IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : EVICTION MATTER

R.C.S.A No. 5 OF 2003

Reserved On : 01.11.2006

Date of Decision : 08.11.2006

SH. RAMESH BHASKAR KALE
(SINCE DECEASED) THROUGH L.R.s ... ... APPELLANT

Through : MR. R.P. BANSAL, SR. ADV. WITH
MR. RAKESH MAHAJAN, ADVOCATE.

- V E R S U S -

SH. HARKIRAT SODHI ... ...RESPONDENT
Through : MR. A.S.CHANDHIOK AND
MR. SANDEEP SETHI, SR. ADVS. WITH
MR. MUKESH ANAND, ADVOCATE.

SANJAY KISHAN KAUL, J.

1.The respondent filed an eviction petition against the petitioner under Section 14(1)(c) and (j) of the Delhi Rent Control Act, 1958 (hereinafter referred to as, 'the said Act') in respect of the premises bearing no. N-8 market, Greater Kailash Part I, New Delhi to the extent of the basement, one show room on the ground floor with bath and toilet which is stated to be let out to the petitioner for commercial purposes on a monthly rent of Rs 1100/- exclusive of water and electricity charges. It was alleged that the tenancy was created for the purpose of store room and storage of goods, but subsequently the petitioner shifted huge machinery from his factory to the tenanted premises and started running a factory. The said use was stated to be not only contrary to the agreement between the parties but also in violation of the provisions of the Delhi Municipal Corporation Act, 1957 as also its bye laws and further causing a public nuisance. The respondent stated that a notice had been served on the petitioner to stop misuser but to no avail. The vibration and the smoke emitting from the factory was alleged to be endangering the suitability and safety of the building and causing health hazard to the respondent and the public at large. The petitioner was also alleged to have caused damage

to the floors and walls of the building and additions and alterations have been allegedly made through the process of construction of partitions, extensive work on the walls and floors, unauthorized construction in the basement through a new staircase, construction of toilet in the basement against the sanction plan, installation of new water pumps and connection with storage pumps and putting pipelines through the walls and basement.

2.The petition was contested alleging that the premises had been originally let out by the father of the respondent Sh. M.S.Sodhi and the purpose of letting was commercial which included installation and running of machines in the premises. Some of the machines were stated to have been installed with the consent of Sh.M.S.Sodhi as per letter dated 25.04.95. The petitioner passed away during the proceedings and his legal heirs were impleaded.

3.The relevant provisions under which the eviction has been sought are as under: 14. Protection of tenant against eviction
1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be mad e by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

a)????

b)????

c) that the tenant has used the premises for a purpose other than that for which they were let:

i) if the premises have been let on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord; or

ii) if the premises have been let before the said date without obtaining his consent;

d)?????
e)?????
f)?????
g)?????
h)????..
i)?????

j) that the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the premises;

14(5) No application for the recovery of possession of any premises shall lie under sub section (1) on the ground specified in clause (c) of the proviso thereto, unless the landlord has given to the tenant a notice in the prescribed manner requiring him to stop the misuse of the premises and the tenant has refused or failed to comply with such requirement within one month of the date of service of the notice; and no order for eviction against the tenant shall be made in such a case, unless the Controller is satisfied that the misuse of the premises is of such a nature that it is a public nuisance or that it causes damage to the premises or is otherwise detrimental to the interests of the landlord.

14(10) No order for the recovery of possession of any premises shall be made on the ground specified in clause (j) of the proviso to sub section (1), if the tenant, within such time as may be specified in this behalf by the Controller, carried out repairs to the damage caused to the satisfaction of the Controller or pays to the landlord such amount by way of compensation as the Controller may direct.?

4.The Additional Rent Controller (hereinafter referred to as ARC) discussed the legal position emanating from the aforesaid provisions and in view of provisions of Section 14(5) of the said Act concluded that there is a pre-requisite of service of notice on the tenant and the failure of the tenant to comply with the requirements within one month of the date of the service of the notice and the misuse is of such a nature that it is a public nuisance or it caused damage to the premises or is otherwise detrimental to the interest of the landlord. Change of user as contemplated under Section 14(1) (c) of the said Act thus requires first the adjudication of as to what was the purpose of letting.

5.The ARC subsequently analyzed the effect of the letter dated 25.04.1985 (ExRW1/1) coupled with the evidence on record to show that there were strained relations between RW5 (the father) and the respondent herein. The finding of fact was reached that the petitioners were running the business of brass/buffing and plating for which chemicals are required and even licence had to be obtained before using the premises for electroplating which was admittedly not done. Chemicals were also required to be stored only after obtaining a licence, but the licence was not obtained by the petitioners. The very nature of activities carried on by the petitioner were found to be hazardous and not permissible. Thus the use of the tenanted premises for commercial purposes was held not to include use for industrial purposes and more so for running a factory for electroplating and buffing in the basement. Thus the conclusion was reached that the premises were being used for purposes other than those for which they were let out and in terms of the impugned order dated 11.02.2002 the respondent was held entitled to seek eviction of the petitioner under Section 14(1)(c) of the said Act.

6.Insofar as the allegations in respect of Section 14(1) (j) of the said Act are concerned, the petitioner was found to have caused substantial damage to the premises, but in view of provisions of Section 14(10) of the said Act the petitioner was granted time to repair the damage within one month from the date of the order.

7.The petitioner aggrieved by the same filed an appeal before the Rent Control Tribunal. It may be mentioned at this stage that since the eviction proceedings were initiated prior

to the amendment of the said Act in December 1988, the provisions as they stood prior to that date would apply. The result would be that the first appeal would lie to the Tribunal under Section 38 of the said Act both on a question of law and of fact while second appeal would lie to this court under Section 39 of the said Act only on a question of law. In pursuance to the amendment the second appeal has been abolished and the first appeal to the Tribunal is only on a question of law. In view of the same, the tribunal considered the matter both on law and on facts.

8.The Tribunal found that in view of ExPW1/A2, the lease deed, the purpose of letting being commercial was established. Undisputedly the premises were being used for industrial purposes. The defence of the petitioner was only ExRW1/1 which was a letter dated 25.04.85 addressed by Sh. M.S.Sodhi to M/s Pashupati International Pvt. Ltd . The letter states that said Sh. Sodhi had visited the Okhla Factory of M/s Pashupati Internation Pvt. Ltd and had no objection to shifting and use of certain machinery to the basement. It was found that this letter was not addressed to the petitioner though the contention of the petitioner remains that the lease deed itself referred to Sh. Ramesh Bhaskar Kale of M/s Pashupati International Pvt. Ltd as the tenant. The material fact has been that Sh.Sodhi had been in litigation with his family in a partition suit since 1984 and the property in suit is with the respondent. It is in view thereof that it was held that any letter which seeks to create rights other than the existing rights during the subsistence of the litigation between the respondent and Sh.M.S.Sodhi would be void in view of Section 52 of the Transfer of Property Act, 1882 and cannot bind the respondent. This is apart from the fact that the letter is not even addressed to the tenant since it is nobody's case that tenant is M/s Pashupati International Pvt. Ltd. The petitioner was served with a notice for stopping misuser vide letter dated 25.02.1986 (ExPW1/A1). In the letter a categorical assertion has been made that the premises were let out for show room and the storage of the goods while the factory was being run at Okhla Industrial Area. In the reply to the said notice also the petitioner refused to stop the misuser but claimed the right to carry on the activity in question. The user of the premises for industrial purposes while they were let out for commercial purposes was thus found to be user contrary to the purpose of letting apart from being detrimental to the interest of the landlord and public at large as the activity involved use of chemicals in the basement.

9.Insofar as the aspect of causing substantial damage to the property is concerned, it was found that the toilet could not be made in the basement and the substantial changes were liable to be removed.

10.Learned senior counsel for the petitioner referred to the pleadings and findings in extentio to canvass the proposition that both the courts below have fallen into an error in deriving conclusions from the evidence and that this court must once again go into all these aspects to come to a conclusion different from the one arrived at by the courts below. The basic plea is that the work of electroplating etc. can be carried on by the petitioner in view of the letter of the original landlord Sh.M.S.Sodhi and there was really no structural damage to the premises.

11.Learned counsel for the respondent relied upon the pronouncements of learned single Judge of this Court in the Leprosy Mission v. UOI; 107 (2003) DLT 328 and National Insurance Company Ltd v. P.K. Walia; 81 (1999) DLT 692 in support of the proposition that concurrent findings of fact returned by the courts below are not open to review in Regular Second Appeal.

12.In my considered view, the contention of learned senior counsel for the petitioner cannot be accepted as what the learned senior counsel seeks to urge is beyond the scope of the jurisdiction of this Court in a second appeal. No doubt number of so called questions of law had been referred to in Para B of the petition, but a bare perusal of the same shows that they are really not questions of law but attempts on the part of the petitioner to seek relief from this Court on the basis of re-appreciation of evidence. Such a course would be wholly impermissible. Learned single judge of this Court in Kailash Kumar v. Dr. R.P. Kapur; 54 (1994) DLT 342 held that in a second appeal the High Court would not be justified to reverse the findings of fact based on admissible evidence. The dispute related to one of subletting under the said Act. Learned single Judge relied upon the earlier judgment in Vinod Kumar v. Ajit Singh Ahluwalia; 1969 RCJ 218 where it was held that in an appeal under Section 39 of the said Act, the High Court was incompetent to re-assess the evidence afresh. To the same effect are the observations made by the Supreme Court in Bhagwan Dass and Another v. S. Rajdev Singh and Another; AIR 1970 SC 986.

13.Learned counsel for the respondent relied upon the judgment of a Division Bench of this Court in Mahavir Woolen Mills Assessee v. Commissioner of Income Tax (2000) VI AD (Delhi) 168 to advance the proposition that a question of fact becomes a question of law, if the finding is either without any evidence or material, or if the finding is contrary to the evidence or is perverse or there is no direct nexus between the question of fact and the primary fact upon which the conclusion is based. But it is impossible to turn a mere question of fact into a question of law by seeking whether as a matter of law, the authority came to a correct conclusion upon a matter of fact. In Hari Ram v. Rukmani Devi and Ors; 64 (1996) DLT 662, it has been observed that unless it is shown that findings of fact were perverse or based on no evidence at all, the same were not to be interfered in second appeal.

14.Learned senior counsel for the petitioner in fact referred to the depositions of the witnesses in extentio to say that there is no evidence on record. I am afraid this submission cannot be accepted as there is material evidence on record and the real contention of the learned senior counsel is that a different conclusion ought to have been arrived on the basis of the said evidence.

15.A conspectus of the aforesaid judgments shows that it is not the job of this court to draw conclusions other than which were arrived at by the appellate court. Some of these judgments have, in fact, been discussed in a recent judgment of this court in RCSA 390/1980 Sh. Kishan Chand v. Sri Chand decided on 18.07.2006. In Sohan Singh v. Bachan Singh (Deceased), 116 (2005) DLT 173, learned single Judge held that the

question, as to how evidence ought to have been appreciated by the courts below, is not the function of this Court in second appeal.

16.In a recent pronouncement, Hero Vinoth v. Seshammal, (2006) 5 SCC 545, the Supreme Court has observed that the general rule is that the High Court will not interfere with concurrent findings of the courts below. But it is not an absolute rule and some of the well-recognized exceptions are where (i) the courts below have ignored the material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying law erroneously: or (iii) the courts have wrongly cast the burden of proof. It was further observed that the reference to a decision based on 'no evidence', not only refers to cases where there is total dearth of evidence but also refers to any case where the evidence taken as a whole is not reasonably capable of supporting the finding.

17.The courts below have arrived at a concurrent finding of fact on the appreciation of the evidence that industrial user was being carried on in stead of commercial user. It is not in dispute that originally the premises were let out only for commercial use. The sole reliance by the petitioner is on the letter dated 25.04.1985. As to what credence and weight can be granted to such a letter has been discussed by both the courts below and is a question of pure appreciation of evidence. It is not a case of no evidence. This is of course apart from the fact that all local laws bar such an industrial user of a basement as the user would be hazardous. Similarly the findings arrived at by the courts below as to the damage caused to the premises are findings of fact and on that account the petitioner has only been asked to restore the premises to its original position.

18.In view of the aforesaid, it is apparent that there is no merit in the petition. The eviction proceedings initiated by the respondent in the year 1986 have dragged on for almost twenty years and at least three years out of the same have been spent in this court replete with adjournment requests on the part of the petitioner.

19.The petition is dismissed with costs of Rs 7,500/-.

SANJAY KISHAN KAUL, J.