

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 11<sup>th</sup> January, 2022.**

+ **CM(M) 458/2020**

**RAJINDER KUMAR**

**..... Petitioners**

Through: Mr. Deepak Vashisht, Advocate

Versus

**RAJ KUMAR & ORS.**

**..... Respondents**

Through: Mr. Hare Ram Jha, Advocate for  
respondent No.1  
Mr. Yogesh Saxena, Advocate for  
respondents No.2 to 4

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL  
[VIA VIDEO CONFERENCING]**

**JUDGMENT**

**AMIT BANSAL, J. (Oral)**

1. The present petition under Article 227 of the Constitution of India impugns the judgment dated 01<sup>st</sup> June, 2020 passed by the Rent Control Tribunal (RCT) in RCT No. 9/2016 , whereby the appeal filed on behalf of the petitioner/tenant under Section 38 of the Delhi Rent Control Act, 1958 (DRC Act) against the order dated 20<sup>th</sup> September, 2012 passed by the Additional Rent Controller (ARC) allowing the eviction proceedings against the petitioner/tenant, has been dismissed.
2. Brief facts necessary to the extent relevant for deciding the present petition are set out below:

- 2.1 Eviction proceedings were initiated on behalf of the respondent No.1/landlord in respect of shop measuring 12' X 7' feet situated in property bearing No. B-347, Raghbir Nagar, Delhi-110027, let out to the father of the petitioner on a monthly rent of Rs.625/- per month, later enhanced to Rs.687.50 per month. The premises was let out in the year 1979 without any document.
- 2.2 Eviction petition was filed by the landlord on 19<sup>th</sup> August, 2004, under Section 14(1)(a), (b) and (j) of the DRC Act.
- 2.3 The said eviction petition was contested by the petitioner along with his deceased father by filing a joint written statement wherein, it was *inter alia* contended that father of the petitioner had never sub-let the said premises to the petitioner and the petitioner was himself an independent tenant in the said premises.
- 2.4 The eviction petition was allowed under Sections 14(1)(a) and 14(1)(b) of the DRC Act by the ARC, while it was dismissed Under The same was dismissed under Section 14(1)(j) of the DRC Act. Accordingly, an eviction order was passed under Section 14(1)(b) in favour of the landlord and against the petitioner and his father. Insofar as the relief under Section 14(1)(a) of the DRC Act was concerned, an order was passed under Section 15(1) of the DRC Act directing the respondent and his father to pay arrears of rent. Upon the payment of arrears by the petitioner, the benefit under Section 14(2) of the DRC Act was given to the petitioner.
- 2.5 An appeal was filed by the petitioner on 30<sup>th</sup> October, 2012 against the aforesaid judgment and the said appeal has been dismissed by the RCT vide impugned judgment dated 01<sup>st</sup> June, 2020.

3. Counsel for the petitioner has submitted that:
- (i) Finding of the ARC in para 9 of the order dated 20<sup>th</sup> September, 2012 that the petitioner's father did not contest the case or file any specific objections to the eviction petition filed by the landlord is wrong.
  - (ii) No document has been brought on record by the landlord to show that the shop in question was let out to the petitioner's father.
  - (iii) The landlord was throughout aware that the shop in question was in occupation of the petitioner.
  - (iv) It is clear from the various rent receipts issued by the landlord as well as the telephone records that the petitioner was in occupation of the premises.
  - (v) After the demise of the father of the petitioner, the petitioner inherited the tenancy in question so there cannot be any sub-letting.
4. On the other hand, counsel appearing on behalf of the respondent no. 1/ landlord submits that:
- (i) Petitioner was not a major in the year 1983 when he claims he was inducted as a tenant. Therefore, no valid contract of tenancy could have been created in his favour.
  - (ii) Inconsistent stands have been taken by the petitioner in different proceedings so as to continue to be in occupation of the premises.
5. I have heard the counsels for the parties and perused the orders passed by the ARC as well as the Rent Control Tribunal. It is a settled position of law that in exercise of jurisdiction under Article 227 of the Constitution of India, the scope of interference in proceedings under Delhi Rent Control Act where there are two concurrent findings of the authorities below is extremely narrow. This Court is not sitting in appeal while exercising

jurisdiction under Article 227 and therefore, cannot re-appreciate the evidence led on behalf of the parties. It is only where the findings are extremely perverse that this Court may interfere with the decision of the subordinate Court under Article 227 jurisdiction. Reference in this regard may be made to the judgments of this Court in **Nawal Kishore Vs. Mohd. Yukub**, 2017 SCC OnLine Del 12778 and **Dev Raj Vs. Saroj Singhal**, 2021 SCC OnLine Del 5492.

6. Both the courts below have passed a detailed and well-reasoned order analysing the evidence led on behalf of the parties and allowed the eviction petition. On the aspect of Section 14(1)(b), the ARC has held that even though upon the death of the petitioner's father the petitioner inherited his right in the tenanted premises, but the tenancy has to be seen from the date when the eviction petition was filed and at that point of time the petitioner's father was alive. It was further observed that since the father of the petitioner had gone abroad in 1981, he had left the possession of the tenanted premises in favour of the petitioner. Accordingly, the petition under Section 14(1)(b) of the DRC Act was allowed.

7. The aforesaid finding of the ARC has been affirmed in the impugned order dated 1<sup>st</sup> June, 2020 passed by the RCT. In this regard, reference may be made to paras 18 and 19 of the impugned order dated 1<sup>st</sup> June, 2020, which are set out below:

*“18. Further, it is uncontroverted testimony of the petitioner/landlord Raj Kumar that his father Late Sh. Chandu Lal, who had let out the premises i.e. the shop as shown in the site plan Ex. PW-1/1 to respondent no.1/deceased Vijay Kumar in the year 1979. As a matter of fact, there is no challenge to the testimony of petitioner/landlord that the premises was let out at the monthly rent of*

*Rs. 625/-. The case of the respondent no.2 (the appellant in the present appeal) that the tenancy premises was let out to him in the year 1983 is not palatable since it has come in evidence that his date of birth was 16.08.1968 and in the year 1979 as also 1983, he was minor being below 18 years of age, and therefore, the Ld. ARC has rightly observed that the tenancy could not have been created in favour of a minor as respondent no.2/appellant was not competent to enter into a contract. Moreover, it has also come in evidence that father of respondent no.2/appellant had gone abroad as per the passport shown during the trial on 07.06.1981 probably after handing over the exclusive possession of the tenancy premises in favour of his son/respondent (appellant in the present appeal). There is no iota of evidence on the record that any written consent of the landlord was taken to induct respondent no.2/appellant as sub-tenant in the premises or to part with the possession of the tenancy premises exclusively in his favour.*

19. *The plea by the ld. Counsel for the appellant that on the death of respondent no.1/father Vijay Kumar, the defect, if any, in the right of the appellant to occupy the premises goes away as he also inherited the tenancy premises right alongwith the other legal heirs is not tenable in law. The Ld. ARC has rightly observed that the issue of sub-tenancy or parting with the tenancy of the premises unauthorizedly without written consent of the landlord has to be seen and adjudged as on the date of filing of the petition, which was filed on 19.08.2004 and as on that day, the tenant viz. respondent no.1 Vijay Kumar was alive and it was the specific case of the petitioner/landlord that the father Vijay Kumar has left the tenancy premises for the exclusive use of his son i.e. respondent no.2/appellant Rajindera Kumar.”*

8. In my view, there is no perversity or illegality in the impugned orders

that warrants interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

9. Dismissed.

**AMIT BANSAL, J.**

**JANUARY 11, 2022**

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