

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: March 03, 2010

Date of Order: April 08, 2010

**+ CM(M) 201/2010**

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**Deepak Arora & Ors.**

Through: Mr. Pradeep Gupta & Ms. Laxmibai, Advocates

**08.04.2010**

**...Petitioners**

Versus

**Bal Krishna Bhargava**

Through: Mr. M.K. Bhargava in person

**...Respondent**

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**JUDGMENT**

1. By way of present petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 7<sup>th</sup> December 2009 of learned ARCT.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner was let out the premises in question on 25<sup>th</sup> June, 1984. The premises also consisted of a mezzanine. According to respondent/ landlord, this wooden mezzanine (*duchati*) was only on 25% of the area of the shop as permitted by municipal byelaws. In January, 1994, the tenant demolished the wooden mezzanine/ loft and in its place laid an inter-floor of RCC on 100% area of shop. On tenant/petitioner making these substantial alterations in the premises, the landlord/ respondent served a notice terminating the tenancy and also requested MCD to take action for unauthorized construction. Since the tenant did not bring the premises to its original shape nor MCD took action, the respondent/ landlord filed a writ petition being Writ Petition 4408 of 1994. In this writ petition, this Court vide order dated 10<sup>th</sup> March, 1997 directed MCD to initiate appropriate action. In pursuant to the order of this Court, unauthorized construction was booked for demolition, however, instead of

demolition, MCD officials punctured RCC inter-flooring and closed the file. The landlord thereafter filed an eviction petition against the tenant in October, 1998 on the ground of substantial changes having been made in the premises in dispute. This eviction petition was allowed under Section 14(1)(j) of DRC Act by the learned ARC vide order dated 8<sup>th</sup> December 2002. The petitioner was directed to dismantle and remove 75% the mezzanine floor being beyond the portion let out and approved by MCD and to bring the mezzanine floor to the original position measuring 16'5" X 30'3" inch within 30 days. The petitioner herein preferred an appeal against this order on 24<sup>th</sup> January, 2003 being RCA 69 of 2003. However, the petitioner chose to withdraw this appeal and the appeal was dismissed as withdrawn on 29<sup>th</sup> January, 2003. The petitioner then filed a review application on 29<sup>th</sup> October, 2003. This review application was also dismissed as withdrawn on 30<sup>th</sup> October, 2008.

3. It is obvious that on withdrawal of appeal by the petitioner the order passed by learned ARC under Section 14(1)(j) became final and binding. The petitioner, however, did not dismantle the excess coverage of mezzanine floor nor brought it to its original position. The petitioner made an application under Section 14 (10) of DRC Act for permitting him to pay compensation to landlord for additions. This application was also dismissed. The petitioner then made an application for recalling order dated 30<sup>th</sup> October, 2003 whereby review was dismissed as withdrawn. This application was allowed by learned ARC on 20<sup>th</sup> February 2004. The respondent/ landlord challenged this order of learned ARC dated 20<sup>th</sup> February 2004 by filing CM(M) No.566 of 2004. This petition was allowed by this Court and the matter was remanded back for reconsideration on 23<sup>rd</sup> May, 2006. The petitioner was allowed by learned ARC to move a fresh review application. The petitioner moved fresh review application dated 15<sup>th</sup> February 2008 for recalling/ setting aside of order dated 18<sup>th</sup> December 2002 before the learned Rent Controller. This review application was dismissed by learned ARC on 6<sup>th</sup> July, 2009. Against this order, an appeal was preferred by the petitioners before RCT on 6<sup>th</sup> August, 2009 and the learned RCT dismissed the appeal vide the impugned order.

4. It is apparent from the entire history of litigation that the petitioner had no intention to comply with the order of learned ARC dated 8<sup>th</sup> December 2002 and had been misusing legal process to his advantage. First he filed an appeal then withdrew the appeal. Despite the order of learned ARC having become final, the petitioner did not dismantle the mezzanine and instead, moved an application that he wanted to pay compensation. He then moved review application which he withdrew. He again preferred an application for recalling the dismissal order on review application. Learned ARCT after observing the entire history of the case found that there was no substance in the appeal filed by the petitioners and the review was rightly dismissed and dismissed the appeal with costs of Rs.10,000/-.

5. It is settled law that under Article 227, this Court does not act as a Court of appeal and has not to re-appreciate the facts. The order passed by learned ARC under Section 14(1)(j) has become final in the year 2002. The only effort of the petitioner seems to be to prolong his illegal actions by resorting to one or other litigation and to see that additional mezzanine constructed by him is enjoyed by him perpetually and to frustrate the order passed by learned ARC. In *Buddikota Subbarao vs. V.K. Parosaran AIR 1996 SC 2687*, the Supreme Court held that no litigant has unlimited right to draught the court time and public money in order to get his affairs settled in the manner, he wishes. Access to justice cannot be allowed to be misused as a license to file misconceived and frivolous petitions. The present petition is hereby dismissed being a frivolous petition with costs. The costs are quantified at Rs.50,000/-.

**April 08, 2010**  
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**SHIV NARAYAN DHINGRA J.**