

MobIn Vs. Master Kausar

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Court : Delhi

Decided On : Nov-05-2012

Judge : G.P. Mittal

Appellant : Mobin

Respondent : Master Kausar

Judgement :

\$~ 51 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

5. h November, 2012 + CM(M). 1196/2012 MOBIN Through Petitioner Mr.S.D. Ansari, Advocate versus MASTER KAUSAR Through Respondent None
CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT CM. No.18741/2012
Exemption allowed, subject to all just exceptions. Application stands disposed of.
G. P. MITTAL, J.

(ORAL) 1. The Petitioner takes exception to an order dated 31.10.2012 passed by the Lower Appellate Court whereby RCT Appl. 29/2012 against an order dated 03.10.2012 passed by the Additional Rent Controller (North-East) was dismissed.

2. An Eviction Petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 was preferred by the Respondent from a suit premises situated at 410, Gali No.19, Main Road, Jafrabad, Delhi. After hearing both the parties, the Application for leave to defend filed by the Petitioner was dismissed by an order dated 17.01.2011. The Petitioner unsuccessfully challenged the eviction order by way of

RC Revision Petition No.258/2011 which was dismissed by an order of this Court dated 05.03.2012. One of the grounds taken up in the Revision Petition was that the provisions of the Delhi Rent Control Act, 1958 are not applicable to the tenancy premises.

3. The Petitioner tried his luck by filing a civil suit for declaration that the eviction decree passed in the Eviction Petition was a nullity as the Rent Controller did not have an inherent jurisdiction to try the Eviction Petition. The plaint in the civil suit was rejected under Order VII Rule 11 of the Code of Civil Procedure by an order dated 05.07.2011. Admittedly, the said order attained finality as it was not challenged by the Petitioner.

4. On taking up the execution of the eviction order dated 17.01.2011, the Petitioner again filed objections raising the same ground that the eviction order was passed without jurisdiction as the Delhi Rent Control Act, 1958 was not extended to the area where the tenancy premises was situated. The objections in the execution Application was dismissed by an order dated 03.10.2012.

5. It is urged by the learned counsel for the Petitioner that the provisions of Delhi Rent Control Act, 1958 will not extend to any area which is urbanized by virtue of notification under Section 507 of the Delhi Municipal Corporation Act(the Act). A separate notification is required to be issued under Section 1(2) of the Delhi Rent Control Act, 1958 Act. There cannot be any dispute about the proposition of law that a notification under Section 1(2) of the Delhi Rent Control Act, 1958 Act is required to be issued for applicability of the Act to any area.

6. The learned counsel for the Petitioner places reliance on Chiranjilal Shrilal Goenka v. Jasjit Singh & Ors., 1993(27) DRJ 10.in order to canvass the point that an order passed without jurisdiction is a nullity and the same could be challenged in execution proceedings. These are questions of fact which are pleaded and are to be gone into by the Court. The question whether the provisions of the Delhi Rent Control Act, 1958 have been extended to any area by virtue of any notification is a question of fact which have to be proved on evidence. The Petitioner had an opportunity to plead and prove these facts during the trial of the Eviction Petition and even in the civil suit. In this view of the matter, the executing

Court cannot go beyond the decree, Chiranjilal Shrilal Goenka(supra) relied upon by the learned counsel for the Petitioner is not attracted to the facts of the present case.

7. The Revision Petition is without any merit; the same is accordingly dismissed in limine. (G.P. MITTAL) JUDGE NOVEMBER 05 2012 pst

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