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

+ CM(M) 355/2022 & CM APPL. 18842/2022, CM APPL. 33578/2022

SHRI ANIL KUMAR GUPTA (DECEASED) THROUGH LRS

.... Plaintiffs

Through: Mr. Arvind Nayar, Sr. Advocate with Mr. Mayank Rustagi, Mr. Sidhanth Nath, Mr. Akshay Joshi, Mr. Samasachi Rawat and Mr. Vipul Kumar Sharma, Advs.

versus

SMT. NISHA SHARMA

..... Defendant

Through: Mr. Rajesh Bhati, Mr. Hemant Kakkar, Mr. Shivam and Mr. Naveen Thakur, Advs.

+ CM(M) 356/2022 & CM APPL. 18843/2022, CM APPL. 18844/2022, CM APPL. 18845/2022

SHRI ANIL KUMAR GUPTA (DECEASED) THROUGH HIS LRS SH. AKSHAY GUPTA

..... Plaintiffs

Through: Mr. Arvind Nayar, Sr. Advocate with Mr. Mayank Rustagi, Mr. Sidhanth Nath, Mr. Akshay Joshi, Mr. Samasachi Rawat and Mr. Vipul Kumar Sharma, Advs.

versus

SMT. NISHA SHARMA & ORS

..... Defendant

Through: Mr. Rajesh Bhati, Mr. Hemant Kakkar, Mr. Shivam and Mr. Naveen Thakur, Advs.



CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

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03.07.2023

CM(M) 355/2022

The *lis*

1. Madho Prasad Kapoor (Respondent 2 herein and referred to, hereinafter, as “Madho”) instituted Eviction Petition E-27/08/95 under clause (b) of the proviso to Section 14(1)¹ of the Delhi Rent Control Act, 1958 (“the DRC Act”), before the learned Additional Rent Controller (“the learned ARC”), alleging that the legal heirs of Harbans Lal Mehra, to whom the premises at 470, Chandni Chowk, Delhi 110006 (hereinafter, “the tenanted premises”) had been let out on rent, had unlawfully sublet the tenanted premises.

2. Array of parties: The legal heirs of Harbans Lal Mehra, were impleaded as Respondents 1 to 5 before the learned ARC. Of them, Respondent 5 has expired, and Respondents 1 to 4 before the learned ARC stand impleaded as Respondents 3 to 6 in the present petition. Anil Kumar Gupta, the allegedly unlawful sub-tenant, who was

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;



Respondent 6 before the learned ARC, has preferred the present petition, as the petitioner. Madho, the petitioner who instituted the Eviction Petition, is formally impleaded as Respondent 2, though he expired even during the pendency of the proceedings before the learned Rent Control Tribunal (“the learned RCT”), against whose verdict the present petition has been instituted. Nisha Sharma, to whom the tenanted premises were transferred by Respondent 2, therefore, stands impleaded as Respondent 1. This may be represented in a tabular fashion thus:

Name	Character/Status	Before the learned ARC	Before this Court
Madho	Owner of tenanted premises	Petitioner	Respondent 2
Nisha Sharma	Transferee of tenanted premises	Not a party; Respondent 2 before learned RCT	Respondent 1
P.K. Mehra	Children of Harbans Lal Mehra	Respondent 1	Respondent 3
J.K. Mehra		Respondent 2	Respondent 4
S.K. Mehra		Respondent 3	Respondent 5
Meena Bhasin		Respondent 4	Respondent 6
Rajni Malhotra		Respondent 5	Respondent 7
Anil Kumar Gupta	Alleged sub-tenant	Respondent 6	Petitioner (through LR)

For the sake of convenience, I would refer to the status of the parties as before this Court, or by their names, as occasion demands.

2.1 Significantly, Respondents 3 to 7 (who were Respondents 1 to 5 before the learned ART) never contested the proceedings either before the learned ARC or before the learned RCT and were proceeded *ex parte* at both stages. Nor have they contested the proceedings before this Court.



3. Madho's contention was that the legal heirs of Harbans Lal Mehra (Respondents 3 to 7) had sublet the tenanted premises to the petitioner, without his consent or authority and behind his back. Madho, accordingly, sought, by way of Eviction Petition E-27/08/95, eviction, from the tenanted premises, of Respondents 3 to 7 and of the petitioner.

4. Eviction Petition E-27/08/95 was dismissed by the learned ARC *vide* judgment dated 26 October 2012. RCT 30244/2016, being the appeal preferred against the said decision by Madho and Nisha Sharma, stands allowed by the learned RCT *vide* judgment dated 6 January 2022.

5. The said decision dated 6 January 2022 of the learned RCT has been assailed by the petitioner, through his legal representatives, by way of the present petition instituted under Article 227 of the Constitution of India.

Facts, and proceedings before the learned Courts below

6. Madho contended, in his Eviction Petition, that the tenanted premises had been let out, by his father Hardhyan Singh Chandiwalla, from whom he had succeeded in title thereto, to Harbans Lal Mehra in or around 1937 at a monthly rent of ₹ 160/- and that, consequent to the demise of Harbans Lal Mehra, his legal heirs – Respondents 1-5 in the Eviction Petition – unlawfully sublet the tenanted premises to the



petitioner. As such, invoking Section 14(1)(b) of the DRC Act, Madho sought eviction of the legal heirs of Harbans Lal Mehra, and of the petitioner, from the tenanted premises.

7. Respondents 3 to 7 before me, as already noted, did not contest the Eviction Petition and were proceeded *ex parte*. The Eviction Petition was contested by the petitioner alone, as Respondent 6 therein.

8. In response to the Eviction Petition, the petitioner (as Respondent 6 therein) categorically denied the allegations that the tenanted premises had been sublet to him by the legal heirs of Harbans Lal Mehra. He contented, *per contra*, that Harbans Lal Mehra had, sometime in December 1987, surrendered his tenancy, whereafter Madho had inducted Raj Kumar Gupta, the father of the petitioner, as tenant in place of Harbans Lal Mehra. As such, it was contended that the petitioner's father Raj Kumar Gupta was a direct tenant under Madho and that, consequent to his death, the petitioner had succeeded to the tenancy.

9. At the same time, the petitioner acknowledged the fact that there was no rent agreement executed between Madho and Raj Kumar Gupta and that no rent receipts were issued by Madho by way of acknowledgement of payment of rent, in respect of the tenanted premises, either by Raj Kumar Gupta or by himself. Rather, contended the petitioner, several requests had been made by Raj Kumar Gupta as well as by himself, to Madho, to issue rent receipts acknowledging



payment of rent in respect of the tenanted premises, but that, on each occasion, Madho demurred. The petitioner asserted that, at the time of the acceptance, by Madho, of Raj Kumar Gupta as the tenant in respect of the tenanted premises, ₹ 9,600/- as a year's advance rent and ₹ 50,000/- as refundable security had been tendered by Raj Kumar Gupta and accepted by Madho. However, even in respect of these amounts, the petitioner acknowledged that no receipt was given by Madho and no receipt or other document acknowledging the said payments was given by Madho. The petitioner asserted that, having thus been inducted as a tenant by Madho in the tenanted premises, Raj Kumar Gupta commenced the wholesale business of Khoya, Paneer and retailing of sweets from the tenanted premises, in the name of M/s Vishal Mawa Bhandar, sometime in the second week of January 1988. It was also asserted by the petitioner that the front portion of the tenanted premises consisted of a *chabutra*², belonging to the Municipal Corporation of Delhi (MCD), for the use of which Raj Kumar Gupta was paying ₹ 1,344/- to MCD on a yearly basis.

10. Consequent on completion of pleadings, evidence was recorded. Madho led only his evidence as AW1 while the petitioner cited six witnesses as RW1 to RW6, of which the petitioner Anil Kumar Gupta himself tendered evidence as RW1.

11. Certain documents were also tendered in evidence by the parties. Reference to the relevant documents would be made hereinafter.

² Vernacular for "platform"



12. Deposing as AW1, Madho denied the presence of any *chabutra* in front of the tenanted premises, belonging to the MCD. He also denied the suggestion that he had let out the premises to Raj Kumar Gupta in January 1988 or that he had accepted any amount from Raj Kumar Gupta towards security or advance rent. He deposed that Harbans Lal Mehra was running his jewellery business from the tenanted premises upto January 1988. He, however, acknowledged that he had not served any notice on the petitioner or taken any action against him as an unlawful sub-tenant prior to October 1994. He further submitted that rent, during the period 1988-89, was being paid by the LRs of Harbans Lal Mehra in cash. He also admitted that, since 1991, the tenanted premises were being used for selling *khoya*, *paneer* and sweets. He denied the allegation that he had collected rent from the petitioner and had refused to issue rent receipts despite requests in that regard.

13. Deposing as RW1, the petitioner stood by the stand adopted by him in the written statement filed by way of response to the Eviction Petition. He submitted that, since the inception of the direct tenancy of Raj Kumar Gupta with Madho, communications were being received, by them, at the tenanted premises. He referred to certain assessment orders, a challan from the Weight and Measures Department and receipt of payment of *tehbazari* charges to the MCD for the *chabutra* in front of the tenanted premises, at the address of the tenanted premises, in support of his contention. He, however, admitted that he had not issued any communication to Madho, for any rent receipt,



sought the execution of any rent agreement, or preferred any petition under Section 26 of the DRC Act in that regard. He also admitted that, till 1987, Harbans Lal Mehra was indeed the tenant in respect of the tenanted premises. He sought to rely on the income tax returns filed by him which, according to him, reflected payment of rent to Madho in respect of the tenanted premises after 1995. On being queried as to why the MCD had issued a *tehbazari* receipt, dated 24 March 1989 (Ex RW1-A6) in the name of Harbans Lal Daulat Ram, he confessed that he had no answer.

14. RW2 and RW3 supported the stand of the petitioner as RW1. They claimed to have known the petitioner since long and that the surrender of tenancy by Harbans Lal Mehra and the subsequent induction by Madho, of Raj Kumar Gupta as a tenant in the tenanted premises, had taken place in their presence sometime in the second or third week of December 1987. He also deposed that the payment of ₹ 9,600/- yearly advance rent and ₹ 50,000/- as security had taken place in the presence of various persons including himself and DK Rastogi, whereafter the case of the tenanted premises was handed over by Madho to Raj Kumar Gupta. He also endorsed the statement of the petitioner that several requests were made by Raj Kumar Gupta and by the petitioner to Madho for issuance of rent receipts, but to no avail. During cross-examination, RW1 admitted that Madho had filed an Eviction Petition against him in respect of the shop Nos. 471-472, Chandni Chowk.

15. Eviction Petition E-27/08/95 was initially dismissed by the



learned ARC *vide* judgment dated 4 June 2002. Said judgment was challenged in appeal by Madho and, *vide* appellate order dated 19 April 2007, passed in Appeal No 523/2002, the learned RCT set aside the order dated 4 June 2002 of the learned ARC and remanded the eviction petition for *de novo* consideration to the learned ARC. It was directed, *inter alia*, by the learned RCT, that, in the said *de novo* proceedings, the death of Harbans Lal Mehra would be treated as 27 April 1988 instead of 27 August 1988.

16. The decision of the learned RCT was challenged by the petitioner before this Court by way of CM (M) 1281/2007, which was disposed of, by this Court, *vide* the following order dated 13 February 2012:

“After some arguments, it has been agreed that the directions contained in the order of the RCT remanding the matter back to the ARC for a fresh consideration be modified. Accordingly, the following directions are issued to the ARC to consider them afresh. This would modify the directions of the RCT. Directions will be considered afresh by the ARC in the light of the document noted hereinunder.

(i) The application filed by Sh. Harbans Lal Mehra for seeking permission from Hon'ble High Court of Delhi in Suit No. 74/1982.

(ii) Application moved by Smt. Sushila Mehra for her substitution in the said application date 19.07.1988 moved after the death of Harbans Lal Mehra

(iii) Probate petition filed by the J.K. Mehra in respect of will left by Harbans Lal Mehra as relied upon by the respondent in their application under Order 41 Rule 27 of the Code of Civil Procedure filed before the RCT and the will left by Harbans Lal Mehra.

(iv) The Trial Court will record a finding as to whether



tenancy was created in favour of Raj Kumar Gupta father of Anil Kumar Gupta. Further whether there was any surrender of tenancy by Harbans Lal Mehra during his life time.

(v) Finding will also be returned on the letter dated 25.08.1988 Ex. AW1/3 purported to have been written by advocate P.N. Tiwari. On this letter the ARC had returned a finding that it was a forged letter; this will have to be viewed in the light of the admitted position that the death of Harbans Lal Mehra had occurred on 27.04.1988 and not on 27.08.1988.

The directions contained qua the first three points relate to admitted documents.

Learned counsel for the respondent has pointed out that there should be a time bound frame for the decision of the matter since the matter is very old and the RCT has also considered a time bound frame and directed the ACR to dispose of the matter within six months more than three months have elapsed.

The parties are accordingly directed to appear before the ARC on 23.02.2012 who shall make endeavour to dispose of the matter within an outer limit of eight months from the date of the receipt of the order.

With these directions petition is disposed of.”

17. The proceedings from which the present petition emanates are the *de novo* proceedings consequent to the afore-extracted order dated 13 February 2012 passed by this Court in CM(M) 1281/2007.

Judgment dated 26 October 2012 of the learned ARC

18. The learned ARC held that Madho had failed to establish the fact of subletting of the tenanted premises by Harbans Lal Mehra, or by his LR's, to the petitioner, or to discountenance the stand of the



petitioner that the tenanted premises had been directly let out, by Madho, to his father Raj Kumar Gupta.

19. In arriving at the said conclusion, the learned ARC proceeded on the basis of the following facts/reasoning:

(i) That Harbans Lal Mehra was in possession of the tenanted premises, as the tenant of Madho, till January 1988, and that, since 1988-89, Raj Kumar Gupta and the petitioner were in possession of the tenanted premises, was undisputed. As such, what was required to be examined was whether the petitioner had come into possession of the tenanted premises as a sub-tenant of Harbans Lal Mehra, or of his LRs, or as a direct tenant of Madho.

(ii) During cross-examination, Madho, deposing as AW1, failed to depose, clearly, as to whether the jewellery business of Harbans Lal Mehra was closed in 1984 or prior thereto.

(iii) Though he asserted that a notice regarding subletting had been issued by him to the LRs of Harbans Lal Mehra, Madho failed to produce the said notice in evidence.

(iv) Madho could not explain as to why no notice regarding subletting had been issued by him to the petitioner.

(v) Madho also failed to explain why, from 1989 till October



1994, he did not proceed against the petitioner as an unlawful sub-tenant, despite staying in the very same building.

(vi) The petitioner, in evidence, deposed that

(a) Raj Kumar Gupta was inducted as tenant by Madho in January 1988 with the prior consent and knowledge of Harbans Lal Mehra, who had expressed his desire to surrender his tenancy rights,

(b) an oral contract of tenancy was executed at the residence of Madho in the presence of Raj Kumar Gupta, Ramesh Kumar Yadav, the petitioner and some other persons,

(c) at the time, an advance yearly rent of ₹ 9,600/-, along with security of ₹ 50,000/- was paid in cash to Madho and

(d) Madho did not, however, provide any written acknowledgement of receipt of the said amount.

(vii) RW2 and RW3 corroborated the testimony of the petitioner deposing as RW1, and claimed to have been present when the aforesaid transactions took place.

(viii) Though the evidence of RW2 might not have been believable as he was an interested witness, RW3 was not interested in the proceedings.

(ix) Therefore, on the basis of the oral evidence adduced by



the parties, it appeared that, after surrender of tenancy by Harbans Lal Mehra, Madho inducted Raj Kumar Gupta as a tenant in the tenanted premises in January 1988. Apropos letter dated 25 August 1988 addressed by the lawyer of Harbans Lal Mehra to Madho, for making payment of rent for the period December 1987 to October 1988, thereby indicating that Harbans Lal Mehra was in tenancy of the tenanted premises till October 1988, there was force in the submission of learned Counsel for Madho that there was no explanation as to why such a letter was sent when, at the same time, the widow of Harbans Lal Mehra was seeking permission, from this Court, to sublet the tenanted premises.

(x) The petitioner also relied on an application dated 10 July 1987 filed by Harbans Lal Mehra, before this Court, in Suit 74/1982 filed by the sister of Madho against Madho and his other co-owners of the tenanted premises, whereby Harbans Lal Mehra sought permission to sublet, or to allow him to join a third party to carry on business on an commission basis in the tenanted premises. This letter could not come to the aid of Madho as, on 10 July 1987, the petitioner had yet to enter the picture.

(xi) The petitioner also relied on a subsequent application dated 19 July 1988, filed by Sushila Mehra, the wife of Harbans Lal Mehra, in the afore-mentioned Suit 74/1982, seeking her substitution in place of Harbans Lal Mehra in the application



dated 10 July 1987 filed by Harbans Lal Mehra in the suit and reiterating, thereby, the prayers made by Harbans Lal Mehra in the application. Madho sought to contend that these applications indicated that, even after January 1988, neither had Harbans Lal Mehra, nor had his LRs, surrendered tenancy rights in respect of the tenanted premises. This application, too, was found to be of no assistance to Madho. The learned ARC observed that, though the application indicated that Sushila Mehra was interested in enjoying tenancy rights inherited by her, it could be safely presumed that she was unaware of the dealings between Harbans Lal Mehra, Madho and the petitioner, whereby the petitioner had come into possession of the tenanted premises in January 1988. This assumption was fortified by the fact that neither Harbans Lal Mehra nor his wife nor any of his other LRs had taken any steps to assert tenancy rights, or to challenge the possession of the petitioner in the tenanted premises after January 1988.

(xii) Madho also relied on probate Case 31/88 filed by J K Mehra, the son of Harbans Lal Mehra and the executor of his will, which made reference to the tenancy rights of Harbans Lal Mehra in respect of the tenanted premises. This, too, according to Madho, indicated that Harbans Lal Mehra had not surrendered his tenancy rights. The learned ARC was not impressed by this document either. He held that the will dated 22 April 1988 of Harbans Lal Mehra was silent regarding the tenancy rights of Harbans Lal Mehra in the tenanted premises.



This strengthened the case of the petitioner that Harbans Lal Mehra had surrendered his tenancy rights in January 1988. In view thereof, the reference to the tenancy rights of Harbans Lal Mehra, in the probate petition filed by J K Mehra could not be accorded undue importance.

(xiii) There was no material to indicate that the LR's of Harbans Lal Mehra evinced any interest or enjoyed tenancy rights in respect of the tenanted premises after January 1988.

(xiv) It was not in dispute that Madho did not make any demand of rent from Harbans Lal Mehra after 1988. Nor did Madho seek to contend that, after 1988, Harbans Lal Mehra, or his LR's, were paying rent to Madho. There was no explanation as to why, for a period of 6 years from 1988 to 1994, no rent was paid by Harbans Lal Mehra or his LR's to Madho if, in fact, they were continuing in tenancy of the tenanted premises. There was no document on record to indicate that any effort was made by Madho to resist the alleged subletting of the tenanted premises.

20. Based on the aforesaid factual observations, the learned ARC invoked Section 111(f)³ of the Transfer of Property Act, 1882, ("the TP Act") to hold that implied surrender of tenancy by operation of

³ **111. Determination of lease.** – A lease of immovable property, determines –

(f) by implied surrender;



law, could be inferred from unequivocal conduct of parties, which was inconsistent with the continuance of the original tenancy. The conduct of the LR's of Harbans Lal Mehra, at least after August 1988, it was held, inferred that they had surrendered their rights to tenancy in respect of the tenanted premises. Reliance was placed, in this regard, on the judgment of the High Court of Rajasthan in *Nauratmal v. Mohanlal*⁴.

21. In these circumstances, and keeping in mind the legal position, the learned ARC held that, in the absence of any direct or indirect evidence, tendered by Madho, to fortify his claim that Harbans Lal Mehra, or his LR's, had sublet the tenanted premises, the allegation of subletting could not sustain. The mere fact that the petitioner had come into possession of the tenanted premises, it was held, was insufficient to justify a finding of subletting.

22. Thus, the learned ARC rejected Eviction Case No. E-27/08/95, holding that Madho had failed to establish the allegation of subletting of the tenanted premises to the petitioner and that, therefore, no case for directing eviction, under Section 41(b) of the DRC Act, was made out.

23. During his lifetime, Madho, assigned/transferred the tenanted premises to Nisha Sharma, who is Respondent 1 before this Court, *via* Sale deed dated 10 January 2005. Nisha Sharma, therefore, appealed against the above judgment dated 26 October 2012 of the learned ARC

⁴ AIR 1966 RAJASTHAN 89



to the learned RCT.

24. By the impugned judgment dated 6 January 2022, the learned RCT has allowed the said appeal, reversed the decision of the learned ARC and allowed Eviction Petition E-27/08/95.

Findings of the learned RCT

25. As there was no serious dispute on facts, it is not necessary to summarise the decision of the impugned judgment of the learned RCT. Suffice it to state that the learned RCT held the judgment dated 26 October 2012 of the learned ARC to be completely unsustainable on merits. The learned RCT, initially, in the following paras of the impugned judgment, set out the basic ingredients of subletting, as envisaged by Section 14(1)(b) of the DRC Act read with the judgment of the Supreme Court in *Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholakar*⁵:

“15. ... Now, as discussed in the connected matter, it is settled proposition of law that to constitute "subletting" there must be parting of legal possession by the tenant in the sense of giving up right to include or exclude others, which is always a question of fact. It contemplates a situation where the tenant and the sub-tenant are in a legal relationship akin to one between a landlord and tenant. It is a settled proposition of law that the expressions "subletting, "parting with possession" as also "assignment" in section 14(1)(b) of the DRC Act connote handing over the exclusive possession and control of the tenancy premises to another for some consideration or the other. 18. After examining several case law on the subject, the Hon'ble Supreme Court in the case of *Celina Coelho Pereira*⁵, reiterated and summarized law on the subject as under:

⁵ (2010) 1 SCC 217



“25. The legal position that emerges from the aforesaid decisions can be summarised thus:

(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established. (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant

(iii) The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person,

(iv) If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession

(v) Initial burden of proving sub-lettings on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises



(vi) In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted."

16. Emphasizing the aforesaid parameters vide point No. (i), (v) & (vi), the landlord is required to prove following essential conditions in order to succeed in a petition under Section 14 (1) (b) of the DRC Act-

(i) The tenant sub-let, assigned or parted with the possession of the whole or part of the premises i.e. the sub tenant or assignee was in exclusive possession of whole or part of the property.

(ii) No consent in writing was taken from the landlord by the tenant.

17. Thus, the core element of this ground of eviction constitutes a stranger coming into possession of the tenanted premises wholly or partly without the consent of the landlord. The ingredient of "*parting with possession wholly or partly*" is inherent in all the three limbs. The primary burden of proving the presence of a stranger in the tenanted premises and he being in exclusive possession of the whole or part of the tenancy premises is upon the landlord. Once the landlord has proven that the tenant stands excluded from the tenancy premises the fundamental facts to show that the tenants stands excluded from the tenanted premises or that he has forfeited the "*right to repossess*" of the whole or part thereof, an inference of subletting, assignment or parting with arises thereby shifting the onus on the tenant to explain the legal status of the stranger in the tenancy premises."

26. Following the aforesaid, the learned RCT adduced the following reasons for coming to a finding that the judgment of the learned ARC was unsustainable on merits:

(i) The testimony of the petitioner before the learned ARC, as RW1, to the effect that Harbans Lal Mehra had surrendered



the tenancy to Madho in December 1987, did not inspire confidence for the following reasons:

- (a) It was not believable that, having remained a tenant in the tenanted premises for over 51 years, Harbans Lal Mehra would surrender the tenancy rights for no consideration whatsoever.
- (b) No surrender deed was executed or forthcoming.
- (c) No evidence, as to when the surrender exactly took place was forthcoming.
- (d) No legal heir of Harbans Lal Mehra had been called in the witness box by the petitioner, to testify to the fact of surrender of tenancy by Harbans Lal Mehra.
- (e) It was for the first time in the cross-examination of the petitioner, testifying as RW1, that it was stated that the keys of the tenanted premises were handed over by Madho to Raj Kumar Gupta.
- (f) No such averment was to be found either in the original written statement or in the amended written statement filed by the petitioner by way of response to the eviction petition.



(ii) RW2 Ramesh Yadav and RW3 Suresh Sharma merely gave “parrot like” support to the testimony of the petitioner, testifying as RW1.

(iii) The averments relating to the circumstances in which Harbans Lal Mehra had approached Madho, expressing his disinclination to continue in tenancy of the tenanted premises and, “one fine Sunday” in December 1987, Madho inducted Raj Kumar Gupta directly as a tenant in the tenanted premises in the presence of Ramesh Yadav, Kapoor Chand and Suresh Sharma, towards which Raj Kumar Gupta handed over ₹ 9,600/- as a year’s advance rent and ₹ 50,000/- as security to Madho, did not figure in the original written statement filed by the petitioner, and were introduced in the written statement only by way of amendment, by adding paras (4A) to (4H). The learned ARC allowed the amendment, but without prejudice. It was for the answering respondent, therefore, to substantiate these assertions, which he had failed to do.

(iv) There was no evidence of any fresh rent deed having been executed between Madho and Raj Kumar Gupta.

(v) There was no evidence of any rent having ever been paid by Raj Kumar Gupta, or by the petitioner, to Madho after January 1988.

(vi) No books of account were produced by the petitioner,



though he claimed to be an income tax payee to demonstrate that, in the books of account, the rent allegedly paid to Madho had been accommodated and/or adjusted.

(vii) Apparently to escape from this situation, the answering respondent, in cross-examination on 24 January 2001, first deposed that, from January 1989 to March 1989, rent, in respect of the tenanted premises, was paid to Madho by his father Raj Kumar Gupta and that, thereafter, he himself had paid the said rent on a regular basis. Thereafter, however, he did a *volte face* and deposed that the payment of rent in respect of the tenanted premises was reflected in the books of account only after 1995.

(viii) In any event, there was no evidence worth its salt to indicate that rent was ever paid by the petitioner, or by Raj Kumar Gupta to Madho till Raj Kumar Gupta's death on 25 March 1990.

(ix) Nor was there any evidence to indicate that Madho had ever demanded any rent either from Raj Kumar Gupta or from the petitioner.

(x) Equally, there was no evidence of deposit or rent, either by Raj Kumar Gupta or by the petitioner under Section 26⁶ of

⁶ 26. **Receipt to be given for rent paid. —**

(1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable 32[and where any default occurs in the payment of rent, the tenant shall be liable to pay simple interest at the rate of fifteen per cent per annum from the date on which such payment of rent is



the DRC Act.

(xi) The testimonies of RW2 and RW3, could not be blindly accepted as they were interested witnesses.

(xii) There was no evidence of the petitioner, or of his father Raj Kumar Gupta having become direct tenants under Madho.

(xiii) The income tax assessment orders for the financial years 1986 and 1987 were issued to R K Gupta, not at the tenanted premises, but at his address at Shop No. 829, Chandni Chowk.

(xiv) The assessment order for the year 1987-88 was also issued to Raj Kumar Gupta at Shop No. 829. In the said assessment order, it was seen that the digit “8” in “1988” had been over-written as “7” to make it appear as “1987”.

(xv) Most importantly, the challan dated 24 March 1989, issued by MCD, evidencing receipt of payment for the *chabutra* outside the tenanted premises was also issued in the name of Harbans Lal Mehra and not in the name of the petitioner or his

due to the date on which it is paid].

(2) Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a written receipt for the amount paid to him, signed by the landlord or his authorised agent. 33[Provided that it shall be open to the tenant to remit the rent to his landlord by postal money order.]

(3) If the landlord or his authorised agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the Controller may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorised agent, by order direct the landlord or his authorised agent to pay to the tenant by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid.



father.

(xvi) There was, therefore, no worthwhile documentary evidence to indicate that Raj Kumar Gupta was inducted as a direct tenant under Madho from January 1988.

(xvii) The petitioner did not summon anyone from the family of Harbans Lal Mehra to the witness box to substantiate that Harbans Lal Mehra wanted to surrender tenancy in respect of the tenanted premises.

(xviii) In the Suit 74/1982, which had been instituted by the siblings of Madho against him seeking partition of, *inter alia*, the tenanted premises, Harbans Lal Mehra filed an application dated 10 July 1987, seeking permission either to sublet the premises or to join a third party to carry on his business. Consequent on his death, his wife Sushila Mehra moved an application dated 19 July 1988, with identical prayers. This indicated that Harbans Lal Mehra and, after him, his legal heirs, were asserting tenancy in respect of the tenanted premises even till July 1988, thereby belying the contention that, with effect from January 1988, Raj Kumar Gupta had been directly inducted as a tenant in respect of the tenanted premises under Madho.

(xix) These documents were required to be taken into consideration as per the order dated 13 February 2012 passed by



this Court in CM (M) 1281/2007 while remanding the matter for *de novo* consideration.

(xx) Another document which was required to be taken into consideration, as per the said order dated 13 February 2012, passed by this Court in CM (M) 1281/2007, was the probate petition filed by J K Mehra, son of Harbans Lal Mehra, an executor of his will. In the probate petition, the realisable assets had been shown to include the tenanted premises. The learned Trial Court committed a serious factual error in holding to the contrary.

(xxi) On 25 August 1988, P N Tiwari, learned Counsel for Harbans Lal Mehra, wrote to Madho, tendering rent in respect of the tenanted premises for the period 1 December 1987 to 31 October 1988. Though the letter had not been proved by calling the author thereof, i.e. advocate P N Tiwari in the witness box, the bank draft accompanying the letter was dated 25 August 1988 and was drawn on Indian Overseas Bank, and it was reasonable to assume that it had been sent on behalf of the LRs of Harbans Lal Mehra after his death to protect their lease hold interest.

(xxii) As such, the finding, of the learned ARC, that no interest in the tenanted premises, or in asserting their tenancy rights in respect thereof, had ever been evinced either by the widow or by the LRs of the deceased Harbans Lal Mehra, was perverse



and contrary to the evidence on record.

(xxiii) The finding, of the learned ARC, that there was inordinate delay on the part of Madho, from 1988 to 1994, in proceeding against the alleged sub-tenant, i.e. the petitioner, was also flawed and perverse, as the evidence indicated that, as soon as he came to know of sub-letting of the tenanted premises in favour of the petitioner, Madho filed for permission to institute the suit, leading to order dated 29 October 1993 (Ex AW-1/1) issued by the competent authority under Section 19(1)(a) of the Slums Act.

27. In these circumstances, the learned RCT holds that the reliance, by the learned ARC, on Section 111(f) of the TP Act, was misguided. Citing, for the purpose, the judgment of a Division Bench of this Court in *Fab India Overseas Pvt. Ltd. v. S.N. Sheopori*⁷, the learned RCT holds that, in order for surrender of tenancy to be implied under Section 111(f), it was essential that the lessee give up possession of the property held by him under the old lease. There was no cogent evidence on record to the effect that Harbans Lal Mehra, or his legal representatives, had surrendered the tenancy held by them in respect of the tenanted premises. Equally, no evidence was led by the petitioner to the effect that a new tenancy had been created in favour of his father by Madho. As such, Section 111(f) could not be invoked to hold that there was implied surrender of tenancy by Harbans Lal Mehra.

⁷ 199 (2013) DLT 351 (DB)



28. The learned RCT also relies on Section 16, 17 and 18 of the DRC Act, in which context paras 29 and 30 of the impugned judgment read thus:

29. A conjoint reading of the aforesaid provisions would show that as per section 16(2) of the DRC Act, there is no presumption in law or fact that a premises has been lawfully sublet, wholly or in part unless and until there is a written consent to do so by the landlord. Further, section 17(1) DRC Act clearly mandates that in the event a premises is sublet after obtaining previous consent in writing of the landlord, the tenant or the sub-tenant is mandated to serve a notice upon the landlord in prescribed form. As per the Delhi Rent Control Rule 1959, framed under section 56 of the DRC Act, such notice *vide* Rule 21 is required to be sent as per the prescribed 'Form-F'. Lastly, in case such notice is given and the tenant later on ceases to have any legal right or the tenancy is determined, the subtenant becomes a tenant directly under the landlord. **The legislative intent is very clear that not only written consent must be previous and specific but also that notice of sub-tenancy must be given to the landlord.** Suffice to state that no notice in prescribed form was ever served by the tenant or the Sub-tenants in the instant case as per section 17(1) of the DRC Act, and thus the plea of the respondents no. 6 that his father had become direct tenant under the petitioner/landlord cannot be sustained.

30. In support of the aforesaid hypothesis, we may invite reference to decision in the case titled *Murari Lal v. Abdul Gaffur*⁸, by Delhi High Court, cited by the Ld Counsel for the appellant, where it was held that "if the lawful sub-tenant does not give notice prescribed then he does not become direct tenant on the determination of the tenant's tenancy. Only benefit he and the tenant enjoys is that they cannot be evicted on the ground of subletting. If the tenant is evicted on any ground, the sub tenants also goes with him. "Further, the issue stands clinched in a decision by the Apex Court in the case titled *Kapil Bhargava vs. Subash Chander Aggarwal*⁹, also cited by the ld counsel for the appellant. Although the said decision was given in the context of an eviction petitioner u/s 14(1)(d) of the DRC Act, where the tenant had sublet the premises without written consent and had

⁸ 1974 RLR 39

⁹ (2001) 6 SCC 645



ceased to reside in the premises for a continuous period of six months prior to the filing of the petition. And answering the issue in the context of section 17(2) of the DRC Act. It was held that:

"16. Submission for the appellant is that once a sub-tenant is a lawful sub-tenant by virtue of Section 16(1), the notice under sub-section (2) of Section 17 would be a mere formality which is procedural. Thus, its non-compliance cannot take away his substantive right created under Section 16(1). This submission misses the purpose for which this sub-section (2) of Section 17 is enacted. On performance of this obligation a right is conferred on a Sub-tenant to become a tenant under Section 18. This service of notice saves a sub-tenant from eviction even if a decree is passed against a tenant under Section 14 and further confers on such sub-tenant an independent right as that of a tenant. Thus notice under Section 17(2) cannot be construed as mere procedural, in fact it confer substantive right on such a sub-tenant. So, a conjoint reading of Sections 16, 17 and 18 makes it clear that sub-tenants falling under Section 16(1) is deemed to be a lawful sub-tenant even without written consent of the landlord But Section 17(2) casts an obligation on such sub-tenant to give notice to the landlord under sub-section (2), within six months of the commencement of the Act. The legislature has used in sub-section (2) the words. "lawfully sub-let". So even if the appellant is a lawful sub-tenant by virtue of Section 16(1), still an obligation is cast on such lawful sub-tenant to serve a notice on the landlord for gaining a right under Section 18. This as we have said is as a protective measure in favour of a 'sub-tenant. So, the submission that by mere declaration as lawful tenant under Section 16(1), no decree for eviction is enforceable against the sub-tenant has no merit and is hereby rejected. Hence, we hold, unless notice under sub-section (2) of Section 17 is served by the sub-tenant, he cannot take the benefit of Section 18 and any decree passed under Section 14 against a tenant is executable against a subtenant.

29. Following on the above discussion, the learned RCT has allowed Appeal No. RCT 30244/2016 and has, thereafter, set aside the judgment dated 6 January 2022 of the learned ARC in Eviction



Petition E-27/08/95.

30. Aggrieved by the aforesaid decision, the petitioner, as Respondent 6 before the learned ARC and before the learned RCT, through his legal representatives, has instituted the present petition under Article 227 of the Constitution of India.

31. I have heard Mr. Arvind Nayar, learned Senior Counsel for the petitioner and Mr. Mr. Rajesh Bhati, learned Counsel for the respondent at length.

32. Mr. Nayar's contention, principally, is only that the learned RCT has grossly exceeded jurisdiction vested in it, in passing the impugned judgment. Mr. Nayar submits, by taking me through the impugned judgment paragraph by paragraph, that the learned RCT has entered into the arena of wholesale reappreciation of the evidence tendered by the parties, which is completely proscribed in Section 38(1), under which an appeal lies only on "questions of law".

Analysis

33. Scope of jurisdiction under Article 227

33.1 The present petition has been instituted under Article 227 of the Constitution of India. The scope of interference with a decision of a subordinate judicial forum, under Article 227, is extremely limited.



The decisions in *Estralla Rubber v. Dass Estate (P) Ltd.*¹⁰, *Garment Craft v. Prakash Chand Goel*¹¹, *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*¹², *Puri Investments v. Young Friends and Co.*¹³ and *Sadhana Lodh v. National Insurance Co. Ltd.*¹⁴ delineate the scope of interference. The relevant paragraphs from the said decisions read thus:

Estralla Rubber¹⁰

“7. This Court in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*¹⁵ in para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case *Waryam Singh v. Amarnath*¹⁶. This Court in *Bathutmal Raichand Oswal v. Laxmibai R. Tarte*¹⁷ has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.

Garment Craft¹¹

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [*Prakash Chand Goel v. Garment Craft*¹⁸] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory

¹⁰ (2001) 8 SCC 97

¹¹ (2022) 4 SCC 181

¹² 2022 SCC OnLine SC 620

¹³ 2022 SCC OnLine SC 283

¹⁴ (2003) 3 SCC 524

¹⁵ AIR 1972 SC 1598

¹⁶ AIR 1954 SC 215

¹⁷ AIR 1975 SC 1297

¹⁸ 2019 SCC OnLine Del 11943



jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [*Celina Coelho Pereira*⁵] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber*¹⁰ has observed: (SCC pp. 101-102, para 6)

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”



Ibrat Faizan¹²

“28. The scope and ambit of jurisdiction of Article 227 of the Constitution has been explained by this Court in the case of ***Estralla Rubber¹⁰***, which has been consistently followed by this Court (see the recent decision of this Court in the case of ***Garment Craft¹¹***). 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.”

Puri Investments¹³

“14. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate



forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are: —

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.

15. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

16. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum.”

Sadhana Lodh¹⁴

“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.”

(Emphasis Supplied)

33.2 It is only, therefore, if the impugned judgment merits



interference within the limited scope of the aforementioned decisions that this Court would deign to do so under Article 227.

33.3 The power conferred by Article 227 is superintending – or supervisory – in nature. It is not, quite certainly, appellate in character. Nor, for that matter, can it partake of the colour of judicial review in the nature of certiorari, as conferred by Article 226 of the Constitution of India. The Court, under Article 227, merely supervises. The power has to be exercised with due respect to the judicial autonomy and independence of the Court whose decision is under scrutiny. It is only where the decision is taken in excess of jurisdiction, or smacks of gross illegality bordering on perversity, that occasion for interference arises, essentially to ensure that the Court, which has taken the decision, exercised its jurisdiction within the legitimate peripheries thereof. The aim and intent of interference, under Article 227, is only so much, and no more. That, in the process, the decision may stand overturned on merits is only an incidental sequitur. The corollary would, therefore, be that, so long as the order under scrutiny does not display want of jurisdiction or perverse illegality, interference under Article 227 would stand foreclosed, even if, on merits, the decision does not appear palatable, or if the Article 227 Court would, if it were independently to examine the facts and the evidence, arrive at a contrary conclusion.

33.4 The extent to which the Article 227 Court would look into the evidence led before the learned Court below has to be gleaned keeping in view these principles. The Article 227 Court does not



independently reappreciate the evidence. It does not, however, treat the evidence as *persona non grata*, if only because the *manner of appreciation of evidence* by the Court below is a relevant factor, while examining whether the order under challenge suffers from perversity. It is only, therefore, in order to assess whether the manner in which the learned Court below has acted is perverse, that the Article 227 Court would condescend to enter into the arena of evidential *appraisal* – *as opposed to appreciation*. The High Court can *reappraise the evidence*, only to examine whether the order of the learned Court below suffers from perversity. If *it does not*, then, the Court cannot *re-appreciate* the evidence, with a view to examining whether the conclusion at which the learned Court below has reached, consequent on appreciation of the evidence, is, or is not, the correct, or even appropriate, conclusion. The Article 227 Court is required to defer to the conclusion of the learned Court below, and any interference, therewith, on the ground that, in its opinion, another conclusion ought legitimately to follow, were the evidence correctly or appropriately appreciated, would amount to serious overreach of the jurisdiction vested in it.

33.5 *To that extent, and that extent alone*, can it be said that no wholesale proscription against reappraisal of evidence can be read into Article 227 of the Constitution of India.

34. (I hasten to observe, here, that I use the expression “Court below” without meaning any disrespect to the said learned Court, and only for the sake of convenience.)



35. Perversity

35.1 “Perversity” is a concept which has been defined, times without number, by the Supreme Court. In *Gamini Bala Koteswara Rao v. State of A.P.*¹⁹, the Supreme Court, dealing with the jurisdiction of the High Court re-appraise the evidence when examining an appeal against acquittal in a criminal case, observed thus:

“It is true, as contended by Mr Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word “perverse” in terms as understood in law has been defined to mean “against the weight of evidence”.

I would venture to opine, with greatest humility, that the power of the High Court to re-appraise evidence, under Article 227, parallels the power of the High Court to re-appraise evidence when entertaining an appeal against acquittal, though the two instances are otherwise as alike as chalk and cheese.

35.2 *Kilasho Devi Burman v. C.I.T.*²⁰ holds that “a conclusion is perverse only if it is such that no person, duly instructed, could, upon the record before him, have reasonably come to it”. In *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*²¹, it was held that findings returned by a Court are perverse if they are “based on no evidence or that on the evidence on record no reasonable person could have come

¹⁹ (2009) 10 SCC 636

²⁰ (1996) 7 SCC 613

²¹ (2012) 7 SCC 288



to that conclusion”. Paras 12 and 14 of ***Damodar Lal v. Sohan Devi***²² dealt with the issue of “perversity” thus:

“12. Be that as it may, the question whether there is a structural alteration in a tenanted premises is not a fact limited to the personal knowledge of the owner. It can be proved by any admissible and reliable evidence. That burden has been successfully discharged by the plaintiff by examining PWs 1 and 2. The defendants could not shake that evidence. In fact, that fact is proved partially from the evidence of the defendants themselves, as an admitted fact. Hence, only the trial court came to the definite finding on structural alteration. That finding has been endorsed by the first appellate court on reappraisal of the evidence, and therefore, the High Court in second appeal was not justified in upsetting the finding which is a pure question of fact. We have no hesitation to note that both the questions of law framed by the High Court are not substantial questions of law. *Even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should stem out of a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity.*

14. In ***S.R. Tewari v. Union of India***²³, after referring to the decisions of this Court, starting with ***Rajinder Kumar Kindra v. Delhi Admn.***²⁴, it was held at para 30:

“30. *The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is ‘against the weight of evidence’, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be*

²² (2016) 3 SCC 78

²³ (2013) 6 SCC 602

²⁴ (1984) 4 SCC 635



*relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide **Rajinder Kumar Kindra** ²⁴, **Gamini Bala Koteswara Rao v. State of A.P.**¹⁹.and **Babu v. State of Kerala**²⁵.”*
(Emphasis supplied)

36. There is no gainsaying the fact that the learned RCT has reappraised evidence, while acting under Section 38 of the DRC Act. Mr. Nayar’s contention is that this is a jurisdictional lapse which is serious enough to vitiate the impugned judgment of the learned RCT *in toto*.

37. Section 38(1) of the DRC Act:

37.1 Under Section 38(1), an appeal would lie only on questions of law.

37.2 It is instructive, at this point, to contradistinguish the nature of the jurisdiction vested in the learned RCT by Section 38(1) of the DRC Act with the jurisdiction vested in the High Court by Section 100 of the CPC. In both cases, the jurisdiction, despite being appellate in nature, vests only if there is a question of law involved. Two distinctions are immediately apparent; firstly, that, while Section 38(1) applies where there is a “question of law” involved, Section 100 of the CPC applies only if there is a “substantial question of law”, and, secondly, that, whereas Section 100(4) specifically requires the High Court to formulate the substantial question of law involved in the case before proceeding to exercise jurisdiction, no such obligation is cast

²⁵ (2010) 9 SCC 189



on the learned RCT by Section 38(1) of the DRC Act.

37.3 Insofar as the second aspect of distinction is concerned, there is a wide swathe of judgments of the Supreme Court²⁶ to the effect that, if the High Court allows a second appeal, under Section 100 of the CPC, without framing any substantial question of law, the decision of the High Court stands *ipso facto* vitiated. It may not be possible to extend the principle automatically to Section 38 of the DRC Act, as there is no provision, in Section 38, analogous to Section 100(4) of the CPC, requiring the learned RCT to frame the question of law arising in the case before proceeding to exercise jurisdiction under Section 38(1). As such, an appellate order of the learned RCT, passed under Section 38(1) of the DRC Act – such as the present – which proceeds in the matter without framing the question of law may not stand vitiated on that sole ground. Nonetheless, in view of the express stipulation, found in Section 38(1) of the DRC Act, which restricts the applicability of the provision to cases in which a question of law is involved, in my considered opinion, it would be advisable for the learned RCTs, exercising jurisdiction under Section 38(1) of the DRC Act to, in future, to frame the question of law which, in the opinion of the concerned learned RCT, arises in the case, before proceeding to entertain the challenge or to allow the appeal.

37.4 The more important distinction between Section 100 of the CPC and Section 38 of the DRC Act, is that, whereas Section 100 applies only where there is a “substantial question of law”, Section 38 applies

²⁶ Refer *inter alia*



where the case involves a “question of law”.

37.5 The Supreme Court has emphasised the distinction between a “question of law” and a “substantial question of law”. In *Sir Chunilal V. Mehta v. Century Spinning & Manufacturing Co. Ltd*²⁷, the Supreme Court observed thus, on the indicia of a “substantial question of law”:

“The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

In *Beer Sain v. Commissioner of Customs*²⁸, the Supreme Court held that there was a distinction between a “question of law” and “substantial question of law”, but did not proceed to elucidate on the nature of distinction. In *Commissioner of Customs v. Vijay Dashrath Patel*²⁹, while examining the jurisdiction of the High Court to entertain an appeal under Section 130 of the Customs Act, 1962, under which an appeal would lie only on “substantial questions of law”, the Supreme Court observed and held as under:

“22. We are not oblivious of the fact that high Courts jurisdiction in this behalf is limited. What would be substantial

²⁷ AIR 1962 SC 1314

²⁸ (2007) 15 SCC 362

²⁹ (2007) 4 SCC 118



question of law, however, would vary from case to case.

23. *Moreover, although a finding of fact can be interfered with when it is perverse, but it is also trite that where the courts below had ignored the rate of preponderating circumstances and allowed the judgment to be influenced by inconsequential matters, the High Court would be justified in considering the matter and incoming to its own independent conclusion. [See **Madan Lal v. Mst. Gopi & Anr.**³⁰]*

24. *The High Court shall also be entitled to opine that a substantial question of law arises for its consideration when material and relevant facts have been ignored and legal principles have not been applied in appreciating the evidence. Arriving at a decision, upon taking into consideration the relevant factors, would also give rise to a substantial question of law. It may, however, be different that only on the same set of facts the higher court takes a different view. [See **Collector of Customs, Bombay v. Swastic Woollen (P) Ltd. & Ors.**³¹ and **Metroark Ltd. v. Commissioner of Central Excise, Calcutta**³²]*

25. *Even in the case where the evidence is misread, the High Court would have the power to interfere. [See **West Bengal Electricity Regulatory Commission v. CESC Ltd.**³³, and also **Commissioner of Customs, Mumbai v. Bureau Veritas & Ors.**³⁴]*

37.6 Clearly, the expression “substantial question of law” is not as circumscribed as it would otherwise appear, and, if the evidence is appreciated in a manner which is *ex facie* erroneous, it is possible, in a given case, to hold that a “substantial question of law” arises. Section 38(1) does *not*, however, require the existence of a “substantial question of law”. All that is required is the existence of a “question of law”. Extrapolating from the understanding of the expression “substantial question of law” in the judgment of the Supreme Court in **Vijay Dashrath Patel**²⁹, any erroneous appreciation of evidence

³⁰ AIR 1980 SC 1754

³¹ (1988) Supp SCC 786

³² (2004) 12 SCC 505

³³ (2002) 8 SCC 715

³⁴ (2005) 3 SCC 265



might, in a given case, tantamount to a “question of law”, justifying interference under Section 38(1) of the DRC Act.

37.7 That said, insofar as the jurisdiction vested by Section 38(1) of the DRC Act is concerned, the overwhelming opinion, in that regard, is that the provision does not confer appellate jurisdiction in its widest amplitude. Wholesale reappreciation of evidence, in the manner in which the evidence was appreciated by the learned ARC cannot, quite obviously, be permitted under Section 38(1); else, it would amount to reducing, to a redundancy, the words “only on questions of law”, figuring in the provision.

37.8 To underscore the restrictive nature of the jurisdiction vested in the learned RCT by Section 38(1), Mr. Nayar cited paras 3, 4 and 9 to 12 of *Manbhari Devi v. Jaimat Rai Ashwani Kumar*³⁵, para 8, 10 and 14 of *Shyam Sunder Dania v. J.D. Kapoor*³⁶ and paras 5 and 12 of *Ram Dulari v. Om Prakash Gupta*³⁷. These passages read thus:

*Manbhari Devi*³⁵:

“3. The petitioner had filed an eviction petition against the respondents on grounds of non-payment of rent and subletting under Sections 14(1)(a) and 14(1)(b) of the Delhi Rent Control Act, 1958 (hereinafter to be referred to as ‘the said Act’) in respect of shop on the first floor of property No. 1102 having private No. 8, Laxmi Market, Kucha Natwa, Chandni Chowk, Delhi-110 006 (hereinafter to be referred to as ‘the premises’). The Additional Rent Controller (hereinafter to be referred to as ‘ARC’) *vide* order dated 18.8.2004 found that respondent No. 1 tenant had defaulted

³⁵ 134 (2006) DLT 369

³⁶ 131 (2007) DLT 219

³⁷ 169 (2010) DLT 301



in payment of rent, but the benefit of Section 14(2) of the said Act was given and respondent No. 1 was granted time of 30 days to clear the arrears of rent, failing which, eviction order would follow. The ARC also found in favour of the petitioner insofar as the ground of subletting is concerned as respondent No. 1 was found to have sublet or parted with possession of the premises to respondent No. 2 and, thus, passed an eviction order under Section 14(1)(b) of the said Act directing the respondents to hand over possession within two months.

4. The respondent aggrieved by the said order dated 18.8.2004 filed an appeal before the Additional Rent Control Tribunal (hereinafter to be referred to as 'the Tribunal'). The Tribunal in terms of the order dated 5.5.2005 rejected the appeal insofar as the ground of non-payment is concerned, but set aside the eviction order passed under Section 14(1)(b) of the said Act on the ground of subletting. The petitioner landlord aggrieved by the same has filed the present petition under Article 27 of the Constitution of India.

9. The Trial Court found that the deposition of the respondents was like a rolling stone and the contradictions in the deposition were pointed out. Such contradictions included the plea of payment of rent by respondent No. 2 in the absence of respondent No. 1 while simultaneously the respondents denied respondent No. 2 had paid arrears of rent. A new story was sought to be set up during the evidence that there was termite attack in the shop of respondent No. 2 for some time and respondent No. 2 had requested respondent No. 1 to keep the articles in the shop of respondent No. 1. There was absence of any such description or the necessary facts being set out in the written statement. The Trial Court, in fact, found that the respondents had deposed contrary to the own affidavit and the written statement. The version of respondent No. 2 was disbelieved that he was being reimbursed by respondent No. 1 for rent paid by way of cheque to the petitioner.

10. The Trial Court has assigned cogent reasons for the aforesaid. Respondent No. 2 had been showing payment of rent to the petitioner as expenditure in its books of accounts and getting the same assessed for income-tax purposes, while respondent No. 1 was not reflecting the payment of rent being made/reimbursed to respondent No. 2 in the books of accounts of respondent No. 1 or in individual assessments, even though they were income-tax assesseees. The only explanation given on behalf of respondent No.



1 was that since the rent amount of the premises was very small, it was not shown in the returns.

11. In my considered view, this was the correct appreciation of evidence on record. The ARC rightly noted the aforesaid fact and, to my mind, this is one of the major reasons why the story of the respondents cannot be believed. It cannot be that the amount is too small for respondent No. 1 to reflect in its books of accounts while respondent No. 2 is reflecting the same in its books of accounts. The *inter se* transfer between respondent No. 1 and respondent No. 2 was also not reflected in the accounts.

12. The Tribunal, in my considered view, had no ground to interfere with the findings of the ARC. It has to be first appreciated that the scope of the first appeal before the Tribunal is limited as it can only be on a question of law. ...

13. In para 8 of the judgment, the Tribunal states that the question of law involved in appeal is as to whether the findings of fact returned by the Trial Court in relation to the two grounds of eviction are against the weight of evidence. In my considered view, the Tribunal really acted as a first Court of appeal both on law and on facts, which was not permissible.”

Shyam Sunder Dania³⁶

“8. Learned counsel also emphasized that while dealing with the provisions of Section 39 of the said Act which provided for a Second Appeal, it was held that only in case of a substantial question of law, could this Court interfere with the findings of the Rent Control Tribunal. This provision has been deleted from the Statute from 1988 and the First Appeal under Section 38 of the said Act now lies to the Rent Control Tribunal only on a question of law. Thus the said parameters would apply and there was no reason for the ARCT to interfere with the Order of the ARC.

10. On consideration of the submissions of the learned counsel for the petitioner, I am of the view that the impugned order of the ARCT cannot be sustained. Firstly, the reasoning of the ARC was based on appreciation of evidence which did not raise any question of law in the First Appeal and thus ought not to have been interfered with. Secondly, even if the evidence is seen, it is an admitted position that there was litigation between the parties in respect of the shop much prior to the present proceedings. The



testimony of the son of the original respondent herein that he was himself informed by petitioner No. 2 about creation of sub tenancy can thus hardly be accepted as it would be against the grain of any prudent communication. The ARCT appears to have been influenced by the fact that the licence produced by petitioner No. 2 was of the year 1991 and if he had taken the alternative premises on rent since 1975, then such a licence should have been available from an earlier date. This reasoning cannot be accepted. The petitioners have further filed annexure P-1, certificate of registration under the Delhi Shop and Establishment Act, 1954 of the year 1983 in the name of petitioner No. 2 with regard to the premises at F-14, Vikas Marg.

14. I am of the view that the impugned order suffers from a patent and jurisdictional error and thus the same is set aside and the order of the ARC dated 01.09.1995 is restored.”

Ram Dulari³⁷

“5. Since an appeal against the order of Additional Rent Controller lies under Section 38 of Delhi Rent Control Act only on the question of law, the learned Additional Rent Control Tribunal on appeal by respondent framed following questions of law for his decision:

“(i) Whether PW-1 Mr. Chandresh Goel who appeared as a witness of the respondent on the basis of her power of attorney Ex. PW1/1 was competent to give evidence on her behalf.

(ii) Whether petition for partial eviction was maintainable.

(iii) Whether respondent being one of the two owners of separate portions of the suit building was alone competent to file the eviction petition against the appellants seeking eviction in respect of tenanted accommodation, a portion of which fell in her ownership and the other portion in the ownership of her husband Mr. Ram Bhagat Goel.

(iv) Whether the respondent has led necessary evidence to show exclusive possession of appellant No. 2 over the



suit premises so as to shift the burden of proof on the appellants to disprove alleged subletting.”

12. I also consider that the learned Additional Rent Control Tribunal exceeded its jurisdiction by entering into an area which was prohibited. It is prohibited for Additional Rent Control Tribunal to re-appreciate the facts and change the finding of fact given by Additional Rent Controller. Learned Additional Rent Control Tribunal also wrongly brushed aside the review petition whereby it was brought to his notice that the mother of respondent No. 1, who was allegedly living in the premises had, in fact, died during the pendency of the eviction petition before Additional Rent Controller. She had died at Charkhi Dadri and was cremated at Charkhi Dadri. Her death certificate obtained by the landlady from Charkhi Dadri clearly showed that the finding given by the learned Additional Rent Controller that she was not living in the premises in question were actually correct finding and this subsequent event substantiated those findings. The learned Additional Rent Control Tribunal, therefore, wrongly came to contrary conclusion.”

37.9 These are all decisions of learned Single Judges of this Court and, with greatest respect, I am of the view that the principle of circumspection, in the matter of interference in appeal under Section 38(1) of the DRC Act, stipulated therein, has to be read in conjunction with the understanding of the expression “substantial question of law” as contained in the judgment of the Supreme Court in *Vijay Dashrath Patel*²⁹, in the light of the obvious principle that the expression “question of law” would be broader in its ambit than the expression “substantial question of law”.

38. The question of whether the impugned judgment of the learned RCT merits interference has, therefore, to be decided keeping in mind, firstly, the restricted jurisdiction vested in this Court by Article 227 of the Constitution of India and, secondly, the ambit of the jurisdiction



vested in the learned RCT by Section 38(1) of the DRC Act. Decidedly, this Court would not be justified, in the present proceedings, in going through the evidence tendered before the learned ARC with a toothcomb, as if it were appreciating the evidence for the first time.

39. Though no question of law has been framed by the learned RCT in the impugned judgment, the learned RCT has treated the decision of the learned ARC as manifestly erroneous in the manner in which it appreciated the evidence before the Court and has also, at one point, characterised the decision of the learned ARC as “perverse”.

40. What the Court has to examine is whether, in reversing the decision of the learned ARC in the manner in which it has chosen to do, the learned RCT has exceeded the jurisdiction vested in it by Section 38(1) of the DRC Act.

41. Mr. Nayar’s contention is that the impugned judgment re-appreciates, wholesale, the evidence available in the case, which is completely proscribed by Section 38(1).

42. As a proposition of law, and in the light of the judgment of the Supreme Court in *Vijay Dashrath Patel*²⁹, I am unable to agree with Mr. Nayar. The learned RCT has underscored what, in its opinion, were the glaring errors in the manner in which the learned ARC appreciated the evidence. If, in that regard, the learned RCT has not



manifestly erred, the case would not merit interference under Article 227 of the Constitution of India.

43. With this background, it would be advantageous to note, once again, the grounds on which the learned RCT has, in the present case, deemed it appropriate to reverse the decision of the learned ARC.

44. Apropos the finding, of the learned ARC, that Harbans Lal Mehra had surrendered his tendency in December 1987, whereafter, in January 1988, Raj Kumar Gupta was inducted as a direct tenant by Madho, the learned RCT observed thus:

(i) It did not commend itself to common sense that Harbans Lal Mehra, having occupied the tenanted premises as a tenant for more than 51 years, would surrender his tendency without any pecuniary gain or advantage.

(ii) No surrender deed was forthcoming.

(iii) No exact date of surrender of tenancy was forthcoming.

(iv) Even in the amended written statement filed by the petitioner, there was no reference to the handing over, by Harbans Lal Mehra, of the keys of the tenanted premises to Madho. This fact found mention for the first time in the cross-examination of RW-1.



(v) There was no evidence of the alleged payment of ₹ 9600/- as advance yearly rent or security of ₹ 50,000/-, stated to have been paid by Raj Kumar Gupta to Madho. Madho categorically denied the existence of any such payment. The only evidence to support this contention of the petitioner was the petitioner's own statement and the statements of RW-2 and RW-3, of whom RW-2, even as per the learned ARC, was an unreliable witness, as he was biased against Madho.

(vi) These averments found no place in the original written statement filed by the petitioner. They were introduced by way of amendment, by inserting, in the original written statement, paras (4A) to (4H). The amendments themselves were allowed only without prejudice. It was, therefore, for the petitioner to substantiate these pleadings and, except for his own statement and the depositions of RW-2 and RW-3, no evidence was led to that end.

(vii) There was no evidence of any rent having been tendered by Raj Kumar Gupta or by the petitioner to Madho after they had, allegedly, become direct tenants under him.

(viii) Even while stating, in his testimony, as RW-1, that he had paid rent to Madho after having directly become a tenant under him, the petitioner later acknowledged that, in the books of accounts, such payment of rent was reflected only after 1995.



(ix) The books of accounts themselves were never tendered in evidence.

(x) There was, thus, no material to indicate payment of rent, at least till 1995, to Madho, either by Raj Kumar Gupta or by the petitioner.

(xi) Nobody sought to aver, and there was no material forthcoming to indicate that Madho ever demanded rent either from Raj Kumar Gupta or from the petitioner.

(xii) There was no evidence to indicate that the rent was deposited by Raj Kumar Gupta or by the petitioner with the learned ARC under Section 26 of the DRC Act.

(xiii) Assessment orders, under Section 143(1) of the Income Tax Act, 1961, were issued to Raj Kumar Gupta at Shop No. 829, and not at the address of the tenanted premises, for the years 1986, 1987 and even 1988. In the assessment order for the year 1988, the digit “8” was scored out and, in its place, the digit “7” was inserted, so as to read “1987” instead of 1988”.

(xiv) Even the receipt of the MCD, dated 24 March 1989, for payment in respect of the *chabutra* in front of the tenanted premises was issued in the name of “Harbans Lal Daulat Ram”.

(xv) The petitioner did not seek to bring, into the witness box, anyone from the family of Harbans Lal Mehra, to corroborate his stand.



(xvi) In pending partition proceedings instituted before this Court by the sisters of Harbans Lal Mehra against him, Sushila Mehra, the wife of Harbans Lal Mehra, moved an application on 19 July 1988, to substitute herself in place of Harbans Lal Mehra in an earlier application filed by Harbans Lal Mehra on 10 July 1987 in the said suit, seeking permission either to sub-let the tenanted premises or to allow him to join a third party to carry on his business. This indicated that, at least till July 1988, Harbans Lal Mehra and, following him, his legal representatives, were asserting tenancy rights in respect of the tenanted premises.

(xvii) Even in the probate petition filed by J. K. Mehra, the executor of the will of Harbans Lal Mehra, before this Court, the realisable assets included the tenanted premises.

(xviii) P.N. Tiwari, advocate, addressed letter dated 25 August 1988, whereby rent, for the period 1 December 1987 to 31 October 1988, in respect of the tenanted premises, was tendered.

45. In the face of the fact that there was no written documentation whatsoever to substantiate the contention of the petitioner that Harbans Lal Mehra had surrendered his tendency in respect of the tenanted premises and that, the next Sunday, the tenanted premises had been let out directly to Raj Kumar Gupta, or that Raj Kumar Gupta had, on deputation, paid yearly rent of ₹ 9600/- along with



security of ₹ 50,000/–, and that this entire story, put up by the petitioner to defend the allegation of sub-letting, was sought to be corroborated only by his own statement and the statement of RW-2, the learned RCT was of the view that the conclusion, of the learned ARC, that Madho had failed to establish the allegation of sub-letting and that, on the other hand, the petitioner had succeeded in proving that his father Raj Kumar Gupta was a direct tenant under Madho, was manifestly perverse.

46. The manner in which the learned RCT has viewed the evidence, *vis-à-vis* the appreciation of evidence by the learned ARC, does not suffer from any perversity, so as to justify interference by this Court in exercise of the jurisdiction vested in it by Article 227 of the Constitution of India. On the other hand, given the manner in which “perversity” has been understood, *vis-à-vis* the existence of a substantial question of law, in the decisions cited hereinbefore, principally *Vijay Dashrath Patel*²⁹, it cannot be said that the learned RCT has manifestly erred, in law, in treating the manner in which the learned a RC has dealt with the evidence, and arrived at the conclusion that the charge of sub-letting was not established by Madho, as perverse.

47. Though, thus, it is true that the learned RCT has reappraised the evidence, the said re-appraisal is principally for the purposes of demonstrating that the manner in which the learned ARC appreciated the evidence originally was perverse as understood in law. That conclusion of the learned RCT cannot, in itself, be regarded as



perverse, or otherwise merit interference within the limited parameters of the jurisdiction vested in this Court by Article 227 of the Constitution of India.

48. Equally, no occasion arises for this Court, in exercise of the jurisdiction vested in it by Article 227, to disturb the findings, of the learned RCT, predicated on Section 111(f) of the Transfer of Property Act or Sections 16, 17 and 18 of the DRC Act. The fact that the petitioner was found in possession of the tenanted premises is not in dispute. The case cannot be analogised with a case in which, for example, a person who was found, on a single location, to be sitting in a shop was, without anything else, being alleged to be a sub-tenant. In the present case, not only was the petitioner in exclusive possession of the tenanted premises, to the exclusion of Harbans Lal Mehra; the petitioner had no reasonable explanation for being in such possession, the case of direct tenancy under Madho being based on precious little material. In these circumstances, the learned RCT cannot be held to have acted, in holding that the petitioner was a sub-tenant under Harbans Lal Mehra, and not a direct tenant under Madho, in a manner which would justify interference by this Court under Article 227 of the Constitution of India.

Conclusion

49. I see no reason, therefore, to interfere with the impugned judgment dated 6 January 2022, of the learned RCT in RCT No. 30244/2016. The judgment is, therefore, upheld in its entirety.



50. Resultantly, the present petition, being devoid of merit, is dismissed. There shall be no orders as to costs.

CM(M) 356/2022

51. CM(M) 356/2022 is directed against

- (i) order dated 12 April 2022, passed by the learned Rent Control Tribunal (“the learned RCT”), whereby an application, filed by the petitioner seeking recall of judgment dated 6 January 2022 *supra* by the learned RCT, was dismissed and
- (ii) order dated 13 April 2022, passed by the learned ARC, as the Executing Court, whereby an application filed by the petitioner under Order XXI Rule 26(1)³⁸ of the CPC in Execution 208/2022, was dismissed.

Challenge to order dated 12 April 2022

52. Inasmuch the judgment dated 6 January 2022, passed by the learned RCT, in RCT 30244/2016, was challenged by the petitioner before this Court by way of CM (M) 355/2022, which stands dismissed by the judgment delivered today, the application for recall of the judgment dated 6 January 2022 of the learned RCT would not

³⁸26. **When Court may stay execution. –**

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.



survive for consideration. Accordingly, to the extent the present petition challenges the order dated 12 April 2022, passed by the learned RCT, the challenge has been rendered infructuous and is disposed of as such.

Challenge to order dated 13 April 2022

53. The present petition also challenges order dated 13 April 2022, passed by the learned ARC, as the Executing Court, in an application filed by the petitioner under Order XXI Rule 26 of the CPC, seeking stay of the judgment dated 6 January 2022 *supra*, passed by the learned RCT in RCT 30244/2016, so as to enable the petitioner to avail further remedies against the said judgment dated 6 January 2022. The learned ARC, as the Executing Court, has rejected the application on two grounds. The first is that the learned RCT, in the judgment dated 6 January 2022, vacated the earlier stay granted in RCT 30244/2016 on 4 April 2022, while allowing the said RCT. The learned ARC, as a hierarchically lower judicial authority, has expressed a view that any stay of operation of the judgment dated 6 January 2022, would be subversive of judicial discipline.

54. I find myself in agreement with this view. Once a judgment and decree passed by a Court is challenged in appeal, and the appeal is allowed, Order XXI Rule 26 of the CPC no longer applies. A plain reading of Order XXI Rule 26 reveals that it applies at a stage when a judgment debtor, having suffered a decree, desires to challenge the judgment and decree before an appellate Court. The judgment debtor



is permitted, in such circumstances, to move the Court which passed the judgment and decree, or the Executing Court, to stay the operation of the judgment and decree till the expiry of the period of limitation available for preferring an appeal thereagainst. This is obviously because the Executing Court would be hierarchically equal to the Court which passed the judgment and decree.

55. Where, however, a judgment and decree is challenged in appeal and upheld, the Executing Court would be hierarchically equal to the Court which passed the judgment and decree, but the stay sought would effectively be of the order passed in appeal by a hierarchically superior Court. The learned ARC is perfectly correct in his view that, in such a situation, the Executing Court could not possibly stay the operation of the order passed by a hierarchically superior Appellate Court. It is obviously for this reason that the CPC does not provide for any application seeking stay of operation of a judgment and decree once such judgment and decree is challenged in appeal.

56. As the learned ARC has correctly observed in the order dated 13 April 2022, such a stay could only be sought from a Court which is hierarchically superior to the First Appellate Court.

57. Accordingly, CM (M) 356/2022, to the extent it challenges the order dated 13 April 2022, is misconceived and is accordingly dismissed.



58. In any event, the judgment dated 6 January 2022 of the learned RCT stands upheld by the judgment passed and delivered by me today in CM (M) 355/2022, no further orders are, therefore, required to be passed in CM (M) 356/2022.

C. HARI SHANKAR, J.

JULY 3, 2023

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