

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

% *Order delivered on: August 07, 2013*

+ **C.R.P. No.4/2013 & C.M. No.671/2013**

RAJ RANI Petitioner
Through Mr.Manuj Aggarwal, Adv.

versus

SUBODH KUMAR Respondent
Through Mr.Ravish Kr.Goyal, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioner assails the order dated 24th November, 2012 whereby the petitioner's application under Order XIV, Rule 2 and Order VII, Rule 11 CPC for treating the issue of maintainability of suit as preliminary issue and for rejection of the plaint, was dismissed, mainly, on the reason that the recovery of money sought by the respondent/plaintiff is not barred by any of the provisions of the Delhi Rent Control Act, 1958 (in short, called the "DRC Act"). The question of quantum of rent is a matter of trial. The suit is not barred by the provisions of Section 6A & 50 of the DRC Act and the respondent is well within his right to seek the prayer for recovery of money being arrears of rent or mesne profits.

2. Admittedly, the respondent/plaintiff had filed the suit for declaration and recovery of arrears of rent against the petitioner/defendant. The respondent in his suit had asserted himself to be the owner and landlord in

respect of the property bearing No.243-B, Anaj Mandi, Shahdara, Delhi-110032 (hereinafter referred to as the “Demised Premises”), having acquired interest in the said property by virtue of inheritance consequent to the death of his father Late Sh.Ram Avtar on 18th August, 2007.

3. It was submitted by the respondent that Sh.Ram Sarup, the husband of the petitioner was the tenant under the father of the respondent at a monthly rent of ₹50/- and subsequently, the tenancy was transferred in the name of the petitioner pursuant to the death of Sh.Ram Sarup. It was also asserted by the respondent that the last paid rent of the demised premises was ₹600/- per month.

4. The respondent had claimed a right for enhancement of the rent of the demised premises in the following manner:-

(i) From ₹600/- to ₹12000/- per month w.e.f. 1st May, 2002 basing his claim on the strength of the judgment passed by this Court in case titled as ***Raghunandan Saran Ashok Saran vs. Union of India*** which had struck down Sections 4, 6 & 9 of the DRC Act. The respondent had also claimed his right to the said amount on the basis of the alleged legal notice dated 31st March, 2002 and 1st April, 2010.

(ii) From ₹12,000/- per month to ₹30,000/- per month w.e.f. 1st May, 2010 in view of the alleged legal notice dated 1st April, 2010.

5. The respondent had also based his claim on the judgment of the Apex Court in case titled as ***Mohd. Ahmed & Anr. vs. Atma Ram Chauhan &***

Ors., decided on 13th May, 2011. It was submitted that the petitioner was not making the payment of the rent at the market rate in terms of the rights acquired by him by virtue of the said judicial precedents, both by this Court as well as by the Apex Court.

6. The respondent had sought for the reliefs as under:-

“(a) That the decree of declaration be passed in favour of the plaintiff and against the defendant to the effect, thereby declaring that the plaintiff is entitled to revise the rate of rent with effect from 01.05.2002 till 30.04.2010 at Rs.12,000/- (Rupees Twelve Thousand Only) per month excluding electricity charges, water charges, property tax and any other tax/charge whatsoever and from the tenancy month commencing from 01.05.2010 at the rate of Rs.30,000/- (Rupees Thirty Thousand Only) per month excluding electricity charge, water charge, property tax and any other tax/charge whatsoever in view of the law laid down in “*Raghunandan Saran Ashok Saran vs. Union of India*” (supra) and “*Mohammad Ahmed & Anr. vs. Atma Ram Chauhan & Ors.*” (supra).

(b) That the decree for recovery of arrears of rent be passed for the sum of ₹6,66,000/- (Rupees Six Laks Sixty Six Thousand Only) in favour of the plaintiff and against the defendant with 18% interest from the due date of rent till the payment.

(c) That the decree of recovery of arrears of rent for the period falling during the pendency of suit be passed in favour of the plaintiff and against the defendant with 18% interest which cannot be ascertained by the plaintiff as on the date of filing of this suit.”

7. In the written statement filed by the petitioner (defendant in the suit), she has raised an objection to the maintainability of the suit and has also

raised various preliminary objections. The following issues were framed vide order dated 6th February, 2012:-

- “(i) Whether the plaintiff is entitled for declaration of decree for enhancement in rent of the suit property w.e.f. 1st May, 2002 to 31st April, 2010 @ Rs.12,000/- per month and from 01.05.2010 @ Rs.30,000/- per month as claimed? OPP
- (ii) Whether the plaintiff is entitled to recover arrears of rent to the tune of Rs.6,60,000/- from the defendant as claimed? OPP
- (iii) Whether the suit is not maintainable under section 34 of Specific Relief Act as alleged? OPD
- (iv) Whether the suit is within time for claiming the revision in rent w.e.f. 01.05.2002? OPP
- (v) Whether the suit is barred under the provisions of DRC Act 1958 as alleged? OPD
- (vi) Whether the plaintiff has no cause of action to file the present suit as alleged? OPD
- (vii) Relief.”

8. The request was made by the petitioner before the learned trial Court to treat issues No.(iii), (iv), (v) & (vi) as preliminary issues. As no such order was passed, the petitioner/defendant filed the application under Order VII, Rule 11 as well as Order XIV, Rule 2 CPC for rejection of the plaint. The said application was dismissed by the impugned order dated 24th November, 2012.

9. It is pertinent to mention here that the similar aspect involved in the present case has been dealt by a Division Bench of this Court in the case of **Santosh Vaid vs. Uttam Chand**, C.M.(M) No.48/2011 decided on 15th

February, 2012, as well as by this Court, in the case of *Atma Ram Properties (P) Ltd. vs. Escorts Ltd.*, 188 (2012) DLT 126.

10. In the case of *Santosh Vaid* (supra), recently upon the reference of the learned Single Judge of this Court to the Division Bench in view of the contrary opinion existing in the case of *Pearey Lal Workshop P. Ltd. vs. Raghunandan Saran Ashok Saran*, 155 (2008) DLT 145. The Division Bench authoritatively has now settled the said question by observing that the authority of *Raghunandan Saran Ashok Saran (HUF) vs. Union of India & Ors*, 95 (2002) DLT 508 (DB) declaring the provisions ultra vires does not entitle the landlords to increase the rents on the basis of the market value. Similarly the Division Bench also holds that the view in *Pearey Lal* (supra) is not correct. The learned Division Bench observed this in following words:

“15. A Division Bench of this Court in *Raghunandan Saran Ashok Saran* held that Sections 4, 6 and 9 of the Delhi Rent Act relating to standard rent had not taken into account the huge difference between the cost of living in the past and the present time and did not pass the test of reasonableness and had become obsolete and archaic and accordingly struck down the same. However the only effect of the said judgment is that a tenant could not apply to have the standard rent thereof determined and thus could not avoid paying agreed rent, as he was able to before this judgment. Undoubtedly, the Division Bench, while so striking down the said provisions, did observe that the said provisions dealing with the standard rent did not take into account the rise in the consumer price index and the huge costs required for maintaining the tenanted premises and there was no justification for not updating the frozen rents but all this was in the context of striking down Sections 4, 6 and 9 only. Thus

the said judgment cannot be said to be a judgment on the proposition that landlords are entitled to have the rent increased as per the consumer price index or rate of inflation.” (Emphasis Supplied)

“It would thus be seen that Pearey Lal cannot be said to be an authority in favour of the right of a landlord to have the rent increased to bring it at par with the consumer price index or to account for the rate of inflation. It is the settled position in law (See Jitendra Kumar Singh v. State of U.P. (2010) 3 SCC 119) that a judgment is a precedent on what it decides and not on other things. Though certain observations of wide sweep were certainly made in the said judgment but that judgment also towards the end accepts that the Court cannot tell a tenant to pay the rent at the present day market value. (Emphasis Supplied)

“Mohd. Ahmed (supra) was also a case where the Supreme Court gave certain suggestions/laid guidelines to minimize landlord-tenant litigation. The same were again in the context of UP Rent Act. The same also have no application to the position as prevailing in Delhi.” (Emphasis Supplied)

11. With regard to another case decided by this Court, titled as *Atma Ram Properties (P) Ltd.* (supra), similar issue has been decided. The relevant paras of the said judgment read as under:-

“39. All these provisions are indicative of the mechanism and working of the Rent Controller and appeal tribunal formed under the Act. The said provisions make it explicitly clear that the matters relating to standard rent or for that matter, increase in rent are the matters, which fall within the exclusive domain of the Rent Controller as the same is clear by way of reading of Section 6A read with Section 9 of the Act.

40. Therefore, the matters relating to increase in rent or the standard rent which are falling within the exclusive domain of the Rent Controller to decide, cannot fall within the domain of the civil court to decide in view of the express bar of jurisdiction envisaged under Section 50 of the Act. Thus, the suits pertaining to matters of standard rent or increase in standard rent as contained Section 6, 7 and 9 of the Act would be straightforwardly barred by way of operation of Section 50 of the Act read with Section 9 of Code of Civil Procedure Code.

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45. Once it is realized that the increase of agreed rate of rent under Section 6A shall be governed by manner provided under the Act under Section 8 of the Act and the consequences thereof, then immediately what follows is that the non payment of the said arrears and refusal to pay the same shall attract the consequences provided under the Act including eviction under Section 14 (1) proviso (a), etc. Therefore, the said aspect of non payment of arrears of rent or remedy of eviction would then become the matters for which the Rent Controller is exclusively vested with the jurisdiction to adjudicate upon and the finality clause and clear bar provided under Section 50 would therefore, continue to operate even in the cases relating to increase of agreed rate of rent governed under Section 6A of the Act.

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47. In the present case, the position in law becomes more clear, if one adopts the plain rule of construction of the enactment, it can be easily discerned that the express bar contained under Section 50 would continue to govern the matters relating to increase in agreed rate of rent as the language of Section 50 is wide enough when it enacts “*any other matter which the controller is empowered by*

or under this act to decide” to take within its sweep the matters relating to increase of the agreed rate of rent provided under Section 6A of the Act. Thus, the arrears of the rent or disputes relating increase in the rent as provided under Section 6A would also attract the bar of Section 50 of the Act when it comes to the jurisdiction of the civil court as they are matters falling within the domain of Rent Controller.

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50. Once it is realized that Section 6A is the statutory or legislative measure to increase the (which has been inserted by way of amendment by the legislature) providing the manner of the increase in the rent, then the said legal means or permission or lawful increase has to be given due respect and the same then attains the status of legislative command. Thus, it is difficult to visualize as to how the manner of increase provided by the legislature under Section 6 A can be ignored and the court can read into it the increase by way of market rate, which would lead to the court re-legislating the provision. The reasons to the same are manifold, few of which are highlighted below:

(a) It is well settled canon of interpretation that when the statute prescribes a things to be done in a particular manner, the said things are to be done in that particular manner to the exclusion of the others. (Kindly See State of UP Vs. Singhara Singh, (1964) SCR 485 wherein the Supreme Court approving the principle of Taylor vs. Taylor, (1875) 1 Ch. D. 426 observes as under:-

“In Nazir Ahmed's case(2) the Judicial Committee observed that the principle applied in Taylor v. Taylor(3) to a Court, namely, that where a power is given to do a

certain thing in a certain way, **the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden**, applied to judicial officers making a record under s. 164 and, therefore, held that magistrate could not give oral evidence of the confession made to him which he had purported to record under s. 164 of the Code." (Emphasis Supplied)

However, one may say that in the present case, the statute in the Act indeed provide a thing to be done in a particular manner by way of increase in the rent but does not prescribe consequences in mandatory form and assuming that argument can be taken, then recourse to the objects and scope of the Act can be taken to resolve such conflict.

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53. Thus, reading of the said Section 6A corresponding to the object and scope of the Act resolves the conflict and testifies for the application of the principle in affirmative, that is, Section 6A prescribes a particular manner of increase which is 10%, every three years and departure to the same is impermissible.

54. Once, it is clear that the Section 6A prescribes a particular manner of increase to be done in that particular manner, then immediately contextual reading of the word "may" in the section attains a kind of significance as that of the word "shall". This is due to the reason that the manner of increase under Section 6A is less of discretion and more of legal permission to increase.

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56. Applying the said principles to the present case, Section 6A not merely provides the limit by way of

increase of 10% but also provides the relevant conditions in which such increase can be effected. The said increase can be made where there is a standard rent or where there is no standard rent which is fixed which is case of agreed rent. The said increase of 10% can be done in the period of every three years. In these circumstances, the contextual reading of the provision makes things contemplated under the said provision to be performed in that particular manner only and not otherwise and the word “may” under Section 6A attains the status of “shall”.

The Supreme Court for the purposes of interpreting the word “may” or “shall” has observed in the case of *Dinesh Chandra Pandey v. High Court of Madhya Pradesh and Another*, (2010) 11 SCC 500 to the following terms:

"15. The courts have taken a view that where the expression "shall" has been used it would not necessarily mean that it is mandatory. It will always depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose sought to be achieved and the object behind implementation of such a provision. This Court in Sarla Goel v. Kishan Chand, took the view that where the word "may" shall be read as "shall" would depend upon the intention of the legislature and it is not to be taken that once the word "may" is used, it per se would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or mandatory. It would have to be interpreted in the light of the settled principles, and while ensuring that intent of the Rule is not frustrated." (Emphasis Supplied)

57. Applying the said principle to the provision of Section 6 A under the Act, the conclusion is again inescapable, the said provision is statutory measure to increase the rent of the premises governed by the Act. It prescribes a particular manner in which such rent is to be increased with the inbuilt conditions. The object of the Act is to protect tenants. The purpose of exercising such increase in the rent would give some relief to the landlords but at the same time retaining the underlying object of the Rent Control Legislation which is the protection of the tenants, thus, the legislative intent, mischief sought to be remedied, the object and purpose of the enactment, purpose of the performance of the power, all speak in one voice, the said things prescribed under Section 6A has to be interpreted in the particular manner. The word “may” occurring in the enactment cannot be read to be discretionary but rather it is mandatory and provision is in the nature of legislative command wherein only such increase is permissible and not otherwise.

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66. Applying the said position in law to the facts of the case, the present suit filed by the plaintiff seeking recovery of arrears of rent which, as per the plaintiff, should be as per the market rate, the same falls within the exclusive domain of the Rent Controller in view of the discussion done above and the rent cannot be increased beyond the prescribed limit of 10% per annum every three years as per Section 6A of the Act. Thus, any suit, like the present one, seeking to recover such arrears at the escalated rate would be clearly barred by the provisions of Section 50 of the Act read with Section 9 of the code.

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69. No further submission is left unanswered. In view of the discussion done above, it can be safely said, the

suit in the present form is barred by the law i.e. Section 50 read with Section 6A of the Act.”

12. In view of the above mentioned two decisions rendered by this Court, it is evident that the learned trial Court has passed the impugned order contrary to decisions delivered by this Court on the same aspect.

13. The impugned order is contrary to Sections 3(c) and 50 of the DRC Act which provide that in case, the monthly rent is below to ₹3500/-, there is a bar of jurisdiction of Civil Court. Admittedly, the monthly rent of the suit property is ₹600/- per month which is definitely below to ₹3500/- per month. Therefore, the suit filed by the respondent was contrary to Section 50 of the DRC Act and was not maintainable.

14. With regard to the claim of respondent about the market rent as per statement made in the plaint and seeking the declaration to the effect to revise the rent with effect from 1st May, 2002 till 30th April, 2010 @ ₹12,000/- per month and commencing from 1st May, 2010 till date @ ₹30,000/- per month, the respondent was entitled to the revision of rent within the meaning of Section 6A of the DRC Act. As the agreed rent between the parties in respect of the suit property was ₹600/- per month, the suit filed by the respondent in the Civil Court was barred under Section 50 of the Act.

15. In view of the abovesaid facts and circumstances, the impugned order dated 24th November, 2012 is set-aside, as the suit filed by the respondent in the present form is barred by law, i.e. Section 50 read with Section 6A of the DRC Act. The prayer made by the petitioner under Order VII, Rule 11 CPC

is allowed. The plaint of the suit filed by the respondent/plaintiff is accordingly rejected.

16. As regard to the arrears of rent and the present rent, the respondent would be entitled to take necessary steps in accordance with law.

17. The petition is accordingly disposed of. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

AUGUST 07, 2013