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

% *Date of Judgment: 08.12.2011*

+ CM(M) 1420/2011 & CM Nos.22113-14/2011 &
CAVEAT No.1108/2011

KANWAR PAL & ORS Petitioners
Through: Mr.J.C.Mahendro, Advocate.

versus

PANKAJ GUPTA Respondent
Through: Mr.Ajay Kumar Gupta,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR J. (oral)

1. Order impugned is the order dated 01.11.2011 passed by the Additional Rent Control Tribunal (ARCT) endorsing the finding of the Additional rent Controller (ARC) dated 23.4.2011 which had decreed the petition of the landlord Pankaj Gupta under Section 14(1))(a) of the Delhi Rent Control Act (hereinafter referred to as the DRCA)

2. Record shows that the present eviction petition had been filed by the landlord seeking eviction of the tenants from the disputed premises i.e. shop no.4 in property bearing no.WZ-A/155,

Arya Samaj Road, Uttam Nagar, New Delhi as depicted in red colour in the site plan attached along with the eviction petition. Present rate of rent was Rs.275/- per month excluding water and electricity charges. The original tenants were Kanwar Pal and Kanti Prasad but thereafter after the death of Kanti Prasad his two sons and his widow being his legal representatives had stepped into his shoes. Contention was that in spite of legal notice dated 06.4.2005 asking the tenants to pay the arrears of rent, they being in default w.e.f. 01.8.2001 @ 250/- per months besides interest @ 15% per annum, no compliance had been effected. Present eviction petition had accordingly been filed.

3. In the written statement these contentions have been denied. The primary objection was that the all the legal representative of the deceased Kanti Prasad had not been impleaded; his widow not having been arrayed as a party; this petition was liable to be dismissed on this ground alone. The notice dated 06.4.2005 had also been disputed; it was denied that the same had been received; further contention was that the rent had been deposited under Section 31 of the Punjab Relief of Indebtedness Act and as such no default had been committed by the tenant.

4. Evidence had been led before the trial court. PW—1 was the landlord who had proved Ex. PW—1/2 whereby the tenant had already been given benefit of Section 14(2) of the DRCA which is not a disputed position. He had also proved the legal notice dated 6.4.2005; the postal receipts showing dispatch of the legal notice by way of registered A.D. had been proved as Ex. PW-1/4 to Ex. PW—1/6; UPC receipt had been proved as Ex. PW—1/7. Both the fact findings court below i.e. the ARC and the ARCT after examining the evidence on record both oral and documentary had drawn a conclusion that the notice had been duly served upon the tenant.; the presumption under section 27 of the General Clauses Act as also the presumption contained in Section 114 of the Indian Evidence Act had been drawn.

5. Admittedly the notice had been sent by registered A.D post although the A.D. had not been received back; the postman had also not been examined but the purport of Section 27 of the General Clauses Act and the presumption contained in Section 114 of the Indian Evidence Act had been adverted to and rightly so. Section 27 of the General Clauses Act, in fact, deals with service by post and it clearly records that unless a different intention appears, the service shall be deemed to be effected by

properly addressing, pre-paying and posting it by registered post, a letter containing the document and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post. This section raises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, pre-paying and posting by registered post to the addressee and then presumption is raised irrespective of whether any acknowledgment due is received back from the addressee or not. This position has in fact been affirmed by the Apex Court in the case of Har Charan Singh Vs. Shiv Rani reported in AIR 1981 SC 1284. This is a rebuttable presumption but has not been rebutted. This finding calls for no interference.

6. Contention of the tenant/petition that he had deposited the rent under the Punjab Relief of Indebtedness Act and this would be a valid deposit also carries no weight. The Apex Court in the case of Atma Ram Vs. Shakuntla Rani reported in 2005 (7) Scale 35 had held that there is a special procedure for deposit of rent which is contained in Section 27 of the DRCA and which has to be adhered to and if any payment made by the tenant under Section 31 of the Punjab Relief of Indebtedness Act it is not a valid

deposit. The submission of the petitioner was that the landlord had shifted his address and his correct address was not known to the petitioner and that is why he had deposited the amounts under Section 31 of the Punjab Relief of Indebtedness Act. This argument is without any merit. Section 27 of the DRCA in fact deals with such a scenario where the tenant is not aware as to whom the rent is to be paid. Section 27 of the DRCA permits such a tenant to make an application before the concerned court to make the deposit of rent in the court. This had admittedly not been done. Record shows that 28 deposits had been made by the petitioner of which 23 deposits were under Section 31 of the Punjab Relief of Indebtedness Act which have to be ignored in view of the judgment of Atma Ram (supra). The only deposit which has been made after the receipt of the legal notice within the two months of the said notice was a deposit dated 12.4.2005 which had again been a deposit under section 31 of Punjab Relief of Indebtedness Act which was also only for the months of March and April 2005. In terms of the legal notice dated 6.4.2005 the tenant was in arrears of rent from 01.8.2001. Tender of the part of the rent would even otherwise not help the tenant.

7. The last argument of the learned counsel for the petitioner is that the widow of Kanti Prasad had not been impleaded which is a non-joinder of necessary parties and on this ground alone the petition is required to be dismissed; this argument is also without any merit. The law is well settled; the legal representatives of the deceased tenant succeed as joint tenants and a petition against one legal representative alone is by itself maintainable. This has been upheld by a Bench of this Court reported in 2008 (8) AD 328 Inder Pal Khanna vs. Commander Bhupinder Singh Rekhi. On all counts the petitioner deserves no relief.

8. This court is sitting in its power of superintendence under Article 227 of the Constitution of India which is not an appellate forum; it has powers of superintendence only; unless and until there is a manifest illegality or a grave injustice which has been caused to the applicant party interference is not called for. Both the fact finding courts below had held in favour of the landlord entitling him for decree of eviction on the ground of non-payment of rent and which orders also not suffers from any infirmity. Petition is without any merit; dismissed.

INDERMEET KAUR,J

DECEMBER 08, 2011/nandan