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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 103/2011

17th February, 2011

HINDUSTAN PLYWOOD CO & ANR

..... Appellants

Through: Mr. S.S.Saluja, Advocate

VERSUS

NARESH KUMAR CHADHA & ANR.

..... Respondents

Through: Mr.Amitabh Narayan and Mr. Avdhesh
Singhal, Advocates

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

Caveat No. 137/2011

Mr. Amitabh Narayan, Advocate appears for the caveators. Hence, the caveat is discharged.

CM No. 3286/2011 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

RFA No.103/2011

1. The challenge by means of the regular first appeal under Section 96 of

the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 22.12.2010 whereby the suit of the respondents/plaintiffs for possession and mesne profits has been decreed.

2. The respondents/plaintiffs laid out a case that the monthly rent was Rs.4026/- per month and since there was no registered lease deed for a fixed period of the tenanted premises, the tenancy of the appellants/defendants was terminated by means of a legal notice dated 21.1.2008, Ex.PW1/12, and on failure of the appellants/defendants to vacate the suit premises, the subject suit came to be filed.

3. By the impugned judgment and decree, the trial court has referred to the fact that the last admitted rate of rent paid was Rs.4026/- and therefore, the appellant had no protection of the Delhi Rent Control Act, 1958 since the rent was more than 3,500/- per month. The relationship between the parties of a landlord and tenant was also admitted. The notice for termination of tenancy Ex.PW1/12, was duly proved. The AD of receipt of this notice was exhibited as Ex.PW1/15. In view of the above, quite clearly, all the necessary ingredients to entitle the respondents/plaintiffs for decree of the suit were made out. The respondents/plaintiffs also led the necessary evidence with respect to mesne profits by filing certified copies of various lease deeds in the area and one of which pertained to the same premises, and relying on such a lease deed Ex.PW1/26, the mesne profits were awarded at Rs.25 per sq. ft. instead of Rs.42 per sq. ft. which was paid under

the lease deed Ex.PW1/26 with respect to a separate floor viz second floor of the same property.

4. Before this court, learned counsel for the appellant raised three main contentions. The first contention was that the rent was illegally enhanced by the respondents/plaintiffs from Rs.1200/- per month to Rs.2500/- per month w.e.f. 1.4.1992 and consequently, such enhanced rent was not payable and nor was the further enhancement thereto payable. The second contention raised is that the monthly tenancy was from the 7th of each calendar month to 6th of each calendar month consequently, the notice terminating the tenancy at the end of the calendar month was not a valid notice. Thirdly and lastly, it was urged that the appellant was a partnership firm and not a sole proprietorship firm and consequently, the suit against the respondent no.1 firm was bound to be dismissed because of the partners were not added as parties to the suit.

5. I am unable to agree with any of the contentions as raised by the learned counsel for the appellants. No doubt, the provision of Section 6A of the Delhi Rent Control Act provides for enhancement of rent by 10% after every 3 years, subject to issuance of an appropriate notice, however, this provision only lays down the upper limit of enhancement after 3 years in case there is opposition by the tenant to the enhancement of rent. Dehors the provision of Section 6A, parties can surely contractually agree to pay a higher rent. This was so done in the facts of the present case and enhanced

rents were duly paid in terms of the agreement and from July 1992 to 1st April, 2007. I, therefore, do not find any basis in the argument raised on behalf of the appellants that the enhanced rent was not payable because of Section 6A of the Delhi Rent Control Act, 1958. While on this point I must advert to the fact that the appellants argued before the trial court, though it was not argued before me, that there was undue pressure or coercion for increase of the rent. This argument was rightly rejected by the trial court because the trial court has found as a matter of fact that the rent was increased not only once but continuously without any letter of protest or complaint by the appellants to any authority, much less under the Delhi Rent Control Act, 1958. The trial court has also referred to the provision of Section 13 of the Delhi Rent Control Act, and as per which, if any excess rent is paid, then the limitation of one year is provided to claim refund of the amounts paid allegedly towards rent not payable.

6. The second argument of the learned counsel for the appellant is equally misconceived that the tenancy was not validly terminated because the notice terminating tenancy was given terminating the tenancy at the end of the calendar month instead of the 6th of the calendar month which was alleged to be the last date of the tenancy month. Though, the fact is that the monthly rent was paid for each calendar month i.e. from 1st to 30th, even if I however accept the argument of learned counsel for the appellant that the tenancy month was from the 7th of one month to the 6th of the next

month, yet the argument is misconceived in view of the provision of Section 106 (3) of the Transfer of Property Act, 1882 and which has also been referred to by the trial court for holding that the tenancy was validly terminated as long as the period for vacation of more than 15 days is given prior to filing of the suit. The tenancy was terminated in this case w.e.f. 29.2.2008 and the suit was filed on 3rd November, 2008, meaning thereby, more than sufficient time was granted after termination of the tenancy for the appellant to vacate the tenanted premises.

7. The last argument of the appellant was that the respondent no.1 was a partnership firm and not a sole proprietorship concern. This argument of the appellant has also rightly been rejected by the trial court by holding that onus of proof lay upon the appellants to show that the respondent no.1 was a partnership, and not a sole proprietorship concern, and which onus of proof the appellants failed to discharge inasmuch as no partnership deed was filed to show that the respondent no.1 was a partnership firm.

8. No other point or issue was urged before me.

9. The appeal, being therefore misconceived, is dismissed, leaving the parties to bear their own costs.

CM No. 3287/2011 (stay)

Since the appeal has been disposed of no orders are required on this application which stands disposed of.

FEBRUARY 17, 2011
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VALMIKI J. MEHTA, J.