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

*Reserved on: 21st December, 2023
Date of Decision: 16th January, 2024*

+ CM(M) 1480/2022 & CM APPLs. 56715/2022, 36287/2023,
47124/2023

BALASARASWATHY

..... Petitioner

Through: Ms. Aditi Gupta, DHCLSC alongwith
Petitioner in person (Through VC)

versus

KVSN RAJU

..... Respondent

Through: Mr. Anoop Prakash Awasthi, Ms.
Prapti Singh and Ms. Parthvi Ahuja,
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. This petition filed under Article 227 of the Constitution of India impugns: - (i) the judgment dated 14.12.2022 passed by the Principal District and Session Judge, West District, Tis Hazari Courts, Delhi ('Appellate Tribunal') in RCT ARCT No. 01/2020 titled as '**Balasaraswathy v. KVSN Raju**' ('Appeal'), (ii) the judgment dated 19.12.2019 passed by the Additional Rent Controller, West District, Tis Hazari Courts, Delhi ('Rent Controller') in RC ARC No. 25899 of 2016



titled as '**K.V.S.N. Raju v. Balasaraswathy**' ('eviction petition') and (iii) seeks stay of the eviction order dated 05.02.2020 passed by the Rent Controller in Misc RC ARC No. 91 of 2019 titled as '**K.V.S.N. Raju v. Balasaraswathy**'.

1.1 The Petitioner herein is the tenant and the Respondent herein is the landlord and owner of the property being DDA Flat No. 47E, JC Pocket, G-8 Area, Hari Enclave, Hari Nagar, New Delhi ('tenanted premises').

For ease of reference, the Petitioner herein and the Respondent herein are being referred to as tenant and landlord, respectively.

1.2 The brief facts of the case are that on 17.08.2010, the landlord filed an eviction petition under Section 14(1)(a) & (c) of the Delhi Rent Control Act, 1958 ('DRC Act') seeking eviction of the tenant from the tenanted premises. The eviction petition was contested by the tenant, *inter alia*, on the ground that the statutory demand notice dated 24.04.2010 (for arrears of rent) was not served upon her as mandated by the DRC Act.

1.3 The Rent Controller after perusing the pleadings, evidence and the documents relied upon by the parties, vide impugned judgment dated 19.12.2019, allowed the eviction petition under Section 14(1)(a) of the DRC Act and furthermore, passed an order under Section 15(1) of the DRC Act, directing the tenant to pay the rent to the landlord at the rate of Rs. 2,000/- per month with effect from 01.08.2009 till date along with simple interest at the rate of 15% per annum within one (1) month from the date of the said order; and to pay the future rent at the same date month by month on or before 15th day of each succeeding English calendar month.

1.4 By impugned order dated 05.02.2020, the Rent Controller passed an eviction order against the tenant with respect to eviction from the tenant



premises, holding that the tenant had not complied with the order issued under Section 15(1) of the DRC Act passed in the impugned judgment dated 19.12.2019 and therefore, the tenant is not entitled to benefit under Section 14(2) of the DRC Act.

1.5 Aggrieved by the Rent Controller's judgment dated 19.12.2019 passed in the eviction petition, the tenant filed an appeal under Section 38 of the DRC Act and consequently, sought stay of the eviction order dated 05.02.2020. The Appellate Tribunal after perusing the Rent Controller's record, upheld the findings returned by the Rent Controller that the tenant was served upon with the statutory demand notice dated 24.04.2010 prior to the filing of the eviction petition and that the tenant is in arrears of rent at Rs. 2,000 per month with effect from August, 2009. In view of the said finding, the Appellate Tribunal dismissed the said Appeal vide its judgment dated 14.12.2022. Aggrieved by the impugned judgments dated 19.12.2019 and 14.12.2022 passed by the Appellate Tribunal and the Rent Controller, respectively, the tenant has filed the present petition.

1.6 As a matter of record, it is pertinent to note that on 18.03.2010 the tenant filed a petition bearing U-03/2010 titled as '**Balasaraswathy v. KVS N Raju**' under Section 45 of the DRC Act ('proceedings under Section 45 of the DRC Act') before Tis Hazari Courts, Delhi seeking restoration of the electricity connection and water supply in the tenanted premises. The landlord filed its reply/written statement dated 27.04.2010 to the said petition and annexed therewith a copy of statutory demand notice dated 24.04.2010 for arrears of rent.

Arguments on behalf of the Petitioner i.e., tenant



2. The learned counsel for the Petitioner i.e., the tenant states that as recorded in the order dated 23.12.2022 passed by the Predecessor Bench, the limited issue arising for consideration in this matter is with respect to the non-service of the statutory demand notice dated 24.04.2010 on the tenant before filing of the eviction petition under Section 14(1)(a) of the DRC Act.

2.1 She states that as per the landlord he served the statutory demand notice dated 24.04.2010 on the tenant through courier service of DTDC and India Post. She states that however, the letter(s) issued by DTDC and Department of India Post respectively confirm that the statutory demand notice dated 24.04.2010 was not served on the tenant due to address problem. She states that the said letters were duly admitted in evidence as Exhibit RW 1/8 and RW 1/9. She states that in view of the said letters the finding of the Rent Controller and the Appellate Tribunal holding that the statutory demand notice dated 24.04.2010 was served on the tenant is contrary to the evidence on record.

2.2 She states that the service of the demand notice is mandatory for maintaining a petition under Section 14(1)(a) of the DRC Act and in this regard relies upon the judgment of a Single Judge of this Court in **Ranjit Singh v. Sudhir Singh**¹ and of Supreme Court in **Mangat Ram and Ors. v. Sardar Meharban Singh and Ors.**²

2.3 No other arguments were addressed by the Petitioner.

Arguments on behalf of the Respondent i.e., landlord

3. In reply, the learned counsel for the Respondent states that both the

¹ 1980 SCC OnLine Del 196

² AIR 1987 SC 1656



Rent Controller and the Appellate Tribunal after duly considering the evidence on record have returned a concurrent finding of fact that the tenant was duly served with the statutory demand notice dated 24.04.2010.

3.1 He states that in addition to service through DTDC and India Post, the tenant received the statutory demand notice dated 24.04.2010 as an annexure to the reply/written statement dated 27.04.2010 filed by the landlord in the proceedings filed by the tenant under Section 45 of the DRC Act. He states that the aforesaid reply/written statement along with the copy of the statutory demand notice dated 24.04.2010 was duly received by the tenant and therefore, she had sufficient notice to pay the arrears of rent.

3.2 He states that the Rent Controller duly perused the record of the proceedings under Section 45 of the DRC Act as well as the cross examination of the tenant, who was examined as RW-1, to conclude that she had due knowledge of the statutory demand notice dated 24.04.2010 in the said Section 45 proceedings.

3.3 He states that the scope of jurisdiction of this Court under Article 227 of the Constitution of India is restricted in nature and the same cannot be exercised to disagree with the fact findings of the Courts below by re-appreciating the evidence. In this regard, he relies upon the judgment of the Supreme Court in *Puri Investments v. Young Friends and Co. and Ors.*³

Analysis and findings

4. This Court has considered the submissions of the learned counsels for the parties and perused the record.

³ 2022 SCC OnLine SC 283



5. The Rent Controller vide judgment dated 19.12.2019 allowed the eviction petition filed by the landlord under Section 14(1)(a) of the DRC Act after returning a finding that the tenant has failed to pay rent of Rs. 2,000 per month with effect from 01.08.2009 despite statutory demand notice dated 24.04.2010. The Rent Controller directed the tenant to pay the arrears along with interest within one (1) month from the date of the order; and directed the tenant to pay the future rent at the same date month by month on or before 15th day of each succeeding English calendar month.

6. The opportunity to pay the arrears was granted in accordance with Section 15(1) of the DRC Act. The Rent Controller directed the Nazir to list the matter for reporting compliance of the said direction before it on 20.01.2020. It is a matter of record that the tenant elected not to comply with the judgment dated 19.12.2019.

7. The Rent Controller vide order dated 05.02.2020 recorded that the tenant has not complied with the directions issued under Section 15(1) of the DRC Act vide judgment dated 19.12.2019; and therefore, held that the tenant is not entitled to the benefit under Section 14(2) of the DRC Act. The Rent Controller consequently passed the eviction order in respect of the tenanted premises under Section 14 (1) (a) of the DRC Act.

8. The tenant assailed the Rent Controller's judgment dated 19.12.2019 on the ground that the statutory demand notice dated 24.04.2010 was not served on her. The Appellate Tribunal rejected the said ground and after perusal of the record concurred with the finding of the Rent Controller that the tenant had been served with the statutory demand notice dated 24.04.2010 prior to the filing of the eviction petition. The Appellate Tribunal also upheld the findings of the Rent Controller with respect to the



tenant being in arrears of rent at Rs. 2,000 per month with effect from August, 2009. The finding of the Courts below that the tenant is indeed in arrears w.e.f. August 2009 has not been contested before this Court and has become final.

9. The only issue raised before this Court during arguments is the challenge to the concurrent finding of the Rent Controller and the Appellate Tribunal with respect to service of the statutory demand notice dated 24.04.2010 demanding arrears of rent at Rs. 2,000 with effect from 01.08.2009.

10. The landlord has led evidence that he duly attempted service of the legal notice on the tenant by sending the statutory demand notice dated 24.04.2010 through DTDC courier, registered post through India Post and filing a copy of the said statutory demand notice with the reply/written statement dated 27.04.2010 in the proceedings filed under Section 45 of the DRC Act.

There is no dispute that the said statutory demand notice was duly dispatched through courier and India Post. The correctness of the address on the envelope is also not in dispute. In these circumstances, the non-delivery of the notices by the DTDC courier and the India Post Department appeared irregular to the Rent Controller. The Rent Controller therefore, examined the record of the proceedings under Section 45 of the DRC Act, which showed that indeed the landlord had duly annexed the copy of the statutory demand notice dated 24.04.2010 along with the reply/written statement dated 27.04.2010. The Rent Controller also examined the cross examination of RW-1 on the issue of service of the notice in the proceedings under Section 45 of the DRC Act and has returned a finding recording its satisfaction that



the tenant had an opportunity to go through (and read) the statutory demand notice dated 24.04.2010 filed on record in the said Section 45 proceedings.

The finding of the Rent Controller on this issue reads as under:

“14. As such, perusal of well settled proposition of law and material on record clearly show that the respondent was served as stipulated U/Sec. 14(1)(a) of D.R.C. Act. Moreover, testimony of RW-1/respondent clearly shows that the respondent had occasion and the opportunity to go through the legal demand notice dated 24.04.2010, which was filed by the petitioner along with reply dated 27.04.2010 in the petition no. U-3/2010 between the same parties. Moreover, testimony of RW- 1/respondent as reproduced above clearly shows that the respondent/RW-1 has made the evasive reply to the question put by Ld. Counsel for the petitioner. Even, during the cross examination, respondent has not denied to have inspected the file on 28.04.2010 in the case no. U-3/2010 between the parties. However, she has taken the excuse of limited time of inspection of the file.

In my considered view, the respondent is taking the excuse or advantage of her own default. Even during the cross- examination, she has stated that she confirmed after returning orally from the Postman/Postmaster about any registered envelope and they informed her that said envelope could not be delivered.

15. As such, service of legal demand notice before filing the present eviction petition as stipulated U/Sec. 14(1)(a) of D.R.C. Act is proved.”

(Emphasis Supplied)

11. The issue of service of the statutory demand notice dated 24.04.2010 through DTDC courier and India Post has also been examined and the Rent Controller’s findings are as under:

“13. I have carefully and minutely gone through the record which shows that the respondent has made the averments in respect of non receiving of such legal demand notice given by the petitioner.

As such, it was the duty of the respondent to prove that she was not served by such notice, but she failed to rebut the evidence and documents of petitioner in respect of legal demand notice.

It is expedient to reproduce the relevant portion of evidence of RW-1 which is as under:-

....

Perusal of the record shows that the petitioner has placed on record the copy of legal demand notice dated 24.04.2010 and he had also placed on record postal receipt Ex. PW-1/5 issued by India Post Department dated 26.04.2010 and he also placed on record courier receipt Ex. PW-1/6 to



prove the service of legal demand notice upon the respondent.

Perusal of legal demand notice clearly shows that address of the respondent mentioned in the legal demand notice is the same address as mentioned in the present petition and the address appears to be complete address as not only the locality but also pocket number and flat number has been mentioned on it...

(Emphasis Supplied)

12. The perusal of Rent Controller's judgment dated 19.12.2019 clearly shows that the finding recording satisfaction that the tenant was duly served with the statutory demand notice dated 24.04.2010 has been returned by the Rent Controller after appreciation of evidence.

13. The Appellate Tribunal as well has duly considered the said issue in detail and thereafter, concurred with the finding of the Rent Controller to hold that the statutory demand notice dated 24.04.2010 was duly served on the tenant.

14. The tenant in her rejoinder filed before this Court on 19.06.2023 has placed on record the inspection application dated 27.04.2010 filed by her in the proceedings under Section 45 of the DRC Act, which records that she has been served with an incomplete copy of the reply/written statement dated 27.04.2010.

15. Pertinently, in the reply/written statement dated 27.04.2010, the landlord has extensively pleaded that the rent of the tenanted premises is Rs.2,000/- and the fact that the tenant has defaulted in making payment of the rent with effect from August, 2009. The landlord also pleaded that a legal notice for recovery of the said arrears has been issued on 24.04.2010 and annexed the legal notice as well as the postal receipts as an annexure to this reply/written statement. The relevant portion of the reply/written statement dated 27.04.2010 (at pages 2 and 3 of the said reply) reads as



under:

“6. ... The petitioner, with malicious intentions and in a misleading manner, misrepresented/concealed that the rent of the property in question (which is the terrace portion of DDA Janta flat No. 47E, JC Pocket, Hari Nagar, Hari enclave) is Rs 2000/- and the same is exclusive of water and electricity charges, which, as per bills raised by the respective authorities was to be shared in equal proportion by the applicant/petitioner and tenant of flat no 47E. JC Pocket, Hari Enclave, Hari Nagar, New Delhi. The applicant/petitioner is a habitual defaulter/irregular in making payment of monthly rental and payments towards electricity and water charges and used to make payment thereof on persistent, continuous and repeated demands of the respondent. Neither the applicant/petitioner has paid the aforesaid monthly rent from August 2009 nor she has paid her share/due towards electricity charges from mid of March, 2008 onwards and water charges from June, 2009 onwards. The applicant/petitioner is in arrears of rent of Rs. 18,000/- (Rs. Eighteen Thousand) ie from August, 2009 @ Rs 2000/- per month. She is further in arrears of Rs. 9524/- (Rs Nine Thousand Five Hundred Twenty Four Only) towards dues of electricity from mid of March, 2008 to 18.02.10 and approximately Rs 650/- (Rs Six Hundred Fifty Only) towards water charges from June 2009 to till date Legal notice dated 24.04 2010 in this regard and termination of tenancy has already been sent to the petitioner by the respondent. Copy of the said legal notice alongwith its postal receipts is attached herewith. ...”

(Emphasis Supplied)

16. This Court is of the considered opinion that in the facts of this case, the aforesaid elaborate pleading of the landlord in the aforesaid reply/written statement dated 27.04.2010 by itself constitutes a notice to the tenant within the meaning of Section 14(1)(a) of the DRC Act. The tenant was duly served with the said reply/written statement dated 27.04.2010 as admitted in the inspection application. This Court therefore, finds no infirmity in the concurrent finding of fact returned by the Rent Controller and the Appellate Tribunal that the tenant had an opportunity to read the statutory demand notice dated 24.04.2010 in proceedings under Section 45 of the DRC Act.

17. This Court finds merit in the submission of the landlord that the tenant herein after learning about the issuance of statutory demand notice dated



24.04.2010 from the aforesaid reply/written statement dated 27.04.2010, orchestrated a deliberate non-receipt from DTDC courier and India Post. This is also the inference which the Rent Controller has drawn in the judgment dated 19.12.2019, while observing that the address mentioned on the envelop was correct and therefore the cause for non-delivery remains unexplained.

18. This Court has perused the annexures filed by the tenant in her rejoinder filed in this petition. Upon perusal, this Court gets a distinct impression that the tenant herein created an elaborate ruse in proceedings under Section 45 of the DRC Act to deny receipt of the complete copy of the reply/written statement dated 27.04.2010 filed by the landlord as well as the copy of the statutory demand notice dated 24.04.2010. On the other hand, the landlord's bona fide is evident from the fact that he adopted multiple modes to effect service of notice of demand.

Most significantly, the finding of fact that the tenant is in default of payment of rent of Rs. 2,000 since August, 2009 stands proved beyond doubt. The tenant has been occupying the tenanted premises for past fourteen (14) years without payment of the admitted rent and wilfully failed to avail the opportunity to pay the arrears granted by the Rent Controller vide judgment dated 19.12.2019.

19. At this stage, it would be apposite to refer to the judgment dated 24.01.2003 passed in '**Sadhana Lodh v. National Insurance Co. Ltd. and Another**'⁴ wherein the Supreme Court has opined that the High Court while exercising its supervisory jurisdiction under Article 227 of the Constitution

⁴ (2003) 3 SCC 524



of India cannot act as an appellate court and it is impermissible for the High Court to reappreciate the evidence upon which the Courts below purports to have passed the order. The relevant portion of the judgment reads as under:

*“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)

20. The aforesaid judgment was further explained by the Coordinate Bench of this Court in the judgment dated 18.05.2022 passed in ‘**Arun Chopra v. Chandra Associates Pvt. Ltd.**’⁵. The relevant portion of the judgment reads as under:

*“28. **With the narrow confines of the parameters of the jurisdiction of this Court under Article 227 of the Constitution of India, I am afraid it is not possible for me to interfere with the findings of the courts below which are concurrent and which do consider the entire evidence available before the courts.** Even if the appreciation of the evidence is incorrect, or even if this Court were to feel that the conclusions at which the court below have arrived at, would not flow from the evidence on which they have placed reliance, that cannot constitute a basis for this Court to interfere under Article 227 of the Constitution of India.”*

(Emphasis Supplied)

21. Significantly, the Supreme Court in **Puri Investments v. Young Friends and Co. and Ors.** (supra) has also opined on the scope of interference by the High Court while exercising its supervisory jurisdiction under Article 227 of the Constitution of India. The relevant portion of the judgment reads as under: -

⁵ 2022 SCC OnLine Del 1551



“14. ...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. ... ”

(Emphasis Supplied)

22. In the facts of this case, this Court finds merit in the submission of the counsel for the Respondent that there is no infirmity in the concurrent findings of the Courts below that the Petitioner i.e., tenant had due notice of the statutory demand notice dated 24.04.2010 and there is no error of jurisdiction or any other error warranting exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India. Accordingly, the law settled by judgments relied upon by the counsel for the Petitioner i.e., tenant in the facts of this case, have been duly complied with.



23. In the facts of this case the eviction order has been passed on 05.02.2020 and the Petitioner herein has been held to be in arrears of rent since August 2009; however, the Petitioner continues to enjoy the occupation of the tenanted premises without payment of the market use and occupation charges.

24. The Petitioner is hereby, directed to forthwith vacate the tenanted premises. It is further directed that if the Petitioner fails to vacate the tenanted premises on or before 31.01.2024, she will become liable to pay the use and occupation charges at Rs.10,000/- per month with effect from 05.02.2020. The use and occupation charges have been fixed keeping in view the nature of the tenanted premises.

25. In view of the aforesaid observations, this petition is without any merits and is accordingly dismissed. Pending applications stand disposed of. Interim order dated 23.12.2022 stands vacated.

MANMEET PRITAM SINGH ARORA, J

JANUARY 16, 2024/msh/MG