

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

+ CM(M) No.201/2012 & CM No.2788/2012

Date of Decision: 28.08.2012

JASVINDER SINGH HEERA

..... Petitioner

Through: Mr. S.K. Chachra, Adv.

Versus

SMT. RAJ RANI THR. LRs

..... Respondents

Through: Mr. R.C. Chopra, Adv.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This appeal under Section 39 Delhi Rent Control Act was converted into CM(M) vide order of this Court dated 15th February, 2012. This has been filed by the petitioner, who was the tenant in the suit premises and whose eviction was sought by the respondent on the grounds under Section 14(1) (f), (h) and (j) of the DRC Act. The order was passed by the ARC, Ms. R. Kiran Nath on 1st February, 1997 upholding the ground of eviction under Section 14(1)(j) and thereby directing the petitioner herein to carry out the repairs of the damaged part of the premises and restore back it to its position as it had been let out, within 10 days. This was carried by the petitioner in appeal before the ARCT. The finding of the ARC to the effect that as far as other

structure, i.e., cement flooring is concerned, was maintained. However, while remanding the matter to ARC, an inquiry was directed to be conducted as regard to other damages. Thereafter, ARC Nivedita Anil Sharma vide order dated 21st August, 2001 recorded a finding in the following manner :

“On perusal of the photographs filed by the petitioner, it appears that the respondent has not complied with the orders of the Ld. Addl. Rent Control Tribunal and has not removed the cement floor to fix the electric machine and constructing pucca masonry tank. The submission of the respondent that there is no cement flooring and fixing electric machines and cement masonry tank cannot be considered as this argument has already been dealt with in the judgment. As the orders have not been complied with, I am of the considered opinion that the respondent is liable to be evicted from the suit premises. Accordingly, eviction orders are passed in favour of the petitioner and against the respondent in respect of two shops measuring 14’X15’ each and verandah in the property bearing No.S-20, Ajay Enclave (Near Tilk Nagar) New Delhi, specifically show in site plan attached to the petition.”

2. This matter was again carried in appeal to ARCT by the petitioner. At this time, ARCT Mr. G.P. Thareja made site inspection and reported on 18th October, 2001 as under :

“I went to the site today and inspected the points G & Z as shown in the site plan. No storage tank was located at point G. It was checked by Shri Chopra and Shri Popli Advocates along with applicants. At

point Z there is nothing. However, towards the point X parallel to Z a machine is there which is on the ground of verandah. In the verandah where the machine is kept a broken floor of 4½ inch of brick is there. I gave opportunity to Shri Chopra as well as Shri Popli Advocate if they want to tell something else so that it may also be recorded. They did not tell any other thing.”

3. After the aforesaid inspection, the matter was listed for arguments on 1st November, 2001. In the mean, Mr. Thareja was transferred and Mr. S.M. Chopra took over as ARCT who ultimately disposed the appeal vide order dated 3rd September, 2004. Taking note of the order of Nivedita Anil Sharma as reproduced above, the ARCT Mr. Chopra observed that the ARC has not given a finding of fact as it has noted that “it appears that the respondent has not complied with the orders”. Noting all this, he again remanded the matter back to the ARC to give an opportunity to the landlord to prove photographs and other evidence, if any, in order to prove the compliance or otherwise of the order of ARC with the right of rebuttal given to the tenant, the petitioner herein. Thereafter, the ARC Mr. Rakesh Kumar, as directed by the ARCT, went ahead with the recording of evidence and in the process took on record photographs etc. filed by the respondent/landlord. He also specifically took note of the report of the ARCT Mr. Thareja and recorded, the order dated 04.04.2001 of ARC having been fully complied with. This was challenged by the respondent/landlord before ARCT Mr. OP Gupta who has passed the impugned order setting aside the order of the ARC, and consequently passed eviction order. This order is under challenge by

the petitioner/tenant in the instant petition.

4. I have heard the learned counsel for the petitioner, as also respondent at length and gone through the records. The above facts have been noted to see as to how the litigation has gone beyond the extent it was required. After certain point of time, the litigation seems to be frivolous and luxurious. After the inspection carried by ARCT Mr. G.P. Thareja himself, the matter was listed for arguments. To my mind, nothing more was required thereafter. The observations made by the ARC that it appears that the respondent has not complied with the orders of ARCT and has not removed the cement floor to fix electric machine and construct pucca masonry tank was dealt with by the ARCT stating that it was incumbent upon the Trial Court to have given opportunity to prove the photographs and also lead evidence in support thereof, with the right of rebuttal to the tenant. There was no such need of conducting a full-fledged trial, which the case seems to have undergone for the last so many years. Further, the observations of Mr. O.P. Gupta as contained in para 15 and 17 reproduced herein are palpably erroneous :

“15. What I feel is that respondent has temporarily removed the tank and machine on the date of inspection by Ld. ARCT. He again fixed the same after inspection. This is no compliance of the order directing removal and restoration of the premises in original condition in which the same were at the time of letting.

17. The counsel for the respondent also submitted that

case of the appellant was regarding masonry tank and not PVC tank. Thus the photo is beyond pleading. Again I am unable to accept the arguments. The tank is a tank, may be of pucca cement or of PVC. Installation of tank and machine causes damage. The Ld. ARCT found floor below the machine broken.”

5. He has gone to the extent of observing himself that he felt that the tank was temporarily removed at the time of inspection by the ARCT and was again fixed after the inspection, and thus there was no compliance of the order directing removal and restoration. He has recorded further erroneous finding that there was no difference between the PVC and the pucca cemented tank. He seems to have overlooked that Section 14 (1)(j) of the DRC Act applies only in the case of substantial damage and not in the case of PVC tank. All these observations are extraneous and not borne from the record, nor this was the case of the respondent that PVC tank in any way, caused any damage.

6. During the course of arguments, to set rest this controversy, I asked the learned counsel for the petitioner and also respondent, as to the present status. On being asked, it is stated that there is only one PVC tank and no pucca tank. A proposal was also made by the learned counsel for the petitioner for the inspection of the premises. To this learned counsel for the respondent, while not disputing that there is a PVC tank only, he maintained that the petitioner had earlier admitted that there was a pucca tank. There being no longer pucca water tank as

observed by ARCT during his inspection and even now, the controversy cannot be permitted to be further dragged any longer.

7. In view of my above discussion, I do not see that the order passed by ARCT Mr. O.P. Gupta is sustainable. The same is set aside. It is noted that to give an end to the litigation, the order of the ARC dated 01.02.1997 stood complied with by the petitioner.

8. The petition stands disposed of accordingly.

M.L. MEHTA, J.

AUGUST 28, 2012

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