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Tribunal has reversed the findings of the Additional Rent Controller who had dismissed the petition of the petitioner (respondent herein) filed under Section 14(1)(b)(d)(h) of the Delhi Rent Control Act, 1958 (for short 'Act').

2. Brief facts of the case, as have been noted by the Tribunal, are as follows :

"The facts giving rise to the present appeal are that the appellant preferred a petition for eviction impleading Smt. Tara Devi as tenant/respondent and Harbans Lal Mehra (since deceased) as sub/tenant/respondent. It was claimed in the petition that the premises consisting of two rooms, one store inside the room on the ground floor and one room, one tin-shed kitchen on the first floor were let to the husband of Smt. Tara Devi by the predecessor of the appellant. One bathroom was also provided later on. This letting was done on 1.3.51 and a Memorandum was executed by the tenant on 11.3.51. The husband of respondent No.1, namely, Kanhaya Lal (since-deceased) was thus, the tenant of the appellant at a monthly rental of Rs.86.45 p.m. which rent initially was Rs.82.50. The eviction of the respondent was sought on the following grounds as stated in the petition - -

18(a)(i) That the respondent No.1 has sub-let, assigned or otherwise parted with the possession of a part of the tenanted premises without obtaining the consent in writing of the petitioner on or after 9th day of June, 1952. Shri Kanhaya Lal Mehra is the tenant w.e.f. 1.3.1951 and he had sub-let, assigned or otherwise parted with the possession of one room and one store inside

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the room on the ground floor out of the tenanted premises to the respondent No.2 even without the written consent of the petitioner's father as well as the petitioner at any time on or after 9.6.1952.

(ii) That the suit premises were let for use as a residence and the respondent No.1 has not been residing therein for the last more than six months immediately before the date of filing the present petition. There is no other member in the family of the respondent No.1 as her husband has also pre-deceased her on 20.11.1983. On his death, the respondent No.1 has also shifted from the tenanted premises and at present she has been residing in H.No.D-254, Ashok Vihar, Phase-I, Delhi.

The aforesaid petition was contested by the respondent No.2. Respondent No.2 filed the written statement in answer to the aforesaid paragraphs as follows :

18(1)(i) That para No.18(1)(i) of the petition is wrong and is denied. It is incorrect to say and allege that respondent No.1 ever sublet, assigned or parted with possession of the premises to this respondent. As already submitted and clarified this respondent is a tenant in respect of the premises under the petitioner ever since February, 1952. The petitioner has not turned dishonest. He wanted this respondent to increase the rent to Rs.75/- per month to which this respondent refused point blank and hence this false and frivolous petition against this respondent taking benefit of the non-issue of rent receipts.

(ii) Para No. 18(a)(ii) of the petition is wrong and denied. It is incorrect that the premises were let out for residential purposes alone.

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As a matter of fact, the premises were let out for residential cum commercial purposes and were always used for twin purposes and were always used for twin purposes. Smt. Tara Devi vacated the portion of the premises in her tenancy to the petitioner after accepting a handsome pugree from him. She has colluded with the petitioner to cause harm and loss to this petitioner. Respondent No.1 never resided in the portion of the property in possession and occupation of this respondent or a tenant of the petitioner which portion has always been in possession and occupation of this respondent ever since February, 1952.

(iii) Para No.1 18(a)(iii) of the petition is wrong and denied. It is however, correct that respondent NO.1 has vacated her portion which was in her actual possession and occupation as a co-tenant to reside in Ashok Vihar. This respondent cannot be evicted because he is a tenant of the petitioner and there is no ground of eviction available against him."

Respondent No.1 did not contest the petition. It is stated and also subsequently admitted in the evidence of the respondent NO.2 that the portion of the tenanted accommodation which was in possession of respondent NO.1 was handed over to the appellant. The eviction now is sought of the portion which is held by respondent No.2 according to the petition as a sub-tenant.

Parties led the evidence and after considering the evidence on record, the court below dismissed the petition on all the grounds."

3. The Tribunal, while adjudicating upon the matter, held

that Ex. AW-1/1 was the document which could be looked at for collateral purpose inasmuch as the premises in question was let out in the year 1951 to one Kanhaiya Lal and, further relying upon Ex. AW-2/4, held that the respondent (appellant herein) was in possession of a portion of the premises let out to Kanhaiya Lal and, therefore, a case under Section 14(1)(d) of the Act is made out.

4. It is contended by counsel for the appellant herein that the Tribunal went wrong in placing reliance on Ex. AW-1/1 when the document did not inspire confidence inasmuch as the stamp paper did not bear the seal as was required under the Rules framed in this regard. Counsel also contends that if Ex. AW-1/1 is removed from the file of the case, there is no evidence on record to suggest that the appellant was a sub-tenant and/or had obtained possession of the premises in question from anyone other than from the landlord (respondent herein) himself being a tenant in his own right. Counsel also contends that it is the case of the appellant that he was in possession of the suit premises since 1952 and even if there has been any parting with possession/sub-letting, no suit under Section 14(1)(d) of the Act would lie as the same would be barred by limitation. On the other hand, counsel for the respondent-landlord submits that in second appeal the scope of inquiry by the High Court

is limited and correctness of facts cannot be gone into. He also contends that there is no substantial question of law that requires adjudication besides contending that from the material on record, namely, Ex. AW-1/1, AW-2/3 and AW-2/4, there is sufficient evidence to show that the appellant came into possession somewhere in 1974 when he filed an affidavit to get an electric connection from DESU for the premises in question.

5. I have heard counsel for the parties and considered the material placed on record as also gone through the judgment under challenge. There is no gainsaying that the scope of the inquiry in second appeal is limited, as has been held by the Supreme Court in Verayee Ammal vs. Seenil Ammal, AIR 2001 SC 2920, where the Supreme Court has affirmed its earlier judgment in Paras Nath Thakur vs. Smt. Mohani Dasi [deceased] AIR 1959 SC 1204, as under :

"It is well settled by a long series of decisions of the Judicial Committee of the Privy Council and of this Court, that a High Court, on second appeal, cannot go into questions of fact, however, erroneous the findings of fact recorded by the Courts of fact may be. It is not necessary to cite those decisions indeed, the learned Counsel for the plaintiff-respondents did not and could not contend that the High Court was competent to go behind the findings of fact concurrently recorded by the two Courts of

fact.”

Counsel also relied upon another judgment of the Supreme Court in Kondiba Dagabu Kadam vs. Savitribai Sopan Gujar & Ors JT 1999

(3) SC 163, where the Court has held as under :

“5. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex court or was based upon inadmissible evidence or arrived at without evidence.”


6. However, since the Tribunal has reversed the findings of the trial court, I have once again gone through the material on record. It is nobody's case before me that Ex. AW-1/1 does not bear the signatures of Kanhaiya Lal and the landlord-respondent. It also

appears that this document was drawn up in 1951. There could hardly be any intention or reason at that point of time to draw up a defective document only to evict a prospective sub-tenant. Even otherwise, Ex. AW-1/1 and AW-1/2 are documents which establish the extent of accommodation with Kanhaiya Lal and the appellant finds no mention as being a tenant in the premises.

7. There is material on record to show that the premises in question was let out to Kanhaiya Lal. If, in defence, the appellant-tenant puts up a case that he has been a tenant in the premises in question since 1952, it was for him to establish the same. The only document on record, besides the oral testimony, is the affidavit of the appellant-tenant seeking an electricity connection for the premises in which he is residing. This must necessarily mean that from 1952 to 1975, there was no electricity in the room in question. There is also no ration card, no electoral roll showing the appellant to be residing in the premises in question or any other document muchless rent receipt or rent note.

8. On the totality of the material on record, the landlord-respondent has been able to establish that Kanhaiya Lal was his tenant in the premises in question and the appellant has come into

possession to the exclusion of Kanhaiya Lal. Further the appellant has sought to perpetuate his possession as an independent tenant, he had to prove this fact. Since there is nothing on record to show that the appellant was a tenant in his own right and there is material on record to show that the premises, which is in possession of the appellant-tenant, was in possession of Kanhaiya Lal as tenant, I see no reason to take a different view from that of the Tribunal. In this view of the matter, RC-SA 27 of 2002 and C.M. Appl.116/2002 are dismissed. No order as to costs.


[R.S. SODHI]
Judge.

November 30, 2004.
jt.