

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.5389/2000

(From the judgment and order dated 24.11.99 in CM(M)349/96 of
the High Court of Delhi at New Delhi)

MACHINE TOOLS (INDIA) LTD.

Petitioner (s)

VERSUS

LATA MEHTA

Respondent (s)

(With prayer for interim relief)
(For Final Disposal)

Date : 05/12/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.P. MISRA
HON'BLE MR. JUSTICE U.C. BANERJEEFor Petitioner (s) Mr. Jaspal Singh, Sr. Adv.
Mr. Sandeep Kapoor, Adv.
Mr. Rajinder Mathur, Adv.For Respondent (s) Mr. Sudhir Chandra Agarwal, Sr. Adv.
Mr. Vijay Gupta, Adv.
Mr. Ravi Kumar Shankar, Adv.
Mr. Navin Prakash, Adv.UPON hearing counsel the Court made the following
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.SP2

Leave granted.

The appeal is dismissed with costs, which is
assessed at Rs.10,000/.

.SP1

(Ganga Thakur)
P.S.to Registrar(V.P. Tyagi)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Machine Tools (India) Ltd.

Appellant

Versus

Lata Mehta

Respondent

O R D E R@@
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Leave granted.
Heard learned counsel for the parties.

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The appellant-tenant has filed his claim as against the order of eviction. The respondent-landlord filed a petition for eviction against the appellant under Section 14 (1)(e) of the Delhi Rent Control Act on the ground of her bona fide requirement.

The case of the respondent is that her husband retired on 31st March, 1979 and was not gainfully employed on the date of eviction petition which was filed on the 18th June, 1980. Respondent family desired to shift to Delhi after retirement as the relatives of both, the appellant and her husband are in Delhi. Her brother-in-law Mr. S.D. Malhotra, invited her husband to join him as partner in his business of Insurance Assessors & Surveyors. Both the families of respondent-landlady and her husband belong to Delhi. The appellant contested the petition denying these averments. The submission is, this petition is only pretext to evict for higher rent. There is no question of doing any business in Delhi. Her husband is gainfully employed in Bombay. They all have their social circle at Bombay as they have been residing there for more than 30 years. The Rent Controller dismissed this petition on the ground, since accommodation in question has two tenancies, one for commercial and the other for residential hence cannot be decreed, though upheld the bonafide need of the landlady. The Rent Controller however recorded that her husband belonged to Delhi and both want to reside at Delhi as they have large circle of friends and relatives in Delhi. Further records that the appellant has not assailed the version that the landlady has no other accommodation in Delhi except the accommodation in question. In fact, it further held that the case of respondent stand corroborated through the testimony of Mr. S.D. Malhotra and Mr. K.K. Mehta. Aggrieved by this the respondent filed revision while the appellant filed petition under Article 227 of the Constitution of India in the High Court. The reason for dismissing the eviction petition of respondent is recorded by the trial court in para 23 as follows:

Admittedly the premises mentioned in Ex.R-1 were let out for residential purpose and mentioned in Ex. R-2 were let out for any purpose other than the residential purpose. Since the petitioner has knocked the door of this Tribunal for eviction of the respondent out of the entire premises bearing No. D-262, Defence Colony, New

Delhi on the ground that there were single tenancy, this Tribunal cannot set up a new case for the petitioner, thereby announcing that her eviction petition for the premises mentioned in Ex. R-1 only is maintainable. It is settled proposition of law that the courts cannot set up a new case for the petitioner. Accordingly, considering the facts that the premises let out on the strength of Ex. R-1 were let out for residential purpose, even then this Tribunal refrains its hands in passing an eviction order in respect of the premises mentioned in Ex. R-1 only.'

The revision petition of the respondent-landlady was allowed holding that both the splitted tenancies to be residential and thus set aside the order of the Rent Controller to that extent. Against this decision, the present appellant filed SLP No. 5939 of 2000 in this Court which was dismissed on 10th April, 2000.

The present appeal is filed against the order of the High Court rejecting appellant petition under Article 227 of the Constitution. The High Court decreed eviction and confirmed the findings recorded by the trial court about the bonafide need of the respondent.

Learned counsel for the appellant with vehemence submits that finding recorded by both, the Rent Controller and the High Court is perverse and is based on no evidence. He has taken us to the evidence on record. We have gone through the same. We find after going through it that the findings are based on evidence and it cannot be said to be perverse. Both the Rent Controller and the High Court has considered the issues based on the evidence and has drawn the inference which does not call for our interference. Lastly, learned counsel submits that since the tenancy is splitted into two, the one composite eviction petition is not maintainable. This submission has no merit. We find the appellant earlier filed SLP as aforesaid challenging order of the High Court that two tenancies are not one commercial and one residential but both are residential. It was for the appellant to raise this issue if at all in that SLP, if they have not raised then cannot be raised now as it would be covered by the principle of constructive res judicata. However, it is pointed out by the learned counsel for the respondent that they have raised specifically this ground in the SLP and that SLP has been dismissed which has become final.

For the said reasons both the grounds fail and thus we do not find any merit in this appeal. Accordingly, the appeal is dismissed. However, looking to the facts and circumstances of the case, we feel it appropriate and accordingly order that the appellant to vacate the premises in question by or before 31st May, 2001 subject to the usual undertaking to be filed within four weeks from today. For this extended period, the appellant shall pay a sum of Rs.15,000/- per month regularly which had to be paid within 1st week of each month in advance. For the month of December, 2000 it shall be paid by on before 20th December. This will also be included in the undertaking to be filed. The appellant shall also deposit any arrears, if due, within six weeks from today.

This appeal with the above observations is dismissed with costs, which is assessed at Rs.10,000/-.

(A.P. Misra)

New Delhi.
December 5, 2000

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(U.C. Banerjee)