

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 246/2008**

Date of decision : August 19, 2009

VINOD KUMAR & ANR. Appellants
Through : Mr. R.S. Kela, Advocate

Versus

DHARAMVEER Respondent
Through : Mr. S.S. Gautam, Advocate

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? ✓
- (3) Whether the judgment should be reported ✓
in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Appellants are the owners of property No. 7333, 7334 and 7340, Prem Nagar, G.T. Karnal Road, Delhi. Respondent is a tenant in the premises consisting of a shop on the ground floor of the said property for the last more than 40 years on a monthly rent of Rs.25/-, besides other charges. The

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tenancy is oral. Appellants served a notice of termination of tenancy dated 23.12.1999. However respondent failed to surrender the possession of the demised premises. Appellants served another notice dated 10.8.2007 upon the respondent asking him to pay charges for use and occupation of the premises @Rs.20,000/- per month with effect from 1.9.2007 as per the prevalent market rate. Thereafter, appellants filed a suit for recovery of Rs.60,000/- being the arrears of charges for use and occupation @Rs.20,000/- per month.

2. The said suit was duly contested by the respondent wherein he filed an application under Order 7 Rule 11 CPC. The said application was decided by the trial court vide its order dated 26.3.2008 in favour of the respondent and the court was pleased to reject the plaint under Order 7 Rule 11 CPC. Aggrieved by the said order of the trial court, appellants filed an appeal before the Additional District Judge being RCA No.09/2008. The said appeal was also dismissed by the appellate court vide detailed order dated 30.8.2008 and the order

of the trial court was upheld. Aggrieved by the said order of the appellate court, this appeal has been filed by the appellants.

3. Learned counsel for the appellants has argued that since Sections 4, 6 & 9 of the Delhi Rent Control Act (hereinafter referred to as DRC Act) have been struck down by this Court in **Raghunandan Saran Ashok Saran (HUF) v. Union of India & Ors. – 95 (2002) DLT 508 (DB)**, the appellants were within their rights to demand the rent @Rs.20,000/- per month being the prevalent rate of rent in the market and therefore, the suit was not hit by the provisions of the DRC Act. The Trial court and the appellate court committed a grave error in rejecting the plaint of the appellants under Order 7 Rule 11 CPC.
4. Learned counsel for the respondent has submitted that no substantial question of law is involved in this appeal which needs any adjudication as respondent continued to be a tenant in the suit premises and is governed by the provisions of DRC Act. **Raghunandan Saran's case (supra)** is not

applicable to the facts and circumstances of this case in view of the provisions contained in Section 6A of the DRC Act. Since the respondent continues to be a tenant in the premises, the appellants cannot treat him as an unauthorised occupant. He prayed that appeal be dismissed.

5. Admittedly, respondent is a tenant in a shop owned by the appellants for the last more than 40 years. He has been paying Rs.25/- per month as rent besides other charges. If the plea of the appellants that tenancy of the respondent was terminated vide notice dated 23.12.1999, for the sake of arguments is accepted, even then the respondent continued to be a statutory tenant in the demised premises after the said termination as the provisions of DRC Act applied to the premises. Under these circumstances, the only remedy if any available to the appellants to get the respondent evicted, was under Section 14 of the DRC Act. In **Raghunandan Saran's case (supra)**, the Division Bench of this Court struck down the provisions of Sections 4, 6 & 9 of DRC Act, which regulate the standard rent of

the premises governed by the said Act, with the observations that the said provisions were formulated without taking into account huge differences between cost of living in past and present time and failed to pass the test of reasonableness and the landlords were being treated arbitrarily because of said provisions. While striking down the provisions of Sections 4, 6 & 9 of the DRC Act, it was observed:

"16. Since the fact situation prevailing in the year 1958 has undergone a sea change, Sections 4, 6 & 9 relating to standard rent have been rendered unjust, unreasonable and unfair as they have kept the standard rent yoked to the levels of the past, including the levels prior to the year 1944 [see Section 6 of the Act]. Even if Section 6A is applied to a situation where a landlord was getting Rs.50/- per month as standard rent in respect of his premises, the increase would be only Rs.5/- every three years. With such a meagre increase how would the landlord maintain himself, his family and the property. Obviously, no landlord will invest in a property which is a losing proposition. Providing for fair, just and reasonable increase in rents will act as an incentive for people to build and maintain their premises."

6. The Court also examined the situation of landlords

in respect of old tenanted premises and observed:

“18. The situation of landlords in respect of old commercial tenancies is no different than the position of landlords in respect of old residential tenancies. It is not uncommon that commercial properties rented long back are fetching very meagre rents, while the tenants running their trades in those properties are earning huge profits. This is an unjust and unreasonable situation. It must be pointed out that it is not always correct that all tenants are poor or all landlords are rich. Poor and rich are evenly divided amongst landlords and tenants. Therefore, the need to rationalise the rents and treat both sides fairly.....”

7. However, the Court also took into view the provisions of Section 6A of the DRC Act which permits a landlord to enhance rent by 10% every three years. The provisions contained in Section 6A were not struck down by the Court though, it was of the opinion that the provisions contained in Section 6A were inadequate to balance the rights of the tenants on the one hand and the landlords on the other. It was also made clear by the Division Bench that, a mechanism has to be put in place for the landlords to increase the agreed rent keeping in view the price index.

8. In ***Model Press Pvt. Ltd. v. Mohd. Saied – 2009 (107) DRJ 58 (DB)***, in exactly the similar circumstances where the plaint was rejected under Order 7 Rule 11 CPC, Division Bench of this Court held that under the circumstances of the case and in view of ***Raghunandan Saran's case (supra)***, the appellant cannot claim more rent from the tenants other than the agreed rent which the tenants are happily paying. Since the rent which was being paid was far below Rs.3,500/- per month, the Division Bench upheld the order of the trial court whereby the plaints were rejected.
9. The facts and circumstances of this case in no manner are different from the one which was before the Division Bench in ***Model Press Pvt. Ltd. v. Mohd. Saied's case (supra)***. The trial court, therefore, rightly rejected the plaint of the appellants under Order 7 Rule 11 CPC holding that the provisions of the DRC Act were applicable to the demised premises as the rent was much below Rs.3,500/- per month. The appellate court, therefore, rightly upheld the order of the trial court.

In view of the settled proposition of law, I am of the view that no substantial question of law is required to be formulated in this appeal.

10. Learned counsel for the appellant has referred to **Pearey Lal Workshop P. Ltd. v. Raghunandan Saran Ashok Saran - 155 (2008) DLT 145** to submit that the civil court has the jurisdiction to entertain the suit and appellants were within their rights to claim the rent at the market value as prevalent at the relevant time. Though **Raghunandan Saran Ashok Saran's case (supra)** was referred to by the Single Bench of this Court, however, while considering that the provisions of Sections 4, 6 & 9 of the DRC Act were struck down being violative of Articles 14, 19(1)(g) & 21 of the Constitution of India, the Court did not take into consideration the provisions of Section 6A of the DRC Act.
11. Be that as it may, **Model Press Pvt. Ltd. v. Mohd. Saied's case (supra)**, decided by the Division Bench of this Court, was not brought to the notice of the learned Single Judge in **Pearey Lal**

(16)

Workshop P. Ltd.'s case (supra).

12. Hence, in view of the settled principle of law, I conclude that no substantial question of law is required to be formulated in this appeal. Therefore, the appeal is hereby dismissed.



**(ARUNA SURESH)
JUDGE**

AUGUST 19, 2009
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