

(2005) 05 DEL CK 0175

In the Delhi High Court

Case No : SAO No. 27 of 2000 and RC Rev 242 of 2001

Dr. B.K. Dawesar

APPELLANT

Vs

Sh. K.K. Sapra
 Sh. K.K. Sapra Vs Dr. B.K. Dawesar

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Delhi Rent Control Act, 1958 — Section 14(1), 25B, 39

Citation : (2005) 121 DLT 147

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : A.D. Maehndroo, in SAO No. 27/2000 and R.S. Endlaw, in RC Rev 242/200, for the Appellant; Rohit Kumar in RC Rev 242/2001 and A.D. Maehndroo in SAO No. 27/2000, for the Respondent

Judgement

O.P. Dwivedi, J.—This order shall govern the disposal of two connected matters namely SAO No 27/2000 and CRP NO 242/2001. Both these matter relate to property No. B-4/31, Safdarjung Enclave, New Delhi and arise out of the two different proceedings relating to the same property between the same parties.

2. Admitted facts between the parties may be noticed first. Property No. B-4/31, Safdarjung Enclave, New Delhi is built up on a plot of land which was granted on perpetual lease basis by the Delhi Development Authority to the revision-petitioner herein for the purpose of raising construction thereon only for residential purpose. It is also not in dispute that the said building is built on stilts consisting of ground, first, and barsati floors. The portion in question which was let out by the petitioner namely Shri K.K.Sapra to the tenant namely Dr. B.K. Dawesar has been built by covering the pillars by half brick walls, thus making one big hall which has been divided into four rooms/cabins/cubicles by wooden partitions of seven feet height and one small latrine/bathroom combined. Admittedly there is no regular kitchen in the tenanted premises. The tenancy commenced on 21st October, 1974. According to landlord, the tenancy was for residential purpose only but according to the tenant, it was let out for residential-

cum-commercial purpose inasmuch, he and his wife who are both doctors, were to reside in the said premises as also to run their medical profession and he has been using the same as such from the inception of tenancy. The landlord served a notice dated 19th January, 1976 (Ex-AW3/5) complaining therein that the tenant is misusing the premises for running clinic which misuse was against the terms of the tenancy as the premises was let out for residence only as also in violation of the terms of perpetual lease. Tenant was called upon to stop the user of the premises as clinic and hand over the vacant possession of the premises. It may be pointed out here that no lease deed/rent note was executed between the parties at the time of letting but a receipt (Ex-AW3/3) was issued wherein the premises was prescribed as residential. Since the tenant did not comply with the notice dated 19th January, 1976 nor sent any reply thereto, the landlord filed an eviction petition in the year 1980 seeking eviction of the tenant under clause (c), (d) and (k) of proviso to sub-section (1) of Section 14 of Delhi Rent Control Act, 1958 (hereinafter referred to as "Act"). It was alleged in the petition that premises which were let out for residential purpose, are being misused by the tenant for running his clinic there from which misuse is against the terms of the tenancy as well as in violation of the terms of perpetual lease under which the plot of land underneath is held by the landlord under DDA and the tenant has not stopped misuse despite service of notice dated 19th January, 1976. It was alleged that neither tenant nor any member of his family has been residing in the demised premises for a period of more than six months before the filing of petition. The eviction petition was contested by the tenant. He pleaded that premises in question were taken on rent for residential as well as professional purposes and as such there is no violation of the terms of the tenancy between the parties. Besides, professionals like doctors are allowed to use a part of residence for professional purposes and as such there is no contravention of terms of perpetual lease deed. The allegation regarding non-residence for a period of six months preceding the date of filing of petition was also denied. On these pleadings, parties went on trial. In proof of his case, landlord examined Mr. Kailash Chand, Clerk from Electrical Office, AW-1; Mr. Ram Dhan, Legal Assistant from Delhi Development Authority, AW-2; Mr. K.K.Sapra, landlord as AW-3; Mr. Balraj Malhotra, neighbour AW-4; another neighbour namely Malik Mathura Dass, AW-5 and Mr. Brahmjit from Gas Agency, AW-6. Tenant-Dr. B.K. Dawesar examined himself as RW-1; Mr. K.K. Meena, Food Inspector, RW-2; Mr. Biru Dass, Head Clerk, Water Department from MCD, RW-3; Mr. Rattan Lal, RW-4; Mr. K.S. Shankaran, RW-5 and Mr. T.J. Shanta Ram, RW-6.

3. On consideration of the material on record in the light of arguments advanced, learned Additional Rent Controller held that the demised premises were let out for residential-cum-commercial purposes and tenant has never changed the user of the premises. Besides, professionals are allowed to use a portion of residence for professional purposes. Learned ARC concluded that none of the grounds of eviction pleaded by the landlord u/s 14(1)(c), (d) and (k) is made out. Accordingly, learned ARC dismissed the eviction petition vide order dated 29th

July, 1998. Landlord preferred an appeal and vide order dated 26th May, 2000, learned Tribunal partly accepted the appeal. Finding of the learned ARC that the abandonment of the demised premises as residence for a period of six months before the filing of the eviction petition has not been proved, was upheld by the Tribunal. But on the point of purpose of letting, Tribunal came to the conclusion that demised premises were let out for residential purpose only and the use of demised premises for the purpose of running clinic amounts to misuse which causes nuisance and is otherwise also detrimental to the interests of the landlord inasmuch as he has been served with the notice by the DDA for cancellation of the lease and the tenant has not stopped the misuse despite service of notice dated 19th January, 1976. In the result, it was held that ground of eviction contemplated under clauses (c) and (k) of proviso to Section 14(1) of the Act are made out and accordingly, learned tribunal passed an eviction order u/s 14(1)(c) of the Act. As regard the ground u/s 14(1)(k) of the Act, the case was remanded back to the learned ARC for proceeding in accordance with the provisions of Section 14(11) of the Act. Finding of the learned ARC that ground of eviction u/s 14(1)(d) is not made out, was upheld. Feeling aggrieved by the Tribunal's findings regarding purpose of letting and eviction order passed u/s 14(1)(c) & (k), tenant has preferred this second appeal being SAO NO 27/2000.

4. During the pendency of the eviction petition referred to above, the landlord on 26.2.1985 filed another eviction petition u/s 14(1)(e) read with Section 25-B of the Act seeking eviction of the tenant on the ground of bona fide requirement. In this eviction petition, it was alleged that premises in question were let out for residential purpose only and the same are required by the petitioner for his residence and for the residence of his family members consisting of himself, his wife, his married son, son's wife, two grand children and his aged parents besides two servants. The accommodation available to him at the first floor of the house comprises of three bed rooms, one dining cum drawing room. He is also in occupation of two rooms and bath room on the back side of ground floor and a barsati on second floor. According to the landlord, two rooms on ground floor are being used by his son as bed room and study-cum-office room respectively. Portion on the first floor of this property is being used by himself, his wife, his mother and two grand children who now require separate rooms, besides maid servant. Barsati is being used by male servant and also for storage. During the pendency of the petition, daughter of the petitioner got married in 1988 and his father also expired but the two grand children have grown up and are now teen agers. It was pleaded that his son wants an independent drawing-cum-dining room as also a kitchen for himself etc. Besides, he has four brothers and four sisters who visit the petitioner frequently and his married daughter also keeps on visiting and as such he would require at least one/two rooms for guests. This eviction petition was contested by Dr. B.K. Dawesar-tenant on the grounds, inter alia, that premises were let out for residential-cum-commercial purposes and as such the ground of eviction contemplated u/s 14(1)(e) of the Act is not available to the landlord. Besides it was alleged by the tenant that

accommodation in possession available to the landlord is much more than what has been disclosed in the petition. According to the tenant, the landlord had four bed rooms on the first floor, likewise on the ground floor plus second floor. In proof of his case, landlord examined himself as AW-1 and tenant examined himself as RW-1. On consideration of material on record, learned ARC concluded that landlord is the owner of the demised premises and he requires the premises for the purpose of residence of his family members who are dependant upon him and he has no alternative suitable residential accommodation available to him but regarding purpose of letting, learned ARC held against the landlord being of the view that structural features of demised premises are such that it could not have been let out for residential purpose alone. Accordingly, vide order dated 25th November, 2000, learned ARC dismissed the eviction petition u/s 14(1)(e) of the Act. Feeling aggrieved, landlord has preferred revision petition being CRP No 242/2001.

5. I have heard learned counsel for the parties and perused the records.

6. From the above recapitulation of the pleadings, evidence and the judgments recorded by authorities under the Act, it becomes obvious that finding regarding purpose of letting is of paramount importance in both these matters. Learned Tribunal vide order dated 26th May, 2000 in RCA No. 528/1998 held that purpose of letting is residential. In arriving at this conclusion, learned Tribunal took into consideration the fact that in the receipts/counterfoils (Exhibits AW-3/2, AW-3/3) and Ex.RX) issued to the tenant, nature of the premises has been described as residential. Learned Tribunal has also taken into consideration the statements of various witnesses examined by tenant, the contradiction in testimony of tenant and his witness namely Mr. K.S.Shankaran, RW-5 regarding purpose of letting and concluded that purpose of letting was residential. It is Therefore, to be seen whether the finding of the tribunal is perverse or in contravention of settled law. Section 39 of the Act permits second appeal only on substantial question of law. According to learned counsel for the appellant, decision on the point of purpose of letting will necessarily involve the interpretation of documents namely receipt/counterfoils wherein the property was described as residential and Therefore, the appeal against Tribunal's finding regarding purpose of letting involves substantial question of law. All that, these receipts/counterfoils show is that demised premises are residential. Learned counsel for the appellant vehemently argued that nature of property as shown in the receipts does not determine the purpose of letting as agreed between the parties. Parties can mutually agree to let out the property for a purpose which is not in conformity with the nature of the building. In the eviction petition u/s 14(1)(c) ,(d) and (k) of the Act, landlord examined, two neighbours namely Balraj Malhotra,AW-4 and Malik Mathura Dass, AW-5. They are not witnesses to the creation of tenancy. According to tenant-Dr. B.K. Dewasar,RW-1, tenancy was created in the presence of K.S. Shankaran, RW-5 who contradicted the tenant when he stated that the purpose of letting was for running the clinic. This is contradictory to the statement of tenant, RW-1, according to whom the purpose of letting was residential-cum-clinic. Of course,

other witnesses on both the sides have stated that tenant has been using the premises for residential-cum-clinic but they have stated so on the basis of what they have been observing. There is no independent witness to support the tenant that premises were let out for residential-cum-clinic purpose. Tenant (RW-1) has been emphasizing the fact that demised premises are not basically meant for residence as there is no regular kitchen therein. This has been the main line of reasoning adopted by the learned ARC in coming to the conclusion that the purpose of letting was composite but according to tenant(RW-1) himself, he has been using one room as a drawing room, one as study room, one as bed room and one room for consultation. According to him, he has not been running any full fledged clinic or dispensary in the demised premises. He and his wife are only consulting physicians. As consulting physician, they just examine the patients and prescribe medicines for treatment and casually they give injections to the patients. There is no operation theatre, dispensary, dressing room in the premises. Thus, according to the tenant, out of the four cabins/rooms, only one cubical/cabin was used by him to examine the patients and prescribe medicines for treatment. In absence of any independent evidence regarding purpose of letting, the user of only one cubical/cabin to examine the patients and prescribe the medicines will not be sufficient to hold that the purpose of letting was residential-cum-commercial. Pushpa Wati Vs. Mahendra Kumar and Another, .

7. In the case of Precision Steel & Engg. Works and Anr. v. Prem Deva Niranjana Deva Tayal 2002 X AD (S.C.) 277, the Supreme Court held that so long as the principal and dominant purpose of letting is residential merely because a mixed user of the premises or user of a part or incidental or ancillary user of the premises is permitted for activities other than residential, the purpose of letting the premises would not cease to be residential and the premises would continue to be governed by Section 14(1)(e) of the Act. As against this, learned counsel for the appellant referred to an earlier decision of the Supreme Court in the case of Dr. Gopal Dass Verma Vs. Dr. S.K. Bhardwaj and Another, . In that case, it was found on facts that out of the four rooms, tenant was using three rooms for the purpose of clinic and one room for residence and the landlord never objected to such misuser. It was, Therefore, held that Explanation to Section 14(1)(e) of the Act is attracted. Since the tenant had been using a substantial part of the premises for commercial purpose with the consent of the landlord, the same would not fall within the ambit of expression "the premises let out for residential purposes" "in Section 14(1)(e) of the Act. There are two other similar decisions reported in 1992 (1) RCJ 371 (Smt. A.N. Kapoor v. Smt. Pushpa Talwar) and 1969 4 RCJ 350 (Kartar Singh v. Chaman Lal and Ors.). In the case of Smt. A.N. Kapoor (supra), it was found on facts that the premises have been used by the tenant not only for her own residence but also for lodging paying guests. Likewise in the case of Kartar Singh (supra), it was found on facts that although in the rent note the purpose of letting was described as residential, on the same date a letter was written by the landlord intimating the tenant that he had no objection if the tenant uses the same for his office as lawyer along with the

residence. Therefore, following the decision of Dr. Gopal Dass Verma (supra), it was held in both these cases that Explanation to Section 14(1)(e) of the Act is attracted and such premises do not fall within the purview of the expression "the premises let out for residential purposes". Learned counsel for the appellant vehemently contended that decision in the case of Dr. Gopal Dass Verma (supra) is rendered by three Judges bench whereas the decision in the case of Precision Steel & Engg. Works & Anr. (supra) has been rendered by two Judges Bench. It may be noticed here that in all these three decisions, the tenant was found to have been using a substantial portion of demised premises for commercial purpose and landlord had never objected to such misuser. Rather the landlord had himself permitted the misuser. Therefore, the Supreme Court held that in view of Explanation to Section 14(1)(e), such premises cannot be held to be "premises let out for residential purpose". In the present case, only a small cabin is being used as consultation room and that too was objected to by the landlord vide notice dated 19th January, 1976 to which the tenant sent no reply. This is the distinguishing feature of this case. Commenting on the Explanation to Section 14(1)(e) , the Supreme Court in the case of Precision Steel & Engg. Works (supra) observed in para 22 as under :-

"Para 22: The learned senior counsel for the appellants referred to the Explanation appended to Section 14(1)(e) and submitted that the legislature in its wisdom thought fit to enact that premises let for residential purposes if used incidentally for commercial or other purposes by the tenant but without the consent of the landlord would not alter the purpose and the enactment of the Explanation is suggestive of legislative intent that even incidental user for commercial or other purposes if accompanied by the consent of the landlord would take the premises out of the expression "premises let for residential purposes". We cannot agree. The enactment of Explanation is ex abundanti cautela. All that the Explanation says that tenant cannot by his unilateral act of impermissible user, alter the purpose of letting. This Explanation has nothing to do with determining the main, principal or dominant purpose of letting the theory which in our opinion applies to interpreting the expression "the premises let for residential purposes" in Section 14(1)(e) of the Act."

8. According to the tenant-R.W.1, the demised premises are not basically meant for residence. If that is so, he must have objected when the landlord described it as residential in the counterfoil/receipts, referred to above but there is no evidence to the effect that the tenant ever raised any objection thereto. This silence on the part of the tenant coupled with the fact that there is no response to the notice dated 19th January, 1976 wherein the landlord asserted that the purpose of letting was residential clearly indicates that the agreed purpose of letting was residential. In any case the finding of the learned Tribunal has been arrived at after taking into consideration the oral as well as documentary evidence on record. It cannot be said to be perverse or totally uncalled for on the basis of material on record. The Tribunal being the court of appeal under the Act, its findings on the question of fact are final. A plain reading of the receipts shows

that the demised premises are residential. It does not require any interpretative skill to understand what it means. Mere plain straight reading of a document does not involve a question of law much less a substantial question of law *Parkash Chander Gupta Vs. Tara Chand Malik*, . I do not see any perversity in the approach or the conclusion arrived at by the learned tribunal in this regard. It is settled law that second appeal u/s 39 of the Act lies only if it involves substantial question of law. Findings of fact cannot be interfered with in second appeal u/s 39 of the Act unless it can be shown that there was an error of law in arriving at it or that it was based on no evidence at all or was perverse. Reference in this connection may be had to various decisions viz; *Nematullah Vs. Mohd. Zikriya*, ; *Begum Hamid Ali Khan v. Col. B.H. Saidi and Anr.* 1982 (1)RCJ 342; *Karam Chand Vs. Oma Devi*, ; *Parvin Sarin Vs. Manbir Singh, Balwant Kaur and Ravinder Sarin*, ; *Vinod Kumar v. Ajit Singh Ahluwalia and Ors.* 1969 III RCJ 218; *Ram Lal Khanna v. Gulab Devi* (1969) Delhi 305; *Mattulal Vs. Radhe Lal*, ; *G.K. Bhatnagar (D) by Lrs. Vs. Abdul Alim*, ; and *Damadi Lal etc. v. Paras Ram etc.* 1976 RLR 634.

9. As already observed, finding of the learned Rent Controller Tribunal regarding purpose of letting is well supported by evidence both oral or documentary. Conclusion arrived at by the learned Tribunal does not suffer from any legal infirmity nor can it be said to be perverse or not at all borne out from the evidence on the record. Therefore, the finding of the learned Tribunal on this point has to be affirmed. As a natural corollary, the finding of learned ARC in the eviction petition filed by the landlord u/s 14(1)(e) of the Act holding the purpose of letting to be residential-cum-commercial, has to be reversed. Learned counsel for the respondent in the revision petition contended that while exercising the revisional power, the High Court cannot substitute its own view in place of view taken by the learned ARC if that view is reasonably possible. Reference in this connection was made to two decisions of the Supreme Court in the case of *Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others*, and *Hiralal Kapur Vs. Prabhu Choudhury*, . In the case of *Helper Girdharibhai* (supra) it was observed that in exercising revisional power, the High Court must ensure that the principles of law have been correctly borne in mind by the lower Court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which leads to miscarriage of justice. As already noticed, in holding the purpose of letting to be residential-cum-commercial, learned ARC seems to have been swayed solely by the constructional features of the demised premises. Such a conclusion will be in direct contrast to the contents of receipt/counterfoils which has been admitted by the tenant wherein nature of premises has been described as residential. Moreover, the fact remains that tenant has been using the premises for residential purpose also. In the case u/s 14(1)(e) of the Act, there was no independent evidence on the either side and in such a situation documentary evidence viz., the receipts which are admitted between the parties assumes great importance. Their evidentiary value could not have

been under mined just because there was some evidence of continued user of the premises for residential-cum-clinical purposes. According to learned ARC, all other ingredients of clause (e) of Section 14(1) of the Act are made out and Therefore, the denial of eviction order merely on account of constructional features, will clearly lead to miscarriage of justice, particularly when the property has been described as residential in the admitted documents. Therefore, in view of law laid down by the Supreme Court in the case of Helper Girdharbhai (supra), this Court can reverse the finding regarding purpose of letting in exercise of revisional powers. In any case, two contradictory findings regarding purpose of letting in respect of the same property between the same parties cannot be allowed to stand simultaneously. Learned RCT's order in the first appeal was passed on 26th May, 2000 whereas learned ARC's order in the eviction petition u/s 14(1)(e) of the Act was passed much later on 25.11.2000. It is true that in the meantime, second appeal had been filed so strictly speaking that order does not operate as res judicata yet learned ARC should have at least given due consideration to the reasoning adopted by the learned Tribunal while passing the order dated 26th May, 2000.

CR NO 242/2001

10. On the point of size of the family of the landlord and the accommodation already available to him, learned ARC accepted the landlord's version that he has three bed rooms, one dining cum drawing room on first floor. He is also in occupation of two rooms and bath room on the back side of ground floor and a barsati room on second floor which is being used by his male servant. He needs one room for himself, his wife and one room for his mother, one for his son and daughter-in-law, two separate rooms for grand children who are now teen ager students and one for the maid servant besides a pooja room. Besides, he has four brothers and four married sisters and one married daughter who visit the petitioner and he would require at least one guest room. His son wants a separate living unit for himself comprising of drawing-cum-dining room, bed room, a kitchen etc. for himself and his wife. Besides, he has one maid servant also for whom separate accommodation is required. Learned ARC rightly disbelieved the tenant's version regarding the extent of accommodation available to the landlord on the ground floor, first floor as the site plan filed by landlord was not disputed nor the tenant filed his site plan. Learned ARC concluded that landlord requires the demised premises for residence as his family members are dependant upon him and no alternative residential accommodation is available to him. ownership of landlord was never disputed as perpetual lease deed (AW-3/1) stands in his name. These findings were not seriously assailed before me. With the reversal of the learned ARC's finding on the point of purpose of letting, all the ingredients u/s 14(1)(e) of the Act are made out and Therefore, eviction order u/s 14(1)(e) of the Act should follow.

SAO NO 27/2000

11. As regards the ground of eviction contemplated u/s 14(1)(d) of the Act,

learned ARC held that landlord has failed to prove that tenant has not been residing in the demised premises for a period of six months preceding the date of filing of the eviction petition. Learned ARC has taken into consideration various documents namely directory of residents' association, record of gas agency regarding shifting of gas connection in the year 1980, electoral records and concluded that tenant has been residing at the demised premises. Therefore, the ground of non-residence u/s 14(1)(d) is not made out. Learned Tribunal has also upheld this finding. This being purely a concurrent finding of fact cannot be allowed to be assailed in the second appeal.

12. This finding has direct bearing on the ground of misuse contemplated under clause (c) of Section 14(1) of the Act. While passing eviction order u/s 14(1)(c) of the Act, learned Tribunal seems to have been completely oblivious of the position of law that in order to make out the ground of eviction u/s 14(1)(c) of the Act, the entire premises which was let out to the tenant must have been put to misuse. If only part of demised premises is put to misuser, ground of eviction u/s 14(1)(c) is not made out. Reference in this connection may be made to the case of Amrik Chand Vs. Harbans Singh, and Jagdish Kumar Aggarwal v. Agra Aerial Taxi Service and Ors. 1983 (1) RCR 379. In view of the findings of both the courts below that besides running the clinic, tenant has also been residing in the demises premises, it follows that the entire premises were not put to use as clinic and Therefore, ground of eviction u/s 14(1)(c) is not made out. Patently, the findings of the learned Tribunal are self-contradictory. Once it is found that the ground of eviction u/s 14(1)(d) is not made out which means that the tenant has been residing in a portion of the demised premises, the ground u/s 14(1)(c) is also not made out. Therefore, the finding of the learned Tribunal regarding Section 14(1)(c) has to be set aside as it is clearly against the settled law on the point.

13. As regards the ground u/s 14(1)(k), learned ARC gave a finding that area used by the tenant for clinic is only one cubical which is much less than 500 sq.ft. In fact the area of total accommodation let out to the tenant is less than 500 sq.ft. Since the DDA has permitted the doctors to use up to 500 sq.ft of the residential accommodation for professional purposes, the ground of eviction u/s 14(1)(k) is not made out, the area under misuse being well within the permissible limit of 500 sq.ft. Tenant had produced a copy of letter dated 10th March, 1972 (Ex.RW-1/2) written by under Secretary to the Govt. of India to the President, Delhi Medical Association intimating thereby that doctors are allowed to use up to 500 sq.ft of their residential accommodation for professional purposes. Learned counsel for the appellant has brought to my notice a decision of this Court in the case of Dr. S.K. Sen and Ors. v. Union of India and Ors. 1989 (1) RCR 382 wherein this Court had taken note of notification appearing at page No. 386 of the judgment which reads as under :-

"Sub: Administration of leases-rationalization of policy regarding.

Misuses appended to the aforesaid letter (11.12.68) may not be objected to, if it

is to be extent of one or two rooms not exceeding in total 500 sq.ft instead of 300 sq.ft as at present."

14. In view of settled policy of Government, learned ARC's finding that the ground of eviction contemplated under clause (k) of Section 14(1) of the Act is not made out as the DDA cannot object to the misuse of cabin which is much less than 500 sq.ft, is perfectly in accordance with law. Learned Tribunal did not consider this aspect at all and rushed to the conclusion that ground of eviction u/s 14(1)(k) is made out. This finding is clearly untenable and has to be reversed.

15. Learned counsel for the respondent in the appeal has also raised objection to the maintainability of the appeal on the ground of non-filing of certified copy of ARC's order dated 29th July, 1998 in time. Referring to paragraph 2(b) of Part A of Chapter 1 of Volume V of Rules and Order of Delhi High Court, learned counsel contended that Section 39 of the Act under which the second appeal lies before the High Court, prescribes no procedure for its filing. In such a case, the appeal will be regulated by the practice and procedure applicable to the filing and hearing of appeals in High Court. In this case, appeal was filed on 7th July, 2000 and certified copy of ARC's order was filed much later in May, 2003. It was contended that second appeal has to be dismissed on this ground alone. Reference in this connection was made to various decisions viz., *Amrit Lal Lamba v. Shrimati Champa Wati* 1971 RCR 770; *Lachhmi Devi v. Aiya Ram Katyal* 1979 (2) RCJ 121; *Sh. Kanwal Nath Mehra v. Sh. Ram Lal Sindhwani* I-AIR 1993 (1) 74; *Amal Mal Sindhi v. Shri Ram Parkashb* 1981 (2) RCJ 9; *Vidya Vati v. Shri Gurbax Rai Arora* 1980 (2) RCR 592; *Indira Khurana Vs. Prem Prakash*, ; *Shri Daya Ram v. Shri Bhartoo Mal and Ors* 1981 (2) RCJ 404; *Gobind Singh Chawla v. Balwant Singh through his L Rs Kesar Kaur and Ors*. 25 (1984) DLT 36.

16. On the other hand, learned counsel for the appellant has referred to the decision of the Supreme Court in the case of Owners and Parties interested in *M.V. "ValiPero" Vs. Fernando Lopez and Others*, wherein the Apex Court emphasized the need to adopt justice oriented approach rather than going into technicalities. In para 18 of the judgment, the Apex Court observed as under :

"Para 18. Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the Court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely

procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system."

17. In the case of *Lacchiman Das v. Shri Suraj Parkash* 1980 RLR 525, learned Single Judge of this Court took the same view and observed in para 29 as under :-

"Para 29 Whereas the purpose of requiring the certified copy of the first appellate judgment flows from the fact that the Court must have a copy of the judgment which can be relied upon as correct before setting aside or confirming it, the purpose of the copy of the judgment of the trial court, which has already merged in the judgment of the first appellate court could only be for reference. This purpose can well be served by the copy which can otherwise be believed to be true, for example, upon certification as true by the Advocate of the appellant. Secondly, once the stage of admission of an appeal is over and the appeal is admitted, the purpose could well be served, by filing a certified copy at any time before the final hearing when reference may be required to be made to it again."

18. In para 34, it is further observed as under :-

34. It appears to me that having regard the above dictum, if a second appeal is filed without a certified copy of the order of the first instance, i.e., of the Rent Controller, and the appeal is otherwise validly presented within the period of limitation, the Court may dispense with the filing of the certified copy of the order of the Rent Controller, at any time before the appeal is finally heard and production of a copy of the certified as true by an Advocate at the time of filing the appeal or even thereafter, appears to be sufficient ground for granting such dispensation.

19. In the present case, at the time of admission of appeal on 7th July, 2000, filing of certified copy was dispensed with subject to all just exceptions. It may be noted that typed copy of the ARC's order was filed along with the appeal duly certified by the counsel. The appeal was admitted long back in July, 2000 on the first date of hearing and arguments have been concluded on merits on 23rd May, 2005. At this stage, I am not inclined to take hyper-technical view in the matter and for the reasons in the case of *Lacchiman Das* (supra), filing of true copies under the certificate of the counsel is taken to be sufficient compliance for dispensing with filing of certified copies.

20. In the result, the appeal SAO NO 27/2000 is allowed and the eviction order u/s 14(1)(c) and (k) of the Act passed by learned Tribunal is hereby set aside. Finding of the learned RCT regarding purpose of letting to be residential, is upheld.

21. CRP No. 242/2001 is accepted and eviction order u/s 14(1)(e) of the Act is hereby passed in favor of the landlord in respect of the demised premises. Tenant is given six months" time to vacate the premises in question.