

(2014) 08 DEL CK 0178

Delhi High Court

Case No: CM (M) No. 757/2014

Jugvinder Singh

APPELLANT

Vs

Phool Chatrath

RESPONDENT

Date of Decision: Aug. 19, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 96
- Constitution of India, 1950 - Article 227
- Delhi Rent Control Act, 1958 - Section 14(1)(a), 14(2), 15(1), 39

Hon'ble Judges: Valmiki J. Mehta, J**Bench:** Single Bench**Advocate:** Rohan Kanhai, Advocate for the Appellant

Judgement

Valmiki J Mehta, J.

This is a petition filed under Article 227 of the Constitution of India against the concurrent judgments of the courts below; of the Additional Rent Controller dated 12.8.2011 and the Rent Control Tribunal dated 13.3.2012; by which the eviction petition filed by the respondent/landlord for non-payment of rent under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short "the DRC Act") has been decreed.

2. The case of the petitioner/tenant was that he was not the tenant inasmuch as he had agreed to purchase the suit property under the agreement to sell dated 20.6.2005 and that the petitioner/tenant had paid a sum of Rs. 1,50,000/-.

3. I may note that the court of the Additional Rent Controller has noted in para-4 of its judgment dated 12.8.2011 that the suit for specific performance filed by the petitioner/tenant relying upon an agreement to sell has been dismissed. As of today, this judgment stands as it has not been set aside, and therefore, the petitioner/tenant cannot seek to place reliance upon the said agreement to sell. Though counsel for the petitioner argues that petitioner has recently filed a regular

second appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) in this Court against the judgment dated 25.1.2008 dismissing the suit for specific performance however, I am doubtful that if a judgment of the year 2008 can be successfully challenged by an RFA filed in the year 2014. In any case, I need not observe anything further in this regard because the issue in the present case is really that the petitioner/tenant had failed to comply with the order of the deposit of pendente lite rent and future rent month by month passed under Section 15(1) of the DRC Act on 10.9.2010, and consequently, the defence of the petitioner/defendant was struck off. Not only the defence was struck off, by an order dated 15.11.2010, the review petition against that judgment dated 15.11.2010 was dismissed on 27.11.2010. An appeal filed by the petitioner/tenant against the order dated 10.9.2010 and 15.11.2010 was also dismissed on 6.4.2011. Therefore, the order with respect to striking off the defence of the petitioner/defendant has become final. There is hence no evidence of the petitioner/tenant whereas on the other hand respondent/landlady has led evidence and proved her case.

4. On the aspect that there has occasioned a default in compliance of the order passed under Section 15(1) of the DRC Act is concerned, that aspect was not seriously disputed before this Court, inasmuch as defaults are a matter on record. Since the order under Section 15(1) of the DRC Act has not been complied with the petitioner will not be entitled to the benefit of Section 14(2) and eviction has to follow. The aspect that the case of non-payment of rent inspite of service of demand notice under Section 14(1)(a) of the DRC Act has been proved and this has been discussed in para 7 of the impugned judgment of the first appellate court dated 31.3.2012 which reads as under:-

"7. Trial court record shows that petitioner Smt. Phool Chatrath categorically stated in evidence which was brought on record by way of her sworn affidavit as deposed in para 6 and 7 that the respondent never paid rent by cash and always paid monthly rent by account payee cheque but then after April 2009 he had not paid the rent at all. She further deposed that a legal demand notice dated 13.10.2009 Ex. PW1/3 was issued by her and was sent by registered post. She proved postal receipt as Ex. PW1/4, UPC is Ex. PW1/5 and acknowledgment card as Ex. PW1/6, prima facie proving that demand notice served upon the appellant. Cross examination on the petitioner is worth quoting in extensor which is as under:-

"I know the contents of my affidavit Ex. P1. I am owner of the flat mentioned above and jointly in the name with my husband. The suit property is in my name which was allotted to me by DDA. The suit property is LIG flat and consists 2 bed rooms, 1 drawing cum dinning, kitchen, bathroom and balcony with terrace. It is correct that I have filed other case against the respondent for non-payment of rent in the year 1995 and matter was compromised on the statement of the respondent. The respondent made the payment of rent only by way of cheques. It is wrong to suggest that the respondent paid the rent in cash. The respondent has paid rent

upto April 2009 and thereafter no rent has been paid by the respondent. It is wrong to suggest that I am deposing falsely."

Ld. ARC has rightly observed that cross examination nowhere brings any material at all to doubt the petitioner"s case."

5. There was a Section 39 in DRC Act which allowed filing of second appeals on substantial questions of law. This provision of second appeal has been deleted by Act 57 of 1988. Therefore, if a second appeal could not be filed, and which also could only be on limited grounds, a petition under Article 227 of the Constitution of India does not lie as if it is a substitute for a second appeal under Section 39 under the Act.

6. In view of above, the present petition under Article 227 of the Constitution of India will not lie. Powers under Article 227 of the Constitution of India are not meant to be exercised sitting as a second appellate court and in any case is not available to challenge the judgments of the courts below in facts such as the present where the defence of the petitioner/defendant stands struck off for an admitted non-compliance of the order passed under Section 15(1) of the DRC Act.

7. Dismissed.