

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

CM(M) No.706/2010

Date of Decision: 08.08.2012

ARJUN SINGH Petitioner
Through: Mr. B.R. Kaushik, Adv.

Versus

MS. SARITA RATHORE Respondent
Through: Mr. Narender Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. The present petition has been preferred under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure (CPC) challenging the order dated 10.03.2010 passed by Id. District Judge/ ARCT , wherein the eviction order dated 11.08.2009 passed by the Id. ARC was set aside.

2. The petitioner had filed eviction petition no. E- 73/2008 against the respondent/tenant under Section 14 (1) (a) of the Delhi Rent Control Act (DRCA) in respect of first floor of house no. 17, Janta Flats, GTB Enclave, Nand Nagri, Delhi (suit property) on the ground that the premises were let out to the respondent/tenant at the rate of 1200/- p.m. in the year 1994 and he had not paid arrears of rent w.e.f. 01.01.1996 till the filing of eviction petition despite service of notice dated 07.07.2005. In the written statement filed on behalf of the tenant, it was alleged that he had taken the first floor as well as the second floor of the suit property on a monthly rent of Rs. 500/- p.m. on 05.01.1995, which was increased to Rs. 700/- p.m. on 01.01.1999. It was further alleged that the petitioner tried to dispossess the respondent/tenant and her family in February 1999 from the suit property and he was constrained to file a suit for permanent injunction against the

petitioner, wherein the petitioner gave an undertaking that he will not dispossess him from the suit property without due process of law.

3. Vide order dated 05.03.2009, the Id. ARC passed an eviction order against the respondent/tenant under Section 14 (1) (a) of DRCA. This order was challenged by the tenant vide appeal no. 20/2009. While disposing off the appeal, the Id. trial Court observed that the eviction order was passed in respect of part premises and could not be sustained and consequently eviction order dated 05.03.2009 was set aside and matter was remanded back to trial Court to decide the issue that whether the respondent was a tenant in respect of second floor of the suit property or not. The petitioner had also filed a suit for possession and Permanent Injunction under Section 6 of the Specific Relief Act, submitting that the respondent has wrongfully encroached upon second floor of the property. In the said suit, the Id. Civil Judge had come to the conclusion that the petitioner had not been able to prove that the respondent was not a tenant of the second floor of the property. This finding of the Id. Civil Judge was not challenged and hence became final. Thereafter, the Id. trial Court relying upon the findings of the Id. Civil Judge, observed that the petitioner had only claimed eviction in respect of first floor of the suit property and since no relief was claimed in respect of the second floor of the property, same could not be granted. Consequently, the eviction order in respect of only first floor of the suit property was granted by the Id. trial Court vide order dated 11.08.2009.

4. The respondent/tenant appealed against the said order of eviction in respect of first floor of the suit property; on the ground that eviction order cannot be passed in respect of part of the tenanted premises, more so when the rent of both the floors was being paid to the petitioner in consolidated form. The appeal was allowed by the Id. District Judge/ ARCT vide the impugned order.

5. The impugned order has been challenged by the petitioner/landlord on the ground that it is illegal and without application of mind and is liable to be set aside. It has been further submitted that the eviction order was rightly passed by the Id. trial Court due to non-payment of rent by the respondent.

6. The burning issue during the spate of litigations between the parties was the position of the respondent in respect of the second floor of the suit property. This issue was settled during the proceedings before the Id. Civil Judge, wherein it was concluded that the petitioner was unsuccessful in

proving the allegation that the respondent was not a tenant, but a trespasser in respect of the second floor of the suit property. This finding, not being challenged by the petitioner, attained finality and cannot be looked into again. The perusal of the eviction petition filed by the petitioner also proves conclusively that eviction was sought only with regard to the first floor of the suit property. The only question that now remains for adjudication is that whether the eviction order set aside vide the impugned order was sustainable or not.

7. It is settled legal position that an eviction order cannot be passed in respect of part premises. Admittedly, the rent in respect of both the floors was also tendered collectively by the respondent. There is no provision in law that permits partial eviction of the tenant. In view of the fact that the petitioner had claimed relief in respect of only first floor of the suit property, I am of the considerate opinion that the order of eviction dated 11.08.2009 passed by the Id. ARC, was contrary to the settled legal parameters and was rightly set aside vide order dated 10.03.2010 .

8. I find no illegality or impropriety in the impugned order. The petition being without any merit is hereby dismissed.

Sd/-
M.L. MEHTA, J.

August 08, 2012