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

+ CM(M) 891/2010 & CM No. 12229/2010

RAJESH VERMA Petitioner
Through Mr. S.K. Verma, Adv
versus

BIRMO DEVI Respondent
Through Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

% **ORDER**
08.11.2011

Order impugned before this Court is the order dated 02.06.2010 which was an order passed by the Additional Rent Control Tribunal (ARCT) affirming the order of the Additional Rent Controller (ARC) whereby the eviction petition filed by the landlord i.e. Birmo Devi qua the property No. 418-E, East Babarpur, Gali No. 4, Yadram Mandir, Shahdara, Delhi in a petition under Section 14 (1)(a) of the Delhi Rent Control Act (DRCA) had been dismissed. There are two concurrent findings of fact by the two courts below. In fact the impugned order had noted that this was a second round of litigation between the parties. The first round of litigation had commenced with the

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landlord filing the eviction petition under Section 14 (1)(a) of the DRCA which had been decreed on 12.02.2009. This judgment was the subject matter of an appeal before the RCT which had disposed of the appeal on 02.09.2009; matter had been remanded back to the ARC with the following directions:-

".... However, as regard second point, viz. whether the respondent had right to refuse to pay enhanced rent due to non-supply of electricity was not considered; inasmuch as, there is no finding to the effect that as to what is the effect of non-supply of electricity and whether due to non-supply of electricity, appellant is entitled to suspension of rent. Under these circumstances, case is remanded back to the Ld. ARC for giving a specific finding in regard to claim of appellant regarding suspension of rent due to disconnection of electricity, and whether on that count he had a right to refuse to pay the enhanced rent."

The ARC vide order dated 07.09.2009 had after hearing submissions of the parties returned the following findings:-

"In view of my above findings, it is very clear that it has been found by this Court that as the electricity had no connection with the role of rent, disconnection of the same which was even prior to the date on which the rent was lastly agreed @ Rs.800/- per month would have no effect on the enhancement of rent, as claimed by the petitioner. Therefore, the same would not give any right to the respondent to suspend the rent as, at the time when the rent was agreed @ Rs.800/- per month, there was no electricity in the tenanted premises.

With these observations, the petition stands disposed off. This order shall form a part and parcel of the judgment dated 12.02.2009"

This order of the ARC dated 07.09.2009 was assailed again before the RCT pursuant to which the impugned order has been passed.

At the outset, the learned counsel for the petitioner has been asked to disclose as to what is the perversity or manifest injustice which has been caused by the impugned order; this is in view of the fact that this Court is sitting in its power of superintendence under Article 227 of the Constitution of India; right of second appeal in a rent matter has since been abrogated and power of superintendence of the High Court is not to be substituted as an appellate forum; only if there is a grave injustice or manifest illegality caused by the impugned order, is interference called for.

Learned counsel for the petitioner has no answer to this specific query. Record has been perused. The contention of the petitioner is that the right of suspension of rent was a right which was available to the petitioner as the landlord had failed to restore its electricity and in these circumstances the right of the landlord to seek a statutory enhancement of rent @ 10% per annum was uncalled for. As noted above, the first appellate Court vide its order dated 02.09.2009 had remanded the matter back to the ARC only to answer this specific query which has been answered by the RCT on 07.09.2009. It is an admitted fact that the earlier rate of rent between the parties was Rs.800/- per month; this rate of rent was admittedly exclusive of the electricity charges; in this view of the matter this was well within

the right of the landlord to seek her right of enhancement of rent by 10% per annum which she had demanded by an earlier legal notice dated 24.04.2007; reply to the said noted had been filed; the landlord had sought enhancement of rent @ 10% per annum i.e. Rs.880/- per month; thereafter enhanced rent was demanded by the aforementioned legal notice. The Court below had rightly held that the right to seek enhancement of rent is a statutory right which is available to the landlord under the provisions of the DRCA; the rent of Rs.800/- per month which was admittedly exclusive of electricity charges was thus rightly enhanced by the landlord @ Rs.880/- per month which notice had been served and delivered to the tenant; the tenant was not paying enhanced rent only for the reason that since electricity was not supplied by the landlord he was not liable to pay the enhanced rent. It is also an admitted fact that the benefit of Section 14 (2) of the DRCA has already been granted to the tenant; inspite of demand notice dated 24.04.2007 seeking enhanced rent @ Rs.880/- per month, the same was not paid; compliance of which had to be effected within two months from the date of service of notice by the tenant but was not adhered to. In these circumstances, the impugned order dismissing his plea and decreeing the petition of the landlord under Section 14 (1)(a) of the DRCA in no manner suffers from any manifest error of law which would call for an

interference. Petition is without any merit.

Dismissed.

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INDERMEET KAUR, J

NOVEMBER 08, 2011

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