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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.80 of 2008

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13.04.2010

SMT. RAJESHWARI KAUSHIK

.....Petitioner

Through: Mr. Manoj Ranjan Sinha, Advocate.

Versus

SHRI KULDEEP SINGH

.....Respondent

Through: Mr. T.C. Sharma, Advocate.

Date of Reserve: 8th March, 2010

Date of Order: April 13, 2010

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?

J U D G M E N T

1. By this petition, the petitioner has assailed order dated 11th October, 2007 passed by learned Additional Rent Control Tribunal thereby allowing the appeal of the respondent thereby setting aside the eviction order dated 24th August, 2006 passed against the respondent.

2. The brief facts relevant for the purpose of deciding this petition are that the appellant/landlady filed an eviction petition against respondent under Section 14 (1) (a) of Delhi Rent Control Act (hereinafter referred to as 'the Act') wherein she alleged that respondent was tenant @ rent of Rs.450/- per month in respect of premises in question and respondent had not paid rent despite service of demand notice dated 26th February, 1998. The respondent in the written statement took a stand that there was no relationship of landlord and tenant and rent was Rs.150/- per month and not Rs.450/- per month. The learned Additional Rent Controller passed an interim order under Section 15 (1) of the

Act and in the interim order, learned Additional Rent Controller observed that the tenant had been taking different stands in different courts. The tenant had filed an affidavit in the court of Sh. Sanatan Prasad, learned Civil Judge stating on oath that he was tenant in the suit premises under the petitioner on monthly rent of Rs.140/- per month excluding electricity charges. However, the learned Additional Rent Controller passed an interim order on 25th March, 2003 under Section 15 (1) of the Act giving following directions to the tenant :-

“Accordingly, the respondent is hereby directed to pay or deposit the arrears of rent at the rate of Rs.150/- per month w.e.f. 1st November, 2002 up till last day of month immediately preceding the date on which the deposit is made within one month from today and continue to pay or deposit the future rent at the said rate by 15th day of each succeeding English calendar month. Nothing stated hereinabove shall tantamount to expression of opinion on merits of case during trial.”

3. The case proceeded on trial and after evidence, the petition of the petitioner under Section 14 (1) (a) of the Act was allowed vide order dated 17th February, 2005. The learned Additional Rent Controller came to the conclusion that the rate of rent was Rs.450/- per month and not Rs.150/- per month on the date of notice of demand and the respondent was in arrears of rent with effect from 1st October, 1993. However, since the petitioner was liable to recover rent only for a period of three years prior to filing of the petition, the petitioner was held entitled to recover arrears of rent with effect from 1st July, 1997 at the rate of Rs.450/- per month. The learned Additional Rent Controller, therefore, modified the order under Section 15 (1) of the Act and directed the tenant to pay arrears of rent @ Rs.450/- per month after adjusting the amount already paid.

4. Against the order dated 17th February, 2005, the respondent preferred an appeal before Rent Control Tribunal being R.C.A. No.134 of 2005. This appeal was dismissed by the Tribunal confirming the findings given by learned Additional Rent Controller vide

order dated 25th October, 2005. The Tribunal observed that none of the findings of fact warranted interference in appeal and the appeal was dismissed. The petitioner thereafter made an application before the learned Additional Rent Controller for passing an eviction order on the ground that the tenant had not complied with the order under Section 15 (1) of the Act and had not deposited/paid rent in terms of the order passed by the court. This application was decided by learned Additional Rent Controller on 24th August, 2006 after confirming non-payment of rent by the tenant subsequent to October, 2005. The tenant admitted that no rent was either tendered or deposited after October, 2005. On this admission of the tenant, the learned Additional Rent Controller observed that tenant was not entitled to benefit under Section 14 (2) of the Act and consequently an eviction order was passed.

5. Against this eviction order dated 24th August, 2006, tenant preferred an appeal and impugned order was passed which is subject matter of challenge. The learned Additional Rent Control Tribunal while setting aside the eviction order observed that the tenant was directed only to pay arrears of rent by learned Additional Rent Controller vide order dated 17th February, 2005 and tenant was not given any direction to pay future rent @ Rs.450/- per month and therefore, non-deposit of future rent would not amount to non-compliance of provision under Section 14 (2) of the Act and no eviction order could be passed. I consider that the learned Tribunal grossly went wrong and acted beyond jurisdiction in considering the implication of Section 15 (1) of the Act and Section 14 (2) of the Act. Section 15 (1) of the Act reads as under :-

“15. When a tenant can get the benefit of protection against eviction – (1) In every proceeding of the recovery of possession of any premises on the ground specified in clause (a) of the proviso to

sub-section (1) of section 14, the Controller shall, after giving the parties an opportunity of being heard, make an order directing the

tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate.”

6. A bare perusal of Section 15 (1) of the Act makes it clear that the order of learned Additional Rent Controller has to be not only in respect of arrears of rent but in respect of deposit of rent month to month by 15th of each succeeding month. The order passed by learned Additional Rent Controller on 25th March, 2003, reproduced in para 2 above, is abundantly clear and categorical directions were given to the tenant to deposit arrears of rent as well as rent month by month @ Rs.150/- per month. This order was modified by final order of learned Additional Rent Controller dated 17th February, 2005 and the modification has to be read in respect of rate of rent. Since at the interim stage the rate of rent as stated by the tenant was ordered to be paid, after recording entire evidence the learned Additional Rent Controller had concluded that rate of rent was Rs.450/- per month and the order under Section 15 (1) of the Act required modification to that extent. Thus, the reasoning given by learned Additional Rent Control Tribunal that the order of learned Additional Rent Controller did not provide for payment of future rent month by month is bereft of substance and not only contrary to facts and it is contrary to law.

7. The Delhi Rent Control Act restricts normal property rights of the landlord. A lease cannot be terminated by serving a notice of termination of lease as under Transfer of Property Act. A tenant can be evicted only if a ground under Section 14 of the Act is made out. When it is specifically provided by the Act that non-payment of rent was a ground of eviction and second default was a definite ground for eviction, the landlord

could not be deprived of this right of getting premises evicted on misconstruction of the provision of Delhi Rent Control Act. The first default in this case was committed by the tenant when despite service of notice the tenant failed to pay arrears of rent and this default was upheld by the court after trial. The second default in this case stood completed when the tenant failed to pay rent after October, 2005 and admitted that rent from November, 2005 onwards was neither paid nor tendered to landlord.

8. I consider that benefit under Section 14 (2) of the Act could not have been given to such a tenant who despite suffering a decree under Section 14 (1) (a) of the Act fails to pay rent regularly and again commits defaults in payment of rent and the learned Additional Rent Control Tribunal grossly erred in holding that the tenant was not bound to pay rent month by month after October, 2005 since there were no directions given by learned Additional Rent Controller in final order. It is an obligation on the tenant to pay rent month by month irrespective of the fact whether any directions were given by the court or not. Once the court had adjudicated the rate of rent being Rs.450/- per month and the relationship of landlord tenant being there, there was no escape for the respondent-tenant from continuing to pay the rent. The tenant in this case did not deposit rent even @ Rs.150/- per month after October, 2005. There was no reason for learned Additional Rent Control Tribunal to either entertain the appeal or to allow the appeal as no question of law was involved in it.

9. The petition is hereby allowed. The eviction order dated 24th August, 2006 passed by learned Additional Rent Controller is restored.

SHIV NARAYAN DHINGRA J.

APRIL 13, 2010
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