
(2012) 11 DEL CK 0144

In the Delhi High Court

Case No : C.M. (M) . No. 346 of 2011

Shri. Om Prakash Seth and Others

APPELLANT

Vs

Mr. Ram Tirath and Another

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 21 Rule 103, Order 21 Rule 97, Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227
Delhi Rent Control Act, 1958 — Section 25B

Citation : (2012) 10 AD 533

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Rajiv Mehra, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—The present petition is filed by the decree holder/landlord under Art. 227 of the Constitution of India against the impugned

order dated 26.11.2010, passed by the Court of Shri. Devendra Kumar Sharma, learned ARC (North), Delhi in Execution No. 5 of 2012 titled

Om Prakash Seth and Others v. Sardar Pardeep Singh", whereby the learned ARC was pleased to post the objections, raised by the respondents

herein, under Order XXI Rule 97 read with Sec. 151 of the Code of Civil Procedure, for the purpose of recording evidence. The brief facts

leading to the present petition are as follows. The Petitioners herein filed a petition under Sec. 14(1)(e) read with Sec. 25B of the Delhi Rent

Control Act, bearing Eviction Petition No. 143/2008. The eviction petition was passed against the judgment debtor, Sardar Pardeep Singh by the

Ld. ARC (North) Delhi, on 24.04.2009. However, during the pendency of this

eviction petition, the respondents herein tried to participate in the proceedings by filing an application under Order I Rule 10 read with Section 151 of CPC. On 07.08.2009, dismissing the abovementioned

application under Order I Rule 10, the Ld. ARC observed that the eviction order shall not be executable against the respondents.

2. Thereafter, the petitioners herein filed an Application for Review of the Order dated 07.08.2009. On 12.01.2010, the Application for Review

of the order dated 07.08.2009 was allowed whereby the Ld. ARC deleted the condition of non-execution of the eviction order against the

respondents herein. Subsequently, the respondents filed a civil suit along with an application before the Ld. Civil Judge under Order XXXIX Rule

1 & 2 of CPC, seeking an injunction against the petitioners from dispossessing the respondents from the suit shop. On 18.05.2010, the Ld. Civil

Judge dismissed the application under Order XXXIX Rule 1 & 2 of CPC observing that equal and efficacious remedy of declaration with respect

to the tenancy rights had not been claimed by the respondents.

3. The petitioners proceeded to file execution petition on 17.02.2010 before the Ld. ARC. On 04.03.2010, the respondents herein filed their

objections to the execution proceedings, before the Ld. ARC under Order XXI Rule 97 read with Sec. 151 of CPC, contending that the

respondents/objectors are the actual tenants under the petitioners in respect of the suit shop for the last more than 25 years. The

respondents/objectors produced certain documentary evidence in support of their contentions. The Ld. ARC observed that said objection could

not be determined without evidence in view of the documents filed and passed the impugned Order dated 26.11.2010 posting the case for

objectors" Evidence. The said order is under challenge in the instant petition.

4. The petitioners in the instant case has contended that the Ld. ARC has erred in posting the objections for evidence on the grounds that he has

exceeded his jurisdiction while entertaining the objections by placing reliance on documents which were procured much after the date of the

eviction order. In assailing the impugned order, the petitioners have questioned the veracity of the documentary evidence produced by the

objectors in the execution proceeding. The petitioners have also contended that the Ld. ARC has failed to consider the limited ambit of the Order

XXI Rule 97 of CPC and erroneously entertained the objections filed, since the objections are filed with a view to delay and prolong the execution

of the eviction order, already passed in the favour of the petitioners.

5. I have perused the impugned order and given my thoughtful consideration to the submissions advanced by the petitioners. The primary

contention of the petitioners in the instant case is that the Ld. ARC exceeded its jurisdiction in allowing the objections and posting it for evidence.

With regard to the scope of power of the Ld. ARC in an execution proceeding under Order XXI Rule 97, the position is settled by the Apex

Court in the case of N.S.S. Narayana Sarma and Others Vs. Goldstone Exports (P) Ltd. and Others, . It was held:

The Executing Court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass

appropriate order which under the provisions of Order XXI Rule 103 is to be treated as a decree.

Therefore, Ld. ARC has not erred in examining the documentary evidence provided by the respondents/objectors and posting it for evidence.

6. The Ld. ARC has held vide the impugned order that from the documents placed on the record on behalf of the respondents/objectors that it is

sufficiently clear that the address of the objectors is given in those documents as of the suit shop. Whether the respondent/objector Ram Tirath was

tenant or merely an employee of the Judgment Debtor cannot be ascertained without further evidence, especially in view of the allegation that the

rent was being received by the petitioner no. 2, who used to make an entry in the diary maintained by the objector. Although the decree holder has

denied making such entries, the Ld. ARC has observed that the said fact cannot be disposed off without evidence. In furtherance of this position,

the Ld. ARC has placed reliance upon J.L. Jhanb Vs. Sheela Devi and Others, and Rakesh Gupta v. M/S Om Prakash Gupta & Sons, 2000 RLR

(NSC) 15.

7. The petitioners herein have assailed the impugned order by contending that the Ld. ARC has failed to consider that most of the documents have

been obtained after the passing of the eviction order dated 24.04.2009, and other documents are of such nature which do not infer tenancy rights

of the respondents/objectors in any manner. The veracity or otherwise of these

documents is not desired to be commented in the present

proceedings in as much as, as is noted above, these are yet to be proved by the respondents/objectors. On the other hand, these documents also

cannot be outrightly discarded at this stage. The power of this Court under Art. 227 of the Constitution is not in the nature of appellate jurisdiction

and the extent and scope of power with this Court is limited and restrictive in nature and in the normal circumstance, it is exercised where there is

want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits

of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts.

8. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus,

in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this

court in its supervisory power under Art. 227. Reference in this regard can be made to the decisions of the Supreme Court in Waryam Singh and

Another Vs. Amarnath and Another, and Mohammed Yusuf Vs. Faij Mohammad and Others, . In my opinion, the Ld. ARC has not exceeded his

jurisdiction and rightly entertained the application of the Objector and posted it for evidence in order to determine veracity of the objections. I see

no infirmity or perversity in the impugned order. The petition is hereby dismissed. While dismissing the petition, it is directed that the trial court shall

expeditiously dispose of the objections of the objector.