

(2013) 11 DEL CK 0297
In the Delhi High Court
Case No : CM. (M) 1111 of 2013

Allahabad Bank

APPELLANT

Vs

Mr. Kishore Bhai Zaveri (Deceased) Thr L.Rs. and Another

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Constitution of India, 1950 — Article 226, 227

Delhi Rent Control Act, 1958 — Section 14(1)(e), 25B(4), 36, 37, 37(2)

Citation : (2013) 11 DEL CK 0297

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : C. Mukund, Mr. Ashok Jain, Mr. Amit Kasera and Mr. Pankaj Jain, for the Appellant; Atul Nigam and Mr. Amit Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The present revision petition is being filed against the impugned order dated 27th August, 2013 passed by learned Rent Controller, New Delhi District, Patiala House Courts, New Delhi in E-74/09. By the impugned order the court below allowed the amendment of a petition filed by the respondents. The case of the petitioner before the learned trial court that the relief granted by the impugned order was earlier rejected by order dated 13th July, 2012 and the same was not challenged by the respondent, thus, the same became final and binding. Filing of similar application on same facts is an abuse of the process of law. Thus, the court below has wrongly allowed the amendment.

2. Brief facts of the case are that:

a) The petitioner is a tenant in respect of all that a Flat No. 2, First Floor, measuring 2600 sq. ft. at the commercial building at Janpath at the monthly rent of Rs. 432.12p.

b) On or about 28th July, 2008 the respondent herein filed an eviction case

against the petitioner u/s 14(1)(e) of the Act.

c) On filing of the eviction petition u/s 14(1)(e) of the Act the petitioner filed an application u/s 25B(4) of the Act, inter alia, for grant of leave to defend the said eviction case filed by the respondents.

d) The petitioner's application was contested by the respondents by filing their affidavit in reply.

e) During the pendency of the said petition, the respondents herein filed an application u/s 151 of CPC seeking permission to complete the delineation of the plan of the said Flat No. 2, First Floor, Atma Ram Mansion, Janpath, New Delhi.

f) The petitioner herein filed the reply to the said application. The said application was strongly opposed by the petitioner.

g) By order dated 13th July, 2012, the court below was pleased to dismiss the said application u/s 151 of CPC on contest. The relevant portion of the order is as follows:

....As I have already observed the site plan in question, the correction wherein has been sought by the petitioners, was filed along with the petition and has been made part of the petition. If the site plan is read in conjunction with the relief clause of the petition then it appears that the petitioners are seeking recovery of possession of a portion of the premises in possession of the respondent and not the recovery of possession of the entire premises. If at this stage, when the application for leave to defend made by the respondent is still pending, the present application u/s 151 CPC is allowed and the petitioners are permitted to modify the site plan filed along with the petition, then, in the considered opinion of the court, especially in the face of the fact that the respondent does not admit the correctness of the site plan filed by the petitioners and has filed its own plan, the respondent may be prejudice in defending the main proceedings in general and the application for leave to defend in particular.

Further more the site plan is part of the main petition and such petition can only be amended in exercise of powers under Order VI Rule 17 of CPC. The law regarding amendment of pleadings is settled that by way of such amendment a petitioner cannot be permitted to set up a new case against the respondent. I see much force in the contention of learned counsel for the respondent that by way of the present application u/s 151 CPC the amendment in the site plan which is part of the petition cannot be allowed.

For the reasons aforementioned the application u/s 151 CPC made by the petitioners is dismissed....

3. The said becomes final. At the stage of evidence, the respondents filed another application for amendment having almost same ground which was allowed by the impugned order which is challenged by the petitioner/tenant in

the present petition.

4. At the admission stage, the learned counsel for the respondent raised preliminary objection regarding the maintainability of the present petition and the jurisdiction of this Court in hearing the present matter as according to him the petition is not maintainable on account of availability of alternative statutory remedy of appeal u/s 38 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act"). Counsel has referred the following decisions in support of his submission:

a) Surya Dev Rai Vs. Ram Chander Rai and Others, . Relevant para 26 reads as under:

"26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the Legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

b) Central Bank of India Vs. Shri Gokal Chand, . Relevant para 3 reads as under:

3. The object of Section 38(1) is to give a right of appeal to a party aggrieved by some order which affects his right or liability. In the context of Section 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case

in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act.

c) Sudarshan Khanna Vs. Krishna Kanta Bhasin, . Relevant para 7 reads as under:

7. This petition under Article 227 of the Constitution has been filed against the concurrent findings of fact and law returned by the Controller and the Tribunal. Consequent on the amendments to the Delhi Rent Control Act carried out in 1988 an appeal now lies u/s 38 only on questions of law. Therefore now the Tribunal is precluded from entering upon the factual arena. The legislature intended to restrict the ambit of the appeal and thus render the Controller as the master of the facts. In the course of the same amending exercise carried out in 1988, Section 39 was omitted and thenceforward no appeal is maintainable to this Court. Invoking the extraordinary jurisdiction of the High Court runs counter to and frustrates the wisdom of the Legislature and infact renders the amendment nugatory. The employment of this Constitutional provision has become rampant. It would be well to bear in mind that under Article 227 the High Court is not expected to correct all hardships or wrong decisions made by Courts exercising their jurisdiction properly. The High Court should adjure an appellate exercise, and restrict its intervention to those instances where a flagrant abuse of fundamental legal principles have been occasioned. It should certainly eschew substituting its own judgment with that of the lower Courts, and venture forth only where the findings are perverse, or are a consequence of the incorrect exercise of jurisdiction. There is a plethora of precedents on these well settled proposition of law and hence reference to them would be a needless and wasteful spending of time. In rent matters, where a Second Appeal to the High Court has been taken away by Parliament, invoking these powers must be confined to very rare case where it is apparent on the face of the record that there was no ground for the lower Court to return the particular finding and conclusion that is under challenge.

5. By referring these decisions, it is argued by the counsel for the respondent submits that this court should not exercise powers under Article 227 of the Constitution. His submission is that the impugned order is apparently affecting the rights of the parties therefore it is appealable u/s 38 of the Act. The present petition is not entertainable.

6. It is not disputed by either counsel that in the cases including in the case of Manohar Lal Vs. Narain Das and Delhi Development Authority, it is held that Section 38(1), the words "every order of the Controller made under this Act" though very wide do not include interlocutory orders, which are merely

procedural, and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders. It is open to any party to set forth the error, defect or irregularity, if any, in such an order as a ground of objection in his appeal from the final order in the main proceeding. Subject to the aforesaid limitation, an appeal lies to the Rent Control Tribunal from every order passed by the Controller under the Act. Even an interlocutory order passed u/s 37(2) is an order passed under the Act and is subject to appeal u/s 38(1) provided it affects some right or liability of any party.

7. Mr. C. Mukund, learned counsel appearing on behalf of the petitioner argued that as far as proposition of law is concerned, there is no dispute, however, in the present case, petition under Article 227 of Constitution of India is maintainable as firstly, the lower court has not returned the final finding either in the main case nor even an order passed u/s 37(2) of the Act. Secondly, the impugned order passed by the learned trial court patent illegal order and an abuse of the process of law which could not have been passed once on the same ground earlier application was rejected. Therefore, under Article 227 of the Constitution the High Court has power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The general superintendence under Article 227 of this court is a duty to keep the Tribunals within the bounds of their authority to see that they do what their duty requires and that they do it in a legal manner. If grave or serious prejudice is caused to a party by non-exercise of the jurisdiction the High Court has power under Article 227 of the Constitution to direct the authority to exercise such power. He argues that by the impugned order, since the rights of the parties are finally or otherwise are not decided, therefore, it is also open to the petitioner to file the present petition in view of large scope of superintendence under Article 227.

8. He has referred the decisions of this Court in the case of S.K. Aggarwal Vs. Abdul Aziz, . It was held in para 1 as under:

1. Mr. Sethi, learned counsel for the petitioner has contended that the petition filed by the petitioner under Article 227 of the Constitution of India is maintainable. On the other hand, Mr. Saini, learned counsel for the respondent has contended that the matter is appealable and this petition is not maintainable. Mr. Sethi in support of his contention has cited Smt. Bhagwati Devi & Ors. Vs.

Haji S.M. Sayeed, 1979 (2) RCR 142 . On the other hand, Mr. Saini has cited in his favor *Sita Ram Talwar and Another Vs. Jai Dev Sharma*, and *Kishan Chand Vs. Ramesh Chander & Ors.*, 1969 RCJ 839 . The law is well settled with regard to the orders which are appealable u/s 38 of the Delhi Rent Control Act. Any order which affects or determines the right of the parties is appealable. For that one has to go to the facts and circumstances of each case whether the amendment sought for results into withdrawal of an admission and whether the amendment sought for changes the nature of the cause of action. However, I find force in the argument of Mr. Sethi that in the present case as amendment sought for was dismissed, Therefore, he could not have filed an appeal. Learned counsel for the petitioner has relied upon *Sita Ram Talwar and Another Vs. Jai Dev Sharma*, in support of his contention.

9. It is settled law that the availability of an alternative remedy is not an absolute bar to the maintainability of a petition under Article 227 of the Constitution. The nature of the power conferred on the High Court under Article 227 of the Constitution of India clearly suggests that the availability of alternative remedy cannot be an absolute bar on the exercise of this power though normally in view of availability of alternative remedy such a petition may not be entertained. It is a self imposed restriction.

10. It is held by this court in the case of *B.K. Kapur Vs. P.D. Gupta*, that when such is the scope of the power under Article 227 of the Constitution of India mere availability of an alternative remedy can not oust the said power of the High Court. In each case the High Court will consider whether a case for exercise of the power under Article 227 of the constitution of India is made out or not. The High Court will always be conscious of the fact that the power has to be used sparingly and with the main object of keeping the Courts and the Tribunals within bounds of their authority. If a case is made out where the Subordinate Court exceeds the bounds of its authority or passes an order which is without jurisdiction or refuses to exercise jurisdiction vested in it, the High Court may interfere with such an order, irrespective of the availability of the right of the appeal.

11. In this context reference may also be made to *Shyam Kishore and others Vs. Municipal Corporation of Delhi* and another, of the said judgment the Supreme Court took note of the fact that ordinarily the High Court will not entertain a petition under Art. 226 of the Constitution when alternate remedy of appeal is available to the party but it must be said that the High Court has the jurisdiction to grant such a relief if it thinks proper to do so in the circumstances of any case. It is settled law that if there is case of a manifest error, error in exercise of jurisdiction on the facts on record or an order being per se void, the High Court may interfere with such an order without insisting on alternative remedy being availed of. The discussion to follow will show that the impugned order in the present case is manifestly illegal and is contrary to the clear and settled position of law. It amounts to refusal to exercise jurisdiction vested in the Additional Rent

Controller, inasmuch as he failed to ensure that the landlords are put in possession of their premises forthwith on their approaching the Additional Rent Controller for that purpose. It also results in grave miscarriage of justice and grave and irreparable injury inasmuch as it embroils the petitioners in prolonged and indefinite litigation and in the process deprives them of the possession of the suit premises contrary to the statutory assurance and protection. For all these reasons I am of the view that the present petition under Art. 227 of the Constitution is maintainable.

12. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, while dealing with the power of the High Courts regarding the Common Law writ of certiorari, the Supreme Court observed that the purpose is to determine on an examination of the record whether the inferior Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer.

13. In the present case, it appears that subsequent application is allowed by the learned Trial Court when on earlier occasion an application seeking similar relief was rejected vide order dated 13th July, 2012.

14. In the present case, it is to be decided as to whether after grant of leave to defend to the respondent merely because that the trial is to proceed to adjudicate the matter in issue between the parties do not mean that there has been change of circumstances when the parties are granted opportunities to prove their case or the matter is to be decided on merit.

15. It is to be examined as to whether said amendment would amount to amendment of the main petition filed u/s 14(1)(e) of DRC Act or not.

16. Therefore, in view of peculiar facts and circumstances of the present case, I am of the view that there is no bar to the maintainability of a petition under Article 227 of the Constitution of India as the impugned order does not appear to be a final order. It appears that it is merely a procedural order passed in the miscellaneous application filed by the respondents u/s 151 CPC and same does not come within the purview of Section 38 of the Act. Thus, the objection raised by the respondent is rejected. Issue notice to the respondents for 10th February, 2014. Reply if any be filed within four weeks. Till the next date, trial court proceedings are stayed. Dasti.