

**Satyendra Jha and Others Vs. State and Others**

**Satyendra Jha and Others Vs. State and Others**

**SooperKanoon Citation :** [sooperkanoon.com/681130](http://sooperkanoon.com/681130)

**Court :** Delhi

**Decided On :** Sep-08-1999

**Reported in :** 1999VIAD(Delhi)157; 82(1999)DLT110

**Judge :** K.S. Gupta, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#)

**Appeal No. :** Crl. Rev. 477 of 1998

**Appellant :** Satyendra Jha and Others

**Respondent :** State and Others

**Advocate for Def. :** Mr. Rajinder Dutt, Adv.

**Advocate for Pet/Ap. :** Mr. Raman Kapur, Adv

**Judgement :**

ORDER

**K.S. Gupta, J.**

1. Aggrieved by the orders dated 6th August, 1998 and 18th August, 1998 of an Additional Sessions Judge, the petitioners have filed this revision petition.

2. Said orders came to be passed while disposing of an application filed by the petitioners seeking anticipatory bail in FIR No. 226/98 under Sections 448/380/34

IPC, PS Mayapuri. This FIR No. 226/98 was lodged by respondent No. 3 on 2nd August, 1998 alleging that his wife, respondent No. 2 is the owner of property No. WZ-6, Lajwanti Garden. Ground and the half first floors of the property are under the tenancy of Life Insurance Corporation while the back portion on the first floor is in unauthorised occupation of Satyendra Jha, petitioner No.1. On 31st July, 1998 Ramesh Kumar informed him that the petitioners broke open the locks of one room, store and kitchen on the second floor in his possession and in addition to criminally trespassing into it, they also removed the goods belonging to him and legal action be taken against the petitioners. Petitioners' application under Section 438 Cr. P.C. seeking anticipatory bail filed thereafter there after came up for hearing on 6th August, 1998 before the Additional Sessions Judge. Copy of the proceedings dated 6th August, 1998 is placed at page 74 of the paper book. As is manifest from the proceedings dated 6th August, 1998 during the course of argument the counsel appearing for the petitioners stated that the petitioners did not take possession of any of the rooms on the second floor of said property No. WZ-6, Lajwanti Garden and taking note of that statement Additional Sessions Judge directed the I.O. to break open the locks of the room, kitchen and store on the second floor and to handover possession thereof to the landlady and submit report on 17th August, 1998. Till then the petitioners were not to be arrested. On 17th August, 1998 the petitioners filed additional application for anticipatory bail and the prayer made therein was to recall the said order dated 6th August, 1998 and restore status quo as was on 2nd August, 1998 in respect on the said second floor accommodation. It is stated that the counsel for the petitioners was not properly briefed and he could not understand that Barsati floor and second floor are one and the same floor. By the order dated 18th August 1998 (copy at Page 87) petitioners were admitted to anticipatory bail on their furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount each to the satisfaction of the I.O./SHO concerned. This order further notices that on 17th August, 1998 I.O. submitted the report that the lock of the said accommodation was broke open by him and possession thereof handed over to the landlady. In view of possession of the said accommodation having been handed over to the landlady, the Additional Sessions Judge did not find any ground to recall the aforesaid order dated 6th August, 1998 which was passed on the basis of the

statement made by counsel for the petitioners. In terms of the said order goods found lying inside the said accommodation belonging to the landlady and also petitioner No. 1 were also ordered to be handed over to them.

3. It would not be out of place to state that earlier in April, 1996 respondent No. 2 had filed a suit for recovery of possession against petitioner No.1 (copy of the plaint at pages 24 to 31), inter alia, alleging that the ground floor and part of the first floor of property No. WZ-6, Lajwanti Garden were leased out by her to Life Insurance Corporation while the remaining portion on the first floor (backside) comprising of two bed rooms, one drawing-cum-dining room, kitchen, one WC, one bath and lobby were allowed to be used as a licensee by petitioner No.1 on 1st October, 1994 as he was not having any shelter in Delhi and had assured to have alternate accommodation within a period of 3 months, on a license fee of Rs. 5,000/- per month. Petitioner No.1 has, however, failed to vacate the said accommodation despite repeated verbal requests and service of a legal notice dated 22nd February, 1996. Along with the suit an application under Order 39, Rules 1 & 2 read with Section 151 CPC was also filed by respondent No. 2 and the prayer made therein was that petitioner No.1, his servants and agents be restrained from interfering and encroaching upon any other portion including the barsati of said property No. WZ-6, Lajwanti Garden, New Delhi. Petitioner No.1 contested the suit and also the application by filing written statement and the reply. The plea taken by petitioner No.1 in the written statement (copy at Pages 35 to 54) was that he is a tenant under respondent No. 2 on the first floor (backside) which comprises of two bed rooms, one drawing-cum-dining room, kitchen, WC, bath, lobby together with Barsati and roof over the tenanted portion. On the application filed under Order 23, Rule 1 read with Section 151 CPC admitted that petitioner No.1 is a tenant, the respondent No. 2 was allowed to withdraw the said suit with liberty to file fresh one by the order dated 29th October, 1997 by an Additional District Judge, Delhi. It seems that there had been an altercation in between petitioner No. 1 and respondent No. 3 and the same was amicably settled as is evident from the writing dated 27th April, 1996 addressed to the SHO, PS Mayapuri (copy at Page 22).

4. I have heard Sh. Raman Kapur for the petitioners and Sh. Rajinder Dutt for respondents 2 & 3 and have also been taken through the record.

5. On a combined reading of the plaint filed for recovery of possession, applications under Order 39, Rules 1 & 2 read with Section 151 CPC and Order 23, Rule 1 read with Section 151 CPC by respondent No. 2 against petitioner No.1 and also FIR No. 226/98 lodged by respondent No. 3, it is manifest that according to respondents 2 & 3 the petitioner No.1 is the tenant in the back side portion of the first floor of property No. WZ-6, Lajwanti Garden comprising of two bed rooms, one drawing-cum-dining room, kitchen, one WC, one bath and the lobby only and the petitioners unlawfully took possession by breaking open locks of one room, store and kitchen on the second floor on 31st July, 1998. Although the case set up by petitioner No.1 in the written statement filed in said suit for recovery of possession was that Barsati and roof over the tenanted portion are also included in his tenancy, still the counsel for the petitioners made the statement on 6th August, 1998 that the petitioners had not taken possession of any of the rooms on the second floor/bar sati of the said property. Pursuant to that statement order regarding breaking open the locks and delivery of possession was made by the Additional Sessions Judge and possession of the said portion was handed over by the I.O. to the landlady-respondent No. 2 on 17th August, 1998. In my opinion, even though the aforesaid order dated 6th August, 1998 passed by the Additional Sessions Judge may not be strictly in conformity with law, no order for restoring the possession of the said portion to the petitioners can be made in these proceedings as there is serious dispute between the parties whether the said portion on the second floor/bar sati forms part of the tenanted premises or was it unlawfully occupied by the petitioners on 31st July, 1998. It would be open to the petitioners to have recourse to the remedy which may be available to them in law to get back the possession of the said portion from respondent Nos. 2 & 3.

6. With these observations the revision petition is dismissed.