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

+ **CM (M) No. 443/2009 & CM No. 6920/2009**

MURTI DEVI

..... Petitioner

Through Mr. Sunil Lalwani, Adv.

versus

BOHAT RAM AND ANOTHER

..... Respondents

Through Mr. J.K. Jain, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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07.02.2012

1 Judgment impugned before this Court is the judgment dated 18.04.2009 which was passed by the Additional Rent Control Tribunal (ARCT) endorsing the finding of the Additional Rent Controller (ARC) dated 26.05.2008 whereby the eviction petition filed by the landlord namely Bohat Ram seeking eviction of his tenant Murti Devi from the demised premises i.e. one room measuring 16'X10' feet on the ground floor of house property No. WZ-5, Village Titar Pur, New Delhi under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA) had been decreed in favour of the landlord.

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2 Record shows that the present petitioner was a tenant in the aforestated premises which had initially been let out to her father-in-law namely Sumer Chand. Contention of the landlord was that after the death of the husband of Murti Devi, she has sublet/assigned/parted with possession of the suit premises in favour of Vinod Kumar,

3 Oral and documentary evidence had been led by the respective parties. The ARC who was the first fact finding Court has returned a categorical finding that the eviction petition under Section 14 (1)(b) of the DRCA stood proved and the ground of sub-letting as averred in the eviction petition had been established by the landlord. This judgment of the ARC was up-held by the RCT who had also delved into the facts although an appeal under Section 38 of the DRCA is to be confined on a substantial question of law only.

4 This is a petition under Article 227 of the Constitution of India.

5 At the outset, learned counsel for the respondent has pointed out that the interference in the two fact findings are called for by the High Court only if there is manifest injustice or a flagrant perversity which has been committed by the courts below in the absence of which interference under Article 227 is not permitted.

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6 It is, in this background, the arguments addressed by the learned counsel for the petitioner shall be viewed.

7 The contention of the learned counsel for the petitioner is that in view of provision of Section 8 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as the 'said Act') read with Rule 5 of the Delhi Land Reforms Rules, 1959, a legal question has arisen which is to the effect that the tenant who was admittedly in occupation of this suit premises even prior to the independence continues to be a tenant and he cannot be evicted in view of the aforementioned statutory provision; further contention being that the relationship of landlord and tenant has been disputed by the petitioner right from the inception; this contention being substantiated by drawing attention of the Court to the testimony of AW-3 who has in his cross-examination has stated that he knew Sumer Chand since the last 50 years; Sumer Chand was living in the village since the independence of India; this testimony establishing a fact that Sumer Chand was living as a tenant in the disputed premises at the time of the promulgation of the DLRA in 1954 and this property is thus covered by the provisions of the DLRA.

8 Needless to state that Sumer Chand was the original tenant i.e.

father-in-law of Murti Devi; contention being raised by the petitioner herein is that since Sumer Chand was a tenant prior to independence, it is clear that at the time of promulgation of the said Act which was in the year 1954, Sumer Chand was a resident of the village and as such the statutory provision as aforementioned i.e. Section 8 read with Rule 5 of the said Act would get attracted and thus there is no relationship of landlord-tenant between the parties.

9 Argument of learned counsel for the petitioner is totally bereft of merit. The testimony of AW-3 which has been adverted to only states that Sumer Chand has been residing in the village around independence time; it does not state that Sumer Chand was a resident of the demised premises. That apart, the further contention of the petitioner that provision of Section 8 read with Rule 5 are to be made applicable and relationship of landlord and tenant being disputed right from the inception, the present petitioner/tenant is entitled to protection under Section 8 read with Rule 5 of the said Act is an argument which has to be noted and only to be rejected. The provision of the said Act would be applicable only if it is established as a fact and as a pre-condition that the petitioner was residing in the demised premises at the time of

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promulgation of the said Act and the disputed premises are covered by the said Act. This has not even been averred; let alone established. Relevant would it be to state at this stage that in the entire pleadings, not a whisper of this objection has been taken by the petitioner; it was never the case of the petitioner that he is protected by the provision of Section 8 of the said Act; this was neither in his pleadings before the ARC and neither did it find in the grounds of appeal when he had filed an appeal before the RCT. This is a mixed question of fact and law and unless it was established that the provisions of the said Act were applicable to the disputed premises and the original tenant was a resident thereof before 1954, the question of applicability of Section 8 read with Rule 5 of the said Act does not arise.

10 In the judgment of this Court reported as 112 (2004) DLT 82 M/s Bhartiya Industries Ltd. & Another Vs. Rajiv Saluja a similar question had arisen; in this case also, the Division Bench of this Court had noted that when the specific plea raised by the tenant about the jurisdiction of the civil Courts being barred because of the provision of the said Act not having been taken before the Courts below, even if it is raised as a legal plea, the Court had noted that the documents on record clearly

established that the relationship of landlord and tenant did exist between the parties. In the instant case as well, evidence has been led by the respective parties. Three witnesses have been examined on behalf of the landlord and one witness on behalf of the tenant; it was after a appreciation of both the oral and the documentary evidence that the Courts below have returned a positive and categorical finding that the relationship of landlord and tenant does exist between the parties. This Court is not a third fact finding Court; it cannot delve into facts.

11 Petition is without any merit. Dismissed.



INDERMEET KAUR, J

FEBRUARY 07, 2012

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