

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

% *Date of Judgment: 20.5.2011*

+ **R.S.A.No.46/2009**

M/S NESCO LTD.

.....Appellant
Through: Mr.Ravi Gupta, Sr. Advocate
with Mr. Vivek Sharma and
Ms.Seema Sund, Advocates.

Versus

SHRI CHANDEEP KOHLI

.....Respondent
Through: Mr.Deo Prakash Sharma and
Mr.Umesh Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers 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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 09.3.2009 which has endorsed the finding of the trial judge dated 24.3.2008 whereby the suit filed by the plaintiff Chandeeep Kohli seeking possession of the suit property i.e. flat bearing No.B-2/102, 10th Floor, Himalaya House, K.G.Marg, New Delhi

(hereinafter referred to as “the suit property”) had been decreed in favour of the plaintiff.

2. Plaintiff claimed herself to the owner of the aforementioned suit property. Defendant was formerly known as M/s New Standard Engineering Co.Ltd. The premises had been leased out to him by the erstwhile owner Lt.Col.Ramphal Singh; this was in terms of the agreement dated 28.11.1970; initial period of lease was for three years. Rate of monthly rent was ₹1500/-. Clause 2 of the agreement is relevant; it reads as follows:

“To pay all charges for consumption of electricity and water as per bills prepared by Society/Corporation/Builders for said premises or in accordance with the bills received from the Municipal Authorities in that connection. In addition to the foregoing, the Lessee shall also be liable to pay other common charges like running costs of lifts lightening in common places, basement, staircases as per bills raised by the Corporation/Co-operative Society or the builder who will be co-ordinating the common services, provided however, that the Lessee shall be liable to pay the said charges to the Lessor at 10 paisa per sq. ft. month in proportion to the area covered by this lease.”

3. Contention of the plaintiff is that the erstwhile owner had since sold the suit premises to the plaintiff and he has become the owner of the suit premises; it is also not in dispute that the defendant had since attorned to the plaintiff and had been paying rent to the plaintiff. The further contention of the plaintiff was

that the rent was ₹1500/- but the maintenance charges w.e.f. 04.01.2003 had been fixed at ₹2334.30 and added to the rent of ₹1500/-; they become ₹3834.80. This amount now being the rent, a suit for possession was maintainable by the plaintiff.

4 The defence of the defendant is that the maintenance charges of ₹2334.30 do not form a part of the rent. The rent was ₹1500/- only. To support this submission Clause 2 (as aforementioned) of the rent agreement had been adverted to. It is pointed out that the maintenance charges which the defendant was paying were 10 Paise per sq. feet per month; the aforementioned amounts were the amounts which were being paid directly by the tenant to the maintenance agency. There was no privity of contract with the landlord qua these maintenance charges; they do not form part of the rent. Admittedly the maintenance agency was M/s Lok Nath & Co. Ltd. and these charges were being paid by the appellant/tenant to the maintenance agency directly. Appellant/tenant was protected under Section 50 of the Delhi Rent Control Act (hereinafter referred to as 'the DRCA'). Rent being below ₹3500/- a civil suit is not maintainable. To further substantiate this submission attention has been drawn to the communication dated 05.2.2003 (page 175 of the paper book)

written by the father of the plaintiff to the maintenance agency wherein the fact of the purchase of the suit premises by the plaintiff had been informed to the M/s Lok Nath Co.Ltd. The letter of the erstwhile owner Col. Ramphal Singh of the same date (05.2.2003) to the defendant also states that rent and other charges payable shall henceforth be paid to the plaintiff. Attention has also been drawn to the documents (page 177, 179 and 181 of the paper book) wherein ₹1500/- had been mentioned as rent which had been received by the landlord from the tenant. It is pointed out that the landlord had also filed a petition under Section 14(1)(b) of the DRCA on the ground of subletting wherein in clause 9 it has been categorically stated that the rent of the premises is ₹1500/-. It is pointed out that thereafter in February 2007 this petition had been withdrawn by the landlord; it, however, does not take away the stand of the plaintiff which all along has been that the rent of the aforementioned premises is ₹1500/-; this being less than ₹3500/- per month, a civil suit was not maintainable. The impugned judgment suffers from a perversity and reliance by the impugned judgment on the judgment of this Court reported in AIR 2000 Delhi 69 Sewa International Vs.Smt. Kuman Kathpalia was incorrect. It is pointed out that this

judgment has not taken into account the argument now propounded before this Court which is to the effect that the maintenance charges are being paid by the tenants directly to the maintenance agency; there is no privity of contract qua these charges between the tenant and the landlord; ratio of the said judgment is inapplicable.

5. This is a second appeal. It has been admitted and on 15.02.2010 the following substantial question of law was formulated:

Whether the courts below adopted a right approach in construing Clause 2 of the Agreement to reach to a conclusion that rent included all other charges as detailed therein?

6. The judgment of Sewa International (supra) squarely applies to the facts of this case. In this case the premises had been leased out at ₹3146/- and ₹538/- were being paid as maintenance charges; the payable amount of ₹3684/- was held to be the rent. Para 4 of this judgment clearly states that the contention of the appellant/tenant was that since these maintenance charges were being paid to the maintenance society, they would not qualify as rent. This submission had been repelled. In this judgment court had noted herein as under:

The expression 'rent' is not defined under the Delhi Rent Control

Act. However, as to what constitutes rent, could be found out from the provisions of Section 105 of the Transfer of Property Act wherein the word 'rent' is defined. It states that money, share, services or other thing to be so rendered is called the 'rent'. Thus, apart, from the money which is paid as rent, if any service is rendered and any payment is made in respect of the same, the same is also to be included within the definition of 'rent'. In *Karnani Properties Ltd. (AIR 1957 SC 309)* (supra), the Supreme Court held that the term 'rent' is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for use and occupation of its appurtenances but also of furnishing, electric institutions and other amenities agreed between the parties to be provided by and at the cost of the landlord.

7. 'Rent' was a term comprehensive enough to include all payments agreed to be made by the tenant for use and occupation not only of the building and its appurtenances but also other amenities. It was in terms of the agreement dated 28.11.1970 (admitted document) between the plaintiff and the defendant and in terms of Clause 2 that the maintenance charges were being paid by the tenant to the maintenance agency (M/s Lok Nath & Co. Ltd.); the tenant was paying these maintenance charges in terms of a contract which he had contracted with his landlord; these charges necessarily form a part of the "rent" and this has been rightly held by the both the two courts below. These payments were being made in terms of Clause 2 of the agreement which is a document relied upon by both the parties. This finding

calls for no interference.

8 The suit had been decreed under Order 12 Rule 6 of the Code; submission made before this Court is that the provisions of Order 12 Rule 6 were not applicable as there was no clear and unambiguous admissions by the defendant; it was his case that the maintenance charges were not a part of the rent and the parties should have been afforded an opportunity to adduce evidence on this count. This submission of the learned counsel for the appellant has to be noted only to be rejected. It was a proposition of law and the definition of the term “rent” which had been expounded to hold that the term “rent” included not only the amount agreed by the tenant to be paid to the landlord for use and occupation of the building but also the maintenance charges which in this case was the fixed amount of ₹2334.30; this amount was not a fluctuating amount; it was fixed at ₹2334.30 w.e.f. 01.4.2003; added to the actual rent, the amount was ₹3834/- per month which was rightly held to be the rent of the premises thus entitling the plaintiff to maintain the suit for possession which was subsequently decreed in his favour under Order 12 Rule 6 of the Code. The substantial question of law is answered in favour of the respondent and against the appellant. There is no merit in the

appeal. Dismissed.

MAY 20, 2011
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INDERMEET KAUR, J.