

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

*% Judgment reserved on: 08.05.2012.
Judgment delivered on: 11.05.2012*

+CM(M) 1245/2011 & CM Nos. 19606/2011 & 20876/2011

SC SHARMA & CO PVT LTD Petitioner
Through: Mr.Sudhir Nandarajog, Sr. Adv.
with Mr.Rajesh Anand and
Mr.Akhand Pratap Singh, Adv.

versus

ATMA RAM BUILDER PVT LTD Respondent
Through: Mr.Sandeep Sethi, Sr. Adv. with
Mr.Amit Sethi, Advocate.

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

INDERMEET KAUR, J.

1 Impugned judgment is dated 08.09.2011 passed by the Additional Rent Control Tribunal (ARCT) endorsing the findings of the Additional Rent Controller (ARC) dated 23.09.2008 whereby in the pending eviction proceedings under Section 14 (1)(k) of the Delhi Rent Control Act (DRCA), the ARC after recording the compliance report under Section 14 (11) of the DRCA had noted that 30 the day period which had been granted to the tenant to comply with the requirement of Section 14 (11) not having been adhered to the order of eviction under

Section 14 (1)(k) of the DRCA had been passed. This finding of the ARC (as noted supra) was endorsed by the ARCT.

2 Record shows that the present eviction petition has been filed by the landlord Atma Ram Builder Private Limited (hereinafter referred to as the 'landlord') against his tenant SC Sharma and Co. Pvt. Ltd. (hereinafter referred to as the 'tenant') qua his eviction from the ground floor of property bearing No. 7D, Connaught Place, New Delhi as depicted in red colour in site plan (Ex. AW-1/3). The ground was under Section 14 (1)(k) of the DRCA. Contention was that the tenant has made unauthorized constructions, additions or alternations which had been noted by the superior lessor i.e. the Land and Development Office and notice issued by the superior lessor dated 15.09.1986 has noted that the unauthorized constructions have been made by the tenant in the mezzanine of the shop occupied by it; there are two objectionable areas i.e. an area of 356 square feet and another area of 229 square feet (details of which have been given in para 18); contention being that penalty/damages have been imposed upon the landlord because of this unauthorized construction by the tenant which makes out a ground for eviction of the tenant under Section 14 (1)(k) of the DRCA; eviction

petition was accordingly filed.

3 The averments in the reply filed to the aforementioned eviction petition have been perused. Para 8 specifically state that the area of the shop is 1900 square feet and the mezzanine floor is within the permissible limits; there is no excess area or unauthorized construction; contention was that only a false ceiling has been created for the purpose of air conditioning which is a well known concept and there is no structural change; grounds under Section 14 (1)(k) of the DRCA are not made out. Vehement contention of the landlord is that nowhere in this entire reply is has the tenant disputed the averments made in the eviction petition which are specifically to the effect that the mezzanine floor has an objectionable area of 356 square feet as also another area of 229 square feet both of which have been mentioned in para 18 of the eviction petition.

4 This submission has been vehemently disputed by the learned counsel for the tenant who has drawn attention of this Court to the notice which had been sent by the L & DO (dated 15.09.1986) to the original landlord namely Prakash Brothers (admittedly the present landlord is the successor in interest of the erstwhile landlord). This is a

notice which had been given to all unauthorized mezzanine constructions in shops at Connaught Place and the unauthorized mezzanine by the present tenant finds mention at serial No. 'X' where the objectionable area has been described as 356 square feet upon which penalty charges have been levied for different periods of time; contention of the tenant being that that the objectionable area in the mezzanine floor was in fact only 356 square feet and the area of 229 square feet which finds mention specifically is not related to the mezzanine; further submission being that the RCT had in fact noted that the area of 356 square feet was not an objectionable area; it was part of the original sanctioned plan which had been taken on record before the RCT and had been proved before the RCT (Ex. RW-5/8) which was a site plan dated 04.04.1950 showing that even at that time, there was a mezzanine of area of 356 square feet; contention being that this area of 229 square feet is not a part of the objectionable area of the mezzanine floor and this was also never the contention in the Court of the ARC and the ARCT returning a finding contrary to the finding of the ARC suffers from an illegality on this score.

5 Attention has been drawn to the order passed by the ARC wherein

the facts as noted by the ARC relate to an area of 356 square feet only and there is no mention of area of 229 square feet.

6 However record does not substantiate the submissions of the tenant. Record shows that on 15.09.1980 a notice had been issued by the L & DO i.e. Ministry of Urban Development to the erstwhile landlord Prakash Brothes wherein at serial No. 'X' in the shop occupied by the present tenant a first objectionable area was mentioned as 356 square feet; damages were levied from 13.10.1970 to 14.01.1972 at the rates mentioned therein. For another area of 229 square feet, damages were levied for a different periods of time i.e. 23.06.1983 up to 14.01.1987. It was only for this reason that the two areas have been depicted separately yet it is clear from the reading of the aforementioned notice that this area was confined to the mezzanine floor only. In fact the entire notice dated 15.09.1980 which has been sent to the various tenants of Connaught Place including Batra Stores, Kapur Brothers, New Era all relate to unauthorized construction made in the mezzanine floor alone. That apart notice dated 10.12.1987 was another notice sent by the landlord to the present tenant wherein again in paras 7 & 8 it had been reiterated that there was an unauthorized construction of mezzanine in an area of 356

square feet and 229 square feet; these two mezzanine areas have been described separately and distinctly. Reply filed to this legal notice is dated 01.02.1988 (sent through Advocate Mr L.K. Garg) wherein reply to paras 7 & 8 there is no dispute to this factual position that the unauthorized areas in the mezzanine floor is not 356 square feet and 229 square feet respectively. This is also evident from the site plan Ex. AW-1/3 wherein also the loft has been depicted as an area of 28'X23' i.e. the area which is unauthorized area and which is about 644 square feet. So also the version of RW-1 wherein he has admitted that the mezzanine floor is more than 500 square feet meaning thereby that it is definitely over and above an area of 356 square feet and even assuming that before the ARCT, the site plan Ex. RW-5/8 had evidenced the area of 356 square feet as authorized being there from the inception yet there is no answer about the excess area after 356 square feet up to 500 square feet. As noted supra, the legal notice sent by the landlord to the tenant in paras 7 & 8 also specifically postulated that the unauthorized mezzanine floor is 356 square feet and area of 229 square feet separately to which again there was no dispute; no counter factual submission was made on this score. Thus it can safely be assumed that the tenant was fully aware

of the fact that the mezzanine floor comprised of an unauthorized area of 356 square feet as also another area of 229 square feet.

7 Before the ARCT, the sanctioned site plan (Ex. RW-5/8) was taken on record which evidenced that the area of 356 square feet forming part of the mezzanine floor was authorized. However, there was no explanation for the excess area over and above the area of 356 square feet and as such the ARCT had correctly noted that inspite of notice having been given to the tenant under Section 14 (11) of the DRCA and the inquiry report having been submitted which was to the effect that the said unauthorized user had not been removed, necessary corollary was that the eviction petition was liable to be decreed under Section 14 (1)(k) of the DRCA.

8 Section 14(1)(k) of the DRCA reads as follows:

“(k) that the tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;”

9 Section 14(11) contains the procedure which has to be followed before an order under Section 14(1)(k) of the DRCA can be

implemented. It clearly postulates that an order for recovery of possession shall not be made if the tenant within such time as specified by the Controller, complies with the condition imposed on the landlord by any of the authorities referred to in that clause or pays to that authority such amount by way of compensation as the Controller may direct.

10 This Court is also conscious of the fact that the right of second appeal has since been abrogated. The powers of this Court under Article 227 of the Constitution of India is not a substitute for an appellate forum; interference is called for only if there is a manifest illegality or miscarriage of justice perpetrated to a party; which is not so in the instant case.

11 In this background, the impugned judgment having decreed the eviction petition under Section 14 (1)(k) of the DRCA suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MAY 11, 2012

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