

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

Date of decision: 21st APRIL, 2022

IN THE MATTER OF:

+ **RC.REV. 76/2022**

RAMESH KUMAR BANGA

..... Petitioner

Through: Mr. Praveen Suri, Ms. Komal
Chibber, Advocates

versus

KAILASH MAKKAR AND ANR

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

CM APPL. 19342/2022 (Exemption)

Allowed, subject to all just exceptions.

RC.REV. 76/2022 & CM APPL. 19341/2022

1. *Vide* the instant revision petition, Petitioner seeks to challenge the order dated 04.04.2022, passed by the learned Additional Rent Controller, West District, Tis Hazari Courts, Delhi in Execution Petition No.18/2019, whereby the learned ARC dismissed the objection petition filed by the Petitioner herein under Section 25 of the Delhi Rent Control Act (*hereinafter referred to as 'the DRC Act'*) against the eviction order dated 04.05.2017, passed by the learned ARC, West District, Tis Hazari Courts, Delhi in ARC No.26161/2016 as well as an application under Order VI Rule 17 CPC for amendment of the objection petition.

2. Shorn of details, the facts leading to the instant revision petition are as under:

- a) A suit for eviction was filed by the Respondent herein with regard to the property bearing No. WZ-113, Meenakshi Garden, Tilak Nagar, New Delhi (*hereinafter referred to as 'the property in question'*), claiming themselves to be the owners of the said property which they purchased from the previous owners by way of sale deed dated 09.09.1987. The eviction petition was filed by the Respondents herein on the ground that the Respondent No.1 herein wanted to start a boutique on the property in question with the help of her daughter (Respondent No.2 herein). It was stated in the eviction petition that the financial condition of the Respondent No.1 herein is not strong and they required the property in question to run a business to make their ends meet.
- b) An application for leave to defend was filed by the Petitioner herein. In the said application, it was stated by the Petitioner herein that he was not a tenant in the premises in question but the owner of the said property. It was further stated that the Respondents herein had no right, title or interest over the premises in question, and that the premises in question was in possession of the father of the Petitioner since 1958 and after the death of the Petitioner's father, the Petitioner herein remained in exclusive and uninterrupted possession of the property in question. The application noted that the electricity connection of the property in question was installed in the name

of the father of the Petitioner in the year 1968 and since then it has continued in his name. It was stated that the electricity meter was installed by the Department only after obtaining the proof of ownership. The leave to defend application further states that in the month of November 2001, inspection was conducted by the Enforcement Division of Delhi Vidyut Board and a notice was issued in the name of the father of the Petitioner herein and the matter was settled with the Delhi Vidyut Board and, therefore, it is clear that the Respondents herein have nothing to do with the premises in question. It is further stated that the municipal tax receipts of various amounts paid by the petitioner on a number of occasions demonstrates that the Petitioners are paying the municipal tax of the property in question and the Respondents herein have nothing to do with the premises.

- c) The said leave to defend application, filed by the Petitioner herein, was dismissed by the learned Additional Rent Controller, West District, Tis Hazari Courts, Delhi *vide* order dated 04.05.2017. The Petitioner herein filed a revision petition before this Court, being RC. REV. 285/2017, against the order of the learned ARC rejecting the application of the petitioner for leave to defend. The said revision petition was rejected by this Court *vide* order dated 23.09.2019. The Petitioner herein approached the Apex Court by filing an S.L.P, being S.L.P (C) No. 26483/2019, against the order dated 23.09.2019 passed by this Court. The said S.L.P. was dismissed as withdrawn *vide*

order dated 15.11.2019 with liberty to pursue all such remedies as are available in law to the Petitioner.

- d) During execution, the Petitioner chose to file an objection petition. Later an application under Order VI Rule 17 CPC for amendment to the objection petition was also filed by the Petitioner.
- e) Vide the said application, the Petitioner herein intended to insert Paragraph No.5(a) to the objection petition. The said paragraph reads as under:

“5(a) That the sale deed dated 09.09.1987 does not transfer any right, title or interest in favour of the Respondents/non Objectors as the father of the Objector and the Objector thereafter became owner of shop No. WZ-113/1, Meenakshi Garden, Tilak Nagar, New Delhi and therefore, a further declaration is to be passed declaring the objector and his predecessor in interest being the owner of the shop by way of adverse possession/law of prescription”

- f) The Petitioner had further prayed for amendment to prayer clause a(i) of his Objection Petition. The said clause reads as under:

“a(i) A decree of declaration be passed whereby the objector and his predecessor in interest be declared as owner of shop bearing No.WZ-113, Meenakshi Garden, Tilak Nagar, New Delhi as shown in red colour by virtue of adverse possession and law of prescription as provided under Section 27 of the Limitation Act.”

- g) Vide order dated 04.04.2022, the learned Additional Rent

Controller, West District, Tis Hazari Courts, Delhi, dismissed the objection petition filed by the Petitioner herein under Section 25 of the DRC Act against the eviction order dated 04.05.2017, passed by the learned ARC, West District, Tis Hazari Courts, Delhi in ARC No.26161/2016 and also dismissed the application under Order VI Rule 17 CPC for amendment of the objection petition.

h) It is this order which has been assailed by the Petitioner in the instant revision petition.

3. Learned counsel for the Petitioner contends that the learned ARC erred in dismissing the application simply on the ground that the issue had been settled in the previous proceedings. He submits that the question as to whether the Respondent is the owner of the property in question or not has to be decided in the objection petition filed by the Petitioner. To substantiate his contention, learned counsel for the Petitioner relies on the judgment of this Court in Mohd. Farjam v. Sarfaraz Ahmed, **2012 SCC OnLine Del 3435**. He further submits that the Petitioner wanted to seek a declaration that the sale deed dated 09.09.1987 does not transfer any right, title or interest in favour of the Respondents herein as the Petitioner's father had become the owner of the property in question and after the death of the father of the Petitioner in the year 1999, it was the Petitioner who became the exclusive owner of the property in question. He submits that he cannot file a suit for the said purpose in light of the judgment of the Division Bench of this Court in Mohd. Farjam (supra). He states that the learned ARC erred in dismissing the petition without a trial as stipulated under Order XXI of the C.P.C.

4. Heard Mr. Praveen Suri, learned counsel appearing for the Petitioner,

and perused the material on record.

5. A perusal of the order dated 04.05.2017, passed by the learned ARC, dismissing the application for leave to defend filed by the Petitioner, shows that all the grievances sought to be agitated by the Petitioner in the objection petition were agitated before the learned ARC who had not agreed with the submissions made by the Petitioner. Relevant portion of the order dated 04.05.2017 reads as under:

“22. It has also been argued that the respondent has become owner of the tenanted shop by adverse possession. The copies of registered GPA, Will and Sale Deed clearly reveals that the petitioners have acquired rights over the tenanted shop. Non filing of any suit for Declaration and Adverse Possession by the respondent show that the defence taken by the respondent is after thought. The registered documents relied by the petitioners are sufficient to prove that the petitioners are more than a tenant. The contentions of the respondent qua the ownership of the tenanted shop does not raise any triable issue”

This Order was challenged before this Court and the same contention was agitated once again. Relevant portion of the order dated 23.09.2019, passed by this Court in RC. REV. 285/2017, reads as under:

“11. The only ground urged by the Petitioner/tenant is that the father of the Petitioner is in occupation of the tenanted property since 1958 and further that there is an electricity meter installed in the name of the father of the Petitioner.

12. Learned counsel for the Petitioner submits that the same implies that Petitioner is in occupation of the property as an owner thereof and there is no relationship of landlord and tenant between the parties and petitioner is occupying the property in his own right”

6. The said contention was rejected by this Court in its order dated 23.09.2019 wherein this Court has observed that a tenant cannot be said to be in adverse possession of the property. This Court also observed that merely because in the sale deed the purchaser mentions that he is in physical possession of the property, when he is not, would not, in any manner, impinge upon the ownership rights that the purchaser acquires under the sale deed.

7. Further, the Special Leave Petition filed by the Petitioner against this order dated 23.09.2019 was dismissed as withdrawn by the Supreme Court *vide* order dated 15.11.2019.

8. It is trite law that an executing Court cannot go behind the decree that is to be executed and give relief to the judgment debtor that was expressly denied to him [refer: Bhawarlal Bhandari v. Universal Heavy Mechanical Shifting Enterprise, (1999) 1 SCC 558]. After this issue pertaining to whether the Petitioner is the owner of the property in question or not has been crystallized, the Petitioner is now once again raking up the same issue which has attained finality. The argument of the Petitioner that he and his father were the owners of the property in question has attained finality in the Eviction Petition and the same has been confirmed by this Court in the Revision petition filed by the Petitioner. Furthermore, and the SLP filed against that order has failed. The Petitioner wants to contend that the sale deed did not convey any right, title or interest to the Respondents as the erstwhile owners were not in possession of the area in occupation of the Respondents. This amounts to re-agitating the case once-again. The Petitioner cannot now agitate the very same issue in the Execution Petition.

9. The decision in Mohd. Faizam (supra) which has been relied upon by the learned counsel for the Petitioner is not applicable to the facts of this case. In the said judgment, one Sarfaraz Ahmd got a decree for eviction against one Mohd. Rizwan, who was a tenant of the property in question therein. One Mohd. Farjam, who was not a party to the eviction proceeding, objected to the eviction by stating that he is the owner. When it was contended that the objector must file a Suit, the Division Bench of this Court held that this question must be decided under Section 25 of the DRC. These facts are not applicable to the instant case. In the instant case, the Petitioner, against whom the decree has been passed, is trying to raise the very same issue in the petition under Section 25 of the DRC and this cannot be permitted.

10. As stated above, the contention of the Petitioner that the Respondents are not the owners of the property in question has been rejected and this issue cannot be permitted to be reopened in the execution petition by the very same person who has lost in the substantive petitions. It, therefore, cannot be said that the Petitioner has an independent right on the premises in question as the same has been determined by the learned ARC as well as this Court.

11. The instant petition is nothing but an abuse of the process of law. The judgment of the learned ARC does not suffer from any infirmity requiring interference from this Court.

12. This Court was inclined to impose costs on the Petitioner for filing this frivolous petition but considering the fact that the learned ARC has already imposed a cost of Rs.5,000/- on the Petitioner, this Court is refraining itself from imposing further costs.

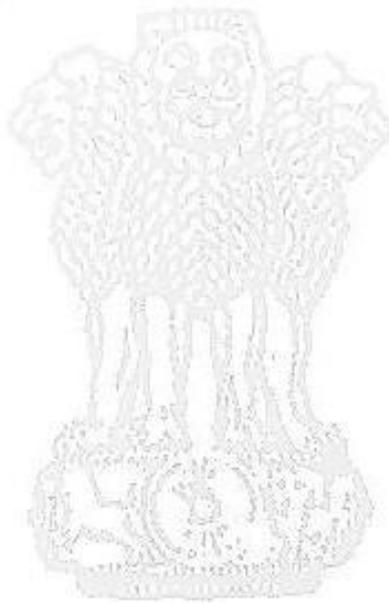
13. The revision petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 21, 2022

Rahul

HIGH COURT OF DELHI



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