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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.360 of 2009

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05.03.2010

PREM CHAND GUPTA & ANR.

.....Petitioners

Through: Mr. Sachin Datta & Ms. Shaila Arora,
Advocates.

Versus

M/S. FINE METAL WORKS

.....Respondent

Through: Mr. Sanjay K. Jha, Advocate.

Date of Reserve: 1st February, 2010

Date of Order: 5th March, 2010

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?

J U D G M E N T

1. By this petition, the petitioners have assailed order dated 3rd June, 2008 passed by learned Additional Rent Control Tribunal whereby learned Additional Rent Control Tribunal dismissed the appeal filed by the petitioners against the order dated 19th July, 2007 of learned Additional Rent Controller.

2. An eviction petition was filed by the petitioners against respondent/tenant on the ground of non-payment of rent and addition alterations under Section 14 (1) (a) and 14 (1) (j) of Delhi Rent Control Act. The order of learned Additional Rent Control Tribunal is challenged only on the ground that arrears of rent tendered after demand notice, did not include interest @ 15 per cent per annum payable by the tenant as envisaged under Section 26 of Delhi Rent Control Act, thus, it was not a valid tender. There is no dispute to the fact that after service of demand notice, the tenant tendered arrears of rent but

without interest. The issue raised is that the tenant was supposed to pay arrears along with 15 per cent interest for unpaid period and not simply accumulated arrears. It is submitted that since the interest was not tendered along with unpaid rent, it was not lawful tender of arrears of rent in terms of Delhi Rent Control Act and, therefore, the petitioners were entitled for a decree of eviction.

3. This issue was considered by the learned Additional Rent Controller as well as Additional Rent Control Tribunal and both found that the demand notice sent by the petitioners to the respondent did not ask for payment of 15 per cent simple interest on the unpaid rent for unpaid period. The notice merely demanded arrears of rent and since the rent as demanded in the notice was tendered, the tenant would not be liable for eviction and no ground was made out by the petitioners. It is contended by the petitioners that arrears of rent include the rent payable coupled with the interest as legally recoverable from the tenant under Section 26 of Delhi Rent Control Act which reads as under :-

“26. Receipt to be given for rent paid. –

(1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable [and where any default occurs in the payment of rent, the tenant shall be liable to pay simple interest at the rate of fifteen per cent. per annum from the date on which such payment of rent is due to the date on which it is paid].

(2) Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorized agent a written receipt for the amount paid to him., signed by the landlord or his authorized agent:

[**Provided** that it shall be open to the tenant to remit the rent to his landlords by postal money order.]

(3) If the landlord or his authorized agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the Controller may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorized agent, by order direct the

landlord or his authorized agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid.”

4. There is no doubt that Delhi Rent Control Act envisages payment of delayed rent along with interest, however, a landlord is also supposed to make a demand under Section 14 (1) (a) of Delhi Rent Control Act of the arrears of rent as payable by the tenant till the date of service of notice. A perusal of demand notice sent by the petitioners to the respondent would show that the petitioners had not asked the respondent to pay interest along with arrears. The petitioners simply demanded the unpaid rent and they did not talk of interest. The tenant under these circumstances tendered the unpaid rent.

5. It is contended by counsel for the respondent, who put appearance, that the respondent was not averse to make payment of any interest. Since the demand made by the petitioners was only of the arrears, tender was made of the amount as demanded in the notice and, therefore, it was not a case where there was refusal of payment despite demand warranting eviction.

6. I consider that looking at the fact that the respondent had tendered the amount as demanded by the petitioners, the petitioners cannot take a plea that despite demand notice, the tenant failed to tender the rent. Section 14 (1) (a) of Delhi Rent Control Act envisages a situation where the tenant fails to tender arrears of rent despite demand. Had the landlord made a demand of interest @ 15 per cent for unpaid period on arrears and the tenant had not tendered the arrears of rent along with interest, the situation would have been different. But in the present case, since no demand of 15 per cent interest was made, the question of not tendering the demanded arrears of rent does not arise.

7. I, therefore, consider that the learned Additional Rent Control Tribunal rightly dismissed the appeal on this count. There is no force in the petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

MARCH 05, 2010
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