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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

...

RA.No.324 of 1994

in

OA.No.1863 of 1988

Dated New Delhi, this 6th day of October, 1994

Hon'ble Shri B. K. Singh, M(A)

Smt Kusum Lata
R/o A-85, Janta Colony
Raghubir Nagar
NEW DELHI

... Review Applicant

By advocate: Shri R.P. Oberoi

VERSUS

1. Lt. Governor of Delhi, through
Chief Secretary,
Delhi Administration
DELHI
2. Director of Education
Delhi Administration
Old Secretariat
DELHI
3. Joint Director of Education
Finance, Directorate of Education,
Old Secretariat
DELHI
4. Principal
Govt. Girls Senior Secondary
School, Sector-6 (First Shift)
R. K. Puram
NEW DELHI
5. Principal
Govt. Girls Senior Secondary
School, B-I, Janakpuri
NEW DELHI

... Respondents

JUDGEMENT:

Shri B. K. Singh, M(A)

This Review Application No.324/94 in OA.No.1863/88
has been filed by the review applicant, Smt. Kusumlata
against the order and judgement in OA.1863/88 delivered
on 19.8.94.

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2. The Review Application cannot be entertained under the provisions of Section 114 of the CPC **for advancement of new arguments.** read with Order 47 Rule 1 / In order that the RA should be admitted, the review applicant is required to show:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of of the review applicant or could not be produced by him/^{her} at the time when the order was made; or
- (ii) Some mistake or error apparent on the face of the record; or
- (iii) Any other sufficient or reasonable cause ^{/to those} ~~analogous~~ mentioned under Section 114 or Order 47 Rule 1 of CPC.

The RA is maintainable only if it comes within the four corners of Order 47 Rule 1 read with Section 114 of CPC. A review cannot be permitted for hearing of fresh arguments or even for correction of an allegedly erroneous view taken but only for correction of a patent error of fact or law which stares one in the face and for which no elaborate effort or argument is needed to establish the same.

3. After going through the RA, I do not find any new evidence or important matter which was not mentioned in the OA or was not argued at the time of hearing nor is there any error of fact or law apparent on the face of the record. On the basis of the admitted

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facts and on the basis of the pleadings on record a very lenient and liberal view was taken in the sense that if we go by cold logic of law, the applicant would not be entitled to any H.R.A. till the divorce suit was decreed in her favour on 30.9.88 and she would have been required to refund the entire amount of H.R.A. charged from the date of her entry ^{into Govt. service} when she was living as daughter-in-law in the house of her father-in-law and subsequently ^{the house} was allotted in the name of her husband when she was living with him. I took a view that she should refund the H.R.A. till the date she shared accommodation with her husband. There is nothing on record to show that she was living with her two sons in her own house No.A-85, Janta Colony, Reghubir Nagar, New Delhi, since December, 1973. The divorce suit was filed in 1979 in the Court of Additional District Judge. In this suit as well as in the suit filed for maintenance of the minor children the address given is B-114, Single Storey, Ramesh Nagar, New Delhi. It is only on the basis of presumption that the applicant has been given the benefit of living separately since after the filing of the divorce suit and claiming maintenance for minor children, she would not be in a position to share the accommodation with her husband. Pleadings on record, OA, counter reply and rejoinder, no-where show the date from which the applicant started living separately from

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her husband. For want of any clear indication, the irresistible presumption ~~is~~ that she must have left her husband before filing the divorce suit ^{the suit for} and main-tenance of her minor children in 1979. From what date in 1979 she vacated the house of her husband, has also not been indicated.

4. In the light of the judgement of the Hon'ble Supreme Court delivered on 1.8.94 where it was held that H.R.A. cannot be claimed as a matter of right if an employee has refused accommodation allotted to him by the management. The Hon'ble Judges comprising Mr Justice P.V. Sawant and Mr Justice M. K. Mukherjee have held that Government rules provide that H.R.A. shall not be admissible to those occupying accommodation provided to them as also to those whom accommodation has been offered but who have refused to accept. The Hon'ble Supreme Court also laid down the law that HRA is not a part of pay but it is covered by the definition of compensatory allowance and has to be treated as such. The uncontroverted fact that the applicant after her marriage resided with her father-in-law whom accommodation was allotted and subsequently when she joined service in 1973, she was living in the Government accommodation allotted in the name of her husband. It is presumed that she would have continued to live with her husband till she parted ^{company} with him and filed the divorce suit in 1979.

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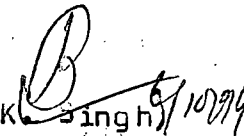
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Therefore, she will have to refund the amount she was paid as HRA from the date of joining of Government service till the date she vacated the house and filed the divorce suit in 1979, and it is only from that date she had shown a different address i.e. B-114, Single Storey, Ramesh Nagar, New Delhi. ^{except} I do not find any other evidence/ a photocopy of the Ration Card to show that she was living with her two sons in her own house A-85, Janta Colony, Raghbir Nagar, New Delhi. Production of Ration Card alone is not a conclusive proof of living in her own house after her marriage.

5. In the light of what has been stated above, I do not find any error of fact or law apparent on the face of the record nor is there any other sufficient ground warranting a review of the order and judgement in DA.1863/88 delivered on 19.8.94.

6. The RA is rejected under Order 47, Rule 4(1) of CPC.


(B. K. Singh)
Member(A)