

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

RC.REV. No. 338/2011

DATE OF DECISION : 10th December, 2014

KANCHAN KAPOOR & ORS.

.....Petitioners

Through:

VERSUS

SARWAN KUMAR

..... Respondent

**Through: Mr. Vijay Gupta and Mr. Mehul Gupta, Adv. for
applicants/respondents.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

**Review Petition No. 544/2014 (U/o 47 Rule 1 & 2 CPC, Section 114 CPC by
respondent) & CM No. 20265/2014 (exemption)**

1. This rent control revision petition was decided by a detailed judgment on 17.11.2014 allowing the petition and setting aside the impugned judgment of the Additional Rent Controller dated 4.6.2011 which had rejected the leave to defend application filed by the petitioners/tenants. By the judgment dated 17.11.2014, the leave to defend application was allowed and since the petitioners in the revision petition i.e the tenants were evicted in execution of the judgment dated 4.6.2011 which was impugned in the petition, the petitioners before this Court were directed to be put in possession by the judgment dated 17.11.2014 pursuant to the setting aside of the judgment dated 4.6.2011.

2. The issue which was argued before this Court at the time of disposal of the Rent Control Revision Petition by the judgment dated 17.11.2014 was whether the respondent/review petitioner/alleged landlord was the owner of the tenanted premises so as to be entitled to file the eviction petition. Parties were heard at length as to whether the respondent in this Court was the owner and landlord of the property. Review petitioner/respondent claimed

title on the ground that he was a servant of the owner Smt. Vidyawati and who had executed a Will dated 17.3.1988 in favour of the respondent.

3. The judgment dated 17.11.2014 specifically refers to Section 50 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') which states that questions as to title i.e questions as to ownership of a tenanted property are no doubt decided by the rent control authorities under the Act, however finality with respect to questions of title can be and only are decided by the civil courts. In the present case, in a civil suit between the parties, the civil court had held that the review petitioner/respondent was not the owner of the property. The detailed findings of the civil court running into about four pages have been reproduced in the impugned judgment dated 17.11.2014. The judgment of the civil court was dated 16.3.2011 and in the civil court proceedings/suit the issue of ownership was issue no.2, and this issue was decided by holding that the review petitioner/respondent was not the owner of the suit property. Para 5 of the judgment dated 17.11.2014 passed by this Court reproduced the verbatim findings of the civil court as regards the issue no.2 decided by the civil court.

4. At the outset, I would like to mention that there is a growing tendency among the litigants and certain lawyers to treat a review petition as if an appeal is being filed before the same court to question the validity of a judgment passed by the Court. It is trite that a judgment, if the same as per which a litigant is 'wrong', then, the same has to be a subject matter of challenge in a higher court and a judgment can be applied for being reviewed before the same Court only and only on the limited ground that there exists an error apparent on the face of the record. The object of a review petition is not to keep on rearguing a case much less by arguing the same thing as was argued when the judgment was passed, by using different words or different forms of the same argument. Surely litigants and certain advocates must understand that there is a concept known as finality of decision so far as a particular court is concerned.

5. Also, I would like to note at this stage the demeanour of counsel for the review petitioner, who inspite of being sufficiently heard on the limited issue in a review petition qua the applicability of Section 50 of the Act which has been dealt with in detail in the impugned judgment dated 17.11.2014 sought to be reviewed, and in fact which was the only/main issue dealt with in the judgment dated 17.11.2014 of which review is applied for, repeatedly states that this court has not 'heard' him and that this Court must

refer to various judgments cited for the first time today. These judgments hold that in the proceedings under the Act, what has to be only seen is that a landlord must have a title better than the tenant. There obviously is no dispute as to the proposition of law laid down by the Supreme Court in its judgment in the case of Shanti Sharma & Ors. Vs. Ved Prabha & Ors. AIR 1987 SC 2028 as also a catena of judgments which lay down the same ratio, however, that was not the issue in the RCR petition no. 338/2011 decided by the judgment dated 17.11.2014 and the issue was that the rent control authorities under the Act for deciding the cases of eviction filed under Section 14 of the Act only take an initial view of title and existence of relationship of landlord and tenant between the parties so as to assume the jurisdiction and decide proceedings under the Act, however, by virtue of Section 50 of the Act the decision of the rent control authorities under the Act with respect to questions of title of the property is not final and what is final is the decision of a civil court on the question of title. The issue of title in this case was decided against the respondent in the civil suit between the parties decided on 16.3.2011 as stated in the judgment dated 17.11.2014 which is sought to be reviewed.

6. Counsel for the review petitioner in spite of not being required to be heard on this review petition as if he can re-arrange the case afresh, and which are only re-arguments on the same points which were argued and dealt with in the judgment dated 17.11.2014, kept on insisting that he is not being heard and therefore this Court really fails to understand the irresponsibility of the advocates in stating that they are not being heard. Hearing is facts and cases specific. In certain cases a limited hearing has to be granted whereas in other cases medium hearing is granted and then in some other cases a long hearing has to be granted. Counsels cannot insist that in every case they must be heard at length although the same is not within the parameters of the proceedings which are coming up for decision before the courts viz a review petition.

7. In view of the above, the review petition is wholly misconceived, wastage of judicial time and an abuse of the process of the law, inasmuch as, the review petitioner/respondent cannot in the guise of a review petition seek to reargue the issue which was the only issue already argued and decided by this Court when the judgment was passed on 17.11.2014 being that the civil court's judgment between the parties to the present petition binds the parties in view of Section 50 of the Act and which judgment of the civil court held that the review petitioner/respondent is not the owner of the suit property.

Once the respondent is not the owner, then surely he cannot be an owner for the purpose of Section 14(1)(e) of the Act.

8. In view of the above, the present petition is dismissed with costs of Rs.75,000/- which shall be deposited with the Delhi High Court Legal Aid Service Committee within a period of four weeks from today. I am forced to impose costs not only because of the frivolous nature of the review petition filed but also because in spite of understanding the issue as regards the limited parameters of a review petition and thus the limited nature of the hearing to be granted, counsel for the review petitioner/respondent has unnecessarily made uncalled for statements of his not being 'heard'.

List before the Registrar General for compliance of the order of deposit of costs on 14th January, 2015. If costs are not deposited within a period of four weeks, then the Registrar General can initiate proceedings to recover the same as arrears of land revenue so that the same are deposited with the Delhi High Court Legal Aid Services Committee.

DECEMBER 10, 2014

Sd/-
VALMIKI J. MEHTA, J.