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

Reserved on: 29th July, 2024

Date of Decision: 12th November, 2024

+ **CM(M) 1914/2023 & CM APPLs. 59774-75/2023**

PRADEEP KUMAR MALIK

..... Petitioner

Through: Mr. Kanwal Chaudhary and Mr. Rohit
Saraswat, Advocates.

versus

CHANDER DHINGRA

..... Respondent

Through: Mr. Shekhar Dasi, Mr. Ayush Dassi and
Mr. M.D. Talha, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present petition has been filed under Article 227 of the Constitution of India, impugning the order dated 10.11.2023 ('impugned order') passed by Rent Control Tribunal (Central), Tis Hazari Courts ('RCT') whereby the RCT dismissed the appeal i.e. RCT 67/2023 filed by the Petitioner herein against the order dated 17.10.2023 passed by the Additional Rent controller ('ARC') in execution proceedings i.e. Ex. 607/2023.

1.1. The Petitioner is the tenant, who has suffered a decree of eviction on 01.09.2022 under Section 14(1)(e) of the Delhi Rent Control Act, 1958 and the



said order of eviction has been upheld by this Court (RCR 263/2022) and Supreme Court (SLP (C) No. 11773/2023).

1.2. The present proceedings emanate from the execution proceedings filed by the Respondent/landlord for execution of the decree of eviction dated 01.09.2022 passed in CIS No. E-289/2022.

1.3. The ARC vide order dated 17.10.2023 dismissed the objections filed by the Petitioner/tenant under Section 47 read with Order XXI Rule 58 of Code of Civil Procedure, 1908 ('CPC') to the execution petition on the ground that entertaining objections as raised by the Petitioner i.e., tenant involving the question of title is beyond the jurisdiction of the ARC in an execution petition as the same has already been decided and upheld by the Supreme Court.

1.4. The Respondent/landlord had filed eviction petition i.e., CIS No. E-289/2022, against the Petitioner/tenant under Section 14(1)(e) read with Section 25B of the DRC Act, the with respect to a shop no. 413, Azad Market, Delhi-110006, admeasuring 4ft. x 7.5ft. ('subject property'), on ground of bonafide requirement of the subject property for himself and his sons for carrying on business in the subject property.

1.5. For the sake of convenience, the parties will also be referred to as per their rank and status before the ARC.

Brief Facts

2. For the purpose of the disposal of the present petition the following facts are germane to the issue at hand.

2.1 The Petitioner/tenant states that he has purchased the subject property from Sh. Tota Ram Dhingra i.e., the father of the Respondent herein on 18.08.1994 vide unregistered customary documents such as General Power of Attorney (GPA), Agreement to Sell (ATS), Affidavit, Will, Receipt and



possession letter for a sale consideration of Rs. 1,00,000/-. The Petitioner/tenant claims to have become owner of the subject property on the basis of the said customary documents.

2.2 Petitioner asserts that he was inducted as a statutory tenant in the subject property by the mother of the Respondent i.e., Smt. Durga Devi in 1981 and after her demise on 24.10.1990, the subject property devolved on the father of the Respondent Sh. Tota Ram Dhingra, who sold the same to the Petitioner by executing the customary transfer documents.

2.3 Respondent/landlord instituted the eviction proceedings i.e. CIS No. E-289/2022 before ARC against Petitioner/tenant under Section 14(1)(e) read with Section 25B of the DRC Act for bonafide requirement of himself and his sons. The summons in the petition were duly served on the Petitioner/tenant on 10.06.2022. It is contended by the Petitioner/tenant that since the paper-book was illegible, the Petitioner moved an application dated 11.07.2022 before the ARC under Section 151 CPC for suspension of period of limitation for filing the application for leave to defend along with the leave to defend application. It is a matter of record that the said application was dismissed by the ARC vide order dated 01.09.2022 and an order of eviction against the Petitioner/tenant was passed, as the Petitioner failed to file an application seeking leave to defend within the statutory period of limitation.

2.4 It is a matter of record that aggrieved by the eviction order of ARC, the Petitioner/tenant filed a Revision Petition before this Court i.e., RC.REV. 263/2022, on the ground that an illegible copy of the eviction petition was supplied to the Petitioner and that since he is the owner of the subject property, having purchased the same from father of the Respondent, no eviction order could have been passed against him. The said Revision Petition was dismissed



vide order dated 17.04.2023 and the Petitioner's plea of ownership was examined on merits in the said order. It was held by this Court that the plea of ownership raised by the Petitioner/tenant on the basis of disputed and unregistered documents cannot give rise to a triable issue and, therefore, the Respondent/landlord was entitled to a decree of possession. The High Court held that the said claim of ownership would have to be established by the tenant in independent proceedings before a Civil Court.

2.5 The Respondent/landlord on 24.04.2023 filed an execution petition (Ex.P. 607/2023) for execution of eviction decree dated 01.09.2022 passed by the ARC.

2.6 Simultaneously, Petitioner/tenant filed a suit on 01.05.2023 seeking declaration of ownership on the basis of customary documents before Civil Judge, Tis Hazari Courts, Delhi i.e., CS SCJ 883/2023. However, the said suit was withdrawn by the Petitioner on 05.07.2023 with liberty to institute a fresh suit on the same cause of action.

2.7 The Executing Court i.e. ARC issued warrants of possession on 12.05.2023 which were executable on 01.06.2023.

2.8 In the meanwhile, Petitioner filed application for stay of the proceedings before the Executing Court in light of pendency of SLP(C) no. 11773/2023 preferred by the Petitioner against the High Court's order dated 17.04.2023 passed in RCR 262/2023. The Petitioner also filed objections to the execution petition on the same day.

2.9 The SLP was dismissed by the Supreme Court vide order dated 01.06.2023. Further the objections of the Petitioner/tenant were dismissed by the executing Court on 17.10.2023 and the ARC issued warrants of possession executable on 30.10.2023, observing as under:



“Once an eviction order has been passed on account of the tenant's failure to file leave to defend application within 15 days and after the eviction order has been affirmed up to Hon'ble Supreme Court of India, the question whether the JD was not a tenant but the owner of the property, is not a question to be determined u/s 47 CPC. The authorities relied upon by Ld. Counsel for the JD, no doubt lays down the preposition that executing Court has the power to decide all questions arising between the parties relating to execution, discharge or satisfaction but the same is not applicable to the present case in view of the nature of the proceedings u/s 25B DRC Act.”

(Emphasis supplied)

2.10 Against the order dated 17.10.2023, Petitioner/tenant preferred an appeal before Rent Control Tribunal ('RCT') under Section 38 of DRC Act, which was dismissed by the RCT vide order dated 10.11.2023 holding that the appellant, who has been ordered to be evicted under Section 14(1)(e) read with Section 25B of the DRC Act cannot sustain an appeal under Section 38 of the DRC Act, as the same is barred under Section 25B (8) of DRC Act.

2.11 The present petition is, therefore, filed against the order dated 10.11.2023 passed by the RCT.

Arguments of Petitioner

3. Mr. Kanwal Chaudhary, learned counsel for the Petitioner/tenant contended that the order dated 17.10.2023 passed by the Executing Court was not passed under Section 25B of the DRC Act, meaning thereby it was not 'an order for recovery of possession' and, therefore, not covered under Section 25B (8) of the DRC Act. He stated that, therefore, the RCT was not correct in dismissing the appeal filed under Section 38 of the DRC Act.

3.1 He stated that the appeal filed under Section 38(1) of the DRC Act against the order dated 17.10.2023 involved a question of law, since the said order was passed by the ARC in a summary manner, no question of law was framed for consideration.



3.2 He stated that RCT failed to appreciate that an eviction order/decreed, which is obtained under any of the provisions of DRC Act requires to be executed in the manner, as provided under Section 42 of DRC Act and the provisions of Order XXI of the CPC would apply, mutatis mutandis, to execution proceedings.

3.3 He stated that if in the eviction petition or any proceedings filed under the provisions of the DRC Act, an order is passed which is not traceable to the special procedure prescribed in Section 25-B of the DRC Act, the party aggrieved would have a remedy of an appeal under Section 38 of the DRC Act. He relied upon the judgment of co-ordinate Bench of this Court in **Bata India Limited v. Sarla Sharma & Ors.**¹.

3.4 He stated that right, title and interest claimed in the property arising between the parties to proceedings, or between the decree holder and any stranger have to be adjudicated by the executing court and not by means of a separate suit. He relied upon the judgment of Supreme Court in **Sameer Singh v. Abdul Rab**² and the judgment of this Court in **Shakuntala Gupta v. Man Mohan Gupta**³ and **Vateena Begum v. Shamim Zafar**⁴.

3.5 He stated that the legislative mandate is that the objections to execution of a decree ought to be adjudicated in the execution petition itself, in order to avoid multiplicity of proceedings and conflicting rulings. He placed reliance on **Vateena Begum** (supra), **Bhavan Vaja & Ors. v. Solanki Hanuji Khodaji Mansang & Ors.**⁵

¹ 2021:DH:1426.

² AIR 2015 SC 591.

³ 2015:DH:3551.

⁴ 2021 (276) DLT 190.

⁵ AIR 1972 SC 1371.



3.6 He stated that, therefore, the claim of ownership raised by the Petitioner herein ought to have been decided by the Executing Court.

Arguments of the Respondent

4. In reply, Mr. Shekhar Dasi learned counsel for the Respondent/landlord contended that this is the second round of litigation between the parties at the behest of the Petitioner/tenant on the issue of ownership, which has been decided by the High Court against the Petitioner/tenant and affirmed by the Supreme Court.

4.1 He stated that the eviction order dated 01.09.2022 passed in CIS No. E-289/2022 was challenged by the Petitioner before this Court in RC.REV. 263/2022, wherein this Court vide order dated 17.04.2023 upheld the order of eviction passed against the Petitioner. He stated that the said order dated 17.04.2023 of this Court was assailed by the Petitioner before the Supreme Court in SLP Civil No. 11773/2023 on the same grounds of ownership of the subject property, which stood rejected by High Court. He stated that the Supreme Court vide order dated 01.06.2023 dismissed the SLP and in essence endorsed finality to the eviction order dated 01.09.2022.

4.2 He stated that Petitioner elected a remedy and filed suit for declaration of ownership i.e., CS SCJ No. 883/2023 on the basis of alleged title documents and same ground of ownership of the Petitioner was urged by the Petitioner. He stated that the said suit was withdrawn by the Petitioner with liberty to file a fresh suit on the same cause of action; however, no suit has been filed thereafter.

4.3 He stated that in the execution petition, the Petitioner filed objections to the said execution petition on the same grounds that he is the owner of the subject property, which already stood rejected by the High Court while deciding



RCR 286/2022. He stated that the Executing Court vide order dated 17.10.2023 rightly dismissed the said objections as they agitate identical pleas.

4.4 He stated that the Supreme Court in **Pradeep Mehra v. Harijivan J. Jethwa**⁶ held that Executing Court's power under Section 47 of CPC cannot be invoked for interfering in the issue which has already been agitated and decided before different fora.

4.5 He stated that it has been held by a co-ordinate Bench of this Court in **Laxmi Devi v. Inder Dev Sharma & Anr.**⁷ that objection to the execution of an eviction order can only be filed by a third-party and not by the tenant himself who is bound by the decree of eviction.

Analysis and Findings

5. This Court has heard the learned counsel for the parties and perused the record.

Finality of Eviction Decree dated 01.09.2022

6. An order for eviction was passed by the ARC on 01.09.2022 in CIS No. E-289/2022. The said order was upheld by the High Court vide order dated 17.04.2023 in RCR No. 263/2022. Pertinently, before the High Court the Petitioner/tenant herein contended that he is the owner of the suit property by virtue of the unregistered GPA, ATS, Will and possession letter all dated 18.08.1994, executed by the landlord i.e. Sh. Tota Ram Dhingra. The Petitioner/tenant on this specific plea opposed the eviction petition and eviction order dated 01.09.2022.

6.1 The said objection of the Petitioner/tenant was recorded, adjudicated upon and expressly rejected by the High Court in its order dated 17.04.2023;

⁶ 2023 INSC 958.

⁷ CM (M) 320/2021.



and the order of eviction dated 01.09.2022 was confirmed. The relevant portion of the order reads as under:

“14. In view of the fact that the title of late Smt. Durga Devi, i.e., the mother of the Respondent and late Shri Tota Ram Dhingra, i.e., the father of the Respondent is **categorically admitted** by the Petitioner, the devolution of title upon the Respondent by virtue of a registered Will dated 05.04.1994 raises a strong presumption in favour of the Respondent herein.

14.1. This Court also notes that the Petitioner has admitted that he was inducted as a tenant in the tenanted premises by late Smt. Durga Devi, i.e., the mother of the Respondent. He has also admitted that, thereafter, he had attorned as a tenant to late Shri Tota Ram Dhingra. The Petitioner has also not disputed that the house tax for the tenanted premises is being paid by the Respondent herein.

14.2. **The Petitioner has set up a plea of ownership on the basis of a disputed unregistered Will which has not been proved in accordance with law. It has also come on record that no steps have been taken by the Petitioner since 11.08.1995, i.e., the death of the Shri. Tota Ram Dhingra to have the tenanted premises mutated in his favour or assert any propriety claim before any statutory authority.**

14.3. Thus, the said Will has not been acted upon before any third party. **In these circumstances, to accept a plea of ownership set up by the Petitioner herein, who is admittedly a tenant, on the basis of a disputed unregistered will would lead to permitting mischief, at the behest of the tenant, in a summary proceeding before the Rent Controller.**

14.4. It is also trite law that by virtue of Section 116 of Evidence Act, a tenant, during the continuance of the tenancy is estopped from challenging the title of the landlord, through whom he claims the tenancy. (Re: Om Prakash and Another v. Mishri Lal (Dead) Represented by his Legal Representative Savitri Devi, (2017) 5 SCC 451).

14.5. Additionally, the disputed facts and plea of ownership has to be established by the tenant in his independent proceedings before a civil court. (Re: Allarakha & Anr., v. Allahwala & Anr., 2014 SCC OnLine Del 3438, Hari Gopal Manu v. B S Ohja).

14.6. Hence, in view of the aforesaid findings, **the plea of the ownership on the basis of unregistered documents (which are disputed by the Respondent) sought to be set up by the Petitioner,**



while admitting the status of tenancy, cannot give rise to a triable issue.”

(Emphasis Supplied)

6.2 The Petitioner/tenant preferred a SLP (SLP (C) No. 11773/2023) against the order of the this Court dated 17.04.2023 expressly agitating the same issue of ownership qua the subject property. The relevant grounds raised in the SLP read as under:

“B. BECAUSE the Hon'ble High Court while dismissing the Revision Petition also gave incorrect finding on two additional issues: - Owner and landlord-tenant relationship between the parties and the non-reply to legal notice dated 06.02.2020.

E. BECAUSE the Hon'ble **High Court failed to appreciate that the subject premises (owned by the Petitioner) is part of a larger shop, bearing number 413, Azad Market Delhi, and the remaining part of the shop is occupied by the Respondent and his family, for past over 40 years.**

F. BECAUSE the Hon'ble High Court failed to appreciate the fact that the Petitioner although entered the subject premises as a statutory tenant in 1981, **he has been enjoying the subject premises as the owner for past over 28 years and had no occasion to believe otherwise.** This also gains strength from the fact that the Respondent has been in occupation of the remaining/ adjacent premises.

I. BECAUSE the Hon'ble **High Court committed an error in construing that the devolution of title upon the Respondent by virtue of registered will dated 05.04.1994 of Shri Tota Ram Dhingra “raises a strong presumption in favour of the Respondent” while ignoring the will dated 11.08.1995 of Shri Tota Ram Dhingra in favour of the Petitioner which was restricted, to the subject premises only.** Despite the non-attornment and disputed claim, the Hon'ble High Court raised presumption under Section 116 of Indian Evidence Act, 1872 while in the same breath leaving the question of ownership and title to be adjudicated before the Civil Court.”

(Emphasis supplied)

6.3 The Supreme Court vide order dated 01.06.2023 dismissed the SLP and consequently upheld the eviction order of the ARC and the judgment of the High Court. The order dated 01.06.2023 reads as under:

“1. **We are not inclined to disturb the concurrent findings of fact rendered by the fora below.**

2. Accordingly, the Special Leave Petition stands dismissed together with pending application(s), if any.”

(Emphasis Supplied)



6.4 The eviction order dated 01.09.2022 passed by the ARC, thus had attained finality in terms of the order passed by the Supreme Court and the Petitioner's plea of alleged ownership as a basis to resist eviction in the proceedings initiated under the DRC Act was put to rest by the said order of Supreme Court.

Power of Executing Court under Section 47 CPC

7. Even though the eviction order dated 01.09.2022 attained finality in view of the dismissal of the SLP, the Petitioner/tenant has failed to vacate the subject property and instead filed objections in the execution petition i.e., Ex. P. 607/2023 agitating the identical grounds of alleged ownership of subject property for opposing execution of the eviction decree before the Executing Court. The Executing Court vide order dated 17.10.2023 dismissed the objections holding that the tenant was estopped from raising the very same issue under Section 47 of CPC. The relevant portion of the order reads as under:

"14. Moreover, the contention of the JD was dealt by Hon'ble High Court of Delhi in its order dated 17.04.2023. It is observed by Hon'ble High Court of Delhi that the Will relied upon by the JD was not acted upon by mutation of the property in his favour nor has he asserted his proprietary claim before any statutory authority. It was further observed that the said Will was not acted upon before any third party also and it was therefore, observed that to accept a plea of ownership set up by the JD, who was admittedly a tenant, on the basis of disputed unregistered will would lead to permitting mischief in a proceeding before Rent Controller. It was held that the plea of ownership set up by the JD on the basis of unregistered documents, while admitting the status of tenancy, cannot give rise to any triable issue. Thus, once it is held by Hon'ble High Court of Delhi, after considering the defence of the JD regarding his ownership of the premises in question, that no triable issue arises on the basis of the documents relied upon by the JD, it is not permissible for this Court to permit the JD to re-agitate the same issue u/s 47 CPC.

15. It is pertinent to mention that the order/decreed sought to be executed is an eviction order passed in summary proceedings under DRC Act. The ARC is not empowered under the law to deal with the question of title between the parties on account of the nature of the proceedings before it. In this background, once an eviction order has been passed on account of



the tenant's failure to file leave to defend application within 15 days and after the eviction order has been affirmed up to Hon'ble Supreme Court of India, the question whether the JD was not a tenant but the owner of the property, is not a question to be determined u/s 47 CPC. The authorities relied upon by Ld. Counsel for the JD, no doubt lays down the preposition that executing Court has the power to decide all questions arising between the parties relating to execution, discharge or satisfaction but the same is not applicable to the present case in view of the nature of the proceeding's u/s 25B DRC Act."

(Emphasis Supplied)

7.1 The Petitioner/tenant contended before this Court that in view of Section 47 of CPC the issue of claim of ownership of the subject property raised by the tenant ought to be adjudicated upon by the Executing Court before eviction; and the Executing Court has exclusive jurisdiction to decide the inter-se claims of ownership between the landlord and the tenant. Further he contended that the Petitioner cannot maintain a separate suit for deciding the said claim.

7.2 In the considered opinion of this Court, the said contention of the Petitioner is bereft of any merits.

7.3 The Supreme Court in **Pradeep Mehra** (supra) has held that the scope of jurisdiction of the issues to be determined by the Executing Court under Section 47 CPC are questions limited to 'execution of the decree' and these questions do not enable the Executing Court to go behind the decree. The relevant portion of the judgment reads as under:

"5. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. **But the important aspect to remember is that these questions are limited to the "execution of the decree". The executing court can never go behind the decree. Under Section 47, CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court's order is itself without jurisdiction.**"

(Emphasis Supplied)



The issue of alleged ownership of the Petitioner herein has no bearing on the execution of the eviction decree as the validity of the said decree of eviction has been tested and upheld by the Supreme Court. And, the plea of ownership raised by Petitioner has been expressly rejected by the **High Court** and Supreme Court.

7.4 In the aforesaid judgment, Supreme Court also referred to another judgment **Dhurandhar Prasad Singh v. Jai Prakash University and Others**⁸ relevant part of the said judgment reads as under:

“24. **The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole.** Thus, it is plain that executing court can allow objection under Section 47 of the Code to **the executability of the decree if it is found that the same is void ab initio and a nullity**, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.”

(Emphasis supplied)

The objections sought to be raised by the Petitioner herein in the execution proceedings do not raise any challenge to the validity and executability of the decree of eviction. The Petitioner’s claim of ownership based on GPA, ATS, Will and possession letter all dated 18.08.1994 is misconceived in law and fact as the said documents together do not per-se confer any ownership rights on the Petitioner. (Re: ***Shakeel Ahmed v. Syed Akhlaq Hussain***⁹)

8. The learned counsel for the Petitioner has referred to the following judgments to contend that Judgment Debtor can maintain objections before the executing Court despite having lost the case on merits and the executing Court

⁸(2001) 6 SCC 534.

⁹ 2023 SCC OnLine SC 1526.



is bound under law to decide any and all objections raised by the Judgment Debtor.

8.1 Learned counsel for the Petitioner relied on the judgment of this Court in **Mohd Farjam v. Sarfaraz Ahmed & Ors.**¹⁰ which in the opinion of this Court is not applicable to the facts of this Case. In the said judgment the Court was dealing with a situation wherein the objector to the execution i.e., Mohd Farjam was not a party to the eviction proceedings. Mohd Farjam was not the judgment debtor but a third party and he objected to the eviction proceedings contending that he is the owner of the tenanted premises.

8.2 The reliance placed by the counsel for the Petitioner on the **Shreenath & Ors. v. Rajesh and Ors.**¹¹ is misplaced owing to the fact that the question raised before the Court in the said case was whether the third party in possession of a property claiming independent right as a tenant, who was not party to a decree under execution could resist such decree by seeking adjudication of his objections under Order XXI Rule 97 of the CPC. Thus, in this case the objector was not the judgment debtor but a third party.

8.3 Further in the case of **N.S.S. Narayana Sarma & Ors. v. Goldstone Exports (P) Ltd. and Ors.**¹² the suit as originally filed was for partition and in the said suit a preliminary decree of partition was passed. After the passing of preliminary decree certain applications were moved before the High Court for delivery of possession as the applicant claimed to be purchasers from the original decree holder, the said prayer was allowed by the **High Court**. At this juncture, the appellants before the Supreme Court came into picture and tried to obstruct the delivery of possessions to the applicants before the **High Court**.

¹⁰ ILR (2010) Supp. (1) Del. 539.

¹¹ AIR 1981 SC 1827.

¹² AIR 2002 SC 251.



The Court noted that appellant herein was not a party to the original suit and at the stage of execution was claiming independent title to the subject matter property. Thus, in this case as well the objection was raised by a third party and not the judgment debtor, who had suffered the decree.

8.4 In **Bhanwar Lal v. Satyanarain**, the Supreme Court held that when any person, whether claiming derivative title from the judgment-debtor or a party which sets up his own right, title or interest de hors the judgment debtor to resist execution, the Executing Court whilst executing the decree, in addition to the power under Rule 35(3), is empowered to conduct an enquiry whether the obstruction by that person is legal or not. In **Bhanwar Lal (Supra)** the objections were filed by one Satyanarain, who was admittedly a third-party.

8.5 In the facts of the Petitioner's cited judgments, the objectors therein were third-parties to decree under execution and were claiming independent rights. Therefore, the said judgments have no relevance to the facts of the present case.

9. The Respondent has rightly pointed out that in the judgments relied upon by the Petitioner, the objections therein were filed by third parties before the Executing Court. The said third parties were otherwise not the Judgment Debtors. It was in these facts that the claims of third parties were entertained by the Executing Court only for the purpose of determining the executability of the decree against the said third parties.

No challenge to Executability of Eviction Decree

10. The Petitioner has admittedly not challenged the executability of the decree of eviction on the ground that it is inexecutable under law, rather the Petitioner has raised bogus plea of ownership to resist the execution.

10.1 The grounds on which the execution of the eviction decree is opposed are identical to the grounds considered and rejected by the **High Court** on



17.04.2023. The effect of the order of the **High Court** is that the said grounds of alleged ownership have been held to not afford any justifiable cause to the Petitioner herein to oppose his eviction in the eviction proceedings and, therefore, in essence the plea of ownership being re-agitated by the Petitioner in no manner casts a doubt on the executability of the eviction decree dated 01.09.2022.

10.2 Further, executing Court was right in concluding that once the Petitioner has raised identical grounds in the revision proceedings, which has been considered and rejected, the same grounds cannot be agitated in the execution proceedings. The re-agitation of the said grounds to oppose eviction would be barred by res-judicata. The order of the Executing Court dated 17.10.2023 is, therefore, correct and does not suffer from any infirmity.

11. So also, the order of the RCT dated 10.11.2023 holding that no appeal is maintainable against the order dated 17.10.2023 under Section 38 of the DRC Act in view of Section 25-B (8) of the DRC Act is correct in view of the judgment of the Co-ordinate Bench of this Court in **Mohd Arshad and Others v. Syed Mohd Yahana Nizami**.¹³

12. In **Bata India Limited v. Sarla Sharma**¹⁴ relied upon by the Petitioner, an eviction petition was filed under Section 14(1)(e) of the DRC Act, and an ex-parte eviction order was passed therein against the tenant and in favour of the landlord. The tenant thereafter, filed an application under Order IX Rule 13 CPC, requesting that the ex-parte eviction order be set aside, while the said application was listed for final arguments the landlord filed an application for the issuance of warrants of possession, stating that the tenant had failed to meet

¹³ 2024 SCC OnLine 7173.

¹⁴ AIR ONLINE 2021 DEL 532J.



the conditions as specified in the interim order dated 03.06.2011. The said application of the landlord was allowed and the application of the tenant pending under Order IX Rule 13 CPC was dismissed vide order dated 29.11.2013. The question arose as to whether an appeal against such an order allowing the said landlord's application and dismissing the tenant's application under Order IX Rule 13 CPC could be maintained. This Court held that an appeal under Section 38 of DRC Act was not maintainable against such an order dated 29.11.2013. This was the ratio of this judgment and therefore the reliance placed by the Petitioner on the said judgment is of no assistance.

Remedy before Civil Court

13. The Petitioner's claim of alleged ownership based on disputed unregistered documents has no relevance to the issue of execution of the decree and the said issue would have to be agitated by the Petitioner before the Civil Court in accordance with law. This was also held by the High Court in the order dated 17.04.2023 at para '14.5'.

13.1 It is a matter of record that the Petitioner/tenant herein filed a suit for the claim of ownership (CS SCJ 883/2023) and withdrew the same on 05.07.2023 after seeking liberty to file a fresh suit on the same cause of action. The order dated 05.07.2023 passed by the Civil Court reserving liberty to the Petitioner/tenant reads as under:

"Plaintiff submits that he may be permitted to withdraw the present suit with liberty to institute a fresh suit on the same cause of action in accordance with law.

Separate statement of plaintiff is recorded to this effect.

In view of statement given by plaintiff today in Court, the present suit is disposed off as withdrawn with liberty to plaintiff to institute a fresh suit on same cause of action. However, it is made clear that the **plaintiff shall be bound by the law of limitation** in the fresh suit instituted on permission granted by this Court in the same manner as if this suit has not been instituted.



File be consigned to the record room after due compliance.”

(Emphasis Supplied)

The Petitioner has without any cause not exercised any liberty to file a fresh suit before the Civil Court.

Conclusion

14. Accordingly, this Court finds no merit in this petition and the same is dismissed with costs of Rs. 50,000/- in favour of the Respondent.

Mesne profits

15. The learned counsel states that Rs. 18,000/- is being paid as mesne profits by the Petitioner to the Respondent for continuing to occupy the subject property after the passing of the eviction order. It is stated that the said amount was awarded as an interim measure vide order dated 24.02.2023 passed in RCR 263/2022. The Respondent has placed on record a registered lease agreement dated 05.02.2024 to contend that similarly located properties are fetching a monthly rental of Rs. 33,000/- per month.

16. Since, the lease agreement is a registered document, there is presumption of genuineness attached with a registered document. The Petitioner has failed to handover the physical possession of the property despite an eviction order being passed against him and having been upheld by the Supreme Court. The conduct of the Petitioner in not vacating the property smacks of wilful disregard for due process of law followed by the Respondent. In such fact, the Petitioner, who is in unlawful occupation of the subject property is liable to pay mesne profits at market rate. The Petitioner is hereby directed to pay the mesne profits at the rate of market rent of Rs. 33,000/- per month w.e.f. 01.06.2023 i.e., the date of dismissal of SLP against the Petitioner, until the handing over of the possession. The arrears of mesne profits shall be paid within four weeks failing which, Petitioner will be liable to pay interest at 12% per annum. In case, the Petitioner



fails to make the payment, the arrears of mesne profits and the current mesne profits will be recoverable in the present execution proceedings.

MANMEET PRITAM SINGH ARORA, J
NOVEMBER 12, 2024/mt/sk

Signature Not Verified

Signed By: MAHIMA
SHARMA CM(M) 1914/2023
Signing Date: 15.11.2024
18:33:03