

**Orient Express Co. (P) Ltd. Vs. Usha Pasricha and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/697987](http://sooperkanoon.com/697987)

**Court :** Delhi

**Decided On :** Feb-25-1992

**Reported in :** 46(1992)DLT531; 1992(23)DRJ142; 1992RLR189

**Judge :** S.C. Jain, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 47, Rule 4; [Constitution of India](#) - Article 227

**Appeal No. :** Civil Miscellaneous (Main) Appeal No. 49 of 1992

**Appellant :** Orient Express Co. (P) Ltd.

**Respondent :** Usha Pasricha and ors.

**Judgement :**

**S.C. Jain, J.**

(1) A limited tenancy was createdj on 4.2.1981 for three years with respect to First floor of 112, Sunder Nagar, New Delhi in favor of Orient Express Co. (PO) Ltd, hereinafter referred to as the petitioner. After expiry of the limited period of tenacy, the petitioner did not vacate the premises necessitating the landlady to file an execution application. Notice was sent to the petitioner. During the execution proceedings, the petitioner tenant filed objections under Section 21 of the Delhi Rent Control Act. An amendment application was also filed for amending the

objections. Objection was taken by the landlady that the objections Filed by the tenant were not maintainable in view of the pronouncements made by the Supreme Court in various decisions. However, the Addl Rent Controller recorded the evidence on the objections and after appreciating the evidence on record the Addl Rent Consular vide his detailed order dated 17.12.1991 dismissed the objections filed under Section 21 and ordered issuance of the warrant of possession against the petitioner. Aggrieved the petitioner Filed an appeal before the Rent Control Tribunal, who confirmed the findings of the Addl Rent Controller and dismissed the appeal. Against that order a review petition was filed by the petitioner on 23.1.92 urging that the possession of the premises in dispute was given on 21.1.81 and actually the tenancy was created on 21-1-81 and this fact has been admitted in letter Ex OW1/5. Cheque for Rs.2500.00 was received by the landlady on that day for as rent for the month of February, 81 and rent for 21st January to 31st January was paid in cash. The stamp paper for execution of the rent note was purchased on 22-1-81. All these facts were to taken into consideration by the not Rent Control Tribunal and thereforee the judgment of the Rent Control Tribunal dated 10.1.92 needs review.

(2) Notice of the review petition was issued to the respondent who made appearance and after hearing the counsel for the parties, the Rent Control Tribunal vide order dated 3.2.92 dismissed te review petition.

(3) This order dismissing the review petition by the Rent Control Tribunal has been challenged before this Court by filing petition under Article 227 of the [Constitution of India](#).

(4) The learned counsel for the petitioner drew my attention towards the provisions of Order 47 Civil Procedure Code which provides three stages of hearing after the review application is filed. The first stage comes when the application for grant of review is placed before the Judge or Judges under Rule 4, sub rule (1). At that stage, if it appears to the Court that there is not sufficient ground for a review, it should reject the application. If, on the other hand, the Court is satisfied that one or more of the grounds detailed in Rule I is made out prima facie, it should order notice to be issued to the opposite party to enable him to appear and be heard in

support of the decree or order whose review is applied for.

(5) Thus, the first one is an *ex parte* stage because the opposite party is not present before the Court at that time. The next stage is reached when the same application (for grant of review) is placed for hearing before the Judge or Judges. At this stage, if the Court comes to the conclusion that the application for review should be granted, it should grant it under sub rule (2) of Rule 4. If, however, it is of the Opinion after hearing the opposite party that the application is not covered by Rule 12, it should be rejected. If the rule is discharged the matter ends there. If, on the other hand, the rule is made absolute, then the third stage is reached. This stage is arrived under Rule 8 after the original case is registered and the court rehears it on merits. After rehearing it may either result in repetition, or in reversal or in variation of the former decree or order. In either case, since the whole matter is reheard, there is a fresh decree or order. In support of his contention, the learned counsel put reliance on various decisions . According to the learned counsel, in this case the Rent Control Tribunal had reached the third stage under Rule 8 and the case should have been registered and it should have been heard afresh. According to the learned counsel by not doing so the Rent Control Tribunal has gone wrong and exceeded his jurisdiction and on this ground alone this order dated 3.2.92 passed by the Rent Control Tribunal is liable to be set aside.

(6) As far as the legal proposition is concerned, there is no dispute that when a review petition is presented before a Judge or Judges the same can be dismissed in limine without giving any notice to the opposite party. If the Judge or Judges find *prima facie* case on issuing notice of that review petition, the same can be done and after hearing both the parties, can dismiss the same without going further. The third stage only comes when the Judge or judges come to the conclusion that the matter is to be admitted and it is only at that stage the original case is registered and the court rehears it on merits and after hearing it, it may result in repetition, reversal or variation of the former decree or order. In this case that third stage is not reached. The Rent Control Tribunal dismissed the review petition at the admission stage itself after hearing both the parties and, therefore, the law cited by the learned counsel for the petitioner does not help him in the present circumstances of the case.

(7) Now, coming to the power of superintendence of the High Court under Article 227 of the [Constitution of India](#), it is admitted legal proposition that this power is to be exercised most sparingly and only in appropriate cases. This power as in the case of certiorary jurisdiction cannot be invoked to correct the error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts. The High Court cannot, while exercising jurisdiction under Article 227 interfere with the findings of fact recorded by the subordinate court or Tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and reappreciating it. I find support in my view from various decisions of the Supreme Court in : AIR 1975 SC1297 .

(8) Now, coming to the facts of this case, both the courts below came to a concurrent finding that limited tenancy was created on 4.2.1981 for three years with respect to the suit premises i.e. the first floor of House No. 112 S under Nagar, in favor of the petitioner. The objections filed by the petitioner company under Section 21 of the Delhi Rent Control Act were duly investigated and opportunities were given even to adduce evidence and prove those objections. After appreciating the evidence on record, as a matter of fact, both the courts below came to a concurrent finding that the limited tenancy was created on 4.2.1981 and not on 21.1.81 as alleged by the petitioner. There is nothing on record to show and point out that the Addl Rent Controller or the Rent Control Tribunal have exceeded their jurisdiction or they have acted beyond the limits of their authority. This Court in its superintending powers under Article 227 of the [Constitution of India](#) is not to correct the mere errors of fact by examining the evidence and reappreciating it. Under these circumstances, I find no merit in this petition filed under Article 227 of the constitution and the same is hereby dismissed at the admission stage itself.