

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RC.REV. 75/2010 and CM No. 6026/2010**

Decided on 12.04.2010

IN THE MATTER OF :

HARISH KUMAR

..... Petitioner

Through: Mr. Harish Kumar, petitioner in person.

versus

SAVITRI DEVI

..... Respondent

Through: Nemo

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

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| 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 the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is directed against an order dated 28.03.2009 passed by the Additional Rent Control Tribunal, dismissing the appeal preferred by the petitioner/tenant against an order dated 09.05.2008 passed by the Additional Rent Controller, whereby the petitioner was directed to deposit rent @ Rs.330/- per month w.e.f. 01.05.2008 and to continue paying the same. By the very same order, an application filed by the petitioner/tenant under Order VII Rule 11 CPC was also dismissed. The petitioner has also assailed the order dated 28.03.2009, by which the review

application preferred by him was dismissed vide order dated 04.06.2009, on the ground that the same was barred by limitation.

2. Vide order dated 09.05.2008 passed by the Additional Rent Controller on a petition preferred by the respondent/landlady under Section 14(2) of the Delhi Rent Control Act (hereinafter referred to as 'the Act'), the application filed under Section 15(1) of the Act was disposed of while directing the petitioner/tenant to deposit rent @ Rs.330/- per month in the Court w.e.f. 01.05.2008, on or before 15th day of each succeeding English calendar month and further, continue to pay the said amount in future. It was clarified that the aforesaid order was passed in view of the petitioner's own stand that he was depositing rent in respect of the tenanted premises, in a separate petition, @ Rs.330/- per month which, as per him, included a sum of Rs.130/- towards electricity consumption charges. However, the stand of the respondent/landlady was that the sum of Rs.330/- did not include the electricity charges. While observing that the aforesaid stand would be established only after trial and could not be adjudicated at that stage, the aforesaid interim order was passed directing the respondent to deposit rent @ Rs.330/- per month as indicated above. By the aforesaid order, the learned Additional Rent Controller also dismissed an application filed by the petitioner/tenant under Order VII Rule 11 CPC, seeking rejection of the petition preferred by the respondent/landlady, by holding that the said application was not maintainable as it contained disputed questions of fact between the parties, which could be decided only after trial.

3. Aggrieved by the aforesaid order dated 9.5.2008 passed by the learned the Additional Rent Controller, the petitioner/tenant preferred an appeal before the Additional Rent Control Tribunal, which also came to be dismissed vide order dated 28.03.2009. The Additional Rent Control Tribunal affirmed the order of the Additional Rent Controller and held that the petitioner was rightly directed to continue depositing rent @ Rs.330/- per month in view of the fact he was himself depositing rent at the aforesaid rate in petitions filed by him under Section 27 of the Act. The Tribunal also upheld the order of the learned ARC rejecting the application filed by the petitioner under Order VII Rule 11 CPC while holding that disputed questions of fact could not be looked into while deciding an application of such a nature.

4. Aggrieved by the aforesaid order dated 28.3.2009, the petitioner preferred a review application, which was dismissed vide order dated 4.6.2009, as barred by limitation by holding that enquiry revealed that the certified copy of the order dated 28.03.2009 was applied for by the petitioner on 08.04.2009 and was made available to him on 13.04.2009, whereas the review application was filed by him only on 13.05.2009, without offering any explanation for the delay in filing the application within the prescribed time.

5. The petitioner who appears in person, has assailed the aforesaid three orders dated 09.05.2008, 28.03.2009 and 04.06.2009 by preferring the present petition. He has been heard on merits at length.

6. The grievance of the petitioner is that the Additional Rent Control Tribunal erred in upholding the order of the Additional Rent Controller dated 09.05.2008 and that not only is he not liable to pay rent @ Rs.330/- per month, but his application under Order VII Rule 11 CPC ought to have been allowed. He states that the sum of Rs.130/-, which is part of Rs.330/- is towards electricity charges and that the actual rent in respect of the tenanted premises is Rs.200/- per month. He, however, does not deny that the said issue has not been finally decided by the court below and the matter is listed before the learned ARC on 13.5.2010 for recording of evidence. It is pertinent to note that while passing the order dated 09.05.2008, directing the petitioner to deposit rent @ Rs.330/- per month, the learned ARC took notice of the fact that in any case, the respondent was himself depositing rent at the aforesaid rate in petitions filed by him under Section 27 of the Act, some of which are stated to be pending disposal. He states that the said petitions are now listed for hearing on 13.05.2010 and 26.08.2010.

7. This Court finds no error in the order dated 09.05.2008, upheld by the Additional Rent Control Tribunal vide order dated 28.03.2009. The order of deposit of rent @ Rs.330/- per month is only interim in nature. Both the courts below took notice of the fact that the petitioner/tenant had himself conceded that he was paying a sum of Rs.330/- per month towards the rent. The question as to whether the sum of Rs.330/- includes the electricity charges or not is still at large and shall be decided at the time when the petition filed by the respondent/landlady under Section 14(2) of

the Act is finally disposed of.

8. Further, this Court does not find any error in the orders of the courts below insofar as the dismissal of the application filed by the petitioner under Order VII Rule 11 CPC is concerned. In the application preferred by the petitioner/tenant under Order VII Rule 11 CPC, he raised various grounds for rejection of the petition filed by the respondent/landlady. It was claimed that the petition was not supported by an affidavit; that a wrong site plan was filed with the petition; that the rent was being paid regularly by him as per the rent agreement and therefore, no cause of action had arisen in favour of the respondent/landlady and against the petitioner/tenant. Quite clearly, the averments contained in the application are mostly questions of fact particularly, the contention pertaining to the rate of rent as per the rent agreement and the rent being deposited by the petitioner/tenant in the Court from time to time including the period prior to 01.05.2008.

9. The courts below were justified in holding that the objections raised by the petitioner/tenant in his application with regard to the maintainability of the petition filed by the respondent/landlady, are disputed questions of facts and are of not such a nature which fall within the parameters of the provisions of Order VII Rule 11 CPC. Having perused the application filed by the petitioner under Order VII Rule 11 CPC, this Court finds no reason to disagree with the aforesaid conclusion. The objections, as raised by the petitioner in the application do not fall within the parameters of

Order VII Rule 11 CPC. The points raised by the petitioner in his application have in fact been categorically denied by the respondent in her reply to the aforesaid application. The aforesaid facts are therefore still in dispute and at this stage, it cannot be held that the petition preferred by the respondent/landlady under Section 14(2) of the Act is not maintainable and hence liable to be rejected.

10. In view of the aforesaid facts and circumstances, this Court does not find any merit in the present petition, which is accordingly dismissed along with the pending application.

APRIL 12, 2010
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(HIMA KOHLI)
JUDGE