(2022) 01 DEL CK 0159

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 59 Of 2022

Harnam Dass Luthra (Now Deceased Through His Legal Heirs) APPELLANT

Vs

Usha Chauhan RESPONDENT

Date of Decision : 18-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
Delhi Rent Control Act, 1958 — Section 14(1)(a), 14(1)(b)

Citation : (2022) 01 DEL CK 0159

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Anil Dwivedi, Rajiv Narain, Sanjay Kumar Singh, Ravi Rai

Final Decision : Dismissed

Judgement

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 [â??the Tribunalâ?] 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 [â??Trial Courtâ?]

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 [â??the

Actâ??].

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] [â??the propertyâ?] 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 petitionerâ??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:-

â??40. Moreover, during the cross-examination, RW2, Sh. Kapil Luthra has deposed that â??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.â??â??

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

landladyâ??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:-

â??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 PWI was cross examined substantively, her testimony as regards the alleged subtenancy

remains unshaken.

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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, RWI 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 re-examine 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.â?? [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:-

â??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.â??

This judgment has been followed in the recent judgment of the Court in Garment Craft vs. Prakash Chand Goel3 (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 sub-tenancy 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. Dwivediâ??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.