



2024:DHC:9386



\$~12

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

%

Date of Decision: 18.11.2024+ **RC.REV. 344/2016 & CM Appls.24801/2016, 20198/2020, 53661/2023**

VIJAY KUMAR SETIA

.....Petitioner

Through: Mr. Vikas Aggarwal and Ms. Anjali Sharma, Advs.

versus

CAPT PREETINDER SINGH THAPAR & ORSRespondents

Through: Mr. Dhruv Chawla, Ms. Yuganshi Singh and Mr. Nitin Kumar, Advs.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner impugning the order dated 21.04.2016 [hereinafter referred to as "Impugned Order"] passed by the learned ACJ/CCJ/ARC (South), Saket Courts, New Delhi. By the Impugned Order, the Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] filed by the Petitioner has been dismissed with respect to the premises comprising of two rooms converted into one room measuring 20'-0" X 20'-0" at A-78, Malviya Nagar, New Delhi as shown in red color in the site plan attached with the Eviction Petition [hereinafter referred to as "subject premises"].

2. At the outset, learned Counsel for the Respondents raises the issue of maintainability of the present Petition. It is contended that the orders of this nature are appealable orders under Section 38 of the Delhi Rent Control Act, 1958 [hereinafter referred to as "DRC Act"].

2.1 Learned Counsel for the Respondents seeks to rely upon the judgment



passed by a Coordinate Bench of this Court in the matter of ***Inder Mohan Sachdeva v. Usha International Ltd.***¹ to submit that all orders affecting the rights and liabilities of the parties are appealable under the provisions of Section 38(1) of the DRC Act and the Court has held that in view of the alternate remedy available, the Petition is not maintainable.

3. The issue of maintainability was also raised before the Coordinate Bench of this Court as is recorded in the order dated 27.02.2024.

4. Section 38 of the DRC Act provides for the provision of Appeal to the Rent Control Tribunal from every order of the Controller that involves question of law. Section 38 of the DRC Act is reproduced below:

*“(1) An appeal shall lie from every order of the Controller made under this Act 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.]...”*

5. The Supreme Court in the case of ***Central Bank of India Ltd. v. Gokal Chand***² has held that Section 38 of the DRC Act gives a right of Appeal to the Rent Control Tribunal against every order of the Rent Controller made under the DRC Act in the following terms:

3. The object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1), the words “every order of the Controller made under this Act”, though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final

¹ 2012 SCC OnLine Del 1954

² 1996 SCC OnLine SC 244



adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. **The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders.** It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act³. Even an interlocutory order passed under Section 37(2) is an order passed under the Act and is subject to appeal under Section 38(1) provided it affects some right or liability of any party. Thus, an order of the Rent Controller refusing to set aside an ex parte order is subject to appeal to the Rent Control Tribunal.

[Emphasis supplied]

6. A Coordinate Bench of this Court in the ***Inder Mohan Sachdeva v. Usha International Ltd.***⁴ while relying on the ***Central Bank*** case has held that an order effecting the rights and liabilities of the parties is an appealable order under Section 38(1) of the DRC Act and that since an alternate remedy is available, the Court would not interfere with the Impugned Order in its jurisdiction under Article 227 of the Constitution of India. The relevant paragraph is reproduced below:

“ 9. Thus, the Supreme Court was of the view that some of the orders can be agitated while preferring an Appeal against a final order and if an innocuous order (though wrong) is passed the legislature did not intend that the same should become an instrument of harassment or delay by giving a remedy of Appeal against such an order.

10. In my view, the order declining to set aside the order dismissing an Eviction Petition in default is very much an order affecting the rights and liabilities of the parties. Therefore, Appeal under Section 38(1) of the Act is maintainable. The alternative remedy being available, this Court would not interfere with the impugned order in its jurisdiction under Article 227 of the Constitution of India.”

[Emphasis supplied]

³ By the Delhi Rent Control Amendment Act [Act 57 of 1988] the right under Section 38 of the DRC Act was restricted to only questions of law.

⁴ 2012 SCC OnLine Del 1954



7. In *Surendra Kumar v. Krishna Dwivedi*⁵ a Coordinate Bench of this Court while examining an order passed by the Rent Controller dismissing an Application under Order VI Rule 17 of the CPC, which was challenged by before this Court also gave a finding that such an order effects the rights of the parties and hence, appealable under the provisions of Section 38 of the DRC Act. The relevant extract is reproduced below:

“6. The legal position which emerges from the above cited authorities is that an order allowing or rejecting an application under Order VI Rule 17 CPC is appealable if it effects the rights of the parties. In the case in hand the rejection of the application is on the ground that the proposed amendment has the effect of withdrawing the admissions and also change the nature of the case, in the opinion of this court, effects the rights of the party seeking amendment. In any case whether the amendment has been wrongly declined is a legal question. Having regard to the background of this case i.e. the various judicial proceedings between the parties and the predecessor-in-interest of Smt. Krishna Dwivedi, this Court is of the opinion that the appeal lay under Section 38 of the Act against such an order of rejection of the application under Order VI Rule 17 CPC. The petitioner ought to have exhausted such remedy before approaching this Court with a petition under Article 227 of the Constitution. Accordingly this petition is dismissed with liberty to the petitioner to approach the Rent Control Tribunal with an appeal, if so advised. Any objection in regard to the appeal having not been filed within the prescribed limitation may be considered by the Tribunal having regard to the time spent by the petitioner in pursuing the present proceedings. The petition is accordingly disposed of with the above observations.”

[Emphasis supplied]

8. The Supreme Court in *Abid-Ul-Islam v. Inder Sain Dua*⁶ has elucidated on the scope and ambit of the proviso to Section 25-B(8) of the DRC Act. The relevant extract is set out below:

"Scope of revision

22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment

⁵ 2003 SCC OnLine Del 1209

⁶ (2022) 6 SCC 30



of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

23. The proviso to Section 25-B (8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.

[Emphasis supplied]

9. At this stage, learned Counsel for the Petitioner fairly submits that he would like to take recourse to the alternate remedy available under the DRC Act.

10. In view of the foregoing, the Petition and all pending Applications stand disposed of. Liberty is however granted to the Petitioner to approach the appropriate forum under Section 38 of the DRC Act *albeit*, in accordance with law.

10.1 The interim protection granted to the Petitioner on 18.07.2016 by this Court shall stand extended for a period of six weeks from today.

11. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

NOVEMBER 18, 2024/r

[Click here to check corrigendum, if any](#)