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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 880/2022 & CM APPL. 37841/2022, CM APPL. 37842/2022

RAJENDER KASHYAP Petitioner
Through: Mr. Awijit Paliwal, Adv. with
petitioner in person

versus

KHANDELWAL JAIN SOCIETY & ANR. Respondents
Through: Mr. Pranav Jain, Mr. Sarthak
and Ms. Srishti Govil, Advs for Respondent
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CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)
30.08.2022

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1. This petition under Article 227 of the Constitution of India assails the order dated 26th August 2022, passed by the learned Rent Controller (“the learned RC”) in Ex. 446/2022 (*Khandelwal Jain Society v. Surrender Kumar*).

2. Ex. 446/2022 was in the nature of execution proceedings for execution of order dated 15th October 2013, passed by the learned RC in Eviction Petition 31/2013 (*Khandelwal Jain Society v. Surrender Kumar*). The petitioner was Respondent 2 in the Eviction Petition and Judgment Debtor 2 (JD-2) in the execution proceedings.

3. The learned RC *vide* judgment dated 13th October 2012, allowed



the Eviction Petition of the respondents and permitted the respondents to recover possession of the premises at Quarter No. 2-A, Jain Mandir Compound, Jaisingh Pura, Jain Mandir Road, Raja Bazar, New Delhi (“the tenanted premises”, hereinafter), under Clause (b) of the proviso to Section 14(1)¹ of the Delhi Rent Control Act, 1958 (“the DRC Act”).

4. An appeal, preferred thereagainst by Surrender Kumar, who was Respondent 1 in the Eviction Petition and JD-1 in the execution proceedings, was dismissed by the learned Rent Control Tribunal (“the learned RCT”) on 28th September 2019. CM(M) 1491/2019 (*Surrender Kumar v. Khandelwal Jain Society and Anr*) was also dismissed by a coordinate Bench of this Court *vide* judgment dated 7th November 2019. SLP (C) 3591/2020, preferred thereagainst by JD-1 Surrender Kumar was also dismissed *in limine* by the Supreme Court *vide* order dated 18th February 2020.

5. Despite this, the petitioner, who has, therefore, been in possession of the tenanted premises for over nine years as on date, after the order of eviction passed by the learned RC, moved an application before the learned RC in Ex. 446/2022, praying for time to

¹ 14. **Protection of tenant against eviction. –**

(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:-

(b) that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord...



vacate the tenanted premises till March 2023, on the ground that he was in impecunious circumstances and that his school going child was in Class 11.

6. The said application has been rejected by the learned RC *vide* order dated 26th August 2022, against which the petitioner is before this Court under Article 227 of the Constitution of India.

7. The learned RC has observed that the plea of the petitioner having school going children cannot a ground to extend the time for the petitioner to continue staying in the tenanted premises, as the petitioner's elder child is in Class 11, and there are no impending board examinations. I may note that the petitioner has a younger child who is in Class 4.

8. Learned Counsel for the respondents has drawn my attention to the identity cards of the petitioner's children, who are studying in Guru Harikishan Public School, which have been placed on record. He points that the identity cards enters, as the address of the children, "31/2C, Sector II, DIZ Area, Gole Market, New Delhi – 110001". As such, submits learned Counsel for the respondents, the petitioner is not in dearth of any alternative accommodation where he could reside.

9. To a query from the Court, learned Counsel for the petitioner, on instructions, submits that the aforesaid premises 31/2C, Sector II, DIZ Area, Gole Market, New Delhi – 110001 are tenanted residential premises in which father of the petitioner is staying.



10. The petitioner has been in possession of the tenanted premises for nine years after the eviction order had come to be passed in favour of the respondents by the learned RC. Even as on date, the petitioner is unwilling to vacate the tenanted premises and is seeking nine months' further time to do so. The eviction order of the petitioner has been upheld up to the Supreme Court.

11. Besides, the impugned order is purely discretionary in nature. It cannot, even otherwise, therefore, invite interference under Article 227 of the Constitution of India, especially as the manner of exercise of discretion by the learned RC cannot be said, by any stretch of imagination, to be perverse.

12. For all these reasons, there is no merit in this petition which is accordingly dismissed in *limine*. All miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J.

AUGUST 30, 2022

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