

**Ramesh Chand Sachdeva Vs. Raj Kumar Manchanda and ors.**

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**Court :** Delhi

**Decided On :** Aug-08-2008

**Reported in :** 153(2008)DLT191

**Judge :** Shiv Narayan Dhingra, J.

**Acts :** Delhi Rent Control Act - Sections 14(1), 14(2), 45, 45(3) and 45(4); Delhi Rent Control Rule - Rule 3; Code of Civil Procedure (CPC) - Order 39, Rules 1 and 2; [Constitution of India](#) - Article 227

**Appeal No. :** CM(M) 2092/2005

**Appellant :** Ramesh Chand Sachdeva

**Respondent :** Raj Kumar Manchanda and ors.

**Advocate for Def. :** Sunil Malhotra, Adv.

**Advocate for Pet/Ap. :** V. Shukla, Adv

**Disposition :** Petition dismissed

**Judgement :**

**Shiv Narayan Dhingra, J.**

1. By this petition under Article 227 of the [Constitution of India](#), the petitioner has assailed the legality of order dated 13th July, 2005 passed by Additional Rent

Control Tribunal.

2. The brief facts relevant for purpose of deciding this petition are that respondent, Raj Kumar Manchanda filed an application for eviction under Section 14(1) (a) and (b) of the Delhi Rent Control Act stating that Mr. Jaswant Rai Khurana was a tenant in respect of premises E-382 (Double Storey) Ramesh Nagar, New Delhi and Mr. Khurana left the premises after sub-letting and assigning it to the present petitioner, Ramesh Chand without consent in writing of the landlord. The monthly rent was Rs.950/- exclusive of electricity and water charges and this rent had also not been paid and tendered by the tenant since 1st February, 1988. A notice of demand dated 5th July, 1990 was served on respondent no. 1. Notice was duly served but respondent no. 1 neither tendered nor paid this rent after notice.

3. In the WS, respondent no. 1 took the stand that he had paid the entire rent during the period of his tenancy and thereafter he left the premises to respondent no. 2 who had shifted to the premises from his previous house in Frashkhana. He stated that respondent no. 2 was inducted in the year by the petitioner/landlord himself. Respondent no. 2 (present petitioner) alleged that the eviction petition was filed by the petitioner in connivance with respondent no. 1. Respondent no. 1 had nothing to do with the premises. He was a stranger. The respondent no. 2 was the tenant in the premises since November, 1980 at monthly rent of Rs.550/- exclusive of water and electricity charges. He (respondent no.2) had been paying rent to the landlord regularly but landlord never issued rent receipt. He started harassing him. Thereafter he filed a petition under Section 45 of Delhi Rent Control Act for restoration of essential supply and the landlord filed the eviction petition as a counter blast.

4. The learned Rent Controller, after appreciating evidence of both the sides came to conclusion that it was respondent no. 1 who was the tenant and respondent no. 1 inducted respondent no. 2 in the premises unauthorizedly, without consent of the landlord. The Rent Controller also came to conclusion that no reply to the notice demanding rent was sent by respondent no. 1 nor the rent was tendered after receipt of notice and the respondent no. 1 therefore failed to comply with the notice.

5. The Rent Controller also gave a finding that the rent of the premises was Rs. 950/- per month and respondent no. 1 was in arrears of the rent w.e.f. 1st February, 1988 and gave directions that respondent no. 1 should either pay or deposit the arrears of rent within one month to avail benefit under Section 14(2) of Delhi Rent Control act.

6. On sub-letting, the Rent Controller gave a finding that respondent no. 2, i.e., the present petitioner was inducted by respondent no. 1 as a sub-tenant sometime in 1982 without written consent of the landlord. The plea of the respondent no. 2 that landlord had not objected to his induction in 1982 did not find favour with the ARC who observed that mere non-objection by the landlord at the time of inducting sub-tenant shall not legalize the sub-tenancy and the prior consent in writing was must for creation of sub-tenancy by the tenant. Reliance was placed on *South Asia Industries Pvt. Ltd. v. V.S. Sarup Singh and Ors.* : [1965]3SCR829 and *Shalimar Tar Products Ltd. v. H.C. Sharma and Ors.* 33 (1987) DLT 375 (Sc)

7. Thus, giving a finding on both the counts against the petitioner/respondent no. 2, an eviction order was passed vide judgment dated 6th January, 2003. The rent as directed by the ARC was not deposited by respondent no. 1 or respondent no. 2. This order was challenged before the Additional Rent Control Tribunal who re-appreciated the evidence and came to conclusion that there was no credible evidence on record to show that the appellant had come in occupation of the premises in November, 1980 as contended by him. The Tribunal reaffirmed the findings of facts on both the counts, as given by ARC and dismissed the appeal.

8. It is argued by counsel for the petitioner that both the Courts below erred in giving findings against him and the Court below ignored the judgment given in his favour by the learned Additional Rent Control Tribunal in proceedings under Section 45 DRC Act. It is submitted that in RC No. 283/90, Additional Rent Control Tribunal had allowed his appeal against an order under Section 45(3) of ARC and directed the landlord to restore the facility of booster pump to maintain water supply to the petitioner. A finding was given by ARCT that prima facie he was a tenant in the premises.

9. Counsel for the petitioner argued that while exercising jurisdiction under Article 227 though, this Court has not to sit as a Court of appeal, but if it is shown that approach of the Courts below was contrary to law or some vital document has been ignored, this Court should re-look into the matter. He submitted that the judgment of ARCT on his application under Section 45(3) DRC Act was wrongly ignored by the two Courts below and therefore this Court should interfere into the order of ARCT dated 13th July, 2005.

10. Section 45(3) of Delhi Rent Control Act provides that if Controller is satisfied that the essential supply or service was cut off or withheld by the landlord with a view to compel the tenant to vacate the premises, the Controller may pass an order for restoration of this essential supply pending the inquiry referred to in Sub-Section (4). The inquiry under Sub-section 4 is to be made by ARC on an application under Section 45 if the essential supply was withheld by landlord without just and sufficient cause.

11. Section 45(3) is in the nature of an application under Order 39 Rule 1 and 2 CPC and the Controller has to satisfy himself prima facie only that relationship of landlord and tenant existed. The tenant was enjoying amenity in respect of tenanted premises and the amenity/supply cut off by the landlord without just and sufficient cause. In the first instance, it is for the tenant to give all material facts in application supported by an affidavit and the ARC has to pass an interim order pending the inquiry on the basis of the material placed before it. In this case, the learned ARC had rejected the interim application under Section 45 Rule 3 of DRC Act holding that prima facie petitioner did not appear to be a tenant. Against this order of ARC on interim application, the petitioner had preferred an appeal before ARCT and the Additional Rent Control Tribunal did not agree with the prima facie observation of ARC and observed that much reliance cannot be placed on counter files of the receipts issued by landlord in favour of Mr. Khurana, at this stage.

12. It is obvious that no finding based on evidence of parties was given by ARCT while allowing the appeal under Section 45(3) of the Delhi Rent Control Act and only a prima facie view was taken. This view was not binding on the ARC in the subsequent proceedings under Section 14(1) (a) and (b). Neither it was binding on

ARCT in the sequent appeal against the eviction order.

13. The learned ARC and ARCT both have given concurrent findings on the basis of evidence produced in the matter that Mr. Jaswant Rai Khurana was a tenant and the present petitioner was an un-authorised sub-tenant. This concurrent finding of fact given by the two Courts below cannot be interfered with by this Court under Article 227. The scrutiny of this Court under Article 227 of the [Constitution of India](#) does not extend to re-evaluating the evidence and to sit in appeal over the decision of the Tribunal. This Court has limited jurisdiction to see if the inferior Court or Tribunal has functioned within the limits of its authority and has not committed some material irregularity. This Court while exercising supervisory jurisdiction has no authority to correct an error apparent on the face of record, this error may be of fact or may be of law. Neither this Court can substitute its own decision on merits in place of the decision given by two Courts below.

14. The legal position about the jurisdiction of this Court under Article 227 has been expounded in *Surya Dev Rai v. Ram Chander Rai* JT 2003 (6) SC 464.

15. I find no infirmity in the order of ARCT. This petition under Article 227 of [Constitution of India](#) is hereby dismissed.

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