

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

**SUBJECT : DELHI RENT CONTROL ACT**

Date of Judgment: 27.01.2012

CM (M) No. 107/2012, CAV No.92/2012 & CM Nos.1660-62/2012

**HARSH TALWAR**

..... Petitioner

Through: Mr. Sanjiv Kakra, Advocate.

versus

**RANI GADHOKE DECD. THROUGH LRS**

.... Respondent

Through: Mr. Sanjeev Sindhwani, Adv.

**CORAM:**

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

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

1 Order impugned before this Court is the judgment of the Additional Rent Control Tribunal (ARCT) dated 20.10.2011 which in an appeal under Section 38 of the Delhi Rent Control Act (DRCA) had endorsed the finding of the Additional Rent Controller (ARC) dated 19.04.2008 wherein the eviction petition filed by the landlord namely Rani Gadhoke (through legal representatives) and others seeking eviction of the tenant Harsh Talwar from the second floor of property No. 44, Ring Road, Lajpat Nagar, ITI, New Delhi on the grounds contained in Section 14 (1) (c), (d) & (h) of the DRCA had been decreed.

2 Record discloses that the eviction petition had been filed by the landlord under the aforementioned provisions of law as also the ground (k) under Section 14 (1) of the DRCA but the said provision is not relevant for the controversy in dispute before this Court. Eviction petition discloses that the premises had been let out to the respondent for a residential purpose; neither the respondent and nor his family is residing in the premises since the last two years; they have shifted their residence to property No. 90, Panchsheel Park, New Delhi; the tenant has also acquired another premises; premises

are being misused as the premises had been let out for a residential purpose but are being used for a commercial purpose. The tenant had been asked to stop the misuse by a legal notice dated 24.07.1980 but inspite of service of the said notice, the respondent had not stopped the misuse. He is using it in a manner contrary to the purpose for which it has been let out and against the bye-laws of the MCD. A second notice dated 31.12.1998 was also served upon the tenant. In the eviction petition, it has further been contended that the barsati floor does not have any separate electricity meter; it is connected with the ground floor.

3 Written statement was filed. It was denied that the premises were being put to misuse; contention of the tenant was that the premises had been let out for commercial purpose only and this was well within the knowledge of the tenant and there has been a continuous user of the premises in the same manner i.e. a commercial purpose; case for misuse is not made out. Admittedly from the ground floor a proprietorship firm under the name and style of M/s Yak International + CIE is being run; contention of the tenant being that the landlord had let out these premises i.e. second floor later in time from the ground floor; the ground floor tenancy had been created in favour of the tenant on 01.01.1978; it was a tenancy created under Section 21 of the DRCA; the present tenancy on the second floor had been created in April, 1978 for a distinct purpose which was for a commercial use; grounds under Section 14 (1)(c),(d) & (h) are not made out. Further contention of the tenant was that admittedly the landlord has service a legal notice for misuse upon the tenant as way back on 24.07.1980 and the eviction petition having been filed on 08.04.1998 i.e. after a lapse of almost 19 years shows that the landlord had impliedly consented to the user of the said premises for a commercial purpose; the landlord has now no right to agitate this issue as he has slumbered over this right, if any, since the last 19 years; the impugned judgment is liable to be set aside.

4. Oral and documentary evidence was led by the respective parties. There was one witness produced on behalf of each party. The landlord AW-1 had reiterated his averments on oath in Court. RW-1 had filed his affidavit dated 14.11.2007. Paragraph 6 is relevant for the controversy in dispute; it reads as under:-

“6. That since the relationship between the landlord and the dependent was extremely good and the deponent required extra accommodation. He requested the then landlord S.R. Gandhoke to let out the second floor including two site terraces on the second floor and a terrace/roof top floor of

the property bearing No. 44, Ring Road, Lajpat Nagar-III, New Delhi. The oral tenancy was created in favour of M/s. Yak International + CIE which is a proprietary concern of the respondent and the premises were given for commercial purposes as the deponent required the same for use of only commercial purpose. The very fact that there is no kitchen on the second floor, no wardrobe/wooden almirah, showcase etc. shows that the premises was let out only for commercial purposes. It is further stated that in the suit premises there is a provision of wooden racks for storing files, all other articles required for commercial activities.”

5. The language used in this paragraph has been highlighted by learned counsel for the respondent/landlord to substantiate his submission that even the tenant in this paragraph has admitted that the premises i.e. second floor had been let out to him as an extra accommodation meaning thereby that the ground floor which was admittedly a tenancy created in favour of the tenant under Section 21 of the DRCA and the second floor was an extra accommodation which added to it and it was thus clearly a letting for a residential purpose. This submission of learned counsel for the respondent has considerable force. This is especially so that it keeping in view the pleadings and the evidence led between the parties which has been interpreted in the correct perspective by the Court below.

6. Admittedly this was an oral tenancy which had been created; there was no documentary evidence on either side which could be adduced in support of their respective case. Record shows that in the legal notice dated 24.07.1980, a specific plea had been made by the landlord that the premises had been let out for a residential purpose but it was being used for a commercial purpose; receipt of this legal notice is not denied. No reply has been filed to this legal notice. A second legal notice was issued by the landlord on 31.12.1998 to which a reply had been filed disputing its contents. It was at this stage that the tenant had taken up the plea that the premises had all alone been let out for a commercial purpose; this was in fact within the knowledge of the landlord himself; had it not been so, the creation of tenancy for the second floor would have also been a tenancy under Section 21 of the DRCA. It had further been contended that it is also admitted by the landlord that NBCC who was the earlier tenant in the said premises was also using these premises for a commercial purpose.

7. The last contention of learned counsel for the petitioner shall be dealt with in the first instance. Admittedly the NBCC had taken these entire

premises i.e. the ground floor, first floor and second floor of 44, Ring Road, New Delhi. Contention of the landlord is that these premises had been let out for residential purpose but the NBCC was using it for commercial purpose; which was a misuse; this was a tenancy for one year and NBCC had thereafter vacated the premises. Thereafter the tenancy of the ground floor and the first floor was created by the landlord admittedly under Section 21 of the DRCA which was for a residential purpose. Both the courts below had considered the evidence adduced before it and had held that the tenancy created of the second floor was an extra/extended accommodation; the word 'accommodation' also carries a mileage; the extra accommodation would necessarily be an extension of accommodation which was already available with the tenant which was admittedly the ground floor. It is an admitted fact that this tenancy of the ground floor was entered into on 01.01.1978 and within two months i.e. in March-April, 1978, the second floor/barsati had also been let out to the tenant. RW-1 in his cross-examination has also admitted that he has no documentary evidence to show that he is carrying out his business from the second floor; his contention that there was separate electricity and water bills issued for these premises is not substantiated as the only electricity bill produced were for the periods which were post litigation i.e. of 2003 and if his contention that right from the inception, the second floor was being used for a commercial purpose having a separate electricity connection, nothing prevented him from filing documents for this period which was from March-April 1978. RW-1 has also admitted in his cross-examination that in all the advertisements issued by his company, the address does not show it as the barsati floor. Both the Courts below in this scenario had correctly noted that the tenancy of the second floor is only an extension of the accommodation of the ground floor and since the ground floor was admittedly let out for a residential purpose; the present letting was also residential. This finding cannot be faulted with. Even in the grounds of appeal filed by the tenant before the RCT (para 15) show that the contention of the tenant is that the premises had been let out by the landlord for a residential purpose but they were being misused by the NBCC. It was in these circumstances, that landlord had hereinafter for the subsequent tenancies thought it fit to create a tenancy under Section 21 of the DRCA which he had done for the ground floor and the first floor; and the second floor being only an extension of accommodation of the ground floor (which was a creation within two months) was also a letting for residential purpose.

8. Record further shows that the ground floor of the premises had not been vacated by the tenant; an eviction petition had been filed to which the

objections had been filed by the tenant in 1980. The matter reached the High Court and then to the Apex Court; the Supreme Court on 08.06.1998 had finally dismissed the appeal of the tenant and the tenant pursuant to the orders of the Supreme Court has since vacated the suit premises. Certain dates would be relevant in this context. Present eviction petition qua the second floor had been filed on 08.04.1999. This was preceded by a legal notice dated 31.12.1998. All this was within a short span of dismissal of the SLP of the tenant on 08.06.1998; contention of the landlord that since the tenancy created of the second floor was a continuation of the tenancy of the ground floor and since the ground floor of the suit premises was vacated only after the SLP had been dismissed on 08.06.1998 immediately thereupon the present legal notice dated 31.12.1998 was served upon the tenant asking him to vacate this property. This explanation furnished by the landlord is plausible and accepted by both the two courts below. There is no reason as to why this Court should interfere with such a reasoned finding as is vehemently contended by learned counsel for the petitioner.

9. This Court is sitting in its power of superintendence under Article 227 of the Constitution of India and unless and until a flagrant injustice or manifest illegality has been committed by the two courts below, powers of interference are limited. The Apex Court in *Waryam Singh Vs. Amarnath* AIR 1954 SC 215 a judgment of the Constitution Bench has laid down the guidelines which were to be followed by the High Courts in exercise of its powers of superintendence. This Court is not an appellate forum. Merely because another view than the view taken by the court below is a possible view, the High Court may not interfere in its powers of superintendence. No patent illegality has also been pointed out by learned counsel for the petitioner. In this background, the impugned judgment does not call for any interference.

10. The last contention of the petitioner that acquittal of the accused in prosecutions which had been launched against him under Section 29 (2) of the DDA Act also show that the premises were in fact being used for a commercial purpose right from the inception i.e. from 1962 is a submission without force. It has also been dealt with by the two courts below. An acquittal in a criminal prosecution (where admittedly the landlord was not a party) does not in any manner support the submission of the tenant that the landlord had consented to the user of the premises for a commercial purpose.

11. Reliance by learned counsel for the petitioner upon the judgment reported as AIR 1992 SC 799 Smt. A.N. Kapoor, Vs. Smt. Pushpa Talwar is misplaced; this was a case where there was no dispute that the premises which had been initially let out for a residential purpose were being used as a guest house since 1961 which was a fact well within the knowledge of the landlord who did not ever raise any objection; in this factual context, the Court had noted that the ground of eviction available under Section 14 (1)(e) of the DRCA (which till that time was available only for residential purpose) being prior in time to AIR 2008 3146 Satyawati Sharma (Dead) by L.R.s vs. Union of India & Another was no longer available to such a litigant; facts of the said case are distinct and have no application to the facts of the present case.

12. Petition is without any merit. Dismissed.

Sd/-  
INDERMEET KAUR, J