

\$~16 (2022 Cause List)

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

Date of Decision: 14th February, 2022

+ CM(M) 144/2022

JOHRINA BEGUM

..... Petitioner

Through: Mr. Pradeep Kumar, Advocate

versus

SUKHBIR SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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

CM APPL. 7910/2022 (exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM(M) 144/2022 & CM APPL. 7911/2022 (stay)

1. By way of this petition under Article 227 of the Constitution, the petitioner seeks to challenge an order dated 18.11.2021, passed by the learned Principal District and Sessions Judge, Rent Control Tribunal, North West District, Rohini Courts, Delhi [hereinafter, "the Tribunal"] in RCT No. 11/2019.
2. By the impugned judgment, the Tribunal has affirmed an order

dated 16.04.2019 passed by the Senior Civil Judge-cum-Rent Controller, North West, Rohini Court [hereinafter, “the Rent Controller”], dismissing the petitioner’s objection to execution of an eviction decree dated 16.08.2016, which was in favour of the respondent herein.

3. The respondent filed an eviction petition on 05.02.2015 against the petitioner’s husband, Mohd. Miraj Khan [hereinafter, “Khan”], in respect of a property described as “*One room on G.F. in Premises No. Plot No. 30, Pal Colony, Rithala, Delhi*”. Eviction was sought under Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter, “the Act”]. Khan contested the proceedings by filing an application for leave to defend, which was dismissed vide the order of the Rent Controller dated 16.08.2016. Consequently, the eviction petition was allowed.

4. The aforesaid order dated 16.08.2016 was not challenged by Khan or by any other party. In the order dated 16.08.2016, Khan’s contention is noted to the effect that his wife [the petitioner herein] was the tenant of the premises in question, which is described as “*Plot No. 17, Khasra No. 59/13, Pal Colony, Near Rithala Village*”, and that she subsequently purchased the property. It was averred that the eviction petitioner [respondent herein] was not the owner of the suit property, but that Khan’s wife [petitioner herein], was the owner. The relationship of landlord and tenant between the eviction petitioner and Khan was therefore denied.

5. The matter was considered by the Rent Controller and it was recorded in the eviction order as follows:

“8. Present eviction petition is with respect to one room in plot no. 30, Part Khasra no. 59/13, Village Rithala, Delhi. The documents filed by the respondent are of plot no. 17, Khasra no. 59/13, Pal Colony, Near Rithala Village, Delhi. **As per the documents filed by respondent, the description of the property is entirely different as compared to the suit property. The respondent in the entire application has not disputed the description of the tenanted premises as disclosed by the petitioner in the petition.** Thus as such petitioner has not raised any triable issue with respect to the ownership/status of landlord of petitioner in the present matter. He is claiming that his wife is the owner of the suit property, however, as per the documents filed by him, his wife is the owner of some plot no. 17, while petitioner is seeking eviction of plot no. 30.”¹

6. The respondent herein thereafter sought execution of the aforesaid eviction order dated 16.08.2016. In the execution proceedings, Khan filed objections. The objections were dismissed by an order dated 05.10.2018, with the following observations:

“23. In view of above mentioned position of law now, we come back to the facts of present case. In this case first of all the case of the JD/objector is not that he has a independent title in the suit property or that he is covered U/s 18 of the DRC Act. **In fact all what the JD is stating is that the description of suit property i.e. Juggi No.30 is different from his Jhuggi No.17. But on a perusal of the main order on leave to defend application dated 16.08.2016 read with site plan filed along with such petition, it is noted that such difference between Jhuggi**

¹ Emphasis supplied.

No. 30 and 17 was dealt at that time also. The present JD/ respondent during such argument in main petition stated that her wife is owner of plot No. 17. But same was held to be a separate property. **Further, on the basis of site plan filed there is no difficulty in identifying the suit property bearing No. 30 in question.** Further, no reason is given by the JD/ respondent why such matter was not agitated further during the main petition and why any revision is not preferred against such judgment dated 16.08.2016 so far.

Further it is pertinent to note that **even in such objections filed by JD now, he has not denied his tenant landlord relationship with the DH.** Infact as rightly pointed out by the DH side, in view of Section 116 of Evidence Act, such JD is estopped from denying the same. Further, interestingly the wife of JD has not filed any objection so far, although it is claimed by JD during main petition proceedings that she is the owner of the suit property in question. Further, being an executing court this court cannot go beyond the decree/judgment in question and the platform/remedy, if so at all, is elsewhere. This executing cannot sit as the appellent court on the judgment in question. Further, it is pertinent to note that in any case such original eviction order is not challenged by the JD so far.”²

7. Approximately one month after the dismissal of the objections filed by Khan, the petitioner herself filed objections to the execution of the eviction order dated 16.08.2016.

8. The said objections were dismissed by the order of the Rent Controller dated 16.04.2019. The Rent Controller held that the

² Emphasis supplied.

objections raised by the petitioner were similar to those raised by Khan, who is her husband. The Rent Controller accepted the contention of learned counsel for the decree holder that the documents pertaining to the petitioner's possession were obtained after the filing of the eviction petition by the decree holder and that the decree holder, in fact, possessed the registered title documents to the property in question. The dispute with regard to the identity of the suit property was raised during the eviction proceedings and considered in the order dated 16.08.2016. The Rent Controller came to the conclusion that the objections raised by the petitioner herein, being similar to those raised by Khan and rejected, also deserved to be dismissed.

9. Against the aforesaid order dated 16.04.2019, the petitioner filed the appeal before the Tribunal, which was dismissed by the impugned order dated 18.11.2021. The Tribunal held against the petitioner on the finding that she had not filed any revenue record to show that plot Nos. 17 and 30 were the same plot as alleged by her, and also observed that she should have had the plots demarcated by the revenue authorities in respect of her contention. The Tribunal also found that the objections of Khan, having already been dismissed, the objections of the petitioner were really an attempt to delay the execution of the decree and that no triable issue has arisen which requires adjudication by leading evidence.

10. Having heard Mr. Pradeep Kumar, learned counsel for the petitioner, I do not find any ground to interfere with the impugned order under Article 227 of the Constitution. The supervisory jurisdiction of this Court is exercised only to ensure that the courts and

tribunals remain confined to their respective jurisdictions and exercise the same in accordance with the fundamental principles of law and justice. The High Court is generally not called upon, under Article 227, to reappraise evidence or correct every error of law or fact. Several judgments of the Supreme Court, including *inter alia* in *Estralla Rubber vs. Dass Estate (P) Ltd.*³ and *Garment Craft vs. Prakash Chand Goel*⁴ make this position clear.

11. The jurisdiction is to be exercised even more sparingly when challenge is to orders of the Rent Controller and the Tribunal under the Act. In *Koyilerian Janaki and Others vs. Rent Controller (Munsiff), Cannanore and Others*⁵, in the context of the Kerala Buildings (Lease and Rent Control) Act, 1965, the Supreme Court held as follows:

*“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***

³ (2001) 8 SCC 97 [paragraph 6]

⁴ 2022 SCC OnLine SC 29 [judgment dated 11.01.2022 in Civil Appeal No. 314 of 2022, arising out of S.L.P.(C) No. 13941 of 2021] [paragraph 18]

⁵ (2000) 9 SCC 406

a party. For this reason also, the judgment of the High Court deserves to be set aside.”⁶

The same principle would apply to the present case. Three judgments of this Court are also relevant in this context. In *Nawal Kishore vs. Mohd. Yakub*⁷, this Court noticed an earlier decision in *Jasbir Singh vs. Manjit Kaur*⁸ and held as follows:

“8. I have at the outset enquired from the counsel for the petitioner as to the scope of the petition under Article 227 of the Constitution of India; though the Act as it was in existence prior to the amendment with effect from 1st December, 1988, besides providing for first appeal under Section 38 of the Act against the order of the Rent Controller to the RCT, also provided for a second appeal under Section 39 thereof to the High Court albeit on a question of law only, by amendment of the Rent Act with effect from 1st December, 1988, Section 39 has been deleted and the appeal to the RCT under Section 38 has been made only on a question of law. It has thus been enquired that once the legislative intent is to do away with a second appeal, to what extent in exercise of jurisdiction under Article 227 of the Constitution of India, this Court can continue to interfere. It cannot certainly be within the same parameters as was permitted under Section 39 of the Act which has been deleted and if it were to be held so, it would amount to rendering nugatory the deletion of Section 39.

9. The counsel for the petitioner agrees that the scope of challenge under Article 227 of the Constitution thus has

⁶ Emphasis supplied.

⁷ 2017 SCC OnLine Del 12778 [CM(M) 1256/2012 decided on 03.10.2017]

⁸ 2013 SCC OnLine Del 4647 [CM(M) 1041/2011 decided on 20.11.2013]

to be narrower than the scope under the erstwhile Section 39 of the Rent Act. However, the counsel for the petitioner, on enquiry, states that to his knowledge, there is no judgment of this Court considering the said aspect or laying down the parameters of the jurisdiction under Article 227 of the Constitution against the orders of the RCT. The counsel for the respondent also has not cited any judgment in this respect.

10. I however find the High Court of Andhra Pradesh in Shaik Abdul Haq v. Aiswarya Nilaya Chit Fund Pvt. Ltd., 2005 SCC OnLine AP 33 to have in the context of Section 102 of the Civil Code of Procedure, 1908, amended with effect from 2002, taking away the remedy of second appeal against a judgment and decree when the subject matter of the original suit is for recovery of money not exceeding Rs. 25,000/-, to have held that if petitions under Article 227 of the Constitution are entertained against the judgment and decree of the first Appellate Court, it will amount to exercising the appellate jurisdiction which has been prohibited by the legislature and by the Supreme Court in Yeshwant Sakhalkar v. Hirabat Kamat Mhamai, (2004) 6 SCC 71, Bathutmal Raichand Oswal v. Laxmibai R. Tarta AIR (1975) 1 SCC 858 and in Ranjeet Singh v. Ravi Prakash, (2004) 3 SCC 682. I also find the High Court of Rajasthan to have in Municipal Council, Sawai Madhopur v. Civil Judge (S.D.), Sawai Madhopur, 2003 SCC OnLine Raj 432 expressed a similar doubt. As far as this Court is concerned, I however find a Co-ordinate Bench in Jasbir Singh v. Manjit Kaur 2013 SCC OnLine Del 4647 to have held that a petition under Article 227 to be maintainable but without this Court in the garb thereof acting as a Court of appeal. It was held that interference there under

is only to keep authorities and the Courts in the supervisory jurisdiction of this Court within their bounds and where it results into manifest miscarriage of justice and not in all cases, to correct mere errors. It was yet further held that the powers under Article 227 of the Constitution are discretionary in nature, to be exercised where the lower court ignores material piece of evidence or considers some evidence which should not be considered and resulting into injustice. It was held that where there are two views possible and the view adopted by the lower court is reasonable and a plausible one, this Court would not be justified in interfering in such cases merely to arrive at different view in the matter.”

Nawal Kishore, in turn, has very recently been cited in *Dev Raj vs. Saroj Singhal (Deceased), through Her Lrs. and Others*⁹.

12. In light of the aforesaid judgments, it is clear that such interference would be justified only in the event the view taken by the Rent Controller and the Tribunal is entirely arbitrary and perverse or in excess of jurisdiction. Where orders have been passed on consideration of the materials placed before the Rent Controller and the Tribunal, this Court would not be justified in exercising jurisdiction under Article 227 of the Constitution

13. In the present case, the facts show that the dispute as to the identity of the property was considered by the Rent Controller while passing the eviction order dated 16.08.2016 against Khan. The question, as decided in the said order, was not carried in appeal. In execution proceedings also, Khan's objections were first considered

⁹ 2021 SCC OnLine Del 5492 [*CM(M) 1132/2921 decided on 22.12.2021*] [paragraph 16]

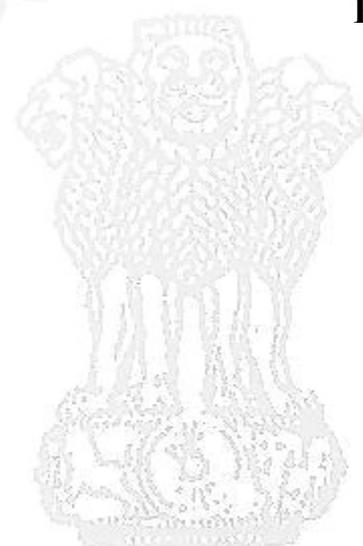
and dismissed, after which the petitioner filed independent objections raising substantially similar grounds. The matter has been considered on the materials placed before the Rent Controller and the Tribunal and there is no jurisdictional error or perversity in that consideration so as to invite interference of this Court in its supervisory jurisdiction.

14. The petition, alongwith the pending application, is therefore dismissed.

PRATEEK JALAN, J

FEBRUARY 14, 2022

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