

THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

CM(M) 732/2012 with CM 108981/2012 & 10892/2012

Date of Decision: 02.07.2012

SHRI PRAFUL KUMAR SHAHI Petitioners
Through: Mr. Y.R. Narula, Sr. Adv. with Mr. Som Dutta Sharma, Adv.

Versus

SHRI B.D. DHAWAN & ORS. Respondents
Through: None.

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

M.L. MEHTA, J. (Oral)

1. This petition under Article 227 of the Constitution of India has been filed challenging part of impugned judgment dated 06.06.2012 of the learned Additional Rent Controller Tribunal (ARCT) in Rent Appeal No. 47/2012. Vide this order the learned ARCT had declined the requests of the petitioner to stay the execution proceedings.

2. A petition of eviction under section 14(1)(a), (b), (d) and (h) of Delhi Rent Control Act, 1958 (for short 'the Act') was filed by respondent No. 1 B.D. Dhawan against respondent No. 2 and 3 Ajay Kumar and Shashi Kumar. The learned ARC passed the eviction order against the respondent No 2 and 3 on 11.04.2012. These respondents challenged the eviction order in appeal which is pending before the learned ARCT. In the main eviction proceedings the petitioner had filed an application under Order 1 Rule 10 CPC on 16.10.2008 for impleading him as a party. The plea which was taken by the petitioner for impleading was that he was owner and in possession of the premises in question. The said application of the petitioner was dismissed by the ARC on 23.04.2009. The petitioner preferred appeal against this order and which was dismissed by the ARCT vide order dated 06.11.2009. Thereafter the petitioner filed a review petition against the order dated 06.11.2009, which came to be dismissed by the ARCT vide

order dated 04.08.2011. Against this order of 04.08.2011 of the ARCT, the petitioner filed CM (M) 1358/2011. which came to be dismissed as withdrawn by this Court on 30.03.2012.

3. Now the petitioner filed objections under section 25 of the Act read with Section 47 of CPC in the execution petition filed by the landlord B.D. Dhawan against respondents No. 2 and 3 Ajay Kumar and Shashi Kumar. The ARC dismissed these objections vide order dated 25th May, 2012. The same was challenged in appeal before the ARCT in Rent appeal No. 47/2012. The ARCT vide the impugned order dated 6th June, 2012 while directing the ARC to dispose of the objections on merits, declined to stay the execution proceedings. It is this part of the impugned order whereby the stay of the execution was declined, that has been assailed in the present petition.

4. I have heard learned counsel for the petitioner and gone through the records.

5. From the facts as noted above, it could be seen that the petitioner remained unsuccessful in being impleaded as a party in the eviction petition that was filed by the landlord B.D. Dhawan against respondent No 2 and 3 Mr. Ajay Kumar and Mr. Shashi Kumar despite his taking recourse up to this court. The plea on which the petitioner sought to be impleaded as a party in the eviction proceedings was that he had purchased the property in question from the original allottee Narain Dass by an oral agreement to sell. He failed to produce any documents of title executed by Narain Dass in his favour. In support of his claim he only filed some DDA challans showing payment of installments with DDA. Those challans were also not in the name of the petitioner, but in the name of the original allottee Narain Dass. His case throughout had been that he had purchased the property by an oral sale from Narain Dass. The trial court rightly dismissed his plea observing that the immovable property could not be transferred without registered document. On the other hand landlord B.D. Dhawan had produced original documents of title of the property. It was also rightly observed by the trial court that the possession, if any, of the property by the petitioner would not make him owner thereof. The petitioner could not establish his case before the ARC as also before the Tribunal and this Court. The objections which were raised by him in the execution proceedings, based on the similar facts, were dismissed by the ARC and this order of ARC was upheld by the ARCT.

6. It is also noted that the petitioner had also appeared as a witness RW-3 in the eviction proceedings and it was gathered from the record that he was brother-in-law of respondent No. 2 Ajay Kumar. The eviction petition was filed in the year 2007 and came to be decided against the respondent No. 2 and 3 on 10th April 2012. The learned ARCT has rightly observed that in view of the entire factual matrix, the landlord could not be deprived of the fruits of the eviction order and consequently the execution proceedings could not be stayed.

7. Having regard to the pleas taken by the petitioner in the application under order 1 Rule 10 CPC and also in the petition under section 25 of the Act read with Order 47 CPC, I do not see any infirmity, illegality or any reason to interfere with the impugned order. The petition has no merit and is hereby dismissed.

Sd/-
M.L. MEHTA, J.

JULY 2 , 2012