

* **HIGH COURT OF DELHI : NEW DELHI**

+ **CS(OS) No.838/2006**

% Judgment reserved on : 24th April, 2009

Judgment pronounced on : 20th October, 2009

Tilak Raj Narula

...Plaintiff

Through : Mr.D.S. Chauhan, Adv. with Ms.Ruchi
Singh and Mr.Rajinder Juneja, Advs.

Versus

M.L. Sethi

....Defendant

Through : Mr.Madhur Sapra, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

- | | |
|---|-----|
| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MANMOHAN SINGH, J.

1. The present suit has been filed by the plaintiff, inter alia, praying for declaration, recovery of money and mandatory injunction against the defendant in respect of the suit premises bearing Hall No.2, Ground Floor, I-41, Lajpat Nagar-II, New Delhi-110024 to increase the monthly rent to Rs.25,000/- p.m. w.e.f. 1st January 2006 or in the alternative directing recovery of possession of the suit premises in the event of default by the defendant to pay the monthly rent at the enhanced market value.

2. The plaintiff is the owner and landlord of Property/premises

No. I-141, Lajpat Nagar – II, New Delhi – 110024. The defendant is tenant of the plaintiff in respect of Hall No. 2 on the ground floor measuring approx. 18'x10' ft. of the above mentioned premises/property of the plaintiff (hereafter called the 'suit premises'). The suit premises was let out by the plaintiff to Sh. Achraj Ram, since deceased, the father of the defendant by an agreement in April, 1962 at a monthly rent of Rs. 141.75, excluding electricity and other charges. Upon the demise of his father in the year 1986, the defendant inherited the tenancy and became tenant under the plaintiff on the same terms and conditions. The defendant is using the suit premises for commercial activity and running a chemist shop by name M/s Sethi Sons Chemist.

3. It is alleged by the Plaintiff that the suit premises is situated in the middle of famous Central Market, Lajpat Nagar, New Delhi. The defendant is however, paying the rent @Rs.141.75 p.m. which is highly inadequate keeping in view the large scale increase in the cost of every item and rising inflation since the year 1962. The rent being paid by the defendant thus does not even meet a fraction of the cost of maintenance or even the liability of property tax and other dues paid by the plaintiff. The plaintiff submits that the suit premises can fetch a minimum monthly rent of Rs. 40,000/- (Rupees Forty Thousand) in the market, whereas the defendant is paying a meager monthly rent of Rs. 141.75 which is not in any manner commensurate with the present market rate of rent and is unjust, unfair and irrational.

4. In view of above, the plaintiff prayed for enhancement of rent according to the prevailing market rates of rent in the

locality/market.

5. It is submitted that vide legal notice dated 22.12.2005, the plaintiff called upon the defendant to enhance the monthly rent of the suit premises to Rs. 25,000/- with effect from 1st January, 2006 and in the case of his inability to do so, called upon him to vacate the suit premises. The said notice was duly served upon the defendant but they declined to enhance the rent or even to vacate the demised premises. Defendant sent reply on 27th January, 2006 to the abovesaid notice through his advocate stating that since the suit premises is covered under the provisions of Delhi Rent Control Act, 1958 (for short the 'Act), the plaintiff cannot demand enhancement of the rent beyond the limit of 10% every three years as prescribed under the provisions of the said Act and the defendant only offered to increase the rent by 10% and purported to tender rent of Rs. 156/- for the month of January, 2006. Thus, the present suit has been filed by the Plaintiff against defendant.

6. The plaintiff submits that Section 4,6 and 9 of the Act, came under challenge in Civil Writ Petition No. 2783 of 1997 titled as **"Raghunandan Saran Ashok Saran (HUF) Vs. Union of India & Ors.** before this Court. A Division Bench of this Court in the abovesaid case vide judgment dated 18.02.2002 (**95 (2002) DLT 508**) struck down the aforesaid provisions of the Act, holding the same to be ultra vires the Constitution of India on the reasoning given therein.

7. By virtue of the observations made in Raghunandan Saran (supra), the statutory prohibition on the landlord not to charge any amount in excess of the standard rent stands removed. The landlord is

therefore entitled to enhance and revise the rent of the premises to commensurate with the rising cost, inflation, price index and such other factors in view of the fast changing structure and norms of the society, as well as many fold increase in the value of the properties.

8. It is argued by the learned counsel for the Plaintiff that in the said ruling, the Court has held that the said provisions of the Act have become unreasonable and unconstitutional with the passage of time where there is no adequate provision for enhancement of rent to commensurate with rising cost, inflation, whole sale price index and which therefore have a shackling effect on the rights of landlords, and from a rational and humane angle, a change was required with the passage of time.

9. The Division Bench of this Court while holding the aforesaid provisions of the Act as ultra-vires removed the statutory prohibition upon the landlord not to charge more than the standard rent and enabled him to revise rent of the premises to commensurate with the rising cost.

10. It is further argued by the plaintiff that the existing rent of the premises at Rs. 141.75 per month has been unjust and unfair keeping in view the municipal taxes in respect of the properties in Delhi. The plaintiff urged that the defendant is deriving double benefit in doing business from the suit premises. In fact the plaintiff/landlord is not getting any amount to maintain himself and his family. The plaintiff therefore, claims a monthly rent to the tune of Rs. 25,000/- per month with effect from 1st January, 2006 and continuance of payment of the same month by month till its further revision in accordance with law.

11. In the written statement, the defendant submitted that after passing of the judgment in the case of Raghunandan Saran (supra), one Shri Vishwant Kumar, who was a tenant in respect of some other premises (which was not the subject matter of the said Writ Petition) was allowed to challenge the said judgment, by filing appeal before the Supreme Court, being Civil Appeal No. 6183 of 2002.

12. However, during the pendency of the said appeal, the said Shri Vishwant Kumar vacated the tenanted premises under his tenancy, and therefore, his appeal became infructuous and, as a result thereof, the same was disposed of by the Supreme court, while leaving open the question of law to be decided in appropriate case, i.e. the question as to whether the Sections 4,6 and 9 of the Act as amended up to date, are ultra virus or not. Thus, it is contended that the judgment in Raghunandan Saran (supra) did not attain finality in the Apex Court and is not applicable in the facts of the present matter and the plaintiff is not entitled to any relief against the defendant on the basis of the said judgment.

13. It is further submitted that this judgment does not render Section 6A of the Act as ultra vires as observed in **Kamlesh Bagga & another Vs. Mahender Kaur CM (M) 948/2004** decided on 5th December, 2008 which was also upheld by the Supreme Court. Thus, in this view of the matter and settled proposition of law, no landlord is entitled to claim/demand/ask for increase in the amount of rent by more than 10%, as provided under Section 6A of the said Act, and that too only in the manner provided under Section 8 of the said Act. The

abovesaid provisions of law have not been held to be ultra vires and they continue to exist/operate as lawful provisions of law.

14. The defendant urged that he is the tenant under the plaintiff in respect of the tenanted premises on monthly rental of Rs. 141.75/- beside electricity charges. The present suit is barred under Section 50 of the Act. It is submitted that the contractual tenancy of the defendant is governed by the provisions of the Act as amended upto date, whereunder the plaintiff is liable to effect increase in the amount of rent only at the rate of 10% after every three years, and accordingly, the plaintiff was entitled to seek increase in the amount of rent only to the said extent and to that, the defendant had no objection.

15. In the case of Kamlesh Bagga (supra), this court clearly held that contractual rent below Rs. 3,500/- attracts the provisions of the Act. Increase of rent in the present case from the contractual rent under the Delhi Rent control Act can only be done by recourse to Section 6A thereof. A unilateral notice increasing rent beyond ten per cent is not permissible under Section 6-A of the Delhi Rent Control Act and cannot be acted upon to take the case out of the purview of the Delhi Rent Control Act.

16. Where the rent is agreed between the parties by agreement, it is agreed rent. If the tenant is not willing and agreeable to an increase in rent in accordance with the provisions of the Act, the landlord can have the rent revised under the provisions of the Act.

17. A Division Bench of the Delhi High Court in the case of Raghunandan Saran (supra) held that Sections 4, 6 and 9 of the Act deal

with the determination and fixation of standard rent which have become archaic and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India with the passage of time. The pegging of rent at such low level causes undue hardship to the landlord and does not take into account the fast increasing value of the property. However, insertion of section 6A in 1988 did not make any advance because it did not give any real succor to the landlord getting standard rent.

18. Section 6 of the Act defines the 'standard rent' except for cases provided in sub section (2) of Section 6. Contractual rent has no reference for determination of the standard rent. Section 2(k) defines the standard rent as rent defined in Section 6.

19. Section 9(2) empowers the Controller to fix standard rent and he may fix it at the amount which appears to be reasonable having regard to the provisions of Sections 6 and 7 and under the circumstances of the case. Section 9(1) of the Act provides that on an application made to the Controller in this behalf either by the landlord or by a tenant as the case may be, he may fix the standard rent.

20. The object of Section 4 is to save the tenant from entering into unconscionable bargain with the landlord on account of housing shortage. On application of increase of standard rent and not of rent, such increases are not increases of rent but are only allowable increases of fixing the standard rent.

21. Section 6A which overrules all other provisions of the Act provides for revision of rent every three years. Under Section 6A, the increase of 10% is permissible in standard rent after fixing of the agreed

rent as the case may be but Section 7 provides for lawful increase of standard rent in certain cases. Only such increase is made payable. For this reason, it has been held that an agreement to pay increased rent does not bind the tenant. Section 6A contains a non obstante clause and overrides the other provisions of the Act. It lays down that standard rent fixed under the Act is agreed rent and where no standard rent has been fixed, it may be increased by 10% every three years. It does not say as to how or by whom the rent may be increased. It does not make the increase automatic. It also does not lay down any other condition for making the increase except that the three years must lapse between the two successive increases in rent.

22. Let me now give some relevant facts of the present case. The plaintiff in the present case has not denied the fact that the suit premises were let out by the plaintiff's father to the defendant by an agreement in April 1962 at a monthly rent of Rs. 141.75/- excluding electricity and other charges. After the demise of his father in the year 1986, the defendant inherited the tenancy and became the tenant of the plaintiff on the same terms and conditions and started using the suit premises for commercial activities i.e. as a Chemist shop by the name of M/s.Sethi Sons, Chemists.

23. There is no dispute between the parties that the defendant has offered to increase the rent at 10% under Section 6A of the Act. The court can fix the standard rent on the basis of the cost of construction under the provisions of Section 9 of the Act on an application made in the prescribed manner. There is no provision for increase of contractual

rent in the Act except under the provisions of Section 6A of the Act. In the present case, it is the admitted position that the rent is less than Rs.3,500/-. The plaintiff has not applied for fixation of standard rent as per the provisions of the Act.

24. Section 50 of the Act clearly bars the present suit in relation to fixation of standard rent as no civil court can entertain any suit or proceedings in relation thereto. In the present case, it is agreed rent between the parties by virtue of agreement and the defendant who is tenant is not agreeable to increase in the rent as suggested by the plaintiff except under the provisions of Section 6A of the Act.

25. In accordance with the provisions of the Act, the landlord i.e. the plaintiff is not entitled to file a suit for declaration for recovery of rent/increased rent and/or in the alternative recovery of possession of the suit premises. The suit is barred under Section 50 of the Act and the same is hereby dismissed with costs.

MANMOHAN SINGH, J

OCTOBER 20, 2009

nn