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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.226 of 2010 & C.M. Appl. Nos.2952-2953 of 2010

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24.02.2010

USHA ARORA

.....Petitioner

Through: Mr. V.M. Thareja, Advocate.

Versus

NARMADA DEVI

.....Respondent

Date of Reserve: 17th February, 2010

Date of Order: February 24, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. By this petition, the petitioner has assailed an order dated 17th November, 2009 passed by learned District Judge-III cum Additional Sessions Judge, Additional Rent Control Tribunal whereby an appeal of the petitioner against the order of Additional Rent Controller was dismissed.

2. The brief facts relevant for the purpose of deciding this petition are that the petitioner was contesting an eviction petition filed by the landlord on the ground of non-payment of rent. The learned ARC passed an order under Section 15 (1) of the Delhi Rent Control Act directing tenant to pay the arrears of rent within 30 days and to deposit monthly rent every succeeding month. In order to see that there was no future controversy about tendering of rent, account number of landlord was given to the tenant and the tenant was to deposit rent every month in that account. The landlord moved an

application under Section 15 (7) of Delhi Rent Control Act for striking of defence of the tenant on the ground that order under Section 15 (1) was not complied with by the tenant (petitioner) and the rent was not deposited for few months and arrears of rent were also not deposited. It was contended that there were thirteen defaults committed by the tenant in deposit of the rent. The learned Rent Controller after going through deposit slips placed on record by the tenant came to the conclusion that rent for the months of December, 2004, January, 2005 and September, 2006 had not been deposited by her. It was also found by the learned Additional Rent Controller that rent for the months of December, 2004 and January, 2005 i.e. arrear was not deposited within one month of passing of order. It was also found that tenant had not paid rent for the months of September, 2006, August, 2007, January, 2008, July, 2008, August, 2008 and September, 2008. She had deposited rent @ Rs.500/- per month instead of Rs.1,000/- per month as ordered by the court for the months of September, 2007, November, 2007 and December, 2007.

3. The petitioner had taken a plea that she had made a payment of Rs.7,416/- to MCD towards property tax on behalf of the landlord and this amount was bound to be adjusted. Learned Additional Rent Controller and Additional Rent Control Tribunal both did not agree with this submission of the petitioner and found that a case of non-compliance of order under Section 15 (1) was made out and the defence of the petitioner under Section 15 (7) was rightly struck off since it was a case of willful default by the tenant.

4. Where a tenant is compelled to pay property tax by way of an order of attachment issued by the municipal authorities, the payment of rent made by the tenant because of such attachment of the rent has to be considered as due discharge of his liability of

payment of rent to the landlord. However, when there is no attachment order made by municipal authorities attaching rent of the premises towards municipal tax, the tenant is not supposed to deposit rent of premises with MCD instead of paying it to the landlord who has liability to pay the tax. A tenant cannot unilaterally keep on discharging alleged dues of the landlord and claim that the payment made by him towards alleged dues of the landlord without his consent should be adjusted towards rent. Thus, the two courts below rightly came to the conclusion that the payment made by the petitioner to MCD was not adjustable. Moreover, this payment of tax even as per the tenant was made in July, 2008. Defaults were committed by the tenant in July, 2007, August, 2007 and September, 2007 when the tenant deposited only Rs.500/- and in respect of December, 2004 and January, 2005 when the rent was not deposited within period of 30 days as directed but was deposited in May-June, 2005. The learned Additional Rent Controller and Additional Rent Control Tribunal both had verified the deposits made by the petitioner and gave a finding that the petitioner had defaulted in compliance with the order under Section 15 (1) of Delhi Rent Control Act.

5. It is settled law that in a petition under Article 227, this court does not act as a court of appeal and cannot upset concurrent finding of fact given by the two courts below; neither the court can re-appreciate the material and give its own finding. The order passed by the learned Additional Rent Control Tribunal was not without jurisdiction and was not passed without material on record. I find no force in this petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

FEBRUARY 24, 2010
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