

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

+ C.M. (M.) 1061/2012

Date of Decision: 5.12.2012

MADAN LAL

.....Petitioner

Through: Mr.R.Rao, Advocate with
Mr.Ankur Mahindro, Advocate.

Versus

SUKHESH CHAND GUPTA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This petition under Article 227 of the Constitution is directed against the order dated 30.08.2011 of Addl. Rent Control Tribunal (ARCT), whereby the appeal filed by the petitioner against the judgment dated 30.11.2010 of Rent Controller, New Delhi, was dismissed.

2. The petitioner is a tenant in respect of one shop No. 43, Block No. 1, Bengali Mal Market, New Delhi under the respondent. The suit shop came in the exclusive ownership of the respondent vide a partition deed dated 9.6.2000 executed between the co-owners. The petitioner attorned to the respondent and paid him rent for the period from 1.4.1999 to 31.3.2000. The petitioner having failed to pay the

rent, thereafter, a demand notice dated 26.4.2002 was issued to him by the respondent. The said notice was replied by the petitioner on 14.5.2002. The eviction petition was filed by the respondent alleging the non-payment of rent by the petitioner with effect from 1.4.2000, despite service of notice. In the written statement that was filed by the petitioner, the defence taken was that he had been regularly paying rent to the respondent, but he (respondent) refused to receive the same, and therefore, the rent was sent by money-order on 4.5.2002, and the same having been tendered and refused, the due rent was sent by another money-order dated 13.5.2002. On return of the said money-order also, the petitioner deposited the rent for the period 1.4.2000 to 30.4.2002 @ 21.45 per month and from 01.05.2010 to 30.06.2010 @ 23.59 per month in the court of Rent Controller under Section 27 of the Act. Based on this premise, it was averred that the rent was duly tendered on receipt of notice and thus, the petition was not maintainable.

3. The petition was put on trial. The respondent examined himself as AW1. The petitioner led his evidence by way of affidavit. The Rent Controller recorded that the petitioner failed to pay or tender the rent despite receipt of notice dated 26.04.2002, but since he had complied the order under Section 15 (1) of the Act, he was entitled to benefit of Section 14 (2) of the Act. In this manner, the petition was disposed. The petitioner carried the matter in appeal before the ARCT, who

maintained the judgment of Rent Controller and dismissed the appeal vide the impugned order dated 30.08.2011.

4. Both the orders of the courts below have been assailed in the instant petition. It is admitted case of the parties that a demand notice dated 26.4.2002 (Ex.PW1/5) issued by the respondent was received by the petitioner. The petitioner replied the same vide Ex.PW1/R1 dated 14.5.2002. In the reply, it was averred by the petitioner that the arrears of rent were sent by money-order dated 4.5.2002. The Rent Controller observed that from this, it would be gathered that the notice of demand dated 26.4.2002 might have been received by the petitioner latest by 4.5.2002 and thus, as per law, he ought to have paid or tendered the rent within two months i.e. by 3.07.2002. The petitioner, in his affidavit of evidence, deposed that after receiving the notice Ex.PW1/5, he tendered the rent to the respondent by way of money-orders. The learned Rent Controller recorded that perusal of the postal receipts would reveal that addresses of the respondent have been mentioned as that of the name of the respondent only. He also observed that on both the money-orders, there were endorsements of the post office that the addressee i.e. the respondent was not available, despite repeated visits by postman and so, the money-order was returned. The last return report dated 12.06.2002 also bears the endorsement that despite repeated visits and intimations having been given repeatedly, the addressee was not available. From all this, the Rent Controller recorded that it could not be proved that these money-orders were refused by the respondent as it was nowhere mentioned

that the information was given to the respondent himself or his family members. In support of this finding, the Rent Controller also observed that the petitioner had not produced his grandson or other person, who according to him, had written the addresses of the respondent on the money-orders. From all this, he concluded that there was no proof that the money-orders were sent on the correct address of the respondent, and thus, it could not be said that there was tender of the rent by money-order or refusal by the respondent. The Tribunal has endorsed the view taken by the Rent Controller.

5. The learned counsel for the petitioner has drawn my attention to the money-order coupons which were received back on 20.05.2002, 29.5.2002 and 12.6.2002. The endorsements as made by the postman while returning have already been noted above. The learned counsel has also drawn my attention to the statement of P.N.Sharma of the postal department and also the report of the department of posts. This would testify that the money-orders were addressed at the address of the respondent as Sukhesh Chand Gupta, E-505, Narvana Apartment, Plot No. 89, I.P. Extension, Delhi-92, and that these were sent vide M.O. receipts 9169 dated 4.5.2002, M.O. 9285 dated 13.5.2002 and M.O. 3774 dated 4.6.2002. The particulars appearing on the endorsements of the money-orders do tally with the particulars and the report of the department of posts. That being so, it would lead to an irresistible conclusion that the money-orders were sent on the aforesaid dates, and were returned by the postal authorities as unclaimed. It is

common knowledge that the complete address of the addressee is not mentioned on the postal receipts by the post offices, and thus, the observation of the Rent Controller that since there were no addresses mentioned on the postal receipts, the money-orders could not be said to have been sent at the correct address of the respondent, is apparently erroneous. The fact that the petitioner did not produce his grandson or the person, who has written the addresses, was another factor, which erroneously weighed with the Controller. There was no need of examining the grandson or the said person and non-examination of them could not lead the court to draw any adverse inference against the petitioner. The money-orders which were sent are duly connected with the postal receipts as also the endorsements of the postman. The Controller has failed to appreciate that evidence in the right perspective.

6. From the above discussion, it comes out to be that the rent was duly tendered by the petitioner by money-orders, immediately on the receipt of the notice dated 26.04.2002 and when the respondent did not make himself available, despite repeated visits of the postman, as also intimation given by him. If that was so, the observation of the Controller that since it was not tendered to the respondent personally or his authorized agent, it could not amount to tender, is another fallacy committed by the Controller. It thus stands concluded that the rent due was duly tendered, but was refused or declined or avoided and unclaimed by the respondent.

7. It was the submission of the learned counsel for the respondent that the petitioner was liable to pay the rent with enhancement @ 10% under Section 6A and also the interest @ 18% as per Section 26 of the Act and that the tender of the rent without enhancement and interest was not valid. It was submitted by the learned counsel for the petitioner and rightly so, that no such plea was taken by the respondent before the Rent Controller or the Tribunal, and such a plea could not be allowed to be taken for the first time in the instant petition. It appears that though the pleas of enhancement of rent of 10% after the expiry of 30 days from the receipt of notice as also demand of interest @ 18%, were averred by the respondent in the eviction petition, but the same were not pressed before the Rent Controller or before the ARCT. Now, in the instant petition under Article 227 of the Constitution, the same cannot be allowed to be urged. The power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity.

8. In view of my above discussion, the orders of Rent Controller and that of the Addl. Rent Control Tribunal suffers from material irregularity and infirmity, as noticed above. Since the same has caused miscarriage of justice to the petitioner, these are liable to be set aside. Consequently, both the impugned orders of the courts below are set aside and it is noted that the petitioner has complied the notice of demand within two months of the receipt of notice and thus, the eviction petition was liable to be dismissed.

9. The petition stands allowed and is disposed of as such.

M.L. MEHTA, J.

DECEMBER 05, 2012

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