

\$~115 (2022 Cause List)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on: 28th February, 2022

+ **CM(M) 189/2022**

SHRI MUKESH KUMAR Petitioner
Through: Mr. S.C. Singhal, Advocate.

versus

SMT KAMLESH DEVI & ANR. Respondents
Through: Mr. Pradeep Kumar, Adv. for
R-1.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CM APPL. 10363/2022(exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 189/2022 & CM APPL. 10362/2022(stay)

1. By way of this petition under Article 227 of the Constitution, the petitioner assails an order dated 21.10.2021 passed by the Rent Control Tribunal, being the Principal District and Sessions Judge, West District, Tis Hazari Courts, Delhi [hereinafter, "the Tribunal"] in RCT No. 12/2019 [*Smt. Kamlesh Devi vs. Shri Sri Ram Jindal & Anr.*]. By the impugned order, the Tribunal has allowed the appeal of the defendant no. 1 herein, against an order of the Additional Rent

Controller [hereinafter, “ARC”] dated 08.02.2019, by which her application under Order IX Rule 13 of the Code of Civil Procedure, 1908 [hereinafter, “CPC”] was dismissed.

2. The petitioner and the respondent no. 2 herein [hereinafter, “landlords”] filed eviction proceedings against the respondent no.1 herein [hereinafter, “tenant”] on 21.01.2011 under Section 14(1)(h) of the Delhi Rent Control Act, 1958 [hereinafter, “the Act”] in respect of the suit property [WZ-1393, Nangal Raya, New Delhi] [hereinafter, “the suit property”]. The landlords claimed that the tenant was in possession of the suit property at a rent of ₹1,400/- per month which had not been paid since 01.06.2005. They also claimed that she had acquired vacant possession of another property.

3. The eviction proceedings were proceeded *ex-parte* against the tenant, recording that she had failed to appear despite service of summons. After examination of the petitioner, the Trial Court allowed the eviction petition under Section 14(1)(h) of the Act, by a judgment dated 30.04.2012.

4. The tenant filed an application under Order IX Rule 13 of the CPC on 29.08.2012. In the application, she claimed that she was not served with the notice of the petition. She also contended that the proceedings were transferred from one Court to another after issuance of notice, but the transferee court had not issued any notice of hearing. In support of the first ground, the tenant claimed that on 28.01.2011, when she was shown to have been served with the summons, she was not available at the suit property as she was attending the offices of BSES Ltd. [*electricity distribution company*] in connection with her

electricity connection. She referred to orders passed in another suit between the same parties.

5. In the application under Order IX Rule 13 of the CPC, the ARC examined the tenant as well as the record clerk from the office of BSES Ltd., on behalf of the tenant. The father of the petitioner herein was examined on his behalf.

6. The ARC dismissed the application by an order dated 08.02.2019, holding that sufficient time had been granted to the tenant for filing of the reply and she was, therefore, rightly proceeded *ex-parte*. The learned ARC also found material contradictions in the testimony of the tenant as to the timing of her visit to the two offices of BSES Ltd. [*in Janakpuri and Andrews Ganj*] and therefore came to a conclusion against her on facts.

7. In appeal under Section 38 of the Act, the learned Tribunal has reversed the view taken by the ARC on both points.

8. The reasoning of the Tribunal on the question of transfer of proceedings is as follows:-

“15. A bare perusal of the aforesaid provisions would show that in case of an ex parte decree or order, the applicant has to satisfy that the summons were not duly served or that one was prevented by any sufficient cause when the case was called for hearing. In the instant matter, the first blemish that occurred on the part of the Ld. ARC was that on filing of the Eviction petition on 21.01.2011, notice was ordered to be issued on filing of PF and RC for 08.03.2011. A perusal of the Trial Court Record would show that process fee was filed on the same day and the summon was shown to have been served upon the appellant/tenant on 28.01.2011, which summon is Ex. PW-1/2. First thing first, contrary to order dated 21.01.2011, the summons were not issued by registered

post AD. Secondly when the matter came up for hearing on 08.03.2011, it is admitted that the matter was transferred to another Court and the Ld. Transferee Court recorded that "no one was present for the respondent/tenant despite due service" and adjourned the matter in a mechanical manner for 18.04.2011 ignoring that notices/summons were not issued by registered post AD and no attempt was made to examine the Process Server."

Relying upon the authorities on this point, the Tribunal has held that the tenant ought to have been issued notice by the transferee court.

9. On the question of service of summons, the Tribunal held that the ARC has erred in emphasizing the inconsistencies in testimony of the tenant as to the timings of her visits to the two offices of the BSES Ltd. The Tribunal's observations in this regard are reproduced below:-

"18. Secondly, the approach of the Ld. Trial Court in finding inconsistencies in the testimony of AW-1 does not appear to be fair, reasonable and rather inhuman. AW-1 categorically deposed that on 28.01.2011, she ran to and fro to the BSES offices at Janakpuri and Andrews Ganj. It does appear that the testimony of AW-1 with regard to her visits to the two offices is inconsistent as to time of her visits but what she has been able to demonstrate is that she was at the office of BSES, Andrews Ganj at 11.05 a.m. as corroborated by RW-2. Taking judicial cognizance of the fact that the distance between the two offices would be more than 20 Kms., it would be too much to expect from an old lady like the present appellant to meticulously remember the timings of her visits to such offices. AW-1 was examined almost after three years of the incident in the Court on 25.10.2013 and later on 16.01.2014. At the cost of repetition, her testimony read as a whole clearly brings out that right from the morning till evening, she was totally engrossed in clearing the pending bills with the BSES and getting her electricity connection restored.

It goes without saying that she was doing so pursuant to order dated 25.01.2011 passed by Mr. Sanjay Sharma, the then Ld. Addl. SCJ, Delhi whereby the NOC from the landlord for availing electricity connection was dispensed with.”

10. Having heard Mr. S.C. Singhal, learned counsel for the petitioner, and Mr. Pradeep Kumar, learned counsel for the tenant, I am of the view that the view taken by the Tribunal does not warrant any interference under Article 227 of the Constitution. The scope of supervisory jurisdiction of this Court is limited to correction of jurisdictional errors or cases where a view taken by the court or tribunal is perverse, in the sense that no reasonable court could have taken the same view. In the context of an order allowing an application under Order IX Rule 13 of the CPC, the Supreme Court, in the recent judgment of *Garment Craft vs. Prakash Chand Goel*¹ has *inter alia* held that the High Court should interfere only in very limited circumstances:-

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the

¹ 2022 SCC OnLine SC 29 [judgment dated 11.01.2022 arising out of S.L.P. (C) No. 13941 of 2021]

*inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when 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 that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in *Estralla Rubber v. Dass Estate (P) Ltd.*² has observed:—*

“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.”

11. The present case does not in my view, fall within these narrow parameters laid down by the Supreme Court. The view taken by the Tribunal is based upon an assessment of the evidence before it. The conclusions reached by it do not appear to me to be perverse or manifestly unreasonable. On the question of service of summons, the Tribunal has come to a clear conclusion that the findings of the ARC rejecting the tenant's testimony were unjustified. The Tribunal has further found that summons were not served by registered post as directed, and that the transferee court did not issue notice to the tenant at all. Such matters are well within the jurisdiction of the Tribunal, and do not call for interference of this Court under Article 227 of the Constitution.

12. On a jurisdictional point, Mr. Singhal submits that in paragraph 19 of the impugned order, the Tribunal has made certain observations with regard to the merits of the matter which were unwarranted in the context of an application under Order IX Rule 13 of the CPC. Mr. Kumar, however, does not dispute that upon the matter being taken up by the ARC pursuant to the impugned order, the ARC would have to take an independent decision on the basis of the evidence and would not be influenced by the observations of the Tribunal in the impugned order. It is so directed.

13. For the reasons aforesaid, I do not find any ground for interference with the order of the Tribunal in the present case. The

petition, alongwith pending application, is therefore dismissed, with the aforesaid observations.

PRATEEK JALAN, J.

FEBUARY 28, 2022

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HIGH COURT OF DELHI



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