Mohan Singh Vs Late Amar Singh Thr. The Lrs.

Court: Supreme Court of India

Date of Decision: Sept. 1, 1998

Acts Referred: Constitution of India, 1950 â€" Article 227
Delhi Rent Control Act, 1958 â€" Section 21, 38, 56

Citation: AIR 1999 SC 482 : (1998) AIRSCW 3648 : (1998) 6 JT 98 : (1999) 2 LW 87 : (1998) 5 SCALE 115 : (1998) 6 SCC 686 : (1998) 1 SCR 252 Supp : (1998) 7 Supreme 147

Hon'ble Judges: M. Srinivasan, J; A. S. Anand, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M. Srinivasan, J.
The appellant became a tenant under Amar Singh the grand-father of the present respondents with respect to premises

situated in E-222, East of Kailash on 29.06.1979. For the sake of con-venience, the parties will be referred to as tenant and landlord herein. A

joint application was filed before the Additional Rent Controller (for short A.R.C.), Delhi u/s 21 of the Delhi Rent Control Act, 1958 hereinafter

referred to as the Act for permission to let the premises for a limited period of two years. The same was granted on 03.07.1979. On 29.06.1981

another joint application u/s 21 was filed for permission to create a limited tenancy for two years. On 30.06.1981 statements of landlord and

tenant were recorded by the A.R.C.. Permission was granted for a period of three years. On the expiry of that period the tenant did not vacate the

premises and the landlord filed an application for execution. Notice was issued to the tenant returnable on 25.01.85. As he was not served, fresh

notice was ordered for 19.04.85. On that day, the tenant did not appear though served on 24.03.85. The court directed issue of warrant but in the

afternoon, the tenant appeared before court and filed his objections. An application was also moved for cancellation of warrant of possession. By

order dated 29.04.85 the A.R.C recorded that there was no justification for issuance of ex-parte stay to stop the execution of warrant of

possession and ordered notice of the application to the counsel for the landlord. The warrant could not be executed and when the matter came up

before court on 31.05.85 the landlord was given time to file reply to the objections filed by the tenant till 02.08.85. On the latter date, the landlord

filed his reply, and the appellant was given time to file re-joinder till 06.09.1985. No re-joinder was filed on 06.09.1985 and the case was fixed for

hearing arguments on the objections and posted to 11.10.1985. On that date, the tenant filed replication and served a copy thereof on the

landlord"s counsel. Arguments were heard and the matter was posted for orders to 18.10.1985. The A.R.C. passed an order on 18.10.1985 that

the objections filed by the tenant could not be dismissed without recording the evidence and granted permission to the tenant to lead evidence in

support of the objection. The landlord was permitted to repudiate the evidence led by the tenant. The dis-posses-sion of the tenant was stayed till

the decision on the objections.

2. In the objections filed by the tenant it was contended that the grant of permission u/s 21 of the Act on 30.06.1981 was wholly vitiated by fraud

and misrepresention and it was contrary to the provisions of Section 21 of the Act. It was alleged that the Landlord had misled and misrepresented

the relevant facts at the time of grant of permission that his family will shift from Amritsar where he was residing but his family was never living at

Amritsar and the premises in question were not required by the landlord for his residence after the expiry of three years as alleged by him. It was

also stated that the landlord owned a property bearing number E-3, East of Kailash, where he and his family were living throughout. It was further

stated that the tenant was in occupation of premises since 29.06.1979 and had continued and remained in possession of the premises in question

and he had never vacated the same since that date. It was alleged that the landlord wanted to enhance the rent to Rs. 3000 per mensem which the

tenant had refused to agree and therefore the petition for execution was filed. It was also stated that the order u/s 21 was liable to be set aside and

quashed and no warrant of possession in respect of the premises in question could be issued against the tenant. No plea was raised then by him

that he was not present in the court of A.R.C. on 30.06.81.

3. In the reply filed by the landlord, it was contended that the tenant being a signatory to the permission granted by the A.R.C. and a party to the

proceedings could not challenge the permission so granted by the Court. The allegations of fraud and misrepresentation were denied. It was also

stated that the landlord was not living in E-3, East of Kailash as alleged by the tenant.

4. In the re-joinder filed by the tenant on 11.10.85 though it was dated 02.09.85 the earlier allegations were repeated. According to the tenant, a

plea was raised that he did net appear before the A.R.C. on 30.06.81 and was not a party to the proceedings. According to the landlord such a

plea was not raised in the said rejoinder. Evidence was recorded in the proceedings. The matter was being adjourned periodically for various

reasons and ultimately an order was passed by A.R.C. on 22.10.94 only. In that order there was no specific reference to the contents of the

rejoinder filed by the tenant. It was found by the A.R.C that as there was no dispute that the premises were not vacant and available for letting out

when the second permission was taken, the Court had no jurisdiction to grant permission u/s 21 of the Act. It was held that a fraud was played on

the Court concealing the factum of tenant being in possession of the premises and the permission was obtained on such concealment. Consequently

the A.R.C. held that the permission granted u/s 21 of the Act was without jurisdiction and could not be enforced. Accordingly, the objections of

the tenant were upheld and the landlord"s application for execution was dismissed.

5. An appeal was filed by the landlord u/s 38 of the Act before the Rent Control Tribunal, Delhi. The counsel for the landlord addressed his

arguments on 16.02.95 and the matter was posted to 22.05.95 for the arguments of the counsel for the tenant. From then onwards, the matter was

being adjourned from time to time and on several occasions at the request of the counsel for the tenant. On 18.12.95 the arguments were heard

and concluded. On that day, an application was moved on behalf of the tenant for permission to file additional evidence. The counsel for the

landlord represented that he did not want to file any reply but advanced his arguments orally on the application also. The matter was posted to

16.01.96 for orders but the case was being adjourned repeatedly and ultimately the order was passed on 21.09.96. The Tribunal allowed the

appeal and set aside the order of the A.R.C. The Tribunal directed the landlord to approach the Trial Court for issuance of warrant of possession

in accordance with law.

6. In the application for additional evidence filed before the Tribunal it was stated by the tenant that on 29.06.81 he was busy in Embassys for

obtaining visas and on 30.06.81 he left the country and purchased the tickets in Germany for his onward journey and that the photo copies of the

passport and the tickets were enclosed to prove that the alleged limited tenancy u/s 21 of the Act was obtained on 30.06.81 from the court by the

landlord on manipulation and fraud played on the Court. Referring to the said application for additional evidence, the Tribunal observed in its order

as follows:

During the pendency of the appeal an application was made on behalf of the respondent praying for permission to file additional evidence with

regard to permission u/s 21 of the Act having been obtained by the appellant in absence of the respondent as according to him on 29.06.1981, the

respondent was busy in Embassys for obtaining visas and on 30.06.1981 he left the country and purchased a ticket for Germany for his onward

journey which would be evident from the entries in his Passport and Visa. That may or may not be so but the present application appears to be

quite vague and in any case it appears to me an afterthought device on the part of the respondent inasmuch as no such plea about his absence

before the Rent Controller was taken up by him in the objection filed in response to the execution application. In any case, this evidence would be

wholly irrelevant in view of my finding that the respondent was not within his rights to maintain the objection petition after expiry of the period of

limited tenancy. The application has, therefore, no merit and is accordingly dismissed"".

7. The Tribunal found that the A.R.C. erred in entertaining the objections of the tenant at the late stage of execution and allowing the same in view

of the settled position of law that such objections could not be raised after the expiry of the period of tenancy. There was also an objection by the

tenant that the landlord''s appeal was not maintainable in view of the amended provision in Section 38 of the Act which permitted appeals only on

questions of law. That objection was overruled by the Tribunal on the ground that the petition for execution was filed long before the said

amendment was introduced and the landlord''s vested right of appeal could not be affected by the subsequent amendment of 1988. The Tribunal

relied upon the judgment of this court in 281700 . On the above findings the Tribunal had allowed the appeal of the landlord.

8. The tenant filed a revision petition under Article 227 of the Constitution before the High Court. The only contention urged before the High Court

was that the order dated 18.10.85 passed by the A.R.C. permitting the appellant to raise objections to the execution had become final and it was

not open thereafter to the landlord to challenge before the appellate court the maintainability of the objection on the ground that it was filed after the

expiry of the period of tenancy. That question was answered against the tenant by the High Court on the ground that the entire matter was at large

before the Appellate Tribunal and it was competent to decide the entire controversy. Consequently, the revision petition filed by the tenant was

dismissed.

9. Aggrieved thereby, the tenant prayed for Special Leave which was granted. Thus this appeal has come on file. The most important plea raised

by the tenant in this appeal is that he was not in Court on 30.06.81 as he had left the country in the intervening night of 29.06.1981 and

30.06.1981 for Germany from where he was to travel to two other European countries. According to him the signature on his alleged statement

was not his. When leave was granted, notice was taken on behalf of the landlord and time was granted to file objections to the application for stay.

Alongwith the counter affidavit to the application for stay, the landlord filed an application LA. 3 of 1997 for revocation of the Special Leave

granted. There was also an application to bring the respondents on record as the legal representatives of the deceased landlord Amar Singh. It was

numbered as LA. 4 of 1997. The latter application was ordered on 10.03.97. In I.A. 3 of 1997 it was stated that several false and misleading

averments were made in the petition for Special Leave including the plea that the appellant was not present in India on 30.06.81 and that he did

not appear before the A.R.C.

10. On 08.11.97 an additional affidavit was filed on behalf of the landlord in which it was stated that a copy of the rejoinder filed by the tenant as

Annexure to the SLP and found in the paper book (Pages 67 of 73 as at present) was not a correct copy and there was a deliberate tampering of

the same. Alongwith that affidavit a copy of rejoinder said to have been served on the counsel for the landlord in the Trial Court was filed as

annexure R-l. It was also stated in that affidavit that a document had been interpolated among the records of the Tribunal as Page 79-A though it

was not produced before the Tribunal and a copy of the said document had been filed by the appellant in this court and found at Page 167 of the

Paper Book at present.

11. The matter came before the Court on 29.01.98. An order was passed referring to the copy of the rejoinder produced as Annexure R-l by the

landlord and an opportunity was given to the tenant to file a detailed affidavit in reply to LA. 3 of 1997 as well as to the additional affidavit. A

direction was issued to the Registry to call for the records from the Court of A.R.C Delhi. Then the matter came up again on 27.03.98. The

relevant passport of the tenant was shown to the court but taken away immediately as xerox copies had been filed. The Court passed an order that

the appeal would itself be finally disposed and posted the same to August 1998. On 12.08.98 the appeal was heard in part and adjourned to

13.08.98 for further hearing. The tenant was directed to produce the passport containing various visa entries. A direction was also issued to the

Rent Control Tribunal to send records of the case R.C.A. No. 749 of 1994 through a special messenger and the matter was posted for 13.08.98

for further hearing. On that day, the arguments were concluded and judgment was reserved as the counsel for the appellant prayed for some more

time to produce the passport. The matter was posted to 20.08.98 in Chamber at 1.30 p.m. The counsel for the parties were permitted to

supplement the arguments by submitting two page written submissions. On 20.08.98 counsel for the tenant submitted that the passport was not

traceable by his client. In the written submissions filed on behalf of the tenant it was stated that inspite of the best efforts the old passports which

were joined together were not traceable and the photo copies thereof filed earlier may be treated as court record.

12. Learned counsel for the tenant has put forward the following contentions:

(a) The order of the A.R.C. dated 30.06.81 in null and void as it was procured by the landlord by playing fraud on court.

(b) The Rent Tribunal was absolutely wrong in holding that the tenant''s objections were belated and not entertainable over looking the fact that

such a plea was not available to the landlord since it had been negatived by the A.R.C. in his order passed on 18.10.85 which became final as it

was not challenged by the landlord.

13. The first contention has two limbs. One is that the tenant had left India around 2.00 a.m. on 30.06.1981 for Germany and he did not appear

before the A.R.C. and give any statement. The signature at the bottom of the statement was not his and it was forged. Learned counsel invited us

to compare that signature with the admitted signatures of the tenant. According to him the disparity is so glaring that anybody would say that the

disputed signature is not that of the tenant. He pointed out that even before the Tribunal, his client soughf for examination of a handwriting expert in

order to ascertain the authenticity of the signature but the Tribunal did not consider the application.

14. We have already pointed out that the tenant did not in his objections to the execution filed on 19.04.85 raise the plea that he was not present in

the Court of A.R.C. on 30.06.81. Nor did he contend that the signature in the statement recorded by the A.R.C. was not his. An explana tion for

this omission has been attempted in the SLP In para 5 thereof it is averred as follows:-

The petitioner was served on 19.04.85 and immediately on the same date at 2.30 P.M. he got filed the objection petition in haste and at the time

he was not aware of the details of his visit during the year 1981"". The averment that he was served on 19.04.85 is false as he was served on

24.03.85 (vide A.R.C''s order dated 29.04.85). Further, the explanation is hardly satisfactory. The tenant claims to be having business connections

in several countries and is undoubtedly worldly wise. If he was not party to the order, he would have put forward the plea in the forefront. The

failure to raise the plea in the earliest opportunity is a definite pointer against the genuineness of the version.

15. Assuming for a moment that his explanation is acceptable, did he raise the plea in the second opportunity which he got when he filed a

rejoinder on 11.10.85? Our answer to this question is undoubtedly in the negative and we proceed to give our reasons immediately. The rejoinder

bears the date 02.09.85. We had earlier set out the chronology where from it will be seen that the A.R.C posted the matter to 06.09.85 for filing

rejoinder. If the rejoinder was ready on 02.09.85 there was no reason why it was not filed on 06.09.85. The A.R.C. posted the matter for

arguments on 11.10.85 on which date the rejoinder was filed in Court and obviously it was served on the counsel for the landlord only at that time

in Court. It is claimed by the tenant that in Para V thereof the following plea was raised.

The respondent was inducted as a tenant under the permission granted in Misc. Petition No. 304 of 1979 executed between the parties and the

respondent has not appeared before the Additional Rent Controller and is not a party to the limited period of tenancy created u/s 21 of Delhi Rent

Control Act on 30.06.81"".

According to learned counsel for the landlord the above sentence was differently worded in the rejoinder originally when it was filed in Court as

could be seen from the copy of the rejoinder served on his counter -part before the A.R.C. The relevant sentence in para V in the said copy reads

as follows:

The respondent was inducted as a tenant under the permission granted in Misc. Petition No. 304 of 1979 executed between the parties and the

respondent has continued in possession of the premises even after the expiry of the limited period of tenancy created u/s 21 of Delhi Rent Control

Act"".

The portion ""not appeared before the Additional Rent Controller and is not a party to"" is found in the former while the latter contains the words

continued in possession of the premises even after the expiry of."" Further the portion ""on 30.06.81"" is also not found in the latter.

16. A mere look at the original record shows even to the naked eye that the aforesaid portion was a later interpolation after erasing the matter

which was already typed. It is also clear that the last portion ""on 30.06.81, had also been typed much later and it was not there originally. It is quite

evident that the rejoinder filed in Court had been tampered with by the tenant at a later point of time in order to enable him to raise a plea that he

was not present in Court on 30.06.81. The sentence as it is found in the copy of the rejoinder served on the counsel for the landlord in open court

on 11.10.85 is quite in accord with syntax and the context. The sentence begins with a reference to what happened in 1979. The statement that he

continued in possession even after that tenancy expired is in natural sequence. There was no occasion in that sentence to refer to the absence of the

tenant from Court on 30.06.81. The sentence in the original record as it reads now is very clumsy and unnatural. Obviously the entire sentence as it

is found in the landlord''s copy was intended to be and is a reiteration of the statement made in para 5 of the objections filed on 19.04.85 that ""the

respondent/objector is in occupation and possession of the premises since 29.06.1979 and has continued and remained in possession of the

premises in question"".

17. If really the tenant had raised the plea that he was not present in Court in 30.06.81 and his signature had been forged, it would not have been

done in this insignificant manner in a portion of a sentence which may easily go unnoticed. On the other hand such a plea would have been put forth

prominently in the fore front of the rejoinder and the tenant''s advocate would have lost no time to bring it to the notice of the Court. The order of

the A.R.C. dated 18.10.85 does not indicate the raising of such a plea.

18. A more important circumstance is that there was no whisper by the tenant in his deposition rendered as late as on 10.10.86. At that time, the

petitioner was not in any haste or hurry. By then, he had all the time in the world to gather all the details of the tours undertook by him in 1981 and

stated them in his evidence. Nothing prevented him from stating on oath that he was not in India at the relevant time and no statement was made by

him before the A.R.C. on 30.06.81. Far from saying so, the tenant admitted his presence in court on 30.06.81 in the following words in his

deposition:

When the second permission u/s 21 was obtained then I knew that the petitioner had never shifted Amritsar. I never told the Court that the

petitioner had never shifted to Amritsar because I wanted the house on rent"".

19. Admittedly the tenant was represented by a lawyer in the said proceedings. If there had been a plea in the rejoinder that he had not appeared

before the A.R.C. and was not a party to the limited period of tenancy created on 30.06.81 even a junior most lawyer would have elicited the said

fact at the beginning of the chief-examination itself. Even if the lawyer had failed to do so, the tenant would have volunteered such a statement in the

course of his evidence. The fact that there was no such statement by the tenant in his deposition shows not only that there was no plea in the

rejoinder to that effect when the evidence was recorded by the A.R.C. but also that the plea raised later is false.

20. It is also significant to note that the abovesaid sentence in the rejoinder is as vague as possible. It stops with merely referring to the non-

appearance of the tenant before the A.R.C and does not go to the extent of saying that the tenant was out of the country at that time. The plea that

the tenant had left India in the night of 29.06.1981 and 30.06.1981 was not raised at any time before the A.R.C or before the Appellate Tribunal

till 18.12.95 when an application was moved by the tenant for permission to file additional evidence. For the first time in the proceedings, the

tenant raised the plea in the said application that he had left the country on 30.06.81. Even at that stage the tenant did not choose to give the details

of his alleged flight to Germany from India. Neither the name of the airline nor the time of the flight was disclosed to the Court. Alongwith the said

application for additional evidence the tenant claimed to have produced a photo copy of the passport and a tickot alleged to have been purchased

in Germany for his onward journey to other countries.

21. If there was a plea in the rejoinder that the tenant did not appear before the A.R.C and was not a party to the proceeding, the A.R.C. who

passed an order on 22.10.94 in favour of the tenant would certainly have referred to the same and given it as his first reason for holding that the

order dated 30.06.81 was not enforceable. For the first time, reference is made to the said plea as having been raised in Para 5 of the rejoinder in

the written submission filed on behalf of the tenant before the appellate Tribunal on 15.01.96. Obviously, the interpolation in the rejoinder was

made some time prior to that. It is also worthy of notice that in the application for additional evidence there was no statement that a plea had

already been raised in the rejoinder filed before the A.R.C. We have no hesitation therefore to hold that the rejoinder filed by the tenant before the

A.R.C had been tampered at a later point of time and in all probability when the matter was pending before the appellate Tribunal in order to

support a new plea raised for the first time by the tenant.

22. Learned senior counsel for the tenant has submitted that the copy of the rejoinder produced before the landlord''s counsel does not contain any

initial of the tenant''s counsel and it cannot be considered to be genuine. According to him, the said copy was not the one served on the landlord''s

counsel in the court of the A.R.C. The argument is obviously one in despair. A comparison of the copy filed by the landlord''s counsel with the

rejoinder in the Court record shows that certain corrections had been made in ink in paragraphs I and II at pages 1 and 2 thereof. The hand-

writing is the same in both and we have no doubt that whoever corrected the original rejoinder carried out the correction in the copy before serving

it on the counsel for the landlord. So also, some corrections are typed. They also correspond with each other. In this connection it is interesting to

read the version of the tenant in his affidavit filed in this Court on 20.03.98. In para 3-4 (p.189 of the paper book) it is stated as follows:-

However, the petitioner cannot say for sure which copy was delivered on the other side since that is done by the counsel generally. However, the

petitioner now faintly remembers that some corrections might have been by the counsel before signing and filing the rejoinder in trial court on

02.09.1985 and be had signed a number of copies of the rejoinder and ordinarily his signatures or the counsel''s signatures would have been there

on the copy as supplied/given to the landlord"".

The above explanation is palpably false and is hereby rejected. We are convinced that the copy produced by the landlord''s counsel is none other

than that served on his counterpart in the court of the A.R.C.

23. Irrespective of the existence of the plea in the rejoinder, we would consider the question whether the tenant has proved his absence from the

court of the A.R.C on 30.06.81. The burden is on him to prove the same. He has miserably failed to do so. We have seen the original record of

the A.R.C. in which the statements of the landlord and the tenant were recorded on 30.06.81. The paper has been torn exactly across the

signature of the tenant and pasted with a cellotape. We have a grave suspicion that it was deliberately torn and pasted like that so that it will

become difficult to compare the signature of the tenant in that statement with his admitted signatures. Significantly in the copy of the proposed

agreement filed by the landlord and the tenant jointly before the A.R.C. the portion containing their signatures has been completely torn and not

available at all. The tenant has admittedly signed the proposed agreement and he was a party thereto. The impossibility of comparing the disputed

signature with the admitted signatures is one reason for our not granting the prayer to have the disputed signature examined by a handwriting

expert.

24. It is not the case of the tenant that he was in India but did not attend the court. His only case is that he had gone out of India and was not in a

position to attend the Court. Such a plea could easily have been proved by producing the relevant official documents such as passport and visa as

well as a copy of the air ticket. The plea was itself raised only at the appellate stage but the relevant documents were not produced even then. In

the application for additional evidence the tenant claimed to have produced photo copies of the passport and the ticket purchased in Ger many for

onward journey. The said ticket even if genuine would not prove in any manner that he was in Germany on the relevant date. The ticket could have

been purchased by any person on his behalf. Even the said photo copy of the ticket did not relate to the year 1981. That fact is admitted by the

tenant in his affidavit filed in this Court on 20.03.98. In paragraph 7 it is stated thus:

That it is further submitted that the copy of the ticket, which is enclosed at page 167 of the Paper Book is not unfortunately the ticket which was

used by the petitioner for going out of the Germany by mistake some other ticket relating to previous travel in the year 1980 has been annexed.

The confusion created because the dates in the ticket are of the same date but of different year. This therefore can be ignored.

The only other document which was filed before the Appellate Tribunal was the xerox copy of some pages of the passport. Initially the relevant

page which contained the visa issued by the German Embassy was not filed before the Tribunal. It is evident from the records as rightly pointed out

by the learned counsel for the landlord that the relevant page may have been introduced into the records of the Tribunal on a later date. That page

bears the number 79A and it finds place between 77 and 79. We find that all the pages in the record of the Tribunal are numbered serially by

taking both sides of each paper into account. Even if the reverse side is blank it is counted for numbering and on the next page the next number is

given. The numbers written actually are only odd numbers such as 1,3,5,7 and so on. There is no page in the entire record excepting the aforesaid

one bearing a number containing an alphabet in addition to numerical. If the document had been filed alongwith the other document filed with the

application for additional evidence it should have been numbered as 79 and the next paper should have borne the number 81 and so on. There is

no reason why the paper after 77 should be numbered as 79A. Even so it should have been numbered as 77A or 78A as it is placed before 79. In

the affidavit filed by the landlord on 08.11.97 it is emphatically stated that before the counter-affidavit dated 27.01.97 was filed in this court he had

inspected the records of the Appellate Court (wrongly mentioned as Trial Court) and at that time the said paper was not in the court records and

that the tenant had got the same interpolated in the court records thereafter as Page 79A. In our opinion this accusation made by the landlord

appears to be well founded. In the absence of any explanation for the number 79A found on the said page, an inference can be drawn that the

same was interpolated in the records of the Tribunal at a later point of time and was not filed alongwith the application for additional evidence.

25. The aforesaid document now found at page 79A of the records of the Tribunal is the same as that found on page 167 of the paper book in the

appeal in this court. It purports to be a visa issued by the German Embassy at New Delhi on 26.06.1981. It is for the period 30.06.1981 to

20.07.1981. At the top there is a rectangular seal which reads as follows:

Bundesrepublik

Deuischland

A-30.06.1981

Flugshafen

Frankfurt/Main 14

After a copy of the said document was served on the landlord it appears that the latter approached the German Embassy at New Delhi in order to

verify the authenticity and correctness of the same. In Paragraph 6 of the affidavit filed by the landlord on 08.11.97, it is stated thus:

Further in order to verify the authenticity of the said document, the answering respondent sent a photocopy of the same to the German Embassy in

Delhi for verification of the same. The communication dated 15.04.1997 received from the German embassy clearly shows that the said document

is not genuine and is a forged document. The petitioner has relied upon the immigration stamp in the said document to claim that he arrived in

Germany on 30.06.1981 whereas ''A'' in the Immigration Stamps stand for Ausreise = Departure and not arrival. Further the name of the country

Deutsch land in Immigration Stamp is spelt incorrectly and the date is not from a rotating stamp which is used by the Customs authorities. It is

submitted that the appellant has resorted to forgery to mislead this Hon''ble Court and it is submitted that it is a fit case where apart from revoking

the special leave granted, criminal proceedings should be initiated against the appellant. A copy of the letter dated 15.04.1997 is annexed hereto as

Annexure R-2.

26. In the letter filed as Annexure R-2 referred to above, it is stated thus:

TO WHOM IT MAY CONCERN

The genuineness of the Visa/Immigration Stamp of the Federal Republic of Germany in Indian passport No. 2-244359 enclosed herewith look

doubtful, since it shows the following deficiencies: Spelling Mistakes

(a) name of the country ""Deutschland"" is spelt incorrectly as ""Deuischland"" in the Immigration Stamp;

(b) In the Visa Stamp ""Gebuhr"" means Fee, it is spelt incorrectly as ""Gebchr

(c) Name of the city ""Frankfurt"" in the Immigration Stamp appears to be incorrectly spelt as ""Frankfort"".

A"" in Immigration Stamp indicates departure (A=Ausreise) but not arrival. Arrival is indicated by ""E"" (E = Einreise).

The date (30.06.1981) in the Immigration Stamp is not from a rotating stamp. Customs used rotating stamps.

The round embassy seal in the bottom left corner appears faked and requires further investigation.

(Signed)

Rehienbeck

ATTACHE

27. Learned senior counsel for the tenant vehemently argued that no reliance should be placed on the aforesaid letter which was written on the

basis of a photo copy and the proper course to be adopted by the court is to sent the passport in which the original visa is entered to the Embassy

and get its opinion as to the authenticity thereof. When the matter was being argued on 12.08.98 he offered to produce the original passport on the

next date. We adjourned the matter to 13.08.98 at 2.00 P.M. but learned counsel wanted further time. We granted one week therefrom for

produc-tion of the passport and posted the matter to 20.08.98 in the chambers at 1.30 P.M. But as stated earlier, the passport is not forthcoming.

It is very strange that the passport which was flashed before the court on an earlier occasion before the matter was heard is now missing after the

court is fully apprised of the facts of the case. This is eminently a fit case to draw an adverse inference against the tenant from the non-production

of the passport. If it had been produced, there is no doubt that it would have been found out that the Visa/immigration stamp of the Federal

Republic of Germany was not genuine but a fabricated one. We have already pointed out that the tenant had tampered with the records in Court

more than once and has been developing his case stage by stage. The plea that he was not in the country was raised for the first time in December

1995 i.e. nearly 11 years after the warrant of possession was issued against him by the A.R.C. Further, we find that in the photo copies of the two

other visa stamps made by the German Embassy with reference to other periods the immigration stamps are not only different in shape but the

spellings of the relevant words are correct. The spelling mistakes found in the disputed visa are not found in the photo copies of the other visas of

the same country. In such circumstances we hold that the tenant has not proved the genuineness of the visa/immigration stamp of the Federal

Republic of Germany. Nor has he proved that he was not in India on the relevant date and the relevant time. Hence the first limb of the contention

that the order of the A.R.C. dated 30.06.81 was vitiated by fraud fails and is rejected.

28. The second limb of the contention is that on 29.06.81 and 30.06.81 the premises was not vacant as it was occupied by the tenant and the

application u/s 21 was not maintainable. According to the tenant the said jurisdictional fact was concealed from the ARC and his permission for

creating a limited tenancy was obtained. It is also the contention of the tenant under this limb that the landlord was never the resident of Amritsar

and always living in another premises in New Delhi and that he did not require the premises at the expiry of the limited tenancy. According to the

tenant the aforesaid facts were also concealed from the A.R.C. It is with respect to this limb of the contention that the learned counsel for the

landlord has submitted that it was not open to the tenant to raise such a plea of fraud after the expiry of the tenancy and if there was any such

fraud, he should have approached the A.R.C. with an appropriate application before the expiry of the tenancy. In support of the said contention

learned counsel for the landlord has cited some of the recent rulings of this Court. Before considering the said aspect of the matter it is better to

clear the facts in this regard.

29. The contention that there was a subsisting tenancy on 29.06.81 and 30.06.81 is factually fallacious. The tenant has in more than one place in

the objection filed by him before the A.R.C and in his deposition dated 10.10.86 stated that the earlier limited tenancy commenced on 29.06.79.

What is relied on at present is that the first order granting permission for limited tenancy was passed on 03.07.79. The records and the

proceedings relating thereto are not available. In the absence of such records and on the face of the express admission made by the tenant that the

tenancy commenced on 29.06.79 we have to proceed on the footing that the permission granted on 03.07.79 was post facto and the tenancy

expired on 28.06.81. Hence, when the application was filed on 29.06.81 for permission u/s 21, there was no subsisting prior tenancy. Now that

we have found that the tenant has failed to prove his alleged absence from the court on 30.06.81, it follows that both the landlord and the tenant

were present before the A.R.C. and made statements as recorded on 30.06.81. Factually, there is no concealment or suppression of the facts and

much less fraudulently by the landlord before the A.R.C. There was nothing wrong in the A.R.C. accepting the statements of landlord and tenant

made before him.

30. On the above facts we will consider the relevant rulings in chronological order. In 291270 , a Bench of three Judges held that when the

landlord applies for eviction after expiry of limited period of tenancy, the Rent Controller must issue warrant for recovery of possession as a matter

of course and is not obliged to issue a prior notice to the tenant or before issuing a notice make an enquiry into allegations of fraud, collusion or

mechanical applica tion of mind in granting permission for creation of a limited tenancy made by the tenant.

31. In 293683 it was held that obtaining permission for letting out the premises to the same tenant for limited periods more than once after expiry

of each such period would not by itself be sufficient to prove that the premises were available for being let out for the indefinite period without

actually showing the absence of the landlord"s intention to occupy the premises. It was held that such successive grants of permission were not

vitiated.

32. In 271659 a Bench of Three Judges considered the matter at some length. After referring to Dhanwanti"s case (supra) the bench observed that

in one sense successive grants of permission would share the characteristic of post facto grant. The Bench referred to the ruling in J.R. Vohra

(supra) and quoted extensively therefrom. It will be advantageous to extract the following passage from the judgment of the Bench:

...In Vohra case this Court laid down that a tenant who assails the permission u/s 21 on the ground that it was procured by fraud - a ground not

dissimilar to the one urged in the present case - must approach the Rent Controller during the currency of the limited tenancy and for an

adjudication of his pleas as soon as he discovers facts and circumstances which, according to him, vitiate the permission. It was held that whether it

was a "mindless" order or one procured by fraud practised by the landlord or was the result of a collusion between landlord and tenant there was

no justification for the tenant to wait till the landlord made his application for recovery of possession but there was every reason why the tenant

should have made an immediate approach to the Rent Controller to have his pleas adjudicated as soon as facts and circumstances giving rise to

such pleas comes to his knowledge.

The reason why this requirement was built in working the rights and obligations u/s 21 was the need to reconcile and harmonise certain competing

claims that arise in administering the scheme of Section 21. This Court, referring to those competing claims observed:

What then is the remedy available to the tenant in a case where there was in fact a mere ritualistic observance to the procedure while granting

permission for the creation of the limited tenancy or where such permission was procured by fraud practised by the landlord or was a result of a

collusion between the strong and the weak?. Must the tenant in such cases by unceremoniously evicted without his plea, being enquired into? The

answer is obviously in the negative. At the same time must he be permitted to protract the delivery of possession of the leased premises to the

landlord on a false plea of fraud or collusion or that there was a mechanical grant of permission and thus defeat the very object of the special

procedure provided for the benefit of the landlord in Section 21?. The answer must again be in the negative...

The manner in which the court harmonised and reconciled these competing and conflicting claims and interests was by insisting upon the tenant to

approach the Rent Controller for adjudication of his pleas as soon as he discovered that the initial grant of permission stood vitiated. This was

evolved as part of policy of law for the reconciliation of divergent and competing claims. It was held:

...In our view these two competing claims must be harmonised by insisting upon his approaching the Rent Controller during the currency of the

limited tenancy for adjudication of his pleas no sooner he discovers facts and circumstances that tend to vitiate ab inito the initial grant of

permission. Either it is a mechanical grant of permission or it is procured by fraud practised by the landlord or it is the result of collusion between

two unequals but in each case there is no reason for the tenant to wait till the landlord makes his application for recovery of possession after the

expiry of fixed period u/s 21 but there is every reason why the tenant should make an immediate approach to the Rent Controller to have his pleas

adjudicated by him as soon as facts and circumstances giving rise to such pleas come to his knowledge or are discovered by him with due

diligence...

The court proceeded to point out that any appeal to the remedy based on concept of nullity and collateral attack is inappropriate and that in a

collateral challenge the exercise was not the invalidation of a decision, but only to ascertain whether the decision existed in law at all and rely upon

incidents and effect of its non-existence. It was held that the permission granted u/s 21 must be presumed to be valid till set aside and the doctrine

of collateral challenge will not apply to a decision which is valid ex hypothesis and which has some presumptive existence, validity and effect in law.

The Bench pointed out the distinction between nullity stem-ming from lack of inherent jurisdiction or a proceeding that wears the brand of invalidity

on its forehead on the one hand and on the other a dispute as to existence or non-existence of facts which require investigation into and

adjudication upon their existence or non-existence on the basis of evidence. The Court said:

...If the parties before the Rent Controller admitted that the fact or the event which gives the Controller jurisdiction is in existence and there was

no reason for the Controller to doubt the bona fides of that admission as to a fact or event, the Controller is under no obligation to make further

enquiries on his own as to that factual state. The test of jurisdiction over the subject- matter is whether the Court or Tribunal can decide the case at

all and not whether the Court has authority to issue a particular kind of order in the course of deciding the case"".

33. The above ruling is sufficient to negative the contention of the tenant in the present case. It is, therefore, not open to him to challenge the validity

of the permission granted on 30.06.81 after the expiry of the tenancy.

34. Learned counsel for the tenant placed reliance on 274449 . In that case, the Bench has in fact relied on the ruling in Pankaj Bhargava''s case

(supra). The Bench has clearly held that the objection to the validity of the permission for limited tenancy should be made immediately on the tenant

becoming aware of the fraud, collusion etc. and that the tenant may be permitted to raise objections after the expiry of lease in exceptional

circumstances only. It has also been held that the burden to prove fraud or collusion is on the person alleging it. No exceptional circumstance has

been made out in this case to enable the tenant to challenge the order dated 30.06.81 after the expiry of the tenancy. The ruling in Shrisht Dhawan

(supra) does not help the tenant in this case.

35. There is no merit in the second contention that the order dated 18.10.85 had become final and, therefore, it was not open to the landlord to

argue before the Appellate Tribunal that the tenant was not entitled to raise objection to the validity of the permission after expiry of the tenancy.

The order dated 18.10.85 was of interlocutory nature and on a prima facie view it permitted the parties to adduce evidence after holding that the

objections of the tenant required consideration. That would not prevent the landlord from contending before the appellate Tribunal that the tenant

was not entitled to raise objections to the validity of the permission after the expiry of the tenancy as per the law laid down in J.R. Vohra and

Pankaj Bhargava (supra). Thus, both contentions of the tenant deserve to be rejected and the appeal has to suffer dismissal.

36. But the matter does not end there. We have found that the records of the A.R.C. and the Rent Tribunal have been tampered. We have also

drawn an inference that the visa alleged to have been issued by the German Embassy on 26.06.81 to the tenant and the Immigration Stamp found

thereon are not genuine. Prima facie, the circumstances indicate that the tenant had committed the aforesaid offences. The tenant has also made an

attempt to hoodwink this Court and succeed in his appeal. He was successful in getting the Special Leave and an order staying dispossession.

Tampering with the record of judicial proceedings and filing of false affidavit, in a court of law has the tendency of causing obstruction in the due

course of justice. It undermines and obstructs free flow of unsoiled stream of justice and aims at striking a blow at the rule of law. The stream of

justice has to be kept clear and pure and no one can be permitted to take liberties with it by soiling its purity. Since, we are prima facie satisfied

that the tenant has filed false affidavits and tampered with judicial record, with a view to eradicate the evil of perjury, we consider it appropriate to

direct the Registrar of this Court to file a complaint before the appropriate court and set the criminal law in motion against the tenant, the appellant

in this case namely, Mohan Singh.

37. Before parting with this case, we have one more observation to make. On a study of the records in this case, we find that a very distressing

state of affairs prevails in the court of A.R.C. and Rent Tribunal. We are told by learned counsel that the situation is the same, if not worse in

subordinate courts on the regular civil side. We found that the rejoinder of the tenant said to have been filed in the Court on 11.10.85 does not

contain any endorsement by the counsel for the landlord acknowledging receipt of a copy thereof. We were informed by counsel that there is no

practice of serving such papers on the other side in advance and getting the acknowledgment of service endorsed on the same. It was stated that

such papers would be handed over across the table to the counsel in open court and some times, the Presiding Officer would enter the same in the

court diary. We were also told that there is no rule in that regard. That is a very unsatisfactory situation. A rule should be made that papers

intended to be filed in Court in matters in which the other side has entered appearance should be served on the opposite party under

acknowledgement endorsed thereon.

38. It is seen that the copy of the rejoinder served on counsel for the landlord in the Court of the A.R.C. does not bear the initial or the signature of

the tenant or his counsel, nor is there any endorsement that it is a true copy of the original rejoinder. A rule should be made that any paper served

on the counsel for the opposite side must bear the endorsement that it is a true copy of the original filed in the Court and it should be signed by the

counsel or the party.

39. The original rejoinder found among the records of the A.R.C. bears a rubber stamp on each page with the date being smudged completely.

From that stamp nobody can say that it was filed in Court on 11.10.85. We accepted that date to be the date of filing because of the entry made

by the A.R.C. in his notes. We have, however, a doubt whether the document which is now on file was the same as the one which was filed before

the A.R.C. The reason for entertaining such a doubt is that while the date stamp in other documents filed in that Court are clear and legible, the

date stamp on this document is alone smudged. In the place of the date somebody has written in ink a figure which looks like 11. The Presiding

Officer should take care to see that any paper filed in Court bears the date stamp clearly on every page and he should put his initials and date on

each page clearly. Such a procedure would ensure to some extent that papers filed in Court are not tampered with.

40. We have referred to the application for additional evidence filed by the tenant before the Rent Tribunal and the fact that one of the documents

said to have been filed along with the application was not filed at that time and interpolated into the records much later. We also find that the

application was not given a separate number. The rejection of the application was made part of the order in the main appeal. It would have been

better if the application had been given a separate number and an order had been passed thereon separately. But that is not a matter of grave

concern. What is to be noted is that in the application, the documents ought to be filed as additional evidence were described vaguely in Paragraph

5 as photo copies of the passport and the ticket. It is absolutely necessary that every application for permission to file additional evidence should

contain a list of documents giving full particulars thereof such as date, parties thereto and description. Apart from that each document should also

bear a certificate of endorsement made by the counsel or the party that the said document was the one referred to in the affidavit or application of

the party. The application must also specify the number of pages of each document filed therewith. Whenever such applications are filed in pending

matters, the copies thereof and copies of the documents sought to be filed as additional evidence should be served on the other side after being

duly certified as true copies by the applicant or his counsel. Appropriate rules have to be framed in this regard also.

41. The above are the matters which have come to our notice in this case. There are several other matters relating to practice and procedure which

require proper attention. In so far as the Act is concerned, Section 56 enables the Central Government to make rules. Rule 23 of the rules framed

under the Act provides that the Controller and the Rent Control Tribunal are as far as possible be guided by the provisions contained in the CPC,

1908. It is absolutely necessary for the Controller and the Rent Control Tribunal to see that the provisions of the Statute, Rules and the CPC are

strictly complied with in all the proceedings before them.

42. We are informed that even for the civil courts in the Union Territory of Delhi, no rules of practice have been framed by the High Court. It is a

sad state of affairs that the High Court of Delhi has not given its thought in this regard. It is high time that the High Court framed appropriate rules

of practice to be observed by all the courts in the territory subordinate to it We direct the Registry to send copies of this judgment to the

concerned department of the Central Government as well as the High Court of Delhi so that appropriate rules may be made by them respectively

with regard to the proceedings under Delhi Rent Control Act and the proceedings in the regular civil courts. We request the High Court to give its

immediate attention to this matter and also cause periodic inspection of the courts subordinate to it and issue such circulars as may be necessary in

order to plug the loopholes then and there.

43. In the result, the appeal is dismissed with the above directions. The tenant shall pay a sum of Rs. 20,000 by way of costs to the respondents.

The tenant shall also deliver possession of the premises in question to the respondents on or before 26.09.1998.