

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

% *Date of Judgment: 09.05.2012*

+ CM(M) 526/2011

RAM SHREE Petitioner
Through Mr.R.L. Sharma, Adv.

versus

SANJEEV JAIN Respondent
Through Mr. R.K. Saxena and Mr.R.K.
Jain, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Impugned judgment dated 03.03.2011 passed by the Additional Rent Control Tribunal (ARCT) had reversed the finding of the Additional Rent Controller dated 13.04.2010 in eviction proceedings filed by the landlord under Section 14(1)(a) of the Delhi Rent Control Act (DRCA).

2 Record shows that the present eviction petition has been filed by the landlady-Smt. Ram Shree against her tenant-Sanjeev Jain under Section 14(1)(a) of the DRCA; contention being that in spite of the
CM (M) No. 526/2011

legal notice (Ex. PW1/2) dated 15.10.2008 wherein arrears of rent had been demanded from January 2007 up to October 2008; contention being that no rent had been tendered; present eviction petition had accordingly been filed.

3 The defence in the written statement was that the rent receipts were issued by the landlord sometime for two months, sometime for three months, some time for four months and sometime for 6 months; rent was being paid in advance by the tenant; there was never a time when the rent receipts were being issued for a single month . Further contention of the tenant being that he had paid rent from January 2007 up to October 2008 i.e. for a period of 20 months by sending a money order (Ex. PW1/R1 to Ex. PW1/R21) dated 11.10.2008 which clearly shows that rent had been tendered for the aforementioned period; further contention being that this money order was deliberately refused by the landlord; thereafter to build up a case under Section 14(1)(a) of the DRCA, the legal notice dated 15.10.2008 was issued subsequently; intentions of the landlord are mala fide.

4 Oral and documentary evidence was led before the Trial Court; the ARC vide his order dated 13.04.2010 had examined the record and

CM (M) No. 526/2011

the evidence both oral and documentary evidence adduced before it. RW1 had produced 21 rent receipts (Ex. PW1/RW1 to PW1/RW21) which evidence that 11 of these receipts were issued for two months, five receipts were issued for one month, two receipts were issued for four months, one receipt was issued for five months, one receipt was issued for six months and another receipt was issued for seven months. The contention of the tenant that he had paid the rent for the aforementioned period as mentioned in the legal notice dated 15.10.2008 i.e. from January 2007 upto October, 2008 by a money order and the money order had deliberately been refused to be accepted by the landlord did not find favour with the ARC; ARC was of the view that no rent has been paid for the aforementioned period as contained in the legal notice and the tenant being in default of payment, the case stood proved under Section 14(1)(a) of the DRCA and the matter had been renoted as to whether the tenant is entitled to the benefit of Section 14(2) of the DRCA or not.

5 This judgment was the subject matter of appeal before the ARCT

6 There is no dispute with regard to the relationship of landlord and tenant between the parties; rate of rent was Rs. 660/- ; the date of the legal notice is dated 15.10.2008 and the period as aforementioned is arrears

of rent claimed by the landlord with effect from January 2007 upto October 2008. Two witnesses were examined by the landlady of whom first witness was landlady herself(PW1); she had denied the suggestion that the rent of October 2008 was sent by money order; she admitted that she had issued the rent receipts Ex.PW1/R1 to Ex. PW1/R21. PW2-J.P.Sharma had corroborated the version of PW1. One witness on behalf of the tenant had been examined who was RW1, the tenant himself; he had proved rent receipts; his contention all along being that these rent receipts evidence that they were never being issued for every month; they were issued sometime for two, sometime for three months, sometime for four months and so on. His further contention was that rent of September 2008 was also paid on 06.09.2008 but the rent receipt had not been issued; in fact rent receipts for the period w.e.f. January 2007 upto October 2008 were deliberate not issued in order that landlord can build up a case against the tenant. The money order dated 11.10.2008 was refused and thereafter subsequently money order dated 04.11.2008 was sent; the postal receipt of the aforementioned money orders have been proved as Ex. RW1/1 and RW1/21. The second witness (RW2-Ajay Bhisht) of the tenant had corroborated the version of RW1

and on the point that on 06.09.2008 the husband of the petitioner namely PW2- J.P.Sharma had visited the tenant and asked for rent; he thereafter he threatened the tenant to get him vacated the premises and pursuant to which a police complaint has also been lodged in the local police station.

7 In this background, the RCT had correctly noted that the perusal of the earlier rent receipts evidence that it was usual practice of the landlady to issue collective rent receipts in one go for many months i.e. every rent she had already received; it was the usual way to render rent which was she was following; on the other hand, rent receipts for one or two months were also being issued; there could be two probabilities; it was either that the tenant was paying rent together and he was receiving one receipt for all those previous months or the landlord was in the habit of issuing rent receipts regularly. The RCT had drawn the conclusion that there is no default of payment by the tenant. These findings have been inter alia extracted hereinbelow:-

It was never the case of the petitioner that respondent was not regularly paying rent or was in the habit of paying rent for months together. This is because of the fact that in the petition, it is alleged that respondent has not paid rent till service of legal demand notice but there is no averment that even prior to that day, respondent was

not in the habit of regularly paying rent or that he used to pay rent for months together. It was the respondent who in the written statement took the plea that although he used to pay rent regularly every month in cash to the petitioner or her husband but they were not in the habit of issuing the rent receipt regularly and used to issue the same for months together. The petitioner filed replication and it was averred that whenever respondent used to pay rent, rent receipt was issued to him. Even here, it was not specifically alleged that respondent was not in the habit of paying rent regularly. Petitioner claimed that respondent was in arrear of rent w.e.f. 01.01.2007 till service of notice of demand dated 15.10.2008. It is highly probable that for a period of almost 20 months, petitioner would remain silent and not claim the arrears of rent from the petitioner, In the authority Faquir Chand (Supra) and Chander Kumar Anand (Supra), it was held by Hon'ble High Court that long drawn silence on the part of the landlord is a pointer towards the correctness of tenant's statement that he had been paying rent regularly to the landlord.

(ii) Moreover, the conduct of the landlady in not taking timely action claiming arrears is also apparent from the fact that it was only when the respondent sent rent for the month of October, 2008 by money order and thereafter for the month of November by money order and claimed rent receipts for the period from 1.1.2007 to September, 2008 that thereafter dispute arose between the parties and it is the case of appellant-respondent that on 6.9.2008 husband of the petitioner alongwith her son came to the shop of the respondent and threatened him to vacate the premises and thereafter again on 15.9.08, petitioner alongwith her husband came to his shop and threatened the employee of the respondent to vacate the shop thereupon complaints Ex.RW1/12 and Ex.RW1/13 were lodged with local police but no action was taken.

(iii) Further more, according to the petitioner, rent is exclusive of electricity charges which are payable at the rate of Rs.400/- per month. However, according to the respondent, initially the electricity charges were paid according to the reading of the sub meter however, arrangement was changed subsequently since another tenant

Rahul Aggarwal was also enjoying the electricity from the same meter and therefore, it was agreed that electricity charges will be shared by them equally and will be paid to the petitioner who will pay the same to the concerned department. This fact was although denied by the petitioner in replication and in examination in chief also, petitioner claimed electricity charges at the rate of Rs.400/- per month. However, the respondent in his examination in chief stated that during the pendency of the petition, petitioner served a legal notice dated 29.6.2009 upon the respondent asking the respondent to pay half of the bill amount but she has not given the detail of the period of bill amount nor sent copy of the bill whereupon the respondent sent reply to the notice asking her to supply copy of the bill. In response to the reply, petitioner supplied the photo copy of the bill in the court thereafter respondent paid a sum of Rs.1,220/- by cheque. He proved notice and the reply Ex. RW1/16 to RW1/25. A perusal of notice Ex.RW1/16 goes to show that petitioner herself claimed half bill amount of the two bills paid by her to BSES Yamuna Power Ltd. and on submission of the bill, the payment was made by the respondent. This clearly shows that although the petitioner has been insisting that the electricity charges are payable at the rate of Rs.400/- per month. However, the petitioner herself called upon the respondent to pay half bill amount of the bill paid by her to BSES Yamuna Power Ltd. which fortifies the version of the respondent that earlier the electricity was being enjoyed from sub meter installed in his premises but since October, 2007 arrangement was changed and it was mutually agreed among the petitioner, respondent and another tenant that the petitioner would pay the bill amount in equal share to the petitioner towards electricity charges to be deposited by her with the concerned department.

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20. In the instant case also, plea of the landlord that electricity charges were payable at the rate of Rs.400/- per month cannot be believed in view of his own legal notice Ex. RW1/16 whereby she claimed half of the bill amount from the respondent-tenant. That being so, under the circumstances, since the landlady is not to be

believed regarding rate of electricity charges, her version that no rent was paid by the respondent for the period 1.1.2007 to September, 2008 cannot be believed more particularly keeping in view her own conduct that for a complete period of about 20 months she maintained silence and did not claim the arrears of rent nor sent any notice to the respondent to pay rent for this period and it was only when respondent sent the rent through money order and claimed issuance of rent receipt w.e.f. 1.1.2007 till September, 2008 as mentioned in Ex.RW1/1 that the legal notice of demand dated 15.10.08 was sent to the respondent. Even in this notice or in the petition, there was no specific mention that the respondent was in the habit of not paying rent regularly to the petitioner or that he used to pay rent at an interval of 5-6 months due to which reason, rent receipts used to be issued only when the rent was paid. In fact, it was in pursuance to the averments made in the written statement that the petitioner was not in the habit of issuing the rent receipt regularly that a plea was taken that rent receipts were issued as and when the rent was paid. Even then, there was no specific plea that the respondent was not in the habit of paying rent regularly to the petitioner and was paying rent at an interval of 5,6 or 7 months. As such, preponderance of probability rather goes against the petitioner and not in favour of the petitioner as observed by ld. Addl. Rent controller.

8 These fact findings do not call for any interference; they can in no manner be said to be perverse.

9 This court sitting in its power of revision can interfere with the findings of the courts below only if there is perversity or lack of application of mind on the evidence adduced and collected; this is definitely not such case. The tenant has been able to prove that he has

been paying rent for the aforementioned period i.e. from January 2007 upto October 2008; he has sent money which has been refused; thereafter on the refusal, the said amount had been deposited under Section 27 of the DRCA. In fact money order dated 11.10.2008 which was much prior to the legal notice dated which is 15.10.2008 and as such RCT had rightly noted that on the date of the legal notice the tenant was not in arrears of rent; no cause of action was available with the landlord to file the present eviction petition.

10 This petition is without any merit; it is dismissed.

INDERMEET KAUR, J

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