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

+ **RSA NO.30/2010 & CM Nos.2757-58/2010**

SHAMSHUDDIN Date of Decision: 16th March, 2010
..... Appellant
Through: Mr. M.R.Chanchal,
Advocate.

versus

MUSTAFA Respondent
Through: None.

AND

+ **RSA NO.31/2010 & CM Nos.2761-62/2010**

RAJBIR Appellant
Through: Mr. M.R.Chanchal,
Advocate.

versus

MUSTAFA Respondent
Through: None.

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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? *Yes*
- (3) Whether the judgment should be reported in the Digest ? *Yes*

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM No.2758/2010 (for exemption) in RSA No.30/2010 & CM No.2762/2010 (for exemption) in RSA No.31/2010

Exemptions allowed, subject to all just exceptions.

Applications stand disposed of.

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RSA Nos.30/2010 & 31/2010

1. Vide this common order aforementioned appeals are being disposed of together. Respondent filed a suit for possession against appellant on the ground that he is owner and landlord of property No.A-222, 1/6 Bhagirathi Vihar, Karawal Nagar, Delhi. He had inducted the appellant as a tenant in respect of one shop on the ground floor on a monthly rent of Rs.363/- excluding all other charges. The tenancy was month-to-month tenancy. Appellant had failed to pay rent after July, 2007. Respondent also needed the shop for himself and therefore he terminated the tenancy of the appellant vide legal notice dated 2nd January 2009, which was duly received by the appellant and was replied by him vide reply dated 6th January, 2009. Appellant challenged the jurisdiction of the Civil Court to entertain the present suit on the plea that it was barred under Section 50 of the Delhi Rent Control Act (hereinafter referred to as 'DRC Act').

2. After the pleadings were complete, respondent moved an application under Order XII Rule 6 CPC seeking a decree for possession on the ground of clear admission of facts by the appellant. Said application was allowed by the Trial Court vide its order and

decree dated 8th September, 2009.

3. Challenge to the said judgment and decree by the appellant vide RCA No.29/09 also failed and the appeal was dismissed vide impugned judgment and decree dated 15th January, 2010. Hence, this second appeal.

4. Learned counsel for the appellant has submitted that Civil Court went wrong in assuming its jurisdiction to entertain the suit of the respondent for possession when rent was below Rs.3,500/- per month and its jurisdiction was barred by virtue of Section 50 of DRC Act. Therefore, according to him, a substantial question of law needs formulation and adjudication from this Court in this appeal if jurisdiction of the Civil Court was barred under Section 50 of the Delhi Rent Control Act.

5. This question was dealt with by the Trial Court in its detailed order dated 8th September, 2009 and it was observed that the suit property was not covered by any notification extending the provisions of Delhi Rent Control Act and therefore, Delhi Rent Control Act was not applicable to the suit premises. Under the circumstances, the Civil Court had the jurisdiction to entertain the

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suit for possession. The Appellate Court dealt with the question of jurisdiction in paragraphs 25 and 28 of the impugned judgment and decree. It read as follows:-

“25. The only point for determination in the present appeal is whether the jurisdiction of the civil court is barred in accordance with section 50 of the Delhi Rent Control Act? The perusal of the photocopy of the notification placed on record by the ld. counsel for the appellant does not show that the area of Bhagirathi Vihar is a notified area. The ld. counsel for the appellant has stated that the area of Zone Ghonda is notified one and there is a Sub Zone Gokalpuri where the suit property is situated. So the suit of the respondent/plaintiff is barred u/s 50 of the DRC Act. But I do not find any force in the contention of the ld. counsel for the appellant that the suit property falls in the zone Ghonda which is a notified area or the suit property is situated in its sub zone Gokalpuri. This is a misleading statement of the ld. counsel for the appellant who has tried to twist the facts of the case. As the suit property is situated in the area of Bhagirathi Vihar which is far away from Ghonda.”

“28. Coming to the case in hand I am inclined to hold that the appellant has miserably failed to prove on record that the area of Bhagirathi Vihar, wherein the suit property is situated, is a notified area so the suit of the plaintiff is not barred u/s 50 of DRC Act and since the relationship of landlord and tenant is admitted one. The service of the legal notice dated 2.1.2009, whereby the tenancy of the appellant was terminated is not disputed and thus no issue is left for trial so the ld. trial court has rightly passed the impugned order and decree under appeal in the given circumstances. Accordingly I am inclined to hold that the impugned order and decree under appeal do not suffer from any

infirmity, so they do not require any interference therein and the same are upheld and the appeal of the appellant/defendant is dismissed being devoid of merit. Parties are left to bear their cost. Decree sheet be prepared accordingly. The record of the trial court be returned. File be consigned to the record room.”

6. Since the Appellate Court found that the premises in suit did not fall in the notified area, DRC Act was not applicable. In that circumstance, Civil Court had the jurisdiction to entertain the suit for possession.

7. DRC Act is extended to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limit of Municipal Corporation of Delhi as are specified in the First Schedule to the Act. However, the Central Government has the power to extend the application of the Act or any provisions thereof to any other urban areas included within the limits of the Municipal Corporation Delhi or exclude any area from the operation of this Act or any provision thereof by way of a notification in the Official Gazette. Therefore DRC Act would have no application to the suit premises, if they are not notified as urban areas by the MCD and also if application of DRC Act is not extended to notified urban areas.

8. During the course of arguments, learned counsel for the appellant was asked to assist the Court if demised premises are notified as urban area under the MCD Act. He has placed on record copies of notifications dated 3rd June, 1966 and 26th February, 1988 to argue that the property in suit is adjacent to Ghonda and therefore, implicitly is a notified urban area. These submissions are devoid of any merit. Any area adjoining a notified urban area does not by implication become an urban area unless so notified under Delhi Municipal Corporation Act. Suit property situated in Bhagirathi Vihar in Karawal Nagar is not a notified area as per these notifications and therefore, Bhagirathi Vihar cannot be treated as an urban area. Similarly, no notification of the Central Government has been placed on record to indicate that D.R.C. Act has been extended to Bhagirathi Vihar, Karawal Nagar.

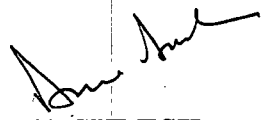
9. In the absence of requisite notifications of MCD and the Central Government, the Trial Court rightly held that Section 50 of the D.R.C. Act has no application to the facts and circumstances of the case to bar the jurisdiction of Civil Court to entertain the suit for possession filed by a landlord against his tenant.

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10. Under these circumstances, I conclude that no substantial question of law is involved in these cases, which need formulation and adjudication by this Court. Hence, I find no merits in these appeals and the same are dismissed.

CM No.2757/2010 (for stay) in RSA No.30/2010 & CM No.2761/2010 (for stay) in RSA No.31/2010

11. Since appeals have been dismissed, these applications have become infructuous. Same are accordingly disposed of.


**ARUNA SURESH
(JUDGE)**

MARCH 16, 2010
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