

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 9th February, 2010
Date of Order: 2nd March, 2010

CM (M) No. 177/2010

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02.03.2010

Rakesh Sharma

... Petitioner

Through: Mr. Yeeshu Jain, Advocate

Versus

Usha

... Respondents

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?

JUDGMENT

By this petition, the petitioner has assailed an order dated 21st January, 2010 passed by the learned Additional Rent Control Tribunal (NE) whereby an appeal of the petitioner against order of eviction passed by the Additional Rent Controller was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that the landlord (respondent herein) filed an eviction petition under Section 14(1)(a) of DRC Act against the petitioner on the ground of non-payment of rent. The rent was stated to be Rs.390/- p.m. excluding of other charges. The petition was contested by the tenant (petitioner herein) on the ground that there was no relationship of landlord and tenant between petitioner and respondent, the premises was taken on rent from Smt. Angoori Devi and respondent was not legal heir of Angoori Devi. It was also submitted that there was no cause of action on the ground of non-payment of rent since the petitioner had been depositing rent under Section 27 of DRC Act in view of the fact that the petitioner did not recognize the respondent as the owner.

3. During pendency of the proceedings, the trial Court passed order under Section 15(1) of DRC Act and the petitioner was directed to pay or deposit in the Court rent @ Rs.375 p.m. from September 2004 onwards. The arrears were to

be deposited within a period of one month and the monthly rent was to be deposited by 15th of the succeeding month. The petitioner was also held entitled to adjustment of rent which he deposited in the Court subject to condition that he would supply copy of challan of depositing rent to the respondent.

4. During trial, both the sides produced evidence. The petitioner during his cross examination admitted that the respondent was the owner-landlord of the property in question. He also admitted in cross examination that the rate of rent was Rs.375 p.m. he however, disputed service of legal notice dated 27th November, 2004 but the learned ARC after perusal of evidence led by landlord in respect of sending of notice came to the conclusion that the demand notice of rent was sent and received by the petitioner. The learned ARC after going through the evidence regarding payment of rent came to the conclusion that petitioner did not pay rent since September 2004 and he was in arrears of rent since September, 2004 despite service of legal notice. An order under Section 14(1)(a) of DRC Act was passed. Then came the issue of giving benefit of Section 14(2) of DRC Act. The trial Court called a report from the *Nazir* regarding deposit of rent by the petitioner under Section 27 of DRC Act and found that the petitioner had failed to comply with the Order under Section 15(1) of DRC Act he did not deposit the arrears of rent w.e.f. September, 2004 till the date of passing of eviction order. The report of *Nazir* on 19th August, 2006 showed that the petitioner had deposited rent w.e.f. 1st May, 2006 to 31st August, 2006, there was no deposit made for the period September, 2004 to April, 2006. In view of this clear violation of order under Section 15(1) of DRC Act, the learned ARC held that the petitioner was not entitled for benefit to Section 14(2) of DRC Act. In appeal, the learned Additional Rent Controller Tribunal again appreciated the facts and considered the challans of deposit and the affidavit filed by the petitioner and found that the petitioner had not even made an averment in the affidavit that he deposited rent w.e.f. September, 2004 till filing of the eviction petition. It was also found that the petitioner contended of making deposits in various Courts under Section 27 however, no evidence was led by the petitioner to prove that he had deposited the rent in different Courts. Learned ARC Tribunal also observed that a tenant who seeks to deposits rent under Section 27 of DRC Act has to comply with the provisions of Section 26, 27 & 28 of the DRC Act and a conjoint reading of all these provisions would show that the tenant was to tender rent every month and in case of non acceptance of rent by the landlord, he has to deposit the same within 20 days with the ARC. A mere filing of application under Section 27 of depositing rent or

a mere challan does not ipso facto prove that the rent was validly deposit under Section 27 of DRC Act.

5. During arguments Counsel for petitioner relied on Sant Ram v. Janki Parshad 2000 (56) DRJ (Suppl) 187 and submitted that the Court cannot go behind the proceedings under Section 27 of the DRC Act and Court has to assume that the proceedings under Section 27 were validly instituted and conducted and the rent Controller therefore has to presume that the rent deposited under Section 27 has been validly deposit under authority of the learned ARC. I consider that this judgment would not help the petitioner. It is a case where petitioner deliberately did not tender rent to the respondent-landlord on the plea that he did not know as to who the landlord was whereas during cross examination he admitted that it was the respondent who was the landlord of the premises. It is further seen that on the one hand, the petitioner alleged that Naresh Kumar was not the legal heir of Angoori Devi and on the other hand not only he admitted during cross examination that Naresh Kumar was the landlord but even prior to filing of the suit by the landlord he had served a notice on Naresh Kumar that he (petitioner) was tenant in the premises and he was paying rent and tendering rent of the shop in the name of deceased Angoori Devi and deposited it in the Court. The petitioner by this notice called upon the respondent/landlord to repair the premises alleging that the premises was leaking and he made it clear that if repairs were not done by the Naresh Kumar he would it got it done at his expenses himself. He stated that current expenses were around Rs.6,000/- and he had already incurred expenses of Rs.12,000/- In view of this notice sent by the petitioner himself to Naresh Kumar it is clear that the petitioner had deliberately not been tendering rent to the landlord although the petitioner very well knew that it was the respondent who was landlord and entitled to receive rent.

6. I consider that the present petition under Article 227 is not maintainable. The two Courts below have given a finding of fact that the petitioner had not complied with the order under Section 15(1) of DRC Act and had not deposited rent for the period September, 2004 till April, 2006 despite the specific order passed by the Court. In petition under Article 227, the Court cannot interfere in this finding of the fact and give a different finding. The petition is not maintainable and is hereby dismissed.

March 02, 2010
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SHIV NARAYAN DHINGRA, J.