

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

+ **RFA No.72/2012**

% **7th February, 2012**

SH. HARISH GOEL & ANR. Appellants
Through: Mr. P.K. Malik, Advocate.

VERSUS

M/S. MEGA OVERSEAS PRIVATE LTD. Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 16.11.2011 dismissing the suit filed by the appellants/plaintiffs for possession and mesne profits by allowing the application filed by the respondent/defendant under Order 12 Rule 6 CPC.

2. A preface is necessary before turning to the facts of the present case. A Division Bench of this Court in the judgment reported as ***Raghunandan Saran Ashok Saran Vs. Union of India 95 (2002) DLT 508*** has held that provisions of fixing the standard rent under the Delhi Rent Control Act, 1958 (hereinafter referred to as ‘the Act’) under Sections 4,6 and 9 were ultra vires the Constitution and were struck down.

3. Once there are no provisions for fixing of standard rent, the contractual rate which is fixed between the parties continues to govern the relationship of landlord and tenant between the parties. A Division Bench of this Court recently in the judgment titled as ***Model Press Pvt. Ltd. Vs. Mohd. Saied 2008 (155) DLT 403*** has held that though the provisions relating to fixing of standard rent were struck down in the judgment of ***Raghunandan Saran Ashok Saran (supra)***, however, since the Legislature has not provided any other mechanism for increase of the rent, therefore, eviction of the tenant can only take place on the grounds as found under Section 14 of the Act. It was held that the Courts cannot legislate and the landlords cannot claim rent other than the agreed rent. Para 20 of this judgment reads as under:-

“20. It is unfortunate that after the decision in *Raghunandan Saran’s* case, the Legislature has not filled up the vacuum created in law with Sections 4,6 and 9 of the Delhi Rent Control Act, 1958

being held ultra vires the Constitution. The mechanism required to be put in place, as observed by the Division Bench in para 28, has yet to find its place. But, since under the grab of interpretation, this Court cannot legislate, the inevitable consequence has to be that the appellants can claim no more rent from their tenants other than the agreed rent which the tenants are happily paying. Since the agreed rent in both case is far below ₹3,500/- per month, we hold that the learned Trial Judges were correct in rejecting the complaints as indeed the claim for recovery of possession against the respondents was not maintainable before a Civil Court.”

(underlining added)

4. In addition to the reasoning given in the judgment of *Model Press Pvt. Ltd. (supra)* I must state that there is a statutory mechanism existing under the Delhi Rent Control Act, 1958 for increase of the rent. This statutory mechanism is contained in Sections 6A and 8 of the Act. As per these provisions, rent can be increased every three years by 10% upon a notice sent by the landlord and the rent enhanced by 10% will be payable after the expiry of 30 days from the date on which the notice is given. Sections 6A and 8 of the Act read as under:-

“**Section 6A. Revision of rent.**- Notwithstanding anything contained in this Act, the standard rent, or , where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.

Section 8. Notice of increase of rent.-(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such

increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in section 106 of the Transfer of Property Act, 1982 (4 of 1882)”

5. In view of the above, the landlord cannot unilaterally increase the rent merely because the provisions of fixing the standard rent have been struck down in the judgment of ***Raghunandan Saran Ashok Saran (supra)***.

In the present case, admittedly the rate of rent is ₹ 1500/- per month for the tenanted premises which have been let out for commercial purpose. As per the plaint, the appellants/plaintiffs claim that since there is no mechanism provided by the Legislature after the provisions of Sections 4, 6 and 9 of the Act were struck down in the case of ***Raghunandan Saran Ashok Saran (supra)***, therefore, by sending of a notice, the market rent can be claimed, and which in the present case was claimed to be ₹1,50,000/- per month. The trial Court has dismissed the suit relying upon the Division Bench judgment in the case of ***Model Press Pvt. Ltd. (supra)*** that only the agreed rent will continue to remain the legally payable rent.

6. In my opinion, no fault can be found with the impugned judgment inasmuch as it relies upon the judgment of a Division Bench of this

Court in the case of *Model Press Pvt. Ltd. (supra)* and para 20 of which is very clear that the landlord cannot claim any rent from the tenant other than the agreed rent. I have additionally referred to the fact that there is in fact a statutory mechanism in place being the provisions of Sections 6A and 8 of the Act and therefore it cannot be said that there is a vacuum which needs to be filled by the Legislature.

7. Counsel for the appellants relied upon a recent judgment of the Supreme Court in the case of *Mohammad Ahmad and Anr. Vs. Atma Ram Chauhan and Ors. (2011) 7 SCC 755* in support of the proposition that the Supreme Court has specifically laid down an entitlement for the landlord to increase the rent in terms of para 21 of the said judgment.

8. In my opinion, the judgment of Supreme Court in the case of *Mohammad Ahmad and Anr. (supra)* relied upon on behalf of the appellants cannot help the appellants inasmuch as the said judgment was passed in the facts of a case where the parties were governed by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and not the Act. Further, a reference to para 21 of the judgment in the case of *Mohammad Ahmad and Anr. (supra)* seems to suggest that what is fixed are only guidelines and norms which are illustrative in nature. The Supreme Court does not hold in the

judgment of ***Mohammad Ahmad and Anr.(supra)*** that in all cases where relationships are governed by the Rent Control Acts of different States, there will automatically be an increased rate of rent in terms of para 21 of the said judgment. In the present case, I have already noted that under the Delhi Rent Control Act, 1958, there is a statutory mechanism for increase of rent in the form of provisions of Sections 6A and 8 of the Act, and therefore in the face of these provisions, a landlord cannot seek to increase the rent on the basis of his unilateral action/demand.

9. In view of the above, I do not find any merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs.

10. After the aforesaid judgment was dictated, learned counsel for the appellants has contended that a similar issue in the case of ***Smt. Santosh Vaid & Anr. Vs. Sh. Uttam Chand*** in C.M.(M) No.48/2011 decided on 12.5.2011 has referred the issue with regard to maintainability of the suit to a larger bench of this Court. Ordinarily, I would have also referred this case to a larger Bench, however, a reading of the judgment in the case of ***Smt. Santosh Vaid and Anr. (supra)*** shows that the binding precedent, being the Division Bench judgment of this Court in the case of ***Model Press Pvt. Ltd. (supra)*** were not pointed out to this Court and in which judgment the Division Bench

in para 20 has clearly said that the landlord cannot unilaterally increase the rent from the figure of the agreed rent.

11. In view of the above, I do not find any merit in the appeal which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

FEBRUARY 07, 2012

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