



\$~10(Appellate)

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

+ CM(M) 1199/2019 & CM No. 36708/2019

SHAKUNTALA

..... Petitioner

Through: Mr. Harvinder Singh, Adv.

versus

RANI

..... Respondent

Through: Mr.Arush Khanna, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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

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20.07.2022

1. This petition, under Article 227 of the Constitution of India, assails judgment dated 10th July, 2019 passed by the learned Rent Control Tribunal in RCT 09/19 (*Shakuntala v. Rani*).

Facts

2. Rani is the landlady and Shakuntala the tenant, in respect of the premises comprising a flat on the second floor of the property bearing no. C-110/12, Ganesh Nagar, New Delhi-110018 ("the tenanted premises", hereinafter).

3. These proceedings emanate from Eviction Petition ARC 25248/16, instituted by the respondent against the petitioner. The respondent, in the said petition, sought to evict the petitioner from the tenanted premises under clause (a) of the proviso to Section 14(1) of the Delhi Rent Control Act, 1958 ("the DRC Act"). The statutory



provision in question would be referred to hereinafter, as Section 14(1)(a), for convenience.

4. The respondent asserted, in the eviction petition, that the petitioner had been inducted in the tenanted premises as a tenant in 1998 at a monthly rent of ₹ 3,000/-, which was paid by her for about two years from the date of commencement of tenancy, whereafter the petitioner discontinued payment of rent. A demand notice, dated 22nd July, 2006, addressed to the petitioner by the respondent, calling on the petitioner to disgorge the rent of which she was in default having failed to elicit any favourable response, the respondent instituted ARC 25248/16 against the petitioner, seeking her eviction under Section 14(1)(a) of the DRC Act.

5. As is usual in such cases, the petitioner contested the title of the respondent over the tenanted premises. It was contended by the petitioner that the respondent was neither owner nor landlady of the tenanted premises which had been leased out to the petitioner by Ram Swaroop, the father of the respondent, in 1998, at a monthly rent of ₹ 1,000/-, apart from water and electricity charges. The petitioner sought to contend that she had been paying rent at the said rate to Ram Swaroop every month, in cash, till 13th November, 2008 and, as Ram Swaroop refused to collect rent thereafter, by way of deposit in Court.

6. The submissions of the petitioner failed to curry favour with the learned ARC, who, *vide* judgment dated 4th February, 2019, allowed the respondent's eviction petition, under Section 14(1)(a) of the DRC



Act. The learned ARC held that the tenanted premises had been let out by the respondent to the petitioner by way of an oral tenancy and that no rent receipts were being issued by her. He further held that the petitioner had failed to prove her contention that she was the tenant of Ram Swaroop or that Ram Swaroop had ever collected rent from her. The learned ARC further found that the notice of demand dated 22nd July, 2006 had duly been served on the petitioner by the respondent, the receipts in respect of which stood exhibited in the eviction petition. It was further found, by the learned ARC, that the petitioner had been unable to prove that she had tendered rent up to November, 2008.

7. Affirming the rate of rent at ₹ 1,000/- per month, the learned ARC allowed the respondent's eviction petition under Section 14(1)(a) of the DRC Act and, in view of Section 15(1) thereof, directed the petitioner to tender rent to the respondent @ ₹ 3,000/- per month with effect from 26th October, 2003 till the date of the order with simple interest @ 15% within a month and to continue to pay rent at the said rate by the 15th of each succeeding calendar month.

8. This judgment was assailed by the petitioner before the learned RCT by way of RCT 09/19.

9. Though various contentions were advanced by the petitioner before the learned RCT, Mr. Harvinder Singh, learned Counsel for the appellant has not pressed the said contentions and has restricted his submission to the contention that the ARC could not have directed payment of rent @ ₹ 3,000/- per month, and, thereby, modified the earlier order dated 23rd December, 2017, which directed payment of



rent @ ₹ 1,000/- per month. He submits that the direction, in the order dated 23rd December, 2017, to the petitioner, to pay rent @ ₹ 1,000/- per month was based on a submission made by the respondent in court and that, therefore, the learned ARC could not have legitimately increased the amount of rent payable from ₹ 1,000/- to ₹ 3,000/- per month at a later stage of the proceeding.

10. No other contention having been pressed by Mr. Harvinder Singh, this Court is required, in the present petition, only to examine whether the aforesaid contention merits interference, by this Court, with the impugned judgment dated 10th July, 2019 of the learned RCT in exercise of its jurisdiction under Article 227 of the Constitution of India.

11. I have had occasion, in order dated 18th July, 2022, passed in ***Kushal Anand v. Mandhir Sachdeva***¹ to opine that a plea which was not raised before the court below cannot be taken as the basis for seeking interference therewith, by the High Court under Article 227 of the Constitution of India. Article 227 does not confer jurisdiction which is either appellate or even in the nature of judicial review. The High Court, under Article 227, superintends the functioning of the courts below. Expressed otherwise, it may be said that the High Court acts in supervisory capacity. The High Court, under Article 227, is concerned with the manner in which the court below has exercised its jurisdiction in the case before it. If the manner in which jurisdiction was exercised calls for supervisory correction, the High Court would

¹ 2022 SCC OnLine Del 2102



pass appropriate orders under Article 227 of the Constitution of India. Else, it would refrain from interfering.

12. The Supreme Court, in the following passage from *Sadhana Lodh v. National Insurance Co. Ltd.*² has clearly held that the correctness of the order passed by the court below is immaterial, insofar as exercise of jurisdiction by the High Court under Article 227 of the Constitution is concerned:

“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.”

13. A plea to which the court below never had occasion to apply its mind, as it was never raised before it, can, obviously, not be taken as a ground to question the manner in which the court below exercised its jurisdiction, in a petition under Article 227 of the Constitution of India.

14. The submission of Mr. Harvinder Singh to the effect that, in view of the submission, by the respondent, before the learned ARC on 23rd December, 2017, that the rent payable in respect of the tenanted

² (2003) 3 SCC 524



premises was ₹ 1,000/- per month, the learned ARC could not have directed payment of rent @ ₹ 3,000/- in his judgment dated 4th February, 2019, is not reflected as having been urged by the petitioner before the learned RCT in the impugned order. If such a plea has not been argued before the learned RCT, it cannot, at the cost of repetition, constitute a basis for the court to interfere with the decision of the learned RCT under Article 227 of the Constitution of India.

15. The petitioner has not even placed, on record, the appeal filed by her before the learned RCT, so that the court could at least ascertain as to whether the said plea had been urged in the appeal. For that matter, even if the plea had been urged in the appeal, so long as it was not argued before the learned RCT, it may not constitute a ground for interference under Article 227 of the Constitution of India.

16. Having said that, learned Counsel for the respondent correctly points out that the learned RCT did apply its mind to the plea of the petitioner that the rate of rent was ₹ 1,000/- per month, and not ₹ 3,000/- per month. In this regard, para 17 of the impugned judgment dated 10th July, 2019 of the learned RCT, reads thus:

“17. As regards the challenge to the rate of rent adjudged by the Ld. ARC @ Rs.3,000/- per month, again the tenant/appellant miserably failed to prove that she had been paying or tendering the rent at the rate of Rs. 1,000/- per month to any other person or that same was paid upto November-2008 as claimed in the written statement. It is settled law that when the petitioner alleges non-payment of rent under section 14(1)(a) of DRC Act, the onus lies upon the respondent/tenant to prove that he has paid the rent. Reliance can be placed on decision in **Raghubir Prasad Vs. Raiendra**



Kumar Gurudev³ that "on default in payment of rent, the onus to show payment of rent lies on tenant". Further, it is held by Hon'ble Judge of the Supreme Court of India in **Karamchand Deoiee Sanehavi vs. Tulshiram Kalu Kumawat⁴** that "in a case of eviction on arrears of rent, the onus would always be on tenant to prove that he has paid the rent".

17. Qua the plea that the rate of rent was ₹ 3,000/- per month, therefore, there are concurrent findings of fact by the learned ARC and the learned RCT. Concurrent findings of fact, ordinarily, would be a delimiting factor, proscribing interference by the writ court under Article 227 of the Constitution of India.

18. The only submission urged by Mr. Harvinder Singh having failed to find favour with this Court in the present proceedings, no occasion arises for the Court to interfere with the impugned order, in exercise of its jurisdiction under Article 227 of the Constitution of India.

19. The present petition is accordingly dismissed with no orders as to costs.

C.HARI SHANKAR, J

JULY 20, 2022/kr

³ 1993 (2) R.C.R. (Rent) 234

⁴ 1992 (1) RCR 118