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

% ***Date of Decision: 28th May, 2025***

+ CM(M) 1015/2025 & CM APPL. 33507-33508/2025
GOPI CHAND SINCE DECEASED THROUGH LRS

.....Petitioner

Through: Mr. S.S. Dahiya, Advocate.

versus

HARIJAN SEWAK SANGH

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners herein are legal representatives (LRs) of one Mr. Gopi Chand (since deceased).
2. Said Mr. Gopi Chand was under the employment of *Harijan Sewak Sangh*, a society duly registered under Societies Registration Act, 1860.
3. According to such Society, one premises i.e Quarter No. 12, Property No.4, Kingsway Camp, Delhi was let out by them to their said employee Mr. Gopi Chand, on account of his being under their employment and since such employment had already come to an end in the year 2006, he was no more entitled to continue with such possession. Since he did not vacate despite repeated request, an eviction petition under Section 14(1)(i) of Delhi Rent Control Act, 1958 (in short 'DRC Act') was filed against Mr. Gopi Chand in the year 2009.
4. It will be, however, worthwhile to mention that during his lifetime,



the written statement was filed by said Mr. Gopi Chand and while admitting various averments made in the petition, he averred that the petitioner was not entitled for any relief of eviction.

5. It also needs to be mentioned that in para 11 of the eviction petition, the landlord had categorically mentioned that the monthly rent was Rs.200/- per month and such fact was not even disputed in the written statement. On the contrary, there is categoric admission to said material fact.

6. After death of Mr. Gopi Chand, his LRs were brought on record and they have been resisting the abovesaid eviction petition.

7. It needs to be highlighted that when the case was at the stage of petitioner's evidence, such LRs moved an application under Order VI Rule 17 CPC which was allowed by the learned Trial Court *vide* order dated 31.07.2018.

8. Undoubtedly, in the amended written statement, such LRs though disputed averment made in the para 11 of the written statement filed by their predecessor-in-interest, fact remains that any legal representative of any such deceased employee, who is brought on record, cannot plead contrary to what has already been admitted by their predecessor. Such admission made by deceased employee cannot be permitted to be withdrawn in such a cursory manner, even otherwise.

9. The learned Rent Controller *vide* judgment dated 18.10.2024, came to the conclusion that the petition was covered under Section 14(1)(i) of DRC Act. It also made reference to Section 22 of DRC Act and while referring to the often-quoted judgment of Hon'ble Supreme Court given in *Associated Hotels of India Ltd. vs. R.N. Kapoor: AIR 1959 SC 1262*, it came to the conclusion that the nomenclature used in the document was not material for



deciding whether there was a lease or license between the parties and it is the substance of the document and the intention of the parties which need to be considered.

10. Before learned Rent Controller, LRs of deceased employee also took an objection that the matter was covered under Section 70 of Delhi Co-operative Societies Act, 2003 and, therefore, learned Rent Controller had no jurisdiction to entertain the eviction petition.

11. After due consideration of the evidence led by both the sides, learned Rent Controller came to conclusion that the plaintiff Society was entitled to a decree of possession.

12. Such order was challenged in appeal by them and their such appeal filed under Section 38 DRC Act has also been dismissed by the learned Rent Control Tribunal.

13. Such order is under challenge.

14. The sole grievance of the petitioners herein is to the effect that as per the receipts issued by the employer, the employee was being charged Rs.200/- as *license fee* and since it was clearly agreed between the parties that there was relationship of *licensor and licensee* between the parties, the learned Rent Controller had no jurisdiction to entertain the abovesaid eviction petition and if the landlord wanted eviction, the only appropriate remedy for them was to have knocked the doors of a Civil Court.

15. The learned Tribunal took note of all such contentions and it also held that the Bar provided under Section 70 and Section 132 of Delhi Co-operative Societies Act, 2003 did not get attracted as it excluded the jurisdiction of Civil Courts only with respect to any dispute about the Constitution, Management or Business of a Co-operative Society, which was



not the situation therein.

16. It also carefully considered whether it could be said to be a case of license or not and after carefully analyzing the evidence led by the parties and hearing contentions made by the learned counsel for the parties, it came to the conclusion that it was a case of a lease and the relationship between the parties was that of *lessor and lessee* and not of *licensor and licensee*.

17. Reference in this regard be made to para 16 to 18 of the impugned order dated 23.04.2025, which read as under:-

“16. Ld counsel for appellant has further argued that there is no document placed on record showing that the property in dispute was given to Gopi Chand on tenancy. There is no rent receipt. The document which is placed on record shows that it was the license fee, which was deducted from his salary. Even in the evidence, they mentioned that it was a license fee and not the rent. This clearly shows that it was a relationship of licensor and licensee and not of a landlord/tenant or lesser/lessee. Ld counsel submitted that onus was upon the petitioner to prove this fact, which, which the petitioner/respondent is not able to prove and therefore, it is not covered by the provisions of Delhi Rent Control Act as the jurisdiction of Ld ARC is only if there is a relationship of landlord/tenant and not licensor and licensee. Ld counsel submitted that keeping in view all these facts, the order of trial court is not maintainable and same be set aside.

17. Ld counsel for the respondent submitted that in this case, it was a relationship of landlord/tenant. These facts are admitted that Gopi Chand was an employee of the petitioner/respondent. He was allotted the property in dispute by virtue of his employment with the petitioner/respondent, so that he may effectively discharge his duty. It is settled law that nomenclature of the payment deducted from his salary will not change the relationship. He admitted that in the documents, it is mentioned that license fee of Rs. 200/- is deducted, but the record shows and also the documents that the petitioner/respondent was collecting/deducting the occupation charges from the respondent under the head of license fee and there was exclusive possession of the property without any interference by the petitioner/respondent and therefore, it is clear that the intention was to create a lease and not a license. It is prayed that the trial court has rightly decided the issue. There is not merit in this contention and



the same be rejected. The order of the trial court be upheld.

18. After hearing the arguments and going through the record, I found that to ascertain as to whether there is a lease or license between the parties, it is not the nomenclature given by the parties, which is relevant, but the actual substance of their relations by ascertaining the actual facts to determine what they intended to create a lease or license. In this case, admittedly, the appellant was allotted the property in dispute by virtue of his employment as washer-man. The property in dispute in his exclusive possession and he was free to use the same for residential purposes as he wants without any interference on the part of the petitioner/respondent during his employment. This arrangement also shows that it was not given for personal usage of the respondent during the service, but he was to be in an exclusive possession of the suit property with right to enjoy without any further condition during his employment without any interference subject to his paying the charges, i.e. the occupation charges, electricity and water charges. On the basis of this arrangement, it is clear that it was a lease created and the relationship between the parties was lesser and lessee and not licensor and licensee.”

18. During course of the arguments, learned counsel for petitioners drew attention of this Court to receipt issued by Bapa Ashram Residential Primary School, Harijan Sevak Sangh, Kingsway Camp, Delhi- 110009. Such slip has been issued in the name of its employee Mr. Gopi Chand and in such staff reduction slip, license fee has been shown as Rs.200/-.

19. The Court cannot, blindly, act upon the nomenclature given in any such document and, moreover, as already noticed above in the eviction petition, the petitioner had specifically claimed that the monthly rent was Rs.200/- and such fact was admitted as correct by said Mr. Gopi Chand during his lifetime and, therefore, his LRs cannot run away from such admission and cannot take a stand contrary to the above.

20. Learned counsel for petitioners places reliance upon *Raizada Topandas and Another vs. Gorakhram Gokalchand: AIR 1964 SC 1348*, but the facts of the present case are, evidently, distinguishable and no real



advantage can be drawn from said precedent.

21. Admittedly, Mr. Gopi Chand was an employee of landlord society and came into possession of the abovesaid suit premises by virtue of his such employment.

22. Scope of interference, while invoking supervisory powers under Article 227 of Constitution of India, is very limited and constricted one and this Court cannot re-appraise the findings given by the learned Courts below. Thus, while entertaining any such petition under Article 227, this court cannot sit as an “appellate court” and cannot evaluate the correctness of order of the learned Rent Controller nor can it re-appreciate the findings. Reference be made to *Dev Raj vs. Saroj Singhal (Deceased), through her LRs. and Others: 2021 SCC OnLine Del 5492* and *Johrina Begum vs. Sukhbir Singh: 2022 SCC OnLine Del 481*.

23. In *Koyilerian Janaki and Others vs. Rent Controller (Munsiff), Cannanore and Others: (2000) 9 SCC 406*, it was observed as under:-

“4. Further we are in agreement with the argument of learned counsel for the appellant that it was not appropriate for the High Court to have interfered with the order passed by the District Judge in exercise of its power under Article 227 of the Constitution. The proceedings in the present case arose under a special Act governing the landlord and tenant relationship and disputes. The Act does not provide any second appeal or revision to the High Court. The purpose behind for not providing such remedy is to give finality to the order passed under the Act. The power under Article 227 is exercisable where it is found by the High Court that due to a certain grave error an injustice has been caused to a party. For this reason also, the judgment of the High Court deserves to be set aside.”

24. Moreover, merely, where two views are possible and the trial court has taken one view which is a possible and plausible view merely because another view is attractive, the High Court should not interfere and would be



in error in interfering with the finding of the trial court or interfering under Article 227 of the Constitution over such decision. Reference be made to *Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala: (1988) 1 SCC 155*.

25. Consequently, the petition is dismissed in *limine*.

26. All the pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MAY 28, 2025/ss/js