



2024:DHC:7894



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

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Date of Decision: 04.10.2024+ **RC.REV. 419/2018**

ASHOK GUPTA & ANR

.....Petitioners

Through: Mr. A.K. Gupta, Adv.

versus

DEEPAK RAO

.....Respondent

Through: Mr. Kunal Yadav, Adv.

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

1. The present Petition impugns an order dated 02.11.2017 passed by learned Additional Rent Controller-02, Central, Tis Hazari Courts, Delhi [hereinafter referred to as the "Impugned Order"]. By the Impugned Order, the Leave to Defend Petition filed by the Petitioners/tenants was dismissed by the learned Trial Court and the Respondent/landlord was found entitled to the recovery of possession of the premises bearing No. 3486/4, Rao Market, Gali Lallu Misser, Qutab Road, Sadar Bazar, Delhi-110006 [hereinafter referred to as the "subject premises"].

2. It is the case of the Respondent that the possession of the subject premises was taken back by the Respondent/landlord pursuant to execution proceedings filed in June, 2018 vide Execution Petition being Ex. No.998/2018. It is thereafter, the Petition was filed by the Petitioner/tenant. Notice in this Petition was issued by the Court on 31.08.2018. Thereafter, the matter has been listed from time to time.



3. Learned Counsel for the Respondent/landlord submits that the Respondent/landlord is a practicing lawyer and he has been using the subject premises as his office for the last five years once the possession was restored by the learned Trial Court. He further submits that in view thereof, the present Petition has become infructuous and accordingly be disposed of.

4. Learned Counsel for the Petitioners/tenants refutes this submission and submits that in the event that the Impugned Order is set aside, the possession of the subject premises is liable to be restored to the Respondent/landlord.

4.1 He further submits that the issue raised by the Petitioners/tenants before the learned Trial Court is that there was no relationship of landlord-tenant between the parties and the Respondent/landlord was not the owner of the subject premises.

4.2 Learned Counsel for the Petitioners/tenants, however, does admit that he was a tenant in the subject premises. He, however, submits that he was inducted as a tenant in the subject premises by Sh. Shiv Prakash Rao and brothers and he had been regularly paying the rent up to 08.05.2014.

5. It is further contended that the Respondent/landlord has failed to show his ownership of the subject premises, thus, there is no question of any *bona fide* need.

6. Learned Counsel for the Respondent/landlord, on the other hand, submits that the Respondent/landlord is the maternal grandson of late Sh. Shiv Prakash. He submits that so far as concerns the subject premises that devolved upon him by virtue of family settlement/deed of compromise dated 10.12.2015 amongst him, his mother and his uncles.



6.1 Learned Counsel for the Respondent/landlord also submits that there is no dispute that his grandfather owned the subject premises, and by virtue of family settlement/deed of compromise amongst various members of the family, the subject premises has come to his share.

7. Learned Counsel for the Respondent/landlord further seeks to rely upon the Judgment passed by the Supreme Court in ***Kale v. Director of Consolidation***¹, wherein the Supreme Court emphasized the sanctity of family settlements. The Court held that family settlements are intended to resolve disputes amicably and maintain family harmony. Such arrangements are governed by a special equity unique to them. Courts are reluctant to disturb such arrangements on technical grounds, recognizing their role in promoting unity and social justice by distributing property fairly among family members. He further submits that this contention has already been adequately dealt with by the learned Trial Court in the Impugned Judgment.

8. Reliance is also placed on Section 116 of the Evidence Act, 1872 to submit that the said provision is a statutory bar on tenants denying the title of their landlord of the property during the period of tenancy. Section 116 of the Evidence Act, 1872 is extracted below:

“116. Estoppel of tenants and of licensee of person in possession. — No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

¹ (1976) 3 SCC 119



9. The learned Trial Court in paragraph 7 of the Impugned Judgment while dealing with the aforesaid contentions raised by the Petitioner/tenant has held that the Petitioner/tenant has not denied the factum of their tenancy. The relevant extract reads as follows:

“7. Now coming to the facts of the present case under consideration. Although, the respondents have denied the relationship of landlord and tenant between them and the Petitioner yet they have not furnished any supporting document on record to show as to who is actual tenant of the suit property. They have also controverted the ownership of the petitioner but they themselves have failed to show, with credible supporting documents, as to who is the actual owner of the suit property. It is now well settled that in a petition for eviction under Delhi Rent Controller [sic-Control] Act, the petitioner does not have to show absolute ownership of the property, he just has to show that his right to the property is over and above that of the tenant, which the petitioner has been able to show by furnishing sufficient cogent documentary evidence.

*In the affidavit annexed with the application under consideration, the **respondents have not disputed the fact that they are tenant in the suit premises.***

*Therefore, **in the light of the pleadings of the parties and other material placed before this court,** in so far as the purpose of clause (e) of sub-section (1) of section 14 of Act 59 of 1958 is concerned, the petitioner are found to be the owner of the premises and it is also found that there exists relationship of landlord and tenant between the parties.”*

[Emphasis supplied]

10. The issue of whether a Revision Petition is maintainable when the tenanted premises have been legally restored to the Respondents/landlord, either during or before the filing of the Revision Petition, has been addressed by the Supreme Court as well as by Coordinate Benches of this Court.

11. The Supreme Court in *NC Daga v. Inder Mohan Singh Rana*², dealt with a similar situation while dismissing a challenge by a tenant to a

² (2003) 1 SCC 453



judgment passed by this Court upholding an order declining leave to defend passed by the learned Trial Court. The facts in the case were that pursuant to order passed by the learned Trial Court, possession had been taken pursuant to an order passed by the Executing Court. The Supreme Court dealt with the similar arguments raised on behalf of the Respondents/landlord that the Petition has become infructuous pursuant to the possession having been taken.

12. After briefly examining the contention of the parties, the Supreme Court held that in view of the admitted position of possession being taken in execution proceedings, it was not necessary to go into the further details since such a decision would be a purely academic question. The Supreme Court held as follows:

“6. In view of the admitted position that pursuant to the order passed by the Rent Controller, possession has been taken on execution of the order permitting eviction, and absence of specific stand regarding implied consent it is, however, not necessary to go into the finer details and to examine the rival stand in the background of legal position as it would amount to rendering decision on a purely academic question. The appeal is, therefore, dismissed, without any order as to costs.”

[Emphasis supplied]

13. A similar view was taken by the Supreme Court in ***Vinod Kumar Verma v. Manmohan Verma***³ where on an averment by the Respondent/landlord that possession of the premises has already been taken over, the Supreme Court held that nothing further survives in the Appeal and disposed the Appeals filed as being infructuous. The order being brief is extracted below:

“Leave granted.

At the time of hearing of these appeals, the learned counsel appearing

³ Civil Appeal Nos. 5220-5221 of 2008



on behalf of the landlord-respondent submits, on instructions, that the possession of the premises in question has already been taken over by the landlord-respondent. That being the position, these appeals have now become infructuous, which have been filed against the final judgment and order dt.25.02.2008 and 28.03.2008 passed by the High Court of Delhi at New Delhi in RCR No.49 of 2007 and C.M.No.119 of 2008 (Review) in RCR No.49 of 2007, by which the Revision Petition filed by the tenant/appellant was dismissed and order of eviction was affirmed. **Since the possession has already been taken over by the landlord-respondent, in our view nothing survives in these appeals and accordingly, the appeals are disposed of as infructuous.** Interim order, if any, stands vacated. There will be no order as to costs.”

[Emphasis Supplied]

14. Various Coordinate Benches of this Court have also similarly held that the tenant’s Petition have become infructuous in view of possession being taken. Reliance is placed on *Neelam Sharma v. Ekant Rekhan*⁴ and *Bhawani Shankar v Nand Lal and Ors.*⁵

14.1 In *Om Prakash Ashok Kumar & Sons v. Ajay Khurana*⁶ while relying on the *NC Daga* case and several other cases, a Coordinate Bench held as follows:

“10. This Court in various decisions has followed the decision given by the Supreme Court in *N.C. Daga v. Inder Mohan Singh Rana*. The Coordinate Bench of this Court in *Poonam Bangia v. Harbhagwan Dass Chandiramani* in RC. REV. no. 16/2021 vide order dated 22.07.2021 after following the law laid down in *N.C. Daga v. Inder Mohan Singh Rana*, **dismissed the revision petition after observing that the landlord has received the possession of the tenanted premises through execution proceedings.** Another Coordinate Bench of this Court in *Mange Ram v. Rajesh Narain Goel*, in RC. REV. no. 147/2021, decided on 19.03.2024 after following **N.C. Daga v. Inder Mohan Singh Rana and Vinod Kumar Verma v. Manmohan Verma**, in Civil Appeal nos. 5220 -5221/2008 passed by the Supreme Court and in *Poonam Bangia v. Harbhagwan Dass Chandiramani* in RC. REV no. 16/2021 passed by

⁴ 2019 SCC Online Del 6487

⁵ 2021 SCC OnLine Del 4284

⁶ 2024 SCC OnLine Del 5228



this Court as mentioned hereinabove also dismissed the revision petition as became infructuous due to the reason that the possession of the subject premises has been restored to the respondent/landlord. The same view was also taken by another Co-ordinate Bench of this Court in *Ram Avtar v. Anuradha Shukla* in RC. Rev. Bearing no. 104/2021 vide order dated 03.11.2023, the revision petition was ordered to be dismissed as the possession of the tenanted premises has already been taken by the respondent/landlord in accordance with law.

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12. In the present case as reflected from the order dated 10.05.2024, *the possession of the tenanted premises has already been restored back to the respondent/landlord in execution of warrant* of possession in accordance with law. This Court is also of the view that the present petition is not maintainable. Accordingly, the present petition, along with pending applications stands dismissed being infructuous.”

[Emphasis Supplied]

15. This Court in various orders including Order dated 14.12.2023 passed in *RC. REV. 335/2019* captioned *Ajay Kumar v. Ranbir Singh & Ors*, Order dated 06.12.2023 passed in *RC.REV. 52/2023* captioned *Govardhan Lal v. Smt. Vidya Rani (Deceased) Through Lrs* and Order dated 03.11.2023 passed in *RC.REV. 104/2021* captioned *Ram Avtar v. Smt. Anuradha Shukla* has held that when a Revision Petition has been filed challenging an order of learned Trial Court which has now gained fruition and has already been implemented through execution proceedings, in such circumstances, the Revision Petition has become infructuous. In addition, it was held that once possession was taken over by the Respondent/landlord in accordance with law, the Petition becomes infructuous. The relevant extract of the *Ram Avtar* case reads as follows:

“4.1 This Court has considered this contention of the learned Counsel for the Petitioner/tenant. *The Revision Petition has been filed challenging the order of the Trial Court which has now gained fruition, and has already been implemented through execution proceedings. In these circumstances, the Revision Petition has become infructuous.*”



5. *Furthermore, this Court in various judgments held that once possession has been taken over by the Respondent/landlord in accordance with law, this petition becomes infructuous and in view thereof, nothing survives in the petition."*

[Emphasis supplied]

16. The present Petition has been filed impugning the order and judgment of the learned Trial Court which has directed vacation of the subject premises in issue. The jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the fact of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. This has been elucidated at length by Supreme Court in *Abid-Ul-Islam v. Inder Sain Dua*⁷ in the following manner:

"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 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.

⁷ (2022) 6 SCC 30



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.**

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25. The aforesaid decision has been recently considered and approved by this Court in Mohd. Inam v. Sanjay Kumar Singhal [Mohd. Inam v. Sanjay Kumar Singhal, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)

“22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.’

It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.

23. Again in Ram Narain Arora v. Asha Rani [Ram Narain Arora v. Asha Rani, (1999) 1 SCC 141] , this Court had an occasion to consider the aforesaid powers under the Delhi Rent Control Act, 1958. This Court observed thus : (SCC p. 148, para 12)



'12. It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the Revisional Court to interfere with such a matter.'

It was thus held, that though the scope of revisional powers of the High Court was very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. It has also been held, that pure findings of fact may not be open to be interfered with, but in a given case, if the finding of fact is given on a wrong premise of law, it would be open to the Revisional Court to interfere with the same."

[Emphasis is ours]

17. The provisions of the Act provide for a remedy of restoration of possession to a Petitioner/tenant in one situation and, i.e., under Section 19 of the Act. In cases allowed under Section 14(1)(e) of the Act, the recovery of possession by a tenant under Section 19(1) can be obtained if the landlord re-let the whole or part of the premises within three years from the date of obtaining possession from the evicted tenant. Sub-section (2) of Section 19 of the Act further provides that where such premises are not occupied within two months or within three years from the date of possession, are re-let to a person without permission of the Rent Controller within three years from the date of possession, the Rent Controller may direct the landlord to put the tenant in possession or pay him such compensation as is deemed fit by the Rent Controller. Section 19 is set out below:

"19. Recovery of possession for occupation and re-entry.—(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to sub-



section (1) of section 14 [or under sections 14A, 14B, 14C, 14D and 21, the landlord shall not, except with the permission of the Controller obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.”

17.1 The Supreme Court in ***Abid-Ul-Islam*** case has held that Section 19 of the Act gives a right of re-possession to the dispossessed tenant if landlord recovers possession under Section 14(1)(e) of the Act and thereafter, the landlord does not use the subject premises for the purpose that it was intended and set out in such Eviction Petition on which basis, an order for eviction was obtained by the landlord. The relevant extract is set out below:

*“19. Before a presumption is drawn, the landlord is duty-bound to place prima facie material supported by the adequate averments. It is only thereafter, the presumption gets attracted and the onus shifts on the tenant. The object of Section 14(1)(e) vis-à-vis Section 25-B has to be seen in the light of yet another provision contained under Section 19. **Section 19 gives a right to the dispossessed tenant for repossession if there is a non-compliance on the part of the landlord albeit after eviction, to put the premises to use for the intended purpose. Such a right is available only to a tenant who stood dispossessed on the application filed by the landlord invoking Section 14(1)(e) being allowed. Thus, Section 19 inter alia throws more light on the legislative objective facilitating a speedy possession.** The object is also reflected in the proviso to Section 25-B(8), denying a right of appeal..”*

[Emphasis Supplied]



2024:DHC:7894



18. The Eviction Petition was filed by the Respondent/landlord under Section 141(c) of the Delhi Rent Control Act, 1958 setting out the requirement to open his law offices. The proceeding was contested by the Petitioner/tenant and an Eviction Order was passed by the learned Trial Court. Pursuant thereto, the Respondent/landlord recovered possession of the demised premises in accordance with law. As such the Revision Petition has been filed challenging the order of the learned Trial Court which has now gained fruition and was executed and has already been implemented through execution proceedings. In these circumstances, the Revision Petition has become infructuous.

19. As stated above, the jurisdiction of this Court exercising revisionary powers is limited and circumspect. The Petitioner/tenant did not initiate civil proceedings for recovery of possession, instead the present Revision Petition was filed. The Petitioner/tenant has not contended that Section 19 of the Delhi Rent Control Act, 1958 has been violated. Relying on the judgment of the Supreme Court in the *NC Daga* case and *Vinod Kumar Verma* case, this Court finds that this Petition has become infructuous and is accordingly dismissed.

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

TARA VITASTA GANJU, J

OCTOBER 4, 2024/SA