

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

**SUBJECT : CODE OF CIVIL PROCEDURE**

Date of Judgment: 10.02.2012

CM(M) 1441/2011 & CM Nos. 22478-479/2011 and

CM (M) 118/2012 & CM Nos. 1793-94/2012

**GYANENDER KUMAR VERMA & ANR** ..... Petitioners  
Through Mr. Prem Kumar, Mr. Surjeet Singh, Mr. Rakesh Kumar and  
Ms. Pooja Singh, Adv.

versus

**KAILASH CHAND JAIN & ORS** ..... Respondents  
Through None.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J. (Oral)**

1. Vide two orders of even date 02.07.2011, the Additional Rent Control Tribunal (ARCT) had disposed of three applications filed by the present petitioner. First two applications had sought initiation of the contempt proceedings and perjury against the non-applicant i.e. Kailash Chand Jain and the third application was filed by the petitioner under Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code') seeking a prayer to the effect that the order dated 21.02.2007 as also the subsequent order dated 26.03.2007 passed in pending eviction proceedings under Section 14(1)(b) of the Delhi Rent Control Act (DRCA) be dismissed; contention in this application was that there was a fraud which had been played upon the petitioner and since all proceedings get vitiated if fraud is proved, the impugned order dated 21.02.2007 as also the subsequent order of the Additional Rent Controller (ARC) dated 26.03.2007 are non-est and are liable to be set aside.

2. Record shows that an eviction petition has been filed by the landlord-Smt. Rajpati under Section 14(1)(b) of the DRCA. Contention was that the tenant-Smt. Sharbati Devi had sub-let the disputed premises in favour of Smt. Shakuntla Devi; premises comprise of a shop bearing municipal number 1793 situated at Dariba Kalan, Chandni Chowk, Delhi. On 09.07.2001, the eviction petition was decreed in favour of the landlord. The appeal was dismissed on 22.10.2001. In second appeal, vide order dated 30.05.2003 passed by the High Court, the matter was remanded back to the ARC to decide the dispute afresh. Certain observations made by the High Court in its order dated 30.05.2003 have been highlighted i.e. at para 14 (page 54) of the paper book. Contention of the petitioner is that the High Court even at that stage had noted that there was a possibility of the landlady having exploited the situation of the estranged relationship between the alleged tenant and sub-tenant. On 21.02.2007 after the direction of remand, the eviction petition was again decreed in favour of the landlady. An appeal was filed before the RCT which is yet pending adjudication.

3. The aforementioned three applications had been filed in the proceedings pending before the RCT. The two applications filed by the petitioner seeking initiation of contempt and perjury against the non-applicant have been disposed of on 02.07.2011. The contention of the petitioner before this court is that there are certain discrepant statements which had been made by the landlord which are to the effect that although in the site plan the disputed premises have been described as a shop without a chabutara yet thereafter the demised premises have been admitted to be a shop with a chabutra; contention being that these are false statements which have been made by the petitioner in judicial proceedings which having qualified as a "false statement" on oath falling within rigours of Section 191 of the Indian Penal Code (hereinafter referred to as 'IPC'), the offence became punishable under Section 193 of the IPC and RCT refusing to take cognizance of the perjury committed by the landlord as also not having initiated contempt proceedings against the landlord in such a scenario has committed an illegality.

4. Vehement arguments have been addressed at length to substantiate this submission. Contention of the petitioner before this court is that fraud vitiates all proceedings and if any proceedings before a court of law are qualified by a fraud the entire proceedings would become non-est having no value in the eyes of law; in these circumstances, impugned order rejecting the application filed by the petitioner suffers from an infirmity as the averments made by the landlord in his eviction petition and thereafter in his

replication as also in the reply to the application under Section 44 of the Said Act clearly show that there is an admission on his part about the existence of the chabutara in or abutting the tenancy premises and for this purpose attention has been drawn to the relevant extracts of the eviction petition, the replication and the pleadings in the application under Section 44 of the Said Act.

5. Learned counsel for the petitioner has placed reliance upon the judgment reported in (2012) 2 SCC 60 titled as Iqbal Singh Narang and Ors. vs. Veeran Narang to substantiate his submission.

6. These vehement submission advanced by the learned counsel for the petitioner have been dealt with in depth and detail by the RCT as also reasoned findings returned thereupon. The relevant extracts read as follows:-

“5. In para8 of the eviction petition, the respondent No.1 described the tenancy premises as follows :

“One shop measuring 8 x 3 feet as shown in red in the plan attached.”

In corresponding para of the amended written statement filed by the appellant, appellant averred as under :

“Allegations in para 7 of the petition are wrong and denied. Correctness of the plan alleged to have been filed by the petitioner is denied. The answering respondent is filing correct plan of the premises. The measurement of the disputed shop is 8'6” x4' and the height is 7 feet. In front of the shop there is a chabutra measuring 2'00” in width towards the bazar. Above the shop there is a mezzanine of the same size with a height of 7'6”.

In the corresponding para8 of the amended replication, the respondent No.1 averred as follows :

“In reply to paragraph No.8 of the written statement, it is submitted that the petitioner has no objection in the plan of the respondent being taken as a correct plan.”

6. In para7 of the application filed by the appellant under Sec.44 of 'the said Act' before this Tribunal, it is averred/stated as follows :

“That the premises comprise a portion measuring 8'.6” x 4' x 14'.6” consisting of shop portion, mezzanine measuring 8'.6” x 4' x 7'.6” with an abutting pucca chabutra measuring 8'.6” x 2'. At the height of 8'.4” there are

two pucca slabs each measuring 5'.10" x 4' and 1.5' x 4' in the mezzanine. The appellants/their predecessors in interest have been continuously running their family business from the said premises since 1930 by raising wooden structure covering both the side walls and also the corresponding portions of the chabutra. (The said premises including the wooden structure raised thereon are more particularly described in the site plan filed herewith as Annexure A). The respondent No.1 had in his eviction petition omitted the existence of chabutra, but on pointing out this omission, willful or otherwise, the Respondent No.1 in response to para 7 of the written statement admitted in para 7 of his replication that the premises comprise not only the shop but also the chabutra."

In the corresponding para of the reply, the respondent averred/stated as follows :

"Para 7 of the application is wrong and is denied. The respondent No.2 was the tenant in respect of shop a shown in the plan annexed with the petition. The alleged plan is not correct as per the spot. There is no Chabutra in front of the shop. The present application has been filed with malafide intention to construct a Chabutra under the guise of repairs. The shop does not require any repairs."

7. The pleadings of the parties in the eviction proceedings before the Ld. Addl. Rent Controller ipso facto do not suggest unequivocal admission as regards the description of the tenancy premises. Merely because the respondent No.1 in replication stated that the plan of the appellant (respondent in the eviction proceedings) may be taken as correct, it cannot be construed to mean that there is an unequivocal admission of fact as regards the the existence of chabutra in or abutting the tenancy premises. By such averment, I consider, the respondent No.1 left the subject to be considered by the Ld. Addl. Rent Controller. The impugned eviction order passed by the respective Ld. Addl. Rent Controller is as per the site plan filed by the respondent No.1 and not the appellant. In other words, the correctness of the site plan of the tenancy premises filed by the petitioner is accepted by the Ld. Addl. Rent Controller. Such site plan of the tenancy premises has no reference to any chabutra either abutting or forming part of the tenancy premises. In this background, in my considered view, the averment/statement made in the reply to the application filed by the appellant U/s 44 of 'the said Act' that the plan of the appellant is not correct as per the spot and that, there is no chabutra in front of the shop and the

application is filed with a malafide intention to construct a chabutra under the guise of repairs, by itself cannot be construed to be a false statement. Even otherwise, such statement in the reply refers to the then factual status and not the past. Was the chabutra actually in existence on the date of filing of 'the said application' by the appellant or on the date of filing of the reply thereto by the respondent No.1, there is no material on record. Needless to say, the eviction petition was filed in the year 1982 and the amended written statements filed in 1983/1985. Statement of the respondent in the reply denying the existence of chabutra in the year 2005 in the absence of any material contrary thereto, is not sufficient to say that the respondent made any patently false statement. Then, assuming, there was a factually false statement as regards the existence of any chabutra forming part of the tenancy premises, there is nothing on record to show that by any such alleged false statement, the respondent No.1 took any advantage. Needless to say, 'the said application' came to be withdrawn by the appellant herself since after the reply filed by the respondent No.1 and no application for the same or similar relief, ever came to be filed thereafter, at least none is pointed out. When that is so, it cannot be said that there was any obstruction in the administration of justice. No doubt, filing of false affidavit is reprehensible and condemnable, the Court cannot remain oblivious of the fact that judicial hypersensitiveness is equally not warranted in each and every case. Reliance placed upon 1995 RLR 295 (SC) Dhananjay Sharma Vs. Haryana State & Anr. and AIR 2000 RLR 124 (SC) Murray & Co. Vs. Ashok Kumar Nevetia by the Ld. Counsel for the appellant, in the given facts and circumstances of the case, is therefore, wholly misconceived. In Dhananjay Sharma's case (supra), the police officers were held guilty of contempt, as they had made one detenu to file a false affidavit in their support. In Murray's case (supra), by filing an undisputed false affidavit, an attempt was made to delay delivery of possession of property. Facts and circumstances of the said cases are at much variance and quite distinct. Keeping in view the totality of the facts and circumstances, I do not find any merit in any of 'the subject applications'."

7. The RCT had examined the site plan as also the averments made by the landlord in his eviction petition as also in his reply filed by the landlord to the pending proceedings under Section 44 of the Said Act; the intention on the part of the landlord who had allegedly made a "false statement" which is the necessary ingredient for an offence to be punishable under Section 193 of the IPC was clearly not made out and rightly so. It is also not the case of the petitioner before this court that by making any such allegedly

false statement the landlord has taken any advantage of this statement; impugned order has correctly noted that in these circumstances the offences as proposed to have been committed made by the petitioner i.e. an offence of perjury and contempt are not made out; intent is the necessary ingredient which was clearly absent in this case.

8. Impugned order thus declining to initiate perjury or contempt proceedings against the tenant in no manner suffers from any infirmity.

9. The impugned order had also dismissed the third application filed by the tenant under Section 151 of the Code on the aforementioned submissions noted by it. This was also rightly so. The RCT having correctly drawn a conclusion that since perjury and contempt cannot be initiated against the tenant for the aforementioned reasons; the question of a fraud having being played upon the tenant by the landlord in this scenario did not arise. The third application of the landlord was in fact bordered on the submission that a fraud has been committed by the tenant upon the landlord because of his mis-statement pursuant to which eviction order dated 21.02.2007 and the subsequent order of review dated 26.03.2007 are non-est and void. This submission now urged can be taken up a ground of appeal before the RCT and if the petitioner is aggrieved by the findings of the ARC which as per him are not evident from the record, the tenant is at liberty to take up this as a ground of appeal before the RCT. This submission made in the present application does not by itself qualify to be a fraud permitting the court to set aside the eviction order dated 21.02.2007 and subsequent order dated 26.03.2007.

10. The present petitions are clearly an abuse of the process of the court and wastage of its precious time; both these petitions are dismissed with respective costs of ` 5,000/- each to be deposited with the Delhi High Court Legal Service Committee.

Sd/-  
INDERMEET KAUR, J