

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

**%** *Judgment reserved on: August 07, 2013*  
*Judgment pronounced on: August 26, 2013*

**+ C.R.P. No.36/2013**

DEEPAK THIRWANI AND ANR ..... Petitioners  
Through Mr.Rajesh Banati, Adv. with  
Ms.Manisha Yadav, Adv.

versus

LACHMAN DAS MANSHARMANI ..... Respondent  
Through Mr.Gulab Rai Chabria, Adv.

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The present petition is filed against the order dated 22<sup>nd</sup> December, 2012 passed in Civil Suit No.51/2012 whereby the learned Civil Judge dismissed the application filed by the petitioners/plaintiffs under Order XII, Rule 6 CPC.
2. Undisputed facts between the parties are that the petitioners are the joint owners of the property bearing No.4/19, Ground Floor, Vikram Vihar, Lajpat Nagar-IV, New Delhi (in short, called the "Suit Property") by virtue of a registered sale deed dated 17<sup>th</sup> June, 2011. When the said property was purchased, the respondent was already a tenant of ground floor in the suit property which was purchased by the petitioners from Rajiv Sharma and Jasbir Singh Khurana.

3. After the purchase of the said property, the petitioners sent a legal notice dated 1<sup>st</sup> November, 2011 to the respondent, calling upon him to pay a sum of ₹25,000/- per month towards the rent to the petitioners. The respondent, in reply, stated that the rent of the premises is ₹3,221/- per month as paid to the last owner in February, 2007. The petitioners thereafter sent another legal notice dated 14<sup>th</sup> November, 2011 calling upon the respondent to pay the entire arrears of rent and also enhance the rent by 10% as per the provisions of Section 6A of the Delhi Rent Control Act, 1958 (hereafter called as “DRC Act”). In reply dated 21<sup>st</sup> November, 2011, the respondent took the plea that the claim of the rent from 2007 cannot be accepted as an immovable property could only be transferred through a sale deed duly registered and not otherwise, i.e. Sale Agreement, GPA, Receipt, Will, etc. With regard to the contention of the enhancement of rent by 10% from January, 2007, the same was also unacceptable to the respondent, stating that the alleged ownership of the property, if any, would commence from 17<sup>th</sup> June, 2011 and not before that date. Thereafter, the petitioners filed the suit for recovery of possession and damages/mesne profits.

4. In the written statement, the respondent/defendant took the plea that the suit for possession is not maintainable, as the respondent is protected under the DRC Act, as the admitted rent of the suit property is below ₹3500/- per month. The contention of the respondent was that the rent of the suit premises is ₹3,221/- per month and not ₹3,543.10p.m., as alleged by the petitioners. However, it was not denied by the respondent that the petitioners became the owners of the suit premises in terms of the order of this Court, dated 12<sup>th</sup> May, 2011 and as such, the jural relationship of landlord and

tenant commenced on 17<sup>th</sup> June, 2011 when the sale deed is alleged to have been executed. With regard to enhancement of rent by 10% from January, 2011 claimed under notice dated 14<sup>th</sup> November, 2011, the same was refuted in the reply dated 21<sup>st</sup> November, 2011 because the rent could only be increased after three years and in this case the relationship of landlord and tenant only assumed in June, 2011. Therefore, claiming of increase of rent by 10% is legally not tenable.

5. Both the parties have made their rival submissions in support of their contentions. As far as the claim of the petitioners for claiming the arrears of rent is concerned, at this stage, I am of the view that final conclusion cannot be arrived as the evidence in this regard has to be gone into by deciding the relief claimed by the petitioners for mesne profits and recovery of damages. However, as regards the main relief sought by the petitioners for possession of the suit property, it is not in dispute that the earlier owner had increased the rent of the premises for a sum of ₹3,221/- per month in 2007. The respondent has also not denied the fact that the petitioners had purchased the property in 2011 and during the period 2007 and 2011, the rent by 10% as per the provisions of Section 6A of the DRC Act was not enhanced or paid to the earlier owner.

6. It is not in dispute that if the petitioners are entitled for the benefit of Section 6A of the DRC Act, then the rent would be excess to ₹3500/- per month. Originally, the said Act did not envisage a distinction between the premises deriving different rates of rent per month. However, in pursuance of the amendment to the said Act carried out with effect from 1<sup>st</sup> December, 1988 the provisions of Section 3 were amended by incorporating Clause (c).

In terms of the said incorporation, the said Act is not to apply to any premises whether residential or not whose monthly rent exceeds ₹3500/-. Thus, the jurisdiction of the Civil Court would lie if the rent is excess to ₹3500/- per month. Such protection would not be available under the DRC Act.

7. Section 6A of the DRC Act reads as under:-

“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.”

8. Under this provision, the landlord of the premises is entitled to claim enhancement of rent by 10% every three years. I agree with the submission of the learned counsel for the petitioners that the present petition is to be decided under the said circumstances as explained, as according to the counsel, after purchasing the property in 2011 the petitioners who have become owners of the property, issued the notice in 2011 claiming the enhancement of the rent by 10% under Section 6A of the DRC Act, as lastly the rent was increased in 2007.

9. In the present case, the relationship between the parties as landlord and tenant is not denied by the respondent. It is also an admitted position that there is no written agreement between the parties and after the receipt of notice, the tenancy of the respondent has become month to month basis. The notice of termination of tenancy is also admitted by the respondent. In case, the rent of the premises being more than ₹3500/- per month in view of the

provisions of the DRC Act, then the third condition of granting the relief of possession is also satisfied.

10. There is no dispute raised by the respondent that the petitioners have purchased the suit property from its previous owners Rajiv Sharma and Jasbir Singh Khurana vide Agreement to Sell, GPA, Receipt of Consideration and Possession Letter dated 17<sup>th</sup> June, 2011, in view of the compromise recorded in this Court in pursuant of litigation and both the sellers handed over the symbolic possession of the suit premises to the petitioners who became owners of the said premises with effect from 27<sup>th</sup> May, 2006, i.e. the date on which the original agreement to sell was executed. The petitioners have also filed an application under Order XXIII, Rule 3 read with Section 151 CPC and the order dated 16<sup>th</sup> May, 2011 passed in Suit No.787/2009. Thereafter, the notices were issued by the petitioners to the respondent as mentioned above for the increase of rent by 10% under Section 6A of the DRC Act which would stand enhanced to ₹3543.10 per month with effect from the tenancy month of January, 2012 onwards. Thus, under these circumstances, the premises, which was earlier protected under the DRC Act after the issuance of notice for the entitlement of 10% increase as provided under Section 6A of the Act, the same was become outside the purview of the said Act.

11. Learned counsel for the petitioners has referred a judgment of the Division Bench in the case of **Rohini Varshnei vs. R.B.Singh**, reported in 155 (2008) DLT 440 (DB) where the similar question arose and the learned Bench has dealt with the objection raised by the tenant as raised in the present case. Paras 17 to 21 of the said judgment reads as under:-

“17. On examination of the rival contentions of learned counsel for the parties, we find no merit in the plea of the appellant. Our decision is predicated on the important aspect of the respondent having sought increase of 10 per cent of the rent in terms of Section 6A of the said Act and the appellant’s failure to increase the rent. This is a statutory entitlement of the respondent and on the failure of the appellant to increase the rent, it would amount to non payment of the appropriate rent. Once the earlier rent of Rs.3,500/- is at least not in dispute, the 10 per cent increase would take the rent to Rs.3850/- and thus take the dispute outside the protection of the said Act. This is naturally the consequence of the notice dated 09.05.2002.

18. Before filing of the suit, the appellant had issued a notice determining the month to month lease and seeking possession on 20.08.2002, receipt of which is not disputed and the notice has been replied to. At the stage when such possession was sought, the correct undisputed rent would have been Rs.3850/- assuming that the original rent was only Rs.3,500/- per month and not Rs.3,550/- per month. Thus these three ingredients required for passing a decree for possession also stands satisfied. We may also notice that the aforesaid approach would amount to adopting a different reasoning than the Trial Court while passing a judgment on admission under Order 12 Rule 6 of the said Code but that itself would not make any difference since the judgment is predicated on the legal pleas advanced by the parties and factual matrix available on the record.

19. It may also be observed that in Para 6 of his plaint the respondent categorically stated that on issuance of legal notice dated 09.05.2002 the appellant was called upon to increase the rent by 10% w.e.f. 21.06.2002 and therefore rents stood increased from 3,500 to 3,850 w.e.f. 21.06.2002. It has also been stated that the said notice was duly received and acknowledged by the appellant who also sent a reply dated 23.05.2002 through her counsel. In the aforesaid reply the appellant simply

denied the right of the respondent to increase the rent which is untenable in view of the right available to the respondent to increase the rent under Section 6A of the DRC Act.

20. In these circumstances, the appellant having accepted the receipt of the notice became liable to pay the rent at the enhanced rate, that is, by adding 10% which would make the rent to 3,850 even if the rent is taken as 3,500 as on 09.05.2002. The suit has been filed only thereafter i.e. on 20.10.2004, at which time, the enhanced rate had become payable.

21. A reference can also be made to the judgment of this Court in *Nischint Bagga Vs. Goliath Detectives Pvt. Ltd. & Anr.*, 78 (1999) DLT 432 where following observations have been made:

“7. Therefore, after receipt of the notice under Sections 6A and 8 of the Act, the rent became more than Rs. 3,500 per month and consequently the tenant lost the protection of the Delhi Rent Control Act. Section 6A and Section 8 reads as under:

‘6-A. *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.’

‘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 insofar as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of 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, 1882 (4 of 1882).'

8. The receipt of notice dated 7.4.1994 calling upon defendant No. 1 to increase the rent at the rate of 10% per annum in terms of Sections 6A and 8 of the Delhi Rent Control Act, 1958 is admitted. The increase of 10% in the last paid rent makes it Rs.3,850 per month which excludes applicability of the Delhi Rent Control Act, 1958 to the suit premises. In other words, the defendants cannot claim any protection of the Delhi Rent Control Act when the rent is beyond Rs. 3,500 per month.”

12. In view of the settled provisions of law on this aspect, I am of the view that the petitioners are entitled for the decree of possession in respect of the suit property in their favour against the respondent. The trial Court has wrongly given its finding despite of the settled law on this aspect. In fact, the application under Order XII, Rule 6 CPC to the extent of prayer for grant of decree of possession ought to have been allowed. The impugned order is accordingly set aside. The application filed by the petitioners under Order XII, Rule 6 CPC is accordingly allowed. Thus, a decree for possession is passed in favour of the petitioners and against the respondent, in respect of the property bearing No.4/19, Ground Floor, Vikram Vihar, Lajpat Nagar-IV, New Delhi. The respondent shall hand over the peaceful and vacant possession thereof to the petitioners within six months from today. During this period, the respondent shall pay the enhanced rent as claimed by the petitioners while taking the benefit of Section 6A of the DRC Act.

13. With regard to the other prayers, i.e. mesne profits and damages, the same would be decided in accordance with law. The parties shall appear before the learned trial Court on 22<sup>nd</sup> October, 2013.

14. The petition is accordingly disposed of.

**(MANMOHAN SINGH)**  
**JUDGE**

**AUGUST 26, 2013**