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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 372/2010

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Judgment Delivered on: 11.02.2011

BHARAT SANCHAR NIGAM LTD

Through : Mr. Lalit Bhardwaj and Mr. Randhir Beri,
Advs. Appellant

versus

DEVENDER PAL SINGH

Through : Ms. Shaad Anwar Shabnam, Adv. Respondent

+ RFA 388/2010

BHARAT SANCHAR NIGAM LTD

Through : Mr. Lalit Bhardwaj and Mr. Randhir Beri,
Adv. Appellant

versus

TEJENDER SINGH

Through : Ms. Shaad Anwar Shabnam, Adv. Respondent

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. With the consent of the parties, the appeal is set down for final hearing and disposal.
2. Both the appeal arise out of a common judgment passed by learned Additional District Judge, Delhi, on an application filed by the respondent under Order XII Rule 6 CPC, whereby a decree was passed by learned trial court with respect to the rate of rent on the basis of a judgment delivered by a Division

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Bench of this Court in identical matters, which was pending between different landlords and the tenant.

3. The judgment dated 24.2.2010 has been primarily assailed on the ground that the learned Additional District Judge has exceeded its jurisdiction and granted interest @ 10%, per annum.
4. Counsel for the appellant submits that it is not in dispute that the judgment of the Division Bench, which was passed in RFA No.75/2007, has settled the controversy between the parties at rest, vide judgment dated 29.5.2007.
5. Grievance of the appellant is that the judgment of the Division Bench does not grant any interest to be paid by the tenant to the landlord for the delay in making the payments. This is the only question, which requires consideration and which would arise in the present matter.
6. Learned counsel for the appellant submits that on 13.12.2001 appellant had taken approximately 120 flats on rent including the flat of the respondents i.e. flat bearing no.B-1011 (in RFA NO.372) & 1009 (in RFA NO.372) in Statesman House Building, Plot No.B-148, Barakhamba Road, New Delhi, @ ₹95/-, per sq. ft., per month of super area, with maintenance charges @ ₹14/-, per sq. ft., per month of super area, initially for a period of three years. The lease deed also provided for an escalation clause whereby the rent could be increased in case the lessees choose to continue use of the premises. However, since the appellants continued to pay the lower rate of rent, the landlords filed a suit

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for recovery of ₹6,06,833/- along with interest as the differential amount due between the rent actually paid and the higher rate of rent. Counsel further submits that learned trial court has placed reliance of the judgment of the Division Bench but has exceeded its jurisdiction and passed the impugned judgment which is beyond the scope of Order XII Rule 6 CPC as the judgment of the Division Bench has not granted any interest.

7. I have heard counsel for the parties and also carefully perused the judgment passed by learned trial court. In this case, the appellant had taken approximately 120 flats on rent on almost identical terms and conditions @ ₹95/- per sq. ft., for a initial period of three years, which was subsequently increased to ₹114/-, per sq. ft. due to an escalation clause which provides for an enhancement of 20% in rent. Admittedly, the appellant unilaterally decreased the rate of rent from ₹114/-, per sq. ft., to 72.85, per sq. ft. This act of the tenant was challenged by the landlords in various suits filed. The orders passed led to the filing of RFA 75/2007 by the appellant titled as **Bharat Sanchar Nigam Ltd. vs. Sh. Tara Chand & Ors.** It will be useful to refer relevant portion of the judgment:

“6. In view of this concession given by the respondents, the only question which needs to be determined is as to whether it was open to the appellant to reduce the rent to Rs.72.85 paisa per sq.ft. w.e.f. 13.12.2004? The answer will be in negative. The only submission which is made by the learned counsel for the appellant, which was the argument raised before the trial court as well, is that the rental during that period had gone down substantially and, therefore, decision to reduce the rent was taken by the appellant which was based on the prevailing market rent, therefore the appellant paid rent to the respondents @ 72.85 paisa per sq.ft. Whether the market rent of the

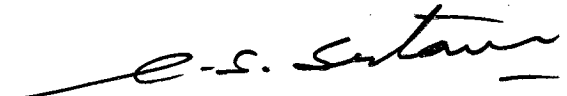
premises in question had gone down or not, is not the question before this Court to go into. The fact remains that there was an Agreement between the parties as per which the rent was fixed @ 95 per sq.ft. The Clause in the agreement was for increase of rent and not for decrease of rent. Therefore, any decision to decrease the rent has to be taken with the mutual consent of the parties as it amounts to novation of the contract entered into between the parties. After the expiry of the initial term, if the appellant wanted to continue in the said premises, such a decrease, therefore, could not have been the unilateral act on the part of the appellant and again in this manner it cannot bind the respondents at all.

7. Respondents would be entitled to receive the rent at the rate agreed upon, if not at escalated rates (which question as aforesaid is not gone into, in view of the concession given by the respondents herein). We, therefore, do not find any merit in these appeals which are accordingly dismissed. However, the decree of the trial court stands modified to the extent that arrears of rent shall be calculated on the basis that rental of the premises is Rs.95 per sq.ft. and not Rs.114 per sq.ft."

8. Reading of the above order would show that parties had arrived at a settlement. Since the respondents were similarly placed as the parties to RFA No.75/2007, it was expected that the appellant would have given benefit of the settlement to all the landlords including the respondents herein. However, the appellant, which is a Government undertaking company, still did not adhere to the terms of settlement with regard to other cases which were pending and contested those matters not only before the trial court but even filed the present appeal.
9. It has been held in the case of **Secy. Irrigation, Government of Orissa v. G.C. Roy**, reported at (1992) 1 SCC 508 it has been held that "*a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest or*

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compensation or damages". In case the appellant had fairly paid the arrears of rent/mesne profits to the respondent at the first opportunity available, the question of payment of interest could have been considered by either the trial court or this Court, but the conduct of the appellant (tenant) is such that there is no reason as to why a common citizen should not be entitled to interest when the rent was unilaterally decreased by the tenant illegally and thereafter in spite of the judgment of the Division Bench the appellant did not choose to pay but kept on contesting the appeal and unnecessarily delayed the benefit from reaching the respondents. The appellants being a Government undertaking should have acted in a fair and just manner and not detrimental to the interest of the common man. As stated in the **Central Bank v. Ravindra**, reported at (2002) 1 SCC 367, the courts can exercise the discretion to grant interest and at least to compensate the person whose rights have been trampled upon. Accordingly, I find no infirmity in the impugned judgment and decree. The present appeals are without merit and the same are dismissed leaving the parties to bear their own cost.


G.S. SISTANI, J.

February 11, 2011

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