



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

% Judgment reserved on: 12.09.2024
Judgment delivered on: 15.10.2024

+ CM(M) 661/2022, CM APPL. 30804/2022 & CM APPL. 63239/2023

MOHD ARSHAD AND ORSPetitioners

versus

SYED MOHD YAHAYA NIZAMIRespondent

Memo of Appearance

For the Petitioner: Mr. Rajesh Mahajan with Mr. Ranjeeb Kamal
Bora and Ms. Jyoti Babbar, Advocates.

For the Respondent: Mr. Rajat Aneja with Mr. Anant Chaitanya Dutta and
Mr. Aditya Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. The petitioners herein are tenants.
2. The short question posed in the present petition is whether the tenants ought to have filed a revision against order dated 10.03.2022 passed by the learned Addition Rent Controller or whether appeal filed by them under Section 38 of Delhi Rent Control Act, 1958 (hereinafter referred to as "DRC Act") was maintainable.
3. Let us take a very quick glance over the factual matrix, germane for the present limited purpose.



4. For the sake of convenience, I would be referring the petitioners herein as ‘tenants’ and respondent as ‘landlord’.

5. Landlord had filed a petition seeking eviction of their tenants from the tenanted premises on the ground of *bonafide requirement*. Such eviction petition filed under Section 14(1)(e) read with Section 25-B of DRC Act was instituted way back in the year 2012. The tenants sought leave to defend which was, initially, allowed by the learned Rent Controller. However, feeling aggrieved, the landlord knocked the doors of this Court and *vide* order dated 14.02.2017, passed by this Court in CM(M) 1007/2016, said order, granting leave to defend, was set aside and, resultantly, an eviction order was passed against the tenants.

6. There is no dispute that such order has already attained finality as the Special Leave Petition (SLP) filed by the tenants was dismissed by the Hon’ble Supreme Court on 04.07.2017.

7. However, when an execution petition was instituted for getting back the possession of the tenanted premises, the tenants filed objection and their such objection petition has been dismissed by the learned Rent Controller *vide* order dated 10.03.2022. While dismissing the above said objection petition, the learned Additional Rent Controller also directed issuance of warrants of possession against the tenants with permission to break open the lock, doors and windows.

8. The tenants challenged the above said order dated 10.03.2022 by filing an appeal before learned Rent Control Tribunal under Section 38 of DRC Act.



9. However, such appeal has been dismissed on the ground of maintainability as the learned Tribunal held that in view of the statutory bar contained under Section 25B(8) of DRC Act, such appeal could not have been filed.

10. Such order dated 01.07.2022 is under challenge.

11. I may reiterate that the question to be adjudicated is to assess the remedy available to any such tenant- whether an appeal under Section 38 of DRC Act would lie or whether, in view of bar provided under Section 25B(8) of DRC Act, only a revision is competent.

12. The merits or demerits of the objection filed by the tenants are not to be gone into, at the moment.

13. Admittedly, as per Section 14(1)(e) of DRC Act, any tenanted premises which are required *bonafide* by landlord for himself or for any member of his family dependent on him, eviction can be sought.

14. A summary procedure was introduced in DRC Act and by virtue of Act 18 of 1976, Chapter IIIA was inserted in DRC Act.

15. Such Chapter IIIA reads as under:-

“25A. Provisions of this Chapter to have overriding effect.—The provisions of this Chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force.

25B. Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.— (1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or



under section 14-A or under Section 14-B or under Section 14-C or under Section 14-D shall be dealt with in accordance with the procedure specified in this section.

(2) The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in the Third Schedule.

(3) (a) The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(5) The Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in clause (c) of the proviso to sub-section (1) of section 14, or under section 14A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing of the application as early as practicable.

(7) Notwithstanding anything contained in sub-section (2) of section 37,



the Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Where no application has been made to the High Court on revision, the Controller may exercise the powers of review in accordance with the provisions of Order XLVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908).

(10) Save as otherwise provided in this Chapter, the procedure for the disposal of an application for eviction on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A, shall be the same as the procedure for the disposal of applications by Controllers.

25C. Act to have effect in a modified form in relation to certain persons.—(1) *Nothing contained in sub-section (6) of section 14 shall apply to a landlord who, being a person in occupation of any residential premises allotted to him by the Central Government or any local authority is required by or in pursuance of, an order made by that Government or authority to vacate such residential accommodation, or, in default, to incur certain obligations, or the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependent child in the Union territory of Delhi.*

(2) In the case of a landlord who, being a person of the category specified in sub-section (1), has obtained, on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A, an order for the eviction of a tenant from any premises, the provisions of sub-section (7) of section 14 shall have effect as if for the words “six months”, occurring therein, the words “two months” were substituted.”

(emphasis supplied)

16. Section 38 of DRC Act, which provides for appeal to the



Tribunal, reads as under: -

“38. Appeal to the Tribunal.—(1) An appeal shall lie from every order of the Controller made under this Act only on questions of law to the Rent Control Tribunal (hereinafter referred to as the Tribunal) consisting of one person only to be appointed by the Central Government by notification in the Official Gazette:

Provided that no appeal shall lie from an order of the Controller made under section 21.

(2) An appeal under sub-section (1) shall be preferred within thirty days from the date of the order made by the Controller: Provided that the Tribunal may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Tribunal shall have all the power vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when hearing an appeal. (4) Without prejudice to the provisions of sub-section (3), the Tribunal may, on an application made to it or otherwise, by order transfer any proceeding pending before any Controller or additional Controller to another Controller or additional Controller and the Controller or additional Controller to whom the proceeding is so transferred may, subject to any special directions in the order of transfer, dispose of the proceeding.

(5) A person shall not be qualified for appointment to the Tribunal, unless he is, or has been, a district judge or has for at least ten years held a judicial office in India.”

(emphasis supplied)

17. Presently, we are not dealing with disposal of eviction petition as such. As noted already, eviction order has already attained finality.

18. Sh. Rajesh Mahajan, learned counsel for the tenants submits that since the eviction proceedings were already over, the above said bar provided under Chapter IIIA stood lifted and, therefore, it cannot be said that with respect to any subsequent proceeding, including in the nature of execution, the appeal would not be permissible. It is contended that Section 38 of DRC Act is very clear and specific and provides that an appeal would lie from



every order passed by the Controller and the words “every order” are wide enough to encompass the present order as well. According to him, the appeal is excluded only when the Controller decides an application seeking eviction but such bar would not come into play while dealing with any subsequent proceedings such as execution or, for that matter, objection filed in any such execution. He also submits that right to appeal is a statutory right, which has been clearly bestowed by virtue of Section 38 of DRC Act and, therefore, the learned Rent Controller erred in not entertaining the appeal.

19. It is also argued that when the language of the statute is plain and unambiguous, there is no reason or occasion to interpret the same and thereby to add or subtract or modify anything. It is submitted that the ordinary meaning should be given effect in any such situation and since the plain language of Section 25B(8) of DRC Act debars appeal only in connection with disposal of application for eviction on the ground of *bonafide* requirement, the moment such petition was disposed of and had even attained finality, any subsequent proceeding would not undergo the same rigors of law and, therefore, there was no reason to have held that the appeal was not maintainable. Reliance has been placed upon *Manoj Kumar v. Bihari Lal*¹, *Feroze N. Dotivala v. P.M. Wadhwani*², *Hardeep Singh v. State of Punjab*³, *RS Nayak vs AR Antulay*⁴, *Swedish Match AB vs SEBI*⁵, *SA Venkataraman vs State*⁶, *SS Bola vs BD Sardana*⁷, *Ms. Santosh Mehta v.*

¹ (2001) 4 SCC 655

² (2003) 1 SCC 433

³ (2014) 3 SCC 92

⁴ (1984) 2 SCC 183

⁵ (2004) 11 SCC 641

⁶ AIR 1958 SC 107

⁷ (1997) 8 SCC 522



*Om Prakash*⁸, *Madan Lal Bhatia v. Rattan Sehgal*⁹, *Central Bank of India v. Gokul Chand*¹⁰, *Inder Mohan Sachdeva v. Usha International Limited*¹¹, *Mst. Azian Bi v. Gangadhar*¹², *R.K. Sharma v. Praveen Gupta*¹³, *Major D.N. Sood v. Shanti Devi*¹⁴, *Kundan Lal Handa v. Gyan Chand Jain*¹⁵, *DN Taneja v. Bhajan Lal*¹⁶.

20. All such contentions have been refuted by the landlord.

21. It is submitted by Sh. Rajat Aneja, learned counsel for the landlord that the dismissal of the objection is, in reality, continuation of an order of eviction, emanating from special procedure enshrined under Chapter IIIA of DRC Act and directly relates to recovery/non-recovery of possession and, therefore, the bar given in proviso to sub-Section 8 of Section 25B of DRC Act remains very much alive to such proceedings also. It is submitted that if the contention of the tenants is accepted then the very purpose of bringing in and introducing procedure of summary disposal for such kind of petitions would stand frustrated and defeated. It is also submitted that what cannot be done directly cannot be achieved indirectly as well and, therefore, no right to file appeal is available to any such tenant. Reliance has been placed upon by learned counsel for the respondent on *Vinod Chowdhry vs. Smt. Narain Devi Taneja*¹⁷, *Abdul Qudus Vs Smt. Shahjahan Begum*¹⁸, *R.S. Bakshi and*

⁸ (1980) 3 SCC 610

⁹ (1980) 18 DLT 513

¹⁰ AIR 1967 SC 799

¹¹ (2012) 189 DLT 5

¹² ILR (1978) II Del 346

¹³ (1998) 71 DLT 55

¹⁴ 1997 10 SCC 428

¹⁵ MANU/DE/0312/1971

¹⁶ (1988) 3 SCC 26

¹⁷ AIR 1980 SUPREME COURT 2012J

¹⁸ RCT ARCT No. 1812018



*Another vs H.K. Malhari and Another*¹⁹ J, *Bata India Limited vs. Sarla Sharma and Others*²⁰, *Prithipal Singh Vs Satpal Singh*²¹.

22. There cannot be any qualm with respect to the rudimentary rule of interpretation of statute.

23. If the language of the statute is plain and unambiguous, the Court, generally speaking, should not go behind the language of the statute so as to add or subtract or modify anything. Therefore, if there is no uncertainty or ambiguity, the duty of the Court is to give effect to the natural meaning of the words used in the provision and the question of construction does not arise at all. To that extent, the petitioner is justified in referring to *Feroze N. Dotivala v. P.M. Wadhwani*, *Hardeep Singh v. State of Punjab*, *RS Nayak vs AR Antulay*, *Swedish Match AB vs SEBI*, *SA Venkataraman vs State* and *SS Bola vs BD Sardana*.

24. It is also not in dispute that if any statute provides and stipulates a remedy of filing an appeal, such remedy should not be denied to any person entitled thereto. Reason is very obvious. The scope of appreciation and consideration of any appeal is much wider vis-à-vis scope of any revision petition.

25. Of course, the words used under Section 38 of DRC Act talks about “every order of Controller made under said Act” but that does not mean that said provision can be read in isolation. Chapter IIIA starts with non-obstante clause and clearly stipulates that the *provisions of said Chapter would have*

¹⁹ 2002IAD (DELHI) 589

²⁰ AIR ONLINE 2021 DEL 532J

²¹ 2010 AIR SCW 182J



effect notwithstanding anything inconsistent therewith contained elsewhere in said Act or any other law for the time being in force.

26. There is no scope of debate that the appeal would be barred if one was to challenge order of eviction, based on a petition on the ground of *bonafide* requirement. In any such situation, the proviso attached to Section 25B (8) would immediately come into play.

27. However, the question is whether such proviso and whether such bar would still be applicable if after the passing of an eviction order, any such Rent Controller deals with an objection petition and while considering such objection petition and also while dismissing it, it also, simultaneously, orders issuance of warrant of possession.

28. Indubitably, such recovery of possession is in context of execution and not in context of eviction petition as such but, for all practical purposes, when the tenant, who had been unsuccessful in the first round of litigation, files an objection petition before the same Controller in continuation of the same proceedings and when such objection is dismissed, resulting in order of issuance of warrants of possession, it will not be appropriate, in any manner, to hold that for subsequent proceeding of such like nature, the proviso would not be attracted or applicable.

29. Sh. Mahajan, learned counsel for the petitioners has strongly relied upon *Manoj Kumar vs. Bihari Lal(supra)* and contends that the Hon'ble Supreme Court has observed therein that the above said provision of Section 25B of DRC Act is a drastic measure for eviction of tenants and, therefore, strict interpretation of the provision is necessary and if from perusal of the



application seeking leave to contest, the Controller finds that the tenant has pleaded a triable case, he should not refuse leave to contest, otherwise the provision is liable to be mis-utilized by any unscrupulous landlord.

30. There cannot be any disagreement with the aforesaid legal proposition but in that case, the situation was totally different as the leave to defend was refused to the tenant and the revision petition filed by the tenant also did not meet with any success. The matter reached Hon'ble Supreme Court and the Hon'ble Supreme Court, noticing the peculiar facts of the above said case, came to the conclusion that the tenant had been able to disclose triable issue and, therefore, the order passed by the Controller was set aside.

31. Here, as noted already, the eviction order has attained finality and we are only concerned with the objection filed by the same tenant during the course of the Execution Proceedings.

32. It is becoming a harsh reality that obtaining a decree in a civil suit is merely 'a beginning of yet another battle' which kicks off with the filing of Execution Petition. The journey further is unyielding and arduous one. At times, the time taken in execution of decree is, practically, more than double the time taken in obtaining one.

33. However, without generalising the same, no Court can afford to disregard the objective behind introduction of Chapter IIIA of DRC Act. The summary procedure was provided only for few grounds, out of many provided under Section 14 of DRC Act.

34. Such summary procedure is available where eviction is sought under



Section 14(1)(e), 14A, 14B or 14C and 14D.

35. For no other ground of eviction, such summary procedure has been provided.

36. It would be, therefore, travesty of justice and somewhat ironical and incongruous as well, if the procedure prescribed for the trial continues to be summary, but the remedial procedure qua the orders passed in execution thereof is permitted to be governed by conventional manner i.e. the manner in which the execution for other eviction petitions are dealt with. The very purpose of introducing summary procedure would be lost if the objection is also not dealt with, in the same manner.

37. Moreover, the execution cannot be divorced from the eviction proceedings.

38. The execution is merely a procedure prescribed for reaping fruits of decree. Therefore, if after the culmination of trial of any such eviction petition, there is a bar in filing appeal, such bar should continue to operate and exist while dealing with execution of any such decree. More so, while disposing of the above said objection petition, the learned Controller also, simultaneously, issued warrants of possession. Therefore, for all practical purposes, the order in question is akin to order for recovery of possession and, therefore, it cannot be said that the above said proviso attached to sub-section 8 of Section 25B of DRC Act, would not be applicable.

39. Mr. Rajesh Mahajan, learned counsel for tenants states that appeal is barred against “order for the recovery of the possession” and it is, therefore,



to be restricted to the order for the recovery of possession only and if any other interpretation is accepted then it would mean that appeal is barred not only against “order for the recovery of possession” but also against “subsequent proceedings therefrom”. It is contended that such reading would amount to introduction of adding words in the statutory provision which cannot be done as the legislature, in its wisdom, while enacting the statute, has limited itself and, therefore, when the language of the statute is plain and unambiguous, the Court cannot go behind such language and must proceed on the footing that the Legislature intended what it had said.

40. It is argued that the Controller has powers of a Civil Court with regard to execution of its order which is specified in Section 42 of DRC Act and, therefore, execution petition has to be dealt with in accordance with such provision contained in Civil Procedure Code.

41. It is contended that for the purposes of dealing with the execution petition, Court cannot fall back to Chapter-III A of Delhi Rent Control Act. It is submitted that even as per Rule 23 of Delhi Rent Control Rules, 1959 in deciding any question relating to procedure not specifically provided by the Act and the Rules, the Controller and the Tribunal shall, as far as possible, be guided by the provisions contained in Civil Procedure Code. Thus, it is argued that appeal against any such order is norm and denial of appeal that too a first appeal would go against the spirit of DRC Act.

42. Mr. Rajesh Mahajan, learned counsel for tenants relies upon *Santosh Mehta v. Om Prakash* (supra). Question in the aforesaid matter, however, was little distinct. In that case, eviction petition had been filed under



Chapter-IIIB of Delhi Rent Control Act but there was non-compliance of the order regarding deposit of rent which invited order of striking off defence under Section 15 (7) of Delhi Rent Control Act. The question was whether against such order of striking off defence, appeal was maintainable under Section 38 of Delhi Rent Control Act or not and the aforesaid question was answered in para-9 which reads as under: -

“9. An order striking out the defence is appealable under Section 38. So this order is appealable. The reliance on Section 25-B(8) to negative an appeal is inept because this is not an order under that special section but one under Section 15. Moreover, Section 25-B(10) preserves the procedure except to the extent contra-indicated in Section 25-B. Negation of a right of special follows from Section 25-B(8) only if the order for recovery is made “in accordance with the procedure specified in this section” (i.e. 25-B). Here the dispossession was not ordered under the special provision in Section 25-B but under Section 15. Nor can the theory of merger salvage the order because the legality of the eviction order depends on the legality of the order under Section 15(7). Once that order is found illegal what follows upon that cannot be sustained.”

43. Here, there is no order passed under section 15 of DRC Act. Moreover, factual matrix of said case also cannot be overlooked. It was noted that the tenant had handed over the rent amount to her advocate but such advocate betrayed her by not depositing such rent in the Court, which resulted in the order of striking out of her defence. It was observed that no party could be punished because its advocate had behaved unprofessionally and, therefore, there was no case for punitive exercise of discretion and, resultantly, it was held that striking out the defence was not legal. Be that as it may, in the aforesaid matter, situation was different as it was observed that negation of a right of appeal follows from Section 25B(8) Delhi Rent Control Act only if the order of recovery is made in accordance with procedure specified therein. It was observed that since dispossession had



not been ordered and the order had been passed under Section 15 of Delhi Rent Control Act, such order was appealable. Here, no aspect of striking out of the defence under Section 15 Delhi Rent Control Act is involved at all. The tenant, who had been unsuccessful during the course of the eviction proceedings and against whom order of eviction has already attained finality, has himself come up with objection petition and once learned Controller formed an opinion that such petition was untenable, order for recovery of possession was the only the necessary corollary which is explicitly recorded in the order of issuance of warrants of possession and, therefore, no real advantage can be dug out by Mr. Mahajan from the above-said case.

44. Facts in *Madan Lal Bhatia v. Rattan Sehgal* (supra) are also distinguishable as in that case though eviction petition was on the ground of *bonafide* requirement but during the pendency of the matter, landlord therein moved an application under Section 15(2) of DRC Act and such application was allowed and the tenant was directed to deposit the arrears of rent and future rent as indicated in the order and it was in the above backdrop that it was observed that order under Section 15(2) of DRC Act was also appealable under Section 38 Delhi Rent Control Act. Paras 8 and 9 of said order reads as under: -

“8. After giving our careful consideration, we are of the opinion that in case the order under Section 15(7) can be regarded as being appealable under Section 38 as held by the Supreme Court, there is no reason why an order under Section 15(2) cannot be held to be a similarly appealable under Section 38. The order under Section 15(7) is only a consequential order and it can only be passed after an order under Section 15 (1) or 15(2) has already been passed. The Supreme Court in the case of Vinod Kumar Chowdhry (supra) had observed that the proviso under Section 25-B(8) has to be read as a legislative measure carved of the Sub-section



to which it is appended and the order mentioned therein has to be regarded as an order of the type which the Subsection speaks of, i.e., “and order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section. From these observations also it is clear that the right of revision is only limited to the cases where the proceedings have concluded under Sub-sections (4) and (7) of Section 25-B.

9. It is no doubt true that Chapter III-A was introduced in the Act by Amendment Act 18 of 1976 to provide for a ‘summary trial of certain applications’, but the said procedure is confined to the extent indicated in the Chapter itself. Once the leave to defend is granted, it does not mean that the landlord has no remedy against the defaulting tenant even though the proceedings may continue for a long period. The right of appeal is taken away only if the order for recovery is made or declined in accordance with the procedure specified in the said Chapter particularly Section 25-B. The same cannot possibly be extended to other provisions contained in the Act.”

(Empasis supplied)

45. This court would rather lay emphasis on said words which clearly suggests that such order has to be regarded as an order of the type which the sub-section speaks of, i.e., “and order for the recovery of possession in accordance with the procedure specified in this section”. Herein, the order passed by learned Controller is order of the same type i.e. order of recovery of possession. Moreover, the situation in the aforesaid case was different and there was merely a direction to pay or deposit the rent under Section 15(2) of DRC Act which cannot be equated with “order for recovery of possession”.

46. Reliance on *Central Bank of India (supra)* is also misplaced. Reason is two-fold. Firstly, it pertained to a different proposition as the question was whether appeal was maintainable against an order which was mere interlocutory in nature. It was observed that the object of Section 38(1) of DRC Act is to give a right of appeal to a party aggrieved by some order



which affected his right or liability. In the context of Section 38(1) of DRC Act, the words “every order of the Controller made under this Act”, though very wide, would not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. The challenge therein was to an order refusing appointment of commissioner for preparation of plan of tenanted premises. Secondly and more importantly, said judgment is prior to introduction of Chapter-III A of DRC Act.

47. In *Inder Mohan Sachdeva (supra)*, the situation was dissimilar. In that case, leave to defend had already been granted and thereafter, suit was *dismissed in default* and the application seeking restoration was also dismissed. The primary question for determination was whether the Petition under Article 227 of the Constitution of India was maintainable against such order passed by the Controller or whether the landlord should have pursued the remedy of Appeal under Section 38 of DRC Act. Relying on *Central Bank of India (supra)*, it was held that order declining to set aside the order dismissing an Eviction Petition in default was very much an order affecting the rights and liabilities of the parties and, therefore, appeal under Section 38(1) of the Act was held maintainable. Here, whereas, we are concerned with an order which also directs issuance of warrants of possession.

48. In *Azian Bi (supra)*, the nature of order under challenge was different i.e. order refusing to stay dispossession under section 25 of DRC Act. Here, we are not concerned with said section. Moreover, said case also seems to be prior to the introduction of Chapter IIIA in DRC Act. For the same reason, no benefit can be drawn from *Kundan Lal Handa (supra)*.

49. *R.K. Sharma Vs. Parveen Gupta (supra)* deals with a petition filed under section 14(1)(a) of DRC Act which is, admittedly, not to be tried in



summary manner as it does not fall within the purview of Chapter IIIA of DRC Act.

50. Its time to refer to *Vinod Kumar Chowdhry (supra)*. The position was not exactly the same therein but observations, as a whole, are noteworthy. Therein, landlady had sought eviction of the tenant under Section 14(1)(e) of DRC Act. The leave was granted to her tenant and later, eviction petition was also disallowed. The landlady went up in revision to High Court when question was raised whether revision was maintainable as there was no order for recovery of possession as eviction had rather been dismissed. Such contention was negated with the observation that a petition for revision lay against an order accepting or rejecting an eviction application. Such view was affirmed by Hon'ble Supreme Court while observing as under:-

“9. The non obstante clause occurring in Section 25-A makes it quite clear that whenever there is a conflict between the provisions of Chapter III-A on the one hand and those of the rest of the Act or of any other law for the time being in force on the other, the former shall prevail. Section 25-B provides a special procedure for the determination of an application by a landlord claiming recovery of possession from his tenant of the premises let out to the latter on either of two grounds viz. those specified in clause (e) of the proviso to sub-section (1) of Section 14 and in Section 14-A. Thus if such an application is based on the ground that the landlord requires the learned premises bona fide for his own occupation as a residential accommodation, It has to be dealt with in accordance with the procedure specified in Section 25-B and not under the provisions contained in chapters other than Chapter III-A. insofar as the latter are inconsistent with the former. This follows directly from the provisions of Section 25-A read with those of sub-section (1) of Section 25-B. That procedure envisages a short-cut to the conclusion of the proceedings before the Controller and for that purpose makes the right of the tenant to contest the application of the landlord subject to the Controller's leave obtained on grounds specified in an affidavit.....

.....
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13. Learned counsel for the tenant however argued that for an order to be



covered by sub-section (8) of Section 25-B it must be an order **for the recovery of possession of any premises** made by the Controller. According to him, if an order does not direct recovery of possession by the landlord from the tenant, it is not an order which sub-section (8) would embrace. This contention, though not wholly implausible, runs counter to the decision in *Devi Singh v. Chaman Lal* [(1977) Rajdhani LR 566] which was followed in *Bhagwati Pershad v. Om Perakash* [(1979) Rajdhani LR 26] and *Mahavir Singh v. Kamal-Narain* [(1979) Rajdhani LR 159] and does not find favour with us. Sub-section (8) no doubt in terms speaks only of an order “for the recovery of possession of any premises” and does not mention one which refuses the relief of eviction to the landlord: but then it appears to us that the expression “order for the recovery of possession of any premises” has to be construed, in the context in which it appears, as an order **deciding an application** for the recovery of the possession of any premises. Our reasons in this behalf are two-fold. Firstly, if an order in favour of the landlord alone was meant to be covered by sub-section (8), an order refusing such relief would be liable to be called in question by way of an appeal or second appeal under Section 38 so that there would be two procedures for the end-product of the Controller's proceedings being called in question; one when the same is in favour of the landlord, and another when it goes against him, which would obviously entail discrimination and make the sub-section suffer from a constitutional invalidity. It is an accepted rule of interpretation that if a provision can be construed in a manner which upholds its legal or constitutional validity it should if possible be so construed rather than the other way round. We do feel that the language used is not happy but then it would not be doing violence to it if it is construed as just above stated.

14. Secondly, the scheme of the Act and the object of the introduction of Section 14-A and Chapter III-A into it by the Amending Act make us form the opinion that sub-section (8) of Section 25-B is exhaustive of the rights of appeal and revision in relation to the proceedings held under that chapter. Before the enforcement of the Amending Act, all disputes between a landlord and his tenant were liable to be dealt with according to a uniform procedure before the Controller as also in appeal and second appeal. No distinction was made between one kind of dispute and another. When it was felt that the procedure prescribed in the Act defeated, by reason of the delay involved, the very purpose of an application made under clause (e) of the proviso to sub-section (1) of Section 14, especially in the case of landlords who themselves held accommodation allotted by the government or a local authority which they were required to vacate, Section 14-A and Chapter III-A were introduced by the Amending Act so as to cut down the time factor drastically, so much so that a tenant was required to obtain leave from the Controller for contesting an application for his eviction before he could put up his defence, and the Controller was given the power to refuse leave and straightway pass an order of eviction if he found that the grounds disclosed by the tenant in support of his right to dispute the landlord's claim were not such as would disentitle the landlord from obtaining an order of eviction. Sub-section (7) further simplified the procedure on contest being allowed, even though sub-



section (2) of Section 37 itself provided for a procedure far simpler than ordinarily obtains in proceedings before a civil court. Then there is sub-section (8) which provides for the abolition of the right of appeal and second appeal and replaces it by a power in the High Court to revise an order passed by the Controller. That provision, as a part of the overall picture painted, must necessarily be construed as laying down procedure exclusive of that provided in Sections 38 and 39, and we hold that the four cases relied upon by the High Court in rejecting the contention raised on behalf of the tenant were correctly decided.

15. In the way of the above interpretation of sub-section (8) of Section 25-B, the provisions of sub-section (10) thereof do not pose a hurdle. All that sub-section (10) states is that the procedure for the disposal of an application for eviction covered by sub-section (1) shall be the same as the procedure for disposal of other applications by Controllers, **except as provided in Chapter III-A.** Sub-section (8) as interpreted by us governs an application covered by sub-section (1) of Section 25-B and expressly takes away the right of appeal or second appeal, while providing the remedy of revision instead. As we have held the provisions of sub-section (8) to be exhaustive of the remedies available to a person aggrieved by an order passed by the Controller in applications triable under Chapter III-A, such applications fall outside the category of those which can be disposed of like other applications under sub-section (10) read with the provisions contained in other chapters of the Act.

16. As a result of the above discussion we hold that the remedy of the landlady against the order of the Controller in the present case was by way of revision (and revision only) of that order by the High Court as laid down in the proviso to sub-section (8) of Section 25-B, even though it was an order not directing, but refusing, recovery of possession of the premises in dispute.”

(emphasis supplied)

51. Thus, clearly, summary procedure has been introduced by the Amending Act so as to cut down the time factor, drastically. It would come into play even where eviction petition was dismissed or leave was granted. Naturally, in such a situation, there is no order for recovery of possession but despite that the right of appeal has been snatched away. *This is indicative of the intention of legislature that the governing factor would be the ground for which there is a summary procedure.* It cannot, therefore, be imagined that while dealing with any objection, related to eviction order passed on the prescribed grounds, including ground of *bonafide* requirement, such procedure would be given a go bye where there is an order of



possession as well, thereby frustrating the very intent of legislature.

52. Therefore, the fast-tracked procedure has to be made applicable for any subsequent order as well, which, too, seeks recovery of possession.

53. *In Bata India Limited (supra)*, eviction petition was under Section 14(1)(e) of DRC Act and *ex parte* eviction order was passed against the tenant and in favour of the landlord. The tenant filed an application under Order 9 Rule 13 of the CPC praying for setting aside of the eviction order passed *ex parte*. The application was allowed with certain conditions. Later, landlord filed an application for issuance of warrants of possession alleging therein that the tenant had failed to comply with the condition. Such application was allowed. The question arose whether appeal was maintainable against such order. This Court held that appeal was not maintainable against such order. Relying on *Prithipal Singh v. Satpal Singh* (2010) 2 SCC 15, it was observed that Section 25B of the Act is a complete Code by which the entire procedure to be adopted for eviction of a tenant on the ground of *bonafide* requirement filed by the landlord in respect of a premises shall be followed. Rule 23 of the Delhi Rent Control Rules, 1959, which provides for the Controller and the Rent Control Tribunal to be guided by the provisions of the Code of Civil Procedure, 1908, shall have no application. The following observations need to be extracted:-

“27. A reading of the abovequoted provisions of the Act as also the above-referred judgments, would clearly show that Section 25-A of the Act gives primacy to the procedure contained in Section 25-B of the Act for an eviction petition filed under Section 14(1)(e), or Sections 14-A, 14-B and 14-C or Section 14-D of the Act, and a remedy of an appeal under Section 38 of the Act would not be available to the parties to such eviction petition against any order passed in exercise of such procedure. However, in such a petition, if an order passed by the learned Rent Controller is not traceable to the special procedure prescribed in Section 25-B of the Act, a remedy of an appeal under



Section 38 of the Act, if otherwise available in eviction petitions or proceedings filed under other provisions of the Act, shall be available to the parties.

28. Once it is held that the application seeking recall of the order passed by the Controller holding the tenant to be duly served with the summons of the eviction petition is one filed under Section 25-B(9) of the Act, the judgment of the Supreme Court in Vinod Kumar Chowdhry case [Vinod Kumar Chowdhry v. Narain Devi Taneja(1980) 2 SCC 120] , which having considered the object and scheme of Chapter III-A and given primacy to such procedure over any general procedure inconsistent with Chapter III-A and further holding that sub-section (8) of Section 25-B of the Act is exhaustive of the rights of appeal and revision in relation to the proceedings held under that Chapter III-A taking away the right of an appeal while providing the remedy of revision instead, would squarely be applicable. The remedy of an appeal under Section 38 of the Act would therefore, not be available to the tenant in such circumstances.

29. In the present case, therefore, it is held that the application of the petitioner, though titled as one filed under Order 9 Rule 13 of the Code, was one under sub-section (9) of Section 25-B of the Act and therefore, in terms of Section(s) 25-A and 25-B of the Act, any order passed thereon shall not be appealable under Section 38 of the Act. The only remedy for the petitioner would be under sub-section (8) of Section 25-B of the Act to this Court.

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43. In the present case, the eviction order itself is not appealable in terms of sub-section (8) of Section 25-B of the Act. Therefore, even if the application is treated to be the one under Order 9 Rule 13 of the Code, an order dismissing the said application would not be appealable under Section 38 of the Act. To hold otherwise would be to defeat the object of introducing Chapter III-A to the Act in much as an appeal, which even otherwise is not maintainable under the Code, would be considered as maintainable under Section 38 of the Act, which itself has been held to be restricted in application. (Refer: Central Bank of India Ltd. case [Central Bank of India Ltd. v. Gokal Chand AIR 1967 SC 799]).

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46. In view of the above, the question of law is answered by holding that in an eviction petition to which the procedure prescribed under Section 25-B of the Act applies, an appeal under Section 38 of the Act is not maintainable against an order dismissing an application under Order 9 Rule 13 of the Code/Section



25-B(9) of the Act. The only remedy available to the aggrieved tenant is in form of a petition under sub-section (8) of Section 25-B of the Act before the High Court.

54. Thus, for a meaningful interpretation, it is obligatory to comprehend the exact intent of legislature and the purpose behind its enactment. Such all-important context cannot be kept aside and it is only after grasping the true import and spirit behind such enactment, the words, wherever so required, need to be interpreted. In *Joginder Pal vs. Naval Kishore Behal: 2002 SCC OnLine SC 594*, Hon'ble Supreme Court considered the exact import of words "for his own use" as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949. It observed that such words must receive a wide, liberal and useful meaning rather than a strict or narrow construction and thus held that the 'requirement' meant not only of the landlord himself but also of the normal "emanations" of the landlord is included therein. It observed that the expression "for his own use" could not be constructed in such a way so as to deny the landlord a right to evict his tenant, when he needs the accommodation for his own son to settle him well in his life. It thus held that that the requirement of the landlord of the suit premises for use as an office of his chartered accountant son is the requirement of landlord "for his own use" within the meaning of said section 13(3)(a)(ii). It noted that there was requirement to strike a balance between the need of protecting the tenants from unjustified evictions and the need for eviction when ground for eviction is one such as the requirement of the landlord. It observed that it was for the court to give colour and content to the expression and provide the skin of a living thought to the skeleton of the words which the legislature has not itself chosen to define. The noteworthy



observations it made, after analysing several judicial precedents on the subject of interpretation and rent legislation, are extracted as under as these are germane herein: -

"9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords - both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble."

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28. Words cannot be construed in vacuo. In *Bidie v. General Accident, Fire and Life Assurance Corpn.* [(1948) 2 All ER 995 : 1949 Ch 121 (CA)] All ER at p. 998 F-G, Lord Greene observed—

"The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: 'In this state, in this context, relating to this subject-matter, what is the true meaning of that word?' "

In *Towne v. Eisner* [245 US 418 : 62 L Ed 372 (1917)] US at p. 425, Holmes, J. observed:



“A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used.”

Both these decisions were cited with approval by Chief Justice Sikri in *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225] SCC at p. 316.

29. In *Union of India v. Sankalchand Himatlal Sheth* [(1977) 4 SCC 193 : 1977 SCC (L&S) 435] , Bhagwati, J. held that the words used in a statute cannot be read in isolation; their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context. His Lordship explained what he meant by the word “context” and proceeded to say (at SCC p. 241, para 54)

“I mean it in its widest sense ‘as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia and the mischief which — the statute was intended to remedy’ ”.

His Lordship called upon the courts faced with the task of assigning meaning to a word to remember that a statute always has some purpose or object to accomplish whose sympathetic and imaginative discovery is the surest guide to its meaning. The literal construction should not obsess the court because it has only prima facie preference. Krishna Iyer, J. in his separate opinion emphasized the need of keeping in view “the roots of the past, the foliage of the present and the seeds of the future” while understanding and interpreting a statute and held that judicial interpretation should not be imprisoned in verbalism and words lose their thrust when read in vacuo. In *Maharaj Singh v. State of U.P.* [(1977) 1 SCC 155] this Court held that the context would quite often provide the key to the meaning of the word and the sense it should carry. Its setting would give colour to it and provide a cue to the intention of the legislature in using it.

30. *Maxwell on the Interpretation of Statutes* (12th Edn.) states, while dealing with beneficial construction of statute, the Judges

“faced with a choice between a wide meaning which carries out what appears to have been the object of the legislature more fully, and a narrow meaning which carries it out less fully or not at all, they will often choose the former”. (at p. 92)

The rule of construction most agreeable to justice and reason is to presume against intending what is inconvenient or unreasonable.

“In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and



legal principles should, in all cases of doubtful significance, be presumed to be the true one.” (at p. 199)

31. In providing key to the meaning of any word or expression the context in which it is set has significance. Colour and content emanating from the context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. Requirement of landlord for his own use, is an expression capable of attributing an intention to the legislature that what was intended to be fulfilled is such requirement as would persuade the landlord to have the premises vacated by the tenant, to forego the rental income, and to put the premises to such use as the landlord would deem to be his own use and in the given facts and circumstances of a case the court too would hold it to be so in contradistinction with a mere ruse to evict the tenant. The legislature intending to protect the tenant also intends to lift the protection when it is the requirement of the landlord to put the accommodation to such use as he intends, away from leasing it out.”

55. After carefully delving on all the attendant facts and circumstances and in view of foregoing discussion and while ensuring utmost care and abundant caution in interpreting the relevant statutory provisions, the picture which emerges out goes on to suggest that right to appeal is not available to the tenants herein as the above bar given under proviso attached to section 25B (8) of DRC Act continues to exist in context of the proceedings herein. The order in question, even if not actually an order of eviction, has all the shades and trappings of eviction order, as it even directs issuance of warrant of possession. Such interpretation seems not only rational but also purposive one, in complete synchronization with the legislative intention.

56. The remedial procedure prescribed for challenging any order of eviction is, admittedly, an accelerated one and, therefore, it will be incomprehensible to hold that the remedial procedure for any such order passed in execution thereof should be any different. Any interpretation, to the contrary, would, manifestly, mitigate against the legislative intention



behind introduction of swift procedure for such like eviction petitions.

57. Resultantly, the petition is dismissed.

58. Before parting, I may hasten to supplement that much delay has already taken place merely in deciphering as to what remedy is available to tenants herein for challenging order dated 10.03.2022 and, therefore, it is expected that initiation of any further action, be it by the parties concerned or for that matter, by the learned Controller, would be quick and swift.

(MANOJ JAIN)
JUDGE

OCTOBER 15, 2024
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