

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

% *Judgment Reserved on: 16.12.2010*
Judgment Delivered on: 21.12.2010

+ **RSA No.70/2003 & CM No.16029/2005**

MADHU BALA Appellant
Through: Mr.O.P.Saxena and Mr.Mithlesh
Kumar, Advocates.

Versus

SHRIRAM SCIENTIFIC & INDUSTRIAL RESEARCH
FOUNDATION Respondent
Through: Mr.Rajesh Gogna, Mr.Sanjay Jha
and Ms.Lata Sharma, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. This appeal has impugned the judgment and decree dated 22.3.2003 which has reversed the finding of the Trial Judge dated 20.1.1996 whereby the suit of the plaintiff Shri Ram Scientific and Industrial Research Foundation (hereinafter referred to as 'the SRSIRF') had been dismissed. The impugned judgment dated 22.03.2003 had decreed the suit.

2. Plaintiff had filed a suit for recovery of ₹50,040/-; this was on account of enhanced rent claimed by the plaintiff for the unauthorized occupation of the suit property i.e. the premises bearing No.B-6, Sri Colony, 19 University Road, Delhi. The suit premises comprised of four rooms, one kitchen, one bath, WC and open court yard. The suit premises had been allotted to the plaintiff vide allotment letter No.B-2 dated 26.9.1987; this was in accordance with the House Allotment Rules of the plaintiff corporation; the defendant being an employee of the plaintiff she had been allotted the accommodation during the course of her employment. The defendant had accepted the terms and conditions of her allotment. Service of the defendant was terminated w.e.f. 08.01.1990. In spite of this factual position, the defendant continued to retain possession of the suit premises and in spite of requests she failed to evict herself from the suit property. She was liable to pay penal licence fee. Present suit was accordingly filed.

3. The defendant contested the suit. It was stated that the defendant had been discriminated and the suit had been filed against her only; other employees of the plaintiff were continuing to retain similar accommodations in spite of they having been terminated from their service.

4. Trial judge framed three issues. In view of the oral and documentary evidence, the Court was of the opinion that since an eviction petition had already been filed by the plaintiff; this being a case of seeking enhancement of rent the suit was not maintainable.

5. This finding of the trial judge was reversed by the first Appellate Court. It was held that the plaintiff was bound by the Allotment Rules which had governed her terms of service; she had been permitted to retain this accommodation only during the tenure of her employment. After the date of her termination of service she was liable to be evicted; in case of her overstay she was liable to pay penal rent. Suit for recovery was decreed in favour of the plaintiff.

6. This is a second appeal. It was admitted and on 16.08.2007 the following substantial question of law had been formulated:

“1. Whether the suit filed by the respondent was hit by the provisions of Section 50 of the Delhi Rent Control Act?

2. Whether the respondent is stopped from taking contradictory stands in two separate proceedings i.e. whether the appellant was a tenant or a licensee?

3. Whether the principle of res judicata barred the respondent from taking the plea that the appellant was a licensee, when it had been finally determined as between the parties that she was a tenant.”

7. On behalf of the appellant, it has vehemently been urged that the present suit was barred by the principle of res judicata.

It has been finally decided by the Court of the Additional Rent Controller and the matter was agitated right up to Supreme court where it has been held that the relationship between the parties i.e. between the plaintiff and the defendant was that of a landlord and tenant; this plea having been finally established present suit was barred under the provisions of Section 50 of the Delhi Rent Control Act (hereinafter referred to as 'the DRCA'). Proposition of estoppel is also attracted and a person is not permitted to approbate and reprobate.

8. Arguments have been countered. It is submitted that admittedly the plaintiff had been allotted this accommodation only in the course of her employment as a Research Assistant Trainee; it was only in this capacity that she was allotted this suit premises which was admittedly owned by the plaintiff corporation. In terms of her employment, in case she overstayed, she was liable to pay market rent of the property which at that time was ₹1500/-. The impugned judgment calls for no interference.

9. Record shows that the appellant/defendant Madhu Bala had joined services of the plaintiff corporation in the year 1983-84. The premises had been allotted to her on 26.9.1987. On 08.01.2009 her services were terminated. On 15.3.1990 petition under Section 14(1)(i) read with Section 22 of the DRCA had

been filed by the defendant which in column 18 contained the grounds on which the eviction of the tenant was sought. It clearly stated that the appellant/defendant was allotted these premises in terms of the her allotment letter No.B-2 dated 26.9.1997; she was governed by the terms and conditions thereof; it was a licence for allotment; after her termination on 08.01.1990 vide letter dated 16.01.1990 she was directed to hand over possession of the suit property but she had failed to do so; on her service coming to an end she being a service tenant she was liable to surrender possession of the suit premises but she failed to adhere to this request of the plaintiff.

10. Ex.PW-1/3 dated 16.12.1986 is the application of the defendant to the plaintiff seeking allotment of a residence. Ex.PW-1/2 dated 26.9.1987 is the Licence for Allotment granted to the plaintiff duly signed by her. It is an admitted document, it states that it is a licence granted to the allottee during the continuance of her service; Management has the right to ask for vacation of the premises immediately; licence fee charged would be 10% of basic salary plus dearness allowance. Ex.PW-1/5 is the affidavit furnished by the defendant undertaking to vacate the flat as and when directed and immediately on the cessation of her employment. Ex. PW-1/9 is the Office Circular of the Department which states that in the event of the house not being

vacated within two months of the termination of the allotment penal licence fee will be charged. Ex.PW-1/10 is the licence fee prevailing as on 01.01.1989 for Type B quarters (suit property). The penal licence for the suit property at the relevant time was ₹1500/-. All these aforementioned documents were produced and duly proved before the Courts below.

11. Vehement contention of the learned counsel for the appellant is that once the appellant/defendant has been accepted as a tenant and this is evident from the fact that the eviction petition filed by the plaintiff had been accepted right up to the Apex Court establishing the relationship of landlord-tenant between the parties; as such the bar of Section 50 operates; a civil suit is not maintainable. The plaintiff corporation cannot now set up a different claim; once they have categorized the status of the appellant as a tenant, they cannot go back on their stand and cannot now aver that she is a licensee.

12. This argument does not have any force. As aforementioned, the factual matrix disclosed that the appellant had been given this accommodation only in the course of her employment; she was governed by rules governing her allotment; the rules provided that in case she did not vacate the suit premises even after the termination of her employment, after two months she would be liable to pay penal licence fee which in her category of suit

premises was ₹1500/- at the relevant time. Admittedly she is still in occupation of the suit premises. Para 18 of the eviction petition clearly described the contingencies and circumstances under which the grounds of eviction of the appellant had been sought. It stated that the plaintiff was a licensee having been given this accommodation under a licence.

13. Section 14 of the DRCA provides a protection to tenant against eviction in certain situation. Under Section 14(1)(i) under certain circumstances, the Controller may order eviction.

Section 14(1)(i) reads as follows:

“14. Protection of tenant against eviction- (1) Notwithstanding anything to the contrary contained in any other law or contract, not order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

..... ..

(i) that premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment.”

Section 14(9) of the DRCA reads as follows:

“(9) No order for the recovery of possession of any premises shall be made on the ground specified in clause (i) of the proviso to sub-section (1), if the Controller is of opinion that

there is any *bona fide* dispute as to whether the tenant has ceased to be in the service or employment of the landlord.”

14. A co-joint reading of the aforementioned statutory provisions show that if the Controller is of the opinion that there is a bonafide dispute as to whether the tenant has ceased to be or not to be in the service or in the employment of the landlord, an order for recovery for possession of the premises under section 14(1)(i) is not to be passed.

15. In the instant case, there was no dispute about the cessation of the services of the defendant employee. Controller, thus, assumed jurisdiction to issue an order under section 14(1)(i) of the DRCA; right up to the Supreme Court the order of eviction of the defendant had been upheld.

16. The scheme of the Delhi Rent Control Act, 1958 nowhere stipulates the provision for payment of penal licence fee in case of an overstay by an unauthorized occupant. Parties were governed by the contract which they had admittedly signed and reflected in Ex.PW-1/2. In terms thereof if after two months in case the plaintiff overstayed after two months of the termination of her employment she was liable to pay the market rate of rent. The bar of Section 50 of the DRCA is not attracted which only bars the jurisdiction of the Civil Courts in respect of the matters

contained therein. This does not include the claim of payment of penal licence fee which was the claim of the plaintiff. This was in terms of the Allotment Rules which governed the contract between the parties and which was an admitted document. Defendant cannot wriggle out of his commitment. While decreeing the suit of the plaintiff, the impugned judgment had considered it fit not to go into the question of the relationship between the parties i.e. whether it was of a landlord-tenant or otherwise; that question stood finally decided and was not reopened; the penal licence fee/penal rent was claimed as a part of the Allotment Rules which governed the contract between the parties. In these circumstances, there was no scope for the applicability of res judicata. Plaintiff was not setting up a different case and claiming that the defendant was a licensee; whether the amount claimed by the plaintiff in terms of the violation of the Allotment Rules governing parties was a penal licence fee or penal rent was immaterial; the terminology as to whether it was a penal rent or a penal licence fee would not take away the admitted clause containing the terms and conditions of the allotment in favour of the defendant. The plaintiff did not adopt any separate stand. The eviction petition had clearly detailed all these circumstances in para 18. The plaint clearly described the suit as a suit for recovery of amount of ₹50,040/-.

The charges claimed were on the ground of the wrongful retention of the suit premises. This amount was claimed as damages.

17. No interference is called for in the finding of the impugned judgment. Substantial questions of law are answered accordingly.

18. There is no merit in the appeal; appeal as also the pending application is dismissed.

INDERMEET KAUR, J.

DECEMBER 21, 2010
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