

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

**C.Rev. No.19/2013,
CMA No.16/2013**

Date of decision: 19/07/2013

Chaitanya Prabhu Vs. Adarsh Kumar

Coram:

Hon'ble Mr. Justice Bansi Lal Bhat, Judge

Appearing Counsel:

For the Petitioner(s) :Mr. Sunil Sethi, Sr. Advocate with
Mr. Rohit Kohli, Advocate

For the respondent(s) :Mr.P.N.Raina, Sr.Advocate with
Mr. J.A.Hamal, Advocate.
:Mr.P.S.Parmar, Advocate

1. Whether approved for reporting in law journals? : Yes/No
2. Whether approved for publishing in Press/Media? : Yes/No/Optional

1. This revision petition is directed against the order dated 15.12.2012 passed by learned Sub Judge, Reasi in File No.1/Execution titled “**Adarsh Kumar Vs. Chetanya Prabhu**”, the order dated 22.02.2013 passed by learned District Judge, Reasi in Appeal No.13/Appeal titled “**Chetanya Prabhu Vs. Adarsh Kumar**”, and the order dated 05.11.2012 passed by learned Sub Judge, Reasi in File No.8/Civil Miscellaneous titled “**Adarsh**

Kumar Vs. Chaitanya Prabhu". The factual matrix attending upon this revision petition may briefly be summarised as under:-

2. Respondent, a tenant of petitioner for about four decades, was running business of photography styled as "M/S Sansar Studio" in the shop which is the subject matter of litigation between the parties. The tenanted premises are located in main bazaar, Reasi. In view of the demised shop being in a state of dilapidation, the respondent filed an application under Section 27 of Jammu and Kashmir Houses and Shops Rent Control Act (hereinafter to be referred to as 'the Act') for carrying out necessary repairs of the shop. The petitioner responded to the notice served on him and admitted that the shop in question had collapsed due to heavy rains and it was required to be reconstructed. He came up with the proposal to reconstruct the shop in question holding out the assurance that he would deliver possession of the shop to respondent after completing the reconstruction work. On the basis of the proposal floated by petitioner and consensus emerging between the parties, learned Sub Judge

exercising powers as Rent Controller, passed order dated 05.11.2011 granting leave to petitioner to reconstruct the shop in question within a period of three months and then deliver possession of the shop to respondent. The order further stipulated that in the event of failure on the part of petitioner to reconstruct the shop within the given time frame, the respondent shall be at liberty to approach the Rent Controller for restoration of possession of the said shop and carrying out necessary repairs/construction at his own level.

3. Future events, however, did not unfold in line with the settlement. After the reconstruction of shop in question, petitioner started back-tracking. He pleaded that his son had filed a suit for partition against him and taken forcible possession of the shop in question for running his business thereby rendering return of suit shop to respondent impossible. Respondent found himself constrained to approach the Rent Controller seeking directions against the petitioner to deliver possession of the reconstructed shop to him. His petition found favour with the learned Trial Court which directed

the petitioner to handover vacant possession of the shop to the respondent with stipulation that in the event of default, petitioner shall be liable to pay a penalty of Rs.500/- per day.

4. Petitioner assailed the order of Trial Court in appeal before learned District Judge, Reasi raising the contention that the Trial Court had passed the order without jurisdiction and that the Trial Court had failed to appreciate that the shop in question was forcibly occupied by the son of petitioner, who had filed a suit for partition of ancestral property including the aforesaid shop against the petitioner. The petitioner further pleaded that having been ousted from the shop in question, he could not be ordered to deliver possession to the respondent. He also raised the plea that there was no provision in CPC for execution of any order passed under Section 27 of the Act. After hearing the parties, learned District Judge dismissed the appeal holding that there was no illegality or impropriety in the impugned order. Thus, the contentions raised by petitioner were repelled.

5. Legality and correctness of the orders impugned in this revision petition has been called in question on the ground that the shop in question given on rent by father of petitioner measuring 8 ft X 10 ft was demolished due to heavy rains in July 2011 prompting respondent and his brother to approach the Trial Court seeking permission to carry out the repairs. It is contended that the application under Section 27 of the Act was not maintainable as the respondent had admitted in his application that the walls and roof of the shop had fallen down. It is further contended that actually no shop existed on spot when application under Section 27 of the Act was filed before the Trial Court. It is further contended that the respondent had subsequently applied for handing over of possession of shop measuring 15 ft X 15 ft despite the fact that the actual shop was of 8 ft X 10 ft dimension. The petitioner is said to have pleaded before the trial court that he was not in possession of the suit shop as his son had instituted the suit for partition against him after forcibly taking over possession of the shop in question and started business of

readymade furniture therein. It was further contended that the son of petitioner had annexed the open space carved out after falling down of the shop in question using the said space by laying tin sheets over the same.

6. The impugned orders have further been called in question on the ground that the order dated 05.11.2011 is in contravention to the provisions of Section 27 of the Act as the Rent Controller had no powers to direct reconstruction of shop; that the impugned order dated 15.12.2012 was legally unsustainable insofar as the same directed the petitioner to handover possession of shop measuring 15 ft X 15 ft to respondent whereas the impugned order dated 05.11.2011 did not specify the dimensions of the shop; that the order dated 15.12.2012 was also illegal in view of the fact that no shop was existing at the time of institution of application under Section 27 of the Act. It is submitted that the Trial Court and the Appellate Court's observations that the suit filed by the son of petitioner was nothing but a camouflage are not based on any material.

7. Heard the rival sides and perused the Record.
8. This case is a typical instance of a novel *modus operandi* adopted by an unscrupulous landlord to frustrate the legitimate rights of a tenant by holding out false assurance in open Court, obtaining possession of tenanted premises by deceitful means and then resisting restoration of possession by adopting very cheap methods of evading liability to wriggle out of his commitments. The contentions raised before this Court were initially raised in appeal and the learned District Judge has repelled the same vide order dated 22.02.2013 which is a reasoned order and does not suffer from any legal infirmity. Section 27 of the Act makes provision for making of repairs and taking of measures for the maintenance of essential services by the tenant on the failure or neglect of the landlord to do so. This provision empowers the Rent Controller, *inter alia*, to direct the landlord of tenanted premises to make any repairs which such landlord is bound to make. It also empowers the Rent Controller to permit the tenant to make such repairs, if the landlord neglects to make such

repairs within a reasonable time. Section 108 of the Transfer of Property Act deals with the rights and liabilities of lessor and lessee. Sub Clause (e) of Clause (B) thereof provides that if any material part of the tenanted premises be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, by fire, tempest, flood, violence or “other irresistible forces”, the lease shall be void at the option of lessee. Clause “F” thereof provides that if the lessor neglects to make any repairs to the tenanted premises within a reasonable time after notice, the lessee may make the same himself and deduct the expenses of such repairs with interest from the rent or recover the same from the lessor. A combined reading of these provisions renders it manifestly clear that the lessor is bound to carry out necessary repairs, upon notice by the lessee, within a reasonable time and in the event of his failure, the lessee can carry out such repairs at the cost and expense of lessor if the subject of lease is destroyed or rendered substantially and permanently unfit for purposes of tenancy. In the instant case neither party has

treated the lease as void. The respondent continues to be under an obligation to pay rent to the petitioner. It was in proceedings under Section 27 of the Act that the possession of shop in question was handed over to petitioner for reconstruction on the basis of proposal floated and assurance held out by him in open Court that he would put the respondent in possession after completing the construction. Petitioner cannot be permitted to wriggle out of his liability and stage a “U” turn. He cannot be heard to say that the order passed by learned Trial Court on the basis of proposal floated by him and materializing into a compromise was without jurisdiction. Since the tenancy is subsisting and the order of reconstruction of the shop in question was passed on proposal emanating from the petitioner, the later cannot be permitted to raise the plea that the Court direction was beyond the scope of Section 27 of the Act and was liable to be set aside on that score. It is the petitioner who made the proposal of reconstruction for raising more spacious building to suit his commercial interests. He cannot be permitted to

deprive the respondent of his right of tenancy over the shop which existed on the date of passing of the order by Rent Controller notwithstanding the fact that such shop was in a dilapidated condition at that time. It has been noticed by learned Appellate Court that the petitioner had misrepresented the facts while seeking extension of time in reconstruction of the shop in question on the ground that he had submitted a site-plan before Municipal Committee, Reasi for approval which was pending consideration. The assertion was belied by the report from Municipal Committee, Reasi which revealed that the petitioner had never applied for approval of any site-plan in regard to the subject of tenancy. Learned Appellate Court has also rightly observed that expression of inability and helplessness on the part of petitioner to restore possession of shop in question to respondent on the projected ground of petitioner's son having filed a suit for partition and having forcibly occupied the shop in question was nothing but a camouflage and a ploy to dislodge the respondent from the shop in question. Learned

Rent Controller has rightly observed that the petitioner never complained before the Competent Authorities that the said shop had been forcibly occupied by his son. The petitioner also did not appear at the trial to defend the suit for partition filed by his son. This was designedly done to facilitate passing of ex parte decree. It is queer that despite making investment in reconstruction of shop in question, petitioner remained a mute spectator helplessly watching grabbing of the suit shop by his son who, as rightly observed by learned Appellate Court, is a rank trespasser having grabbed the tenanted premises in league with the petitioner.

9. In so far as dimension of shop in question is concerned, possession of the tenanted shop was handed over to petitioner for reconstruction at his instance. He was aware of the dimension of shop in question. If he chose to expand or increase its dimension, it was at his risk and to the detriment of his interest. Same cannot be made a ground to deny legitimate right of restoration of shop in question to respondent. It is futile to contend that

the order directing restoration of possession is incapable of execution. Such order has been passed at the behest of petitioner himself who came out with a proposal of rebuilding the shop and held out an assurance to put back the respondent-tenant in possession within a given time frame. Allowing him to raise the plea of such order, passed on consensus, as being illegal would amount to paying premium on dishonesty. Petitioner cannot be allowed to take advantage of his manipulation designed to frustrate the legal rights of respondent. Such tendencies must be curbed in the right earnest.

10. In view of the aforementioned discussion, I am of the considered view that the impugned orders dated 15.12.2012; 22.02.2013 and 05.11.2012 do not suffer from any legal infirmity or jurisdictional error. There is no merit in this revision petition and the same is **dismissed**.

(Bansi Lal Bhat)
Judge

Jammu
19/07/2013
Varun Bedi