

*

THE HIGH COURT OF DELHI AT NEW DELHI

+

CM (M) 777/2012

Date of Decision: 06.08.2012

AJAY JAIN & ANR.

.... PETITIONER

Through: Mr.Vijay K.Gupta, Advocate.

Versus

RAJAT SHARMA

.....RESPONDENT

Through: Mr.Rajiv Nayyar, Sr.Advocate
with Mr.Ravi Gupta, Sr.Advocate
& Mr.Ankit Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition under Article 227 of the Constitution seeks assailing the judgment dated 5.6.2012 of District Judge-cum-Addl. Rent Control Tribunal (ARCT) whereby the appeal against the judgment dated 11.4.2012 of Addl. Rent Controller (ARC) was dismissed.

2. The petitioners are the tenants in respect of the suit premises. Their eviction was sought by the respondent Rajat Sharma by filing eviction petition before the ARC, which came to be allowed vide his judgment dated 11.4.2012. The petitioners carried the matter in appeal before the ARCT, which came to be dismissed vide the impugned judgment.

3. The petitioners are the joint tenants in the suit premises. They were inducted as tenants by late Manohar Lal Sharma, who expired on 27.10.2008. Earlier, he had instituted a petition under Section 14 (1)(a) of the Delhi Rent Control Act (for short the 'Act') against the petitioners on the ground of 'non-payment' of rent in respect of the suit premises. In the said petition, an order under Section 15(1) of the Act was passed against the petitioners, which having been complied, benefit under Section 14(2) of the Act was given to them. The petitioners had taken that matter also in appeal, which ultimately, came to be dismissed. During the pendency of the said appeal, Manohar Lal Sharma expired and Vijay Kumar Sharma was substituted in his place, on the basis of registered Will executed by the deceased Manohar Lal Sharma in his favour.

4. The respondent is the son of Vijay Kumar Sharma and he claimed having acquired the ownership rights in the suit premises by virtue of registered gift deed executed by his father in his favour. However, this eviction petition was filed by him through his father as his attorney. It was averred that the petitioners were in arrears of rent since December, 2007, which they have not paid despite issue of demand notice dated 18.4.2011 and thus, they are liable to be evicted, since they have already availed the benefit of Section 14(2) of the Act. The said petition was allowed by ARC on 11.4.2012 and the appeal against that order, also came to be dismissed by the ARCT vide impugned judgment. The petitioners have contested the case mainly disputing the ownership of the

respondent in the suit premises. It was also their case that they have deposited the rent in the court upto 31.07.2010 and that thereafter, they paid the rent to the respondent in the month of August, 2010 and further that, they have been paying the rent to him from the month of March, 2010 regularly. They also denied the receipt of any demand notice.

5. With regard to their disputing the respondent to be the owner of the suit premises, the learned ARC noted that this question had already been decided in the previous proceedings, and now, the petitioners were stopped from raising the same again and again. It was observed that even otherwise, the petitioners being the tenants, are not entitled to challenge the registered Will in favour of Vijay Kumar Sharma and the execution of gift deed by him in favour of his son, the respondent herein. He also observed that in any case, the petitioners admittedly paid rent to the respondent and thus, the controversy in this regard no longer survived. With regard to the service of notice of demand, he noted that though, issue of notice of demand was not contemplated for maintaining a petition of eviction on account of non-payment of rent in the case of second default, but, however, a notice of demand dated 18.4.2011 was issued by the respondent.

6. Referring to the statements of the attorney of the petitioner and also petitioner Sanjay Jain, made before him, he recorded a finding of fact that even as per this petitioner's own showing, he had deposited the rent i.e. Rs. 3080/- in the bank account of the respondent herein on

29.8.2011 stating it to be rent for the period upto 30.09.2011 and he noted that after the death of Manohar Lal Sharma, the petitioners filed an application under Section 27 of the Act for deposit of rent. In the said application, it was stated by them that the rent stood paid up to 31.07.2010 and therefore, they sought to deposit the rent w.e.f. 01.08.2010 to 31.03.2011. However, this application was withdrawn by them on 19.2.2011 stating that they would file an application against the concerned landlord, which they never did. In view of this, it was observed that even according to the petitioners own showing, the rent was not paid for at least from 01.08.2010. Based on all this factual matrix, he recorded the petitioners having defaulted in payment of arrears of rent within two months of the receipt of notice dated 18.4.2011 and thus, this being a case of second default, they were liable to be evicted.

7. The Appellate Court of ARCT had maintained all the findings of the facts recorded by ARC. The petitioners have challenged the orders of ARC and ARCT again on the similar grounds namely, (a) the respondent is not the owner/landlord of the suit premises; (b) notice of demand was not served upon them; (c) they have paid the arrears of rent to the respondent and nothing was outstanding from them. In support of their contention, disputing the title of the respondent in the suit premises, the learned counsel for the petitioners placed reliance on the judgment of **Subhash Chandra Vs. Mohammad Sharif and Others, AIR 1990 SC 636** to contend that the tenant was entitled to challenge the title of the landlord. I do not see this judgment to be laying any such proposition of

law. It was held in this case that a tenant already in possession, can challenge the plaintiff's claim on derivative title of the landlord showing that the real owner is somebody else, but this is subject to the rule enunciated by Section 116 of the Evidence Act. It was further held that the Section does not permit the tenant, during the continuance of the tenancy, to deny that his landlord had at the beginning of the tenancy a title to the property. The title to the suit premises set up by the respondent was derived from the gift deed executed by his father in his favour and the latter having acquired the same by virtue of registered Will and that being so, the aforesaid judgment was not applicable to this case.

8. In the petition filed under Section 14(1)(a) of the Act, the petitioners were given benefit of Section 14(2) of the Act. Their appeal against the said judgment was dismissed. In those proceedings, Vijay Kumar Sharma was substituted in place of deceased Manohar Lal Sharma, based on the will in his favour. The petitioner No. 2 Sanjay Jain, in his statement made before ARC had himself stated having deposited Rs. 3080/- in the account of the respondent on 29.8.2011. The petitioners are the tenants of the suit premises, but have been again and again disputing the title of Vijay Kumar Sharma as also of the respondent. This is despite the fact that different courts have passed orders on 10.2.2009, 4.1.2010 & 2.11.2010. It is settled law that the concept of ownership in a landlord-tenant litigation governed by the DRC Act is entirely different from the one in a title suit. The suit premises was undisputedly owned by late Manohar Lal Sharma and came in the hands

of Vijay Kumar Sharma under the Will. Vijay Kumar Sharma executed registered gift deed in favour of his son, the respondent. The petitioners, who are the mere tenants, have no right to challenge the title of such a beneficiary. At one place, it was averred by the petitioners that someone had claimed rent from them, but, it was not stated as to who was that claimant. This all shows the petitioners to be taking frivolous objections to the title of the respondent in the suit premises. Such an objection cannot be entertained, unless there was anything on record to show if anyone else, other than the respondent, had set up any claim in respect of the suit premises. I do not see any infirmity in the finding of the Trial Court in this regard.

9. With regard to the notice of demand dated 18.4.2011, the same was stated to have been sent by the respondent by registered post as also by the courier. It was undisputed that the envelopes sent by registered post bear the correct addresses of both the petitioners and were returned “unclaimed”. The learned counsel for the petitioners sought to argue that what was contemplated was the service of notice and not issuing of notice under proviso (a) to Section 14 (1) and further that the notice was returned as “unclaimed” as distinct from ‘refused’. In this connection, a reference to Section 27 of the General Clauses Act will be useful. The Section reads thus:

“27. Meaning of service by post. - Where any central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a

different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting 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 post”.

10. There is no dispute that envelopes bear the correct addresses of the petitioners. It is also borne from the findings of the ARC that the notices were sent by registered A.D. with acknowledged due at the correct addresses. Thus, the notices can be deemed to have been served on the petitioners, unless it was proved otherwise by them. There being nothing to the contrary brought on record by the petitioners to discharge the burden to rebut the aforesaid presumption, the notices received ‘unclaimed’ would be deemed to be served upon the petitioners. The dictionary meaning of the word “unclaimed” is ‘not claimed’ or ‘not having been claimed’. This would be amounting to nothing but refusal. Thus, there is no significant difference in the words ‘unclaimed’ or ‘refused’ for the purposes of drawing a presumption of service contemplated under Section 27 of the General Clauses Act. In addition to the notices sent by registered post, which returned unclaimed, the notices were also got issued by courier services. This was nowhere denied or controverted by the petitioners. In any case, the service of notice by the courier also stands established from the statement of the respondent. It can be noted here that the service of process by courier and other modes has also been recognized by way of Notification No. 70/Rules/DHC dated 09.02.2011.

11. It is noted above that the petitioners had filed a petition for deposit of rent under Section 27 of the Act stating therein having already paid rent upto 31.07.2010. Thus, from the petitioners own showing, the rent was not paid at least from 01.08.2010. The finding of fact in this regard has been correctly recorded by the ARC. The petitioners have taken inconsistent stands in stating having paid the rent to the respondent from March, 2010 at one place and from August, 2010 at another place. Be that as it may, there is nothing on record to substantiate that rent was paid within two months of the receipt of notice dated 18.4.2011. The deposit of Rs. 3080/- in the account of the respondent on 29.8.2011, was apparently much after the expiry of two months of the said notice. Thus, the petitioners are seen to have committed second default for three consecutive months, and so liable to be evicted.

12. In view of the discussion above, I do not see any infirmity or illegality in the impugned order of ARC as also of ARCT. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

AUGUST 06, 2012

akb