Ramesh Gupta, it is averred that '*petitioner was inducted as a sub-tenant by the respondent no.-1 unauthorizedly and without the permission & consent of Dr. Ramesh Kumar Gupta, the previous landlord*'.
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9.3 On these admitted pleadings, as noticed above, this court finds that the view taken by the Ld. Trial Court regarding the status of parties *inter-se* can not be challenged. Findings by the Ld. Trial Court on this aspect are, therefore, affirmed.”

(Emphasis supplied)

20. On these findings, the learned RCT proceeded to affirm the findings of fact returned by the learned ARC.

21. The learned RCT also proceeded, separately, to address the submission, advanced by learned Counsel for the petitioner, that the purported sale deed between Dr. R.K. Gupta and Chandra Associates had merely been exhibited and that mere exhibiting of the sale deed



did not result in proof of its contents or rendering of its contents admissible in evidence. The learned RCT held that, as the factum of tenancy of Krishna Gupta in the premises as well as the creation of sub-tenancy by Krishna Gupta in favour of the petitioner without the consent of R.K. Gupta, already stood admitted in the pleadings in the petition filed by the petitioner, there was no need to look for proof of the said facts from any external source, as admitted facts were not required to be proved. The learned RCT also relied on the suggestion put by the petitioner to PW-1 Manoj Singhal during cross examination, reflected from his response thus:

“It is correct that the suit property was purchased by petitioner company in the year 1986 but the present petition has been filed in the year 1995. No petition was filed by erstwhile directors also.”

22. In view of the aforesaid, the learned RCT found no reason to interfere with the finding of the learned ARC regarding the creation of an unlawful sub-tenancy in favour of the petitioner by Krishna Gupta without the consent of the owner Dr. R.K. Gupta. As such, the appeal filed by the petitioner was dismissed by the learned RCT.

23. The petitioner has now sought to challenge the order of the learned RCT by means of the present proceedings, under Article 227 of the Constitution of India.

24. Apropos the jurisdiction of this Court under Article 227, the following passage from the judgment of three Hon'ble Judges of the



Supreme Court in *Sadhana Lodh v. National Insurance Co. Ltd.*¹

neatly encapsulates the legal position:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

25. Besides, the parameters of Article 227 also stand adumbrated by the judgments of the Supreme Court in *Estralla Rubber v. Dass Estate (P) Ltd.*², *Garment Craft v. Prakash Chand Goel*³, *Puri Investments v. Young Friends & Co.*⁴. These judgments were relied upon, by this Court, in its decision in *Omaxe Buildhome Pvt. Ltd. v. Ibrat Faizan*⁵ which now stands affirmed by the Supreme Court in its recent decision in *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*⁶. The passage, from the said decision of the Supreme Court in *Ibrat Faizan*⁶, which deals with Article 227 of the Constitution and the parameters of the jurisdiction of this Court under the said provision, may be extracted thus:

“28. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of *Estralla Rubber v. Dass Estate (P) Ltd.*², which has been consistently followed by this Court (see the recent decision of

¹ (2003) 3 SCC 524

² (2001) 8 SCC 97

³ 2022 SCC OnLine SC 29

⁴ 2022 SCC OnLine SC 283

⁵ 2022 SCC OnLine Del 944

⁶ 2022 SCC OnLine SC 620



this Court in the case of *Garment Craft v. Prakash Chand Goel*³. Therefore, while exercising the powers under Article 227 of the Constitution, the High Court has to act within the parameters to exercise the powers under Article 227 of the Constitution. It goes without saying that even while considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.”

26. Ms. Shobhana Takiar, learned Counsel for the petitioner has reiterated the submission, advanced before the courts below, that the contents of the sale deed purportedly under which the petitioner purportedly purchased the suit property were never proved and that mere exhibiting of the sale deed did not result in proof of admissibility of its contents. Insofar as the reliance, by the courts below, on the pleadings contained in the petition filed by the petitioner under Sections 6 and 8 of the DRC Act are concerned, Ms.Takiar submits that the said petition was never adjudicated and that the manner in which the pleadings have been read by the courts below is not correct and does not reflect the actual state of the averments contained in the said pleadings.

27. If the evidence is properly appreciated, Ms. Takiar submits that it would be clear that no case of creation of any illegal sub-tenancy in favour of the petitioner by Krishna Gupta can be said to existed. The findings of the court below, in this regard, are, according to her, vitiated by manifest perversity.



28. With the narrow confines of the parameters of the jurisdiction of this Court under Article 227 of the Constitution of India, I am afraid it is not possible for me to interfere with the findings of the courts below which are concurrent and which do consider the entire evidence available before the courts. Even if the appreciation of the evidence is incorrect, or even if this Court were to feel that the conclusions at which the court below have arrived at, would not flow from the evidence on which they have placed reliance, that cannot constitute a basis for this Court to interfere under Article 227 of the Constitution of India. The circumstances which have weighed with the learned ARC and the learned RCT, in arriving at their findings are that (i) in the written reply filed by her in response to the petition of the petitioner under Sections 6 and 9 of the DRC Act, Krishna Gupta admitted having inducted the petitioner as sub-tenant with the permission of Dr. R.K.Gupta, (ii) Dr. R.K.Gupta had also, in the pleadings in the said petition, admitted, the sub-tenancy of the petitioner having been effected without his consent, (iii) the GPA dated 26th August, 1976 did not confer any authority to Krishna Gupta to lease the suit property, (iv) the lease deed dated 5th August, 1983 did not purport to have been executed on behalf of Dr. R.K.Gupta, (v) rather, the lease deed referred to Krishna Gupta as an occupier of the suit property (vi) the petitioner had, in his petition under Sections 6 and 9 of the DRC Act, referred to Krishan Gupta as his landlady, and had also stated that he had been inducted into the premises by her, (vii) there was no reference, in the said pleadings of the petitioner, that his induction into the suit property by Krishna Gupta, *vide* the lease



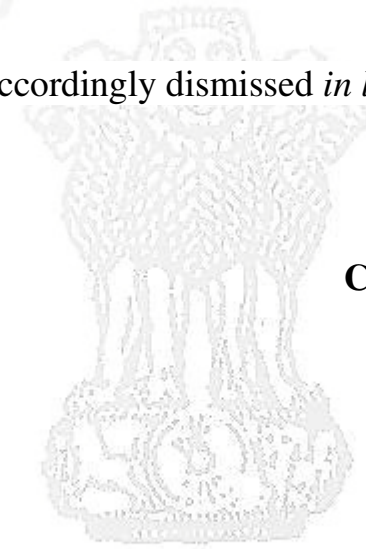
deed dated 5th August, 1983, was on behalf of Dr. R.K. Gupta and (viii) the petitioner did not step into the witness box to prove any of the documents on which he placed reliance.

29. As the finding of illegal of sub-tenancy has been arrived at on a cumulative consideration of all the above factors, which, again, is predicated on an appreciation of the evidence before the courts below, I regret that it is not possible for me to interfere with the said decisions under Article 227 of the Constitution of India.

30. This petition is accordingly dismissed *in limine*.

C.HARI SHANKAR, J

MAY 18, 2022/kr



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