

[2022 LiveLaw \(Del\) 165](#)

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE PRATEEK JALAN

CM(M) 59/2022; 18th January, 2022

SH. HARNAM DASS LUTHRA (NOW DECEASED THROUGH HIS LEGAL HEIRS)
versus
USHA CHAUHAN

Petitioner Through: Mr. Anil Dwivedi, Mr. Rajiv Narain, Mr. Sanjay Kumar Singh & Mr. Ravi Rai, Advocates.

PRATEEK JALAN, J.

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 3126/2022 (*for exemption*)

Exemption allowed, subject to all just exceptions.

This application stands disposed of.

CM (M) 59/2022 & CM APPL. 3125/2022 (*for stay*)

1. The present petition under Article 227 of the Constitution is directed against a judgment dated 01.12.2021 rendered by the learned Principal District & Sessions Judge (HQs) & Rent Control Tribunal (Central), Tis Hazari Courts, Delhi [“the Tribunal”] in RCT No. 02/2021. By the impugned judgment, the Tribunal has dismissed the appeal of the petitioner-appellant against the order of the Additional Rent Controller [“Trial Court”] dated 22.12.2020, allowing the eviction petition filed by the respondent-landlady under Section 14(1)(b) of the Delhi Rent Control Act, 1958 [“the Act”].

2. The eviction petition was filed both under Sections 14(1)(a) and 14(1)(b) of the Act. By an order dated 27.11.2014, the petition was allowed under Section 14(1)(a) of the Act, but was dismissed under Section 14(1)(b). Against the aforesaid order, so far as Section 14(1)(b) of the Act was concerned, the landlady carried the matter to the Tribunal by way of RCT No. 30276/2016. The Tribunal allowed the appeal and remanded the matter to the Trial Court for a fresh decision in accordance with law, after giving the landlady an opportunity to produce evidence/documents.

3. The case of the landlady was that the suit property [Shop No. 29/9, Ground Floor, Shakti Nagar, New Delhi-110007] [“the property”] had been let to the petitioner in 1974 by her predecessor in interest. The monthly rent claimed by the landlady was Rs. 96.80 per month, and it was averred that the petitioner neither paid nor tendered the agreed rent since 01.08.2003. After service of a legal notice dated 18.08.2009, the landlady alleged that the dues had not been cleared and also that the petitioner had

sub-let the property to one Shri Kapil Luthra without her knowledge, consent or permission. Eviction was, therefore, sought both under Sections 14(1)(a) and 14(1)(b) of the Act. The said Shri Kapil Luthra is the son of Shri Vir Bhan, who is the nephew of the petitioner herein.

4. In the judgment dated 22.12.2020, the learned Trial Court, after noticing the provisions of Section 14(1)(b) of the Act and several authorities, recorded that, in the reply dated 17.09.2009 sent on behalf of the petitioner to the legal notice of the landlady, the presence of Shri Kapil Luthra in the property was admitted, although it was stated that he was assisting the petitioner in the conduct of the business. The petitioner's evidence was that no written partnership deed was executed between him and Shri Kapil Luthra or his father. The Trial Court also analysed the testimony of Shri Kapil Luthra to the following effect:-

"40. Moreover, during the cross-examination, RW2, Sh. Kapil Luthra has deposed that "I conduct the business in the name of Luthra Cycle Stores from the disputed premises. I do not have any other shop or any other business. I am an Income tax payee but I have not filed any paper with regard to the same. My firm is registered as Luthra Cycle Store with the registering authorities but I have not filed any document of the same. I deposit the rent of the suit shop in the bank through my grandfather Sh. Deshraj Luthra (Dadaji). I have not brought any record of the deposit of rent with the bank.""

5. On this basis, the Trial Court came to the conclusion that Shri Kapil Luthra was running a business in the property and did not have any other shop or business, and also noticed that Shri Kapil Luthra had not claimed to deposit the rent of the property on behalf of the petitioner herein. The Trial Court came to the conclusion that the petitioner was neither in physical nor in legal possession of the property, and, therefore, sustained the landlady's plea under Section 14(1)(b) of the Act.

6. Upon the petitioner filing an appeal against the aforesaid judgment of the Trial Court, after hearing learned counsel for the parties, the Tribunal framed the issue for consideration as to whether Shri Kapil Luthra was in possession of the property simply as a relative of the petitioner or he had been inducted as a sub-tenant to whom possession of the property had been given by the petitioner.

7. The Tribunal examined the pleadings and evidence of the parties and affirmed the findings of the Trial Court in this regard with the following observations:-

*"6.1 In her chief examination affidavit as PW1, the present respondent deposed on oath the above mentioned facts pertaining to the alleged subtenancy of Shri Kapil Luthra. **Although PW1 was cross examined substantively, her testimony as regards the alleged subtenancy remains unshaken.**"*

6.3 The tenant Shri Harnam Dass Luthra appeared in the witness box as RW1 to depose on oath the above mentioned contents of his pleadings. In his cross examination, RW1 stated that Shri Kapil Luthra helps him in the shop and his shop also is nearby; that no partnership deed was executed by him with Shri Kapil Luthra or his father Veer Bhan; that it was oral partnership since 1975 and he did not keep any accounts of the same, that he could not produce any documentary evidence related to the business of the alleged oral partnership firm.

6.4 The alleged subtenant Kapil Luthra appeared in the witness box as RW2 and deposed in his chief examination affidavit that the tenanted premises have not been let out to him by Shri Harnam Dass Luthra, who is uncle of his father; and that the tenanted premises are being used as a godown for storing spare parts and cycles etc; and that he is taking care of the family business alongwith Shri Harnam Dass Luthra. **In his cross examination, RW2 Kapil Luthra specifically deposed that he conducts business in the name of Luthra Cycle Store from the tenanted premises and does not have any other shop or business; that his firm is registered as Luthra Cycle Store: that he deposits rent of the tenanted premises in the bank through his grandfather.**

7. The abovesaid specific statement of appellant's own witness RW2 Shri Kapil Luthra remains unchallenged on record to the effect that he is running his business of Luthra Cycle Store from the tenanted premises. Admittedly, learned counsel for the appellants neither sought permission to cross examine their own witness RW2 (on the ground that he had deposed hostile to the case setup by the appellants) nor sought permission to reexamine RW2 (claiming that an ambiguity had erupted in his testimony).

8. According to the unchallenged cross-examination statement of RW2 Shri Kapil Luthra, he is running his business in the name of Luthra Cycle Store from the tenanted premises.

9. **That being so, in view of the rival pleadings the natural corollary is that the tenant Shri Harnam Dass sublet or parted with possession of the tenanted premises in favour of Shri Kapil Luthra and he is running his business of Luthra Cycle Store from there.** As regards the contention of the appellants that Luthra Cycle Store is partnership firm of Shri Harnam Dass Luthra and their family members, the same does not appear to be correct. **As mentioned above, the Partnership Deed as well as the Dissolution Deed of Luthra Cycle Store do not name Shri Harnam Dass Luthra as one of the partners. Rather, as also mentioned above.** Shri Harnam Dass Luthra signed the Partnership Deed and the Dissolution Deed only as a witness. No doubt the said Partnership Deed and Dissolution Deed pertain to premises no. 29/5, Shakti Nagar, Delhi and not the tenanted premises. But according to the appellants, Luthra Cycle Store is being run from premises no. 29/5, Shakti

Nagar, Delhi and they are using the tenanted premises as godown. In other words, **according to the appellants the business being carried out from the tenanted premises also is of Luthra Cycle Store.**

10. As regards the contentions of the appellants that Luthra Cycle Store is an oral partnership firm of Shri Harnam Das Luthra and in its business, Shri Kapil Luthra is only helping as a family member, there is not even a shred of documentary evidence in the form of any taxation records or bank records or any other business records to that effect.

11. There is no clear evidence to show any connection of the tenant Shri Harnam Dass with the firm Luthra Cycle Store being run from the tenanted premises, much less to show that Shri Harnam Dass was a partner of Luthra Cycle Store.

12. It would further be significant to notice that cross examination testimony of RW2 also remains unchallenged that rent of the tenanted premises was being deposited by him (RW2 Kapil Luthra) in the bank through his grandfather. Furthermore, RW2 Shri Kapil Luthra also stated that he does not have any other shop or business.

13. Consequently, the only inference is that Shri Kapil Luthra, who deposed in his unchallenged cross examination as appellant's witness that he is running his independent business of Luthra Cycle Store from the tenanted premises is a subtenant, inducted by the tenant Shri Harnam Dass Luthra. Admittedly, the tenant Shri Harnam Dass Luthra never obtained written consent of the respondent landlord before subletting the tenanted premises to Shri Kapil Luthra.”

Emphasis supplied.

8. The aforesaid findings of the Trial Court and the Tribunal are based on a consideration of the pleadings and evidence before them. In exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution, the Court is not required to re-examine the evidence as an appellate forum, and interference is unwarranted so long as there is material to support the conclusion arrived at by the courts below. The judgment of the Supreme Court in ***Estralla Rubber vs. Dass Estate (P) Ltd; (2001) 8 SCC 97*** has clarified this position in the following terms:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of

fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

This judgment has been followed in the recent judgment of the Court in [Garment Craft vs. Prakash Chand Goel](#), 2022 SCC OnLine SC 29 [Civil Appeal No. of 2022 (Arising out of S.L.P. (C) No. 13941 of 2021); decided on 11.01.2022] (paragraph 18).

9. In the present case, I do not find the judgments of the courts below to fall within the narrow scope of interference under Article 227 of the Constitution.

10. Mr. Anil Dwivedi, learned counsel for the petitioner, submits that the corollary of the impugned judgment would be that a subtenancy would be presumed in every case where a family member is helping the tenant in the running of his business from a commercial premises. I am unable to accept Mr. Dwivedi's contention to this effect. In each case, whether the tenant has parted with possession to a third party, or continues in possession of the property and is only availing of the assistance of a relative, would have to be examined on facts. The judgments rendered by the Trial Court and the Tribunal in the present case do not lay down that, in every case, such an arrangement would amount to the creation of a sub-tenancy. The specific finding that the petitioner had parted with the possession of the property in favour of the sub-tenant has been rendered on the basis of the evidence in the present case. For the reasons stated above, the said finding is not susceptible to any interference under Article 227 of the Constitution.

11. In view of the above, the present petition, alongwith the pending application, stands dismissed.

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