

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

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Date of decision: 5th March, 2014.

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CS(OS) 2813/2011

THAKUR RANGJI MAHARAJ TRUST

..... Plaintiff

Through: Mr. R.K. Dhawan, Mr. S.T.
Srinivasan and Ms. Richa Dhawan,
Advs.

Versus

A.J. PRINTERS

..... Defendant

Through: Mr. S.K. Sharma, Mr. Rahul Sharma
and Mr. Prayas Aneja, Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The plaintiff has instituted this suit for the relief of recovery of possession of ground floor portion of property no.97, Sunder Nagar, New Delhi – 110 003 and for recovery of arrears of rent of Rs.55,825/- and *mesne* profits/damages for use and occupation for the period from 1st February, 2011 till the date of institution of the suit on 26th August, 2011 of Rs.21 lacs and for future *mesne* profits/damages for use and occupation @ Rs.10,000/- per day, pleading:-

- (a) that the plaintiff let out the portion consisting of three rooms, drawing-cum-dining, pantry, kitchen, two servants quarters and

one garage on the ground floor of property No. 97, Sunder Nagar, New Delhi – 110 003 to the defendant for residential purposes pursuant to written Lease Deed dated 1st October, 1972 at a monthly rent of Rs.2,000/-;

- (b) that the rent was increased to Rs.2,500/- per month w.e.f. 1st April, 1982;
- (c) that the defendant continued to pay rent at the rate of Rs.2,500/- per month till the date of institution of this suit;
- (d) that during the pendency of certain proceedings between the parties under the Delhi Rent Control Act, 1958, the plaintiff, vide Legal Notice dated 9th November, 2010, invoked Section 6A read with Section 8 of the Rent Act, notifying the defendant that the revised rent in terms of the statutory provisions, from 1st January, 2007 would be Rs.4,425/- per month and called upon the defendant to pay rent at the said rate;
- (e) that the defendant sent a vague reply to the aforesaid Legal Notice;

- (f) that the plaintiff vide another Legal Notice dated 4th January, 2011 determined the tenancy of the defendant w.e.f. 1st February, 2011;
- (g) that the aforesaid action of the plaintiff “was covered by the ruling of the Hon’ble Supreme Court of India in the case of *Nopany Investment (P) Ltd. Vs. Santokh Singh (HUF)* reported in AIR 2008 SC 673; 2007 (13) SCR 28 on the implications of Sections 6A and 8 of the Act, the guidelines issued in *Atma Ram Properties Vs. Federal Motors Pvt. Ltd.* 2005 (1) SCC 705, and in the recent judgment delivered on 13th May, 2011 in C.A. No.4422 of 2011 *Mohamed Ahmed Vs. Atma Ram Chauhan*”;
- (h) that since the current rent exceeded Rs.3,500/-, the bar of Section 3(c) of the Rent Act was not applicable;
- (i) that the defendant had no right to continue in the premises from the midnight of 31st January, 2011;
- (j) that the defendant had failed to vacate the premises;
- (k) that the defendant, after determination of tenancy w.e.f. 1st February, 2011 was liable to pay *mesne* profits at Rs.10,000/- per

day and a sum of Rs.21 lacs was due to the plaintiff for 210 days till the institution of the suit; and,

- (1) that the defendant was also liable to pay differential in rent for the period September, 2008 to January, 2011 of Rs.55,825/-.

accordingly, the suit for the reliefs aforesaid of, ejectment of the defendant from the premises, recovery of Rs.21 lacs and Rs.55,825/- with interest thereon and future mesne profits, was filed.

2. Summons of the suit were issued and the defendant has filed a written statement and to which a replication has been filed by the plaintiff. The parties have also filed affidavits of admission/denial of each other's documents.

3. On the pleadings of the parties, the following issues were framed in the suit on 17th September, 2013:-

- “ 1. Whether this court has no jurisdiction to entertain the present suit by virtue of Section 50 of the Delhi Rent Control Act, 1958?(OPD)*
- 2. Whether the plaintiff is entitled to seek increase in rent under Section 6-A of the Delhi Rent Control Act cumulatively from 01.01.2001 onwards by a single notice sent on 9.11.2010 by 10% for each period of 3 years?(OPP)*

3. *Whether the lease of the defendants stands duly terminated vide notice dated 04.01.2011? (OPP)*
4. *Whether the plaintiff is entitled to recovery of possession and damages of the mesne profits. If so, at what rate and for what period?(OPP)*
5. *Whether the plaintiff is entitled to claim interest and if so, at what rate and for what period? (OPP)*
6. *Whether Section 48 of the Trust Act is applicable to the present case? (OPD)*
7. *Whether the suit has not been filed by the authorized representative on behalf of the plaintiff? (OPD)*
8. *Relief.”*

4. Issues No.1 and 2 above being purely legal issues, were ordered to be treated as preliminary issues and the suit posted for hearing arguments thereon.

5. Adjournment was sought by the counsel for the plaintiff on 20th November, 2013.

6. The counsel for the plaintiff today states that the matter be again adjourned because the plaintiff has filed an application for amendment of the plaint and which has not been listed.

7. Finding the conduct of the plaintiff to be dilatory and the suit as filed to be *prima facie* not maintainable, the application filed by the plaintiff has been

requisitioned from the Registry and the counsel for the plaintiff asked to address on the maintainability of the suit.

8. The plaintiff wants to amend the plaint to plead, (i) that the defendant, a partnership firm had ceased to exist long back and the affidavits filed by Shri Anil Narendra in these proceedings as partner of the defendant are *prima facie* false and fraudulent; (ii) that since the taking of the premises on rent nearly 40 years ago, the defendant firm had become redundant for all purposes and on cessation of the firm the defendant had become a trespasser in the premises and the present occupation and possession of Shri Anil Narendra of the premises is thus unauthorized. The plaintiff also seeks to amend the prayer paragraphs to seek a declaration of cessation of the defendant firm and of the possession of Shri Anil Narendra of the premises being unauthorized on this account.

9. I will first take up the maintainability of the suit as per the averments in the plaint originally filed. As per the case pleaded therein, the defendant was a tenant under the plaintiff on a rent of Rs.2,500/- per month; however on service of the notice dated 9th November, 2010 by the plaintiff on the defendant, the rent stood increased to Rs.4,425/- per month, thereby taking the premises outside the purview of the Rent Act.

10. It is not in dispute that if the rent of the premises is less than Rs.3,500/- per month, the jurisdiction of this Court to entertain this suit for recovery of possession of the premises would be barred by Section 50 of the Rent Act.

11. The claim of the plaintiff thus hinges on the entitlement of the plaintiff to have the rent increased by serving such a notice.

12. Section 6A as incorporated in the Rent Act w.e.f. 1st December, 1988, permits the rent agreed upon between the landlord and the tenant to be increased by 10% every three years. Section 8 provides that where a landlord wishes to increase the rent, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under the Act, it shall be due and recoverable only in respect of the period after the expiry of 30 days from the date on which the notice is given.

13. The question for consideration is, whether such a notice of 10% increase has to be given 'every three years' or where a landlord, even if has not had the rent increased every three years, is entitled to, at any point of time, give a notice of cumulative increase for several periods of three years each in the past.

14. The question is no longer *res integra*. This Court recently in *M/s. Atma Ram Properties Pvt. Ltd. vs. M/s. Allied Motors Ltd.* 202 (2013) DLT 649 has held that, to be entitled to increase in rent under Section 6A, the landlord has to exercise the entitlement and once the landlord has failed to exercise his right/entitlement at the expiry of three years from the last agreed rent, it amounts to waiver of the right and the landlord cannot exercise such right retrospectively after any number of years according to his whim and fancy. It was thus held that a landlord, by way of a single notice, cannot ask for any number of enhancements of 10% each for the past periods, as was contended in that case also.

15. The counsel for the plaintiff has however contended that the language, neither of Section 6A nor of Section 8 bars a notice claiming more than one increase, for giving effect thereto. It is argued that once the law permits increase in rent by 10% every three years, the same can be so increased at any point of time and even if the landlord has not issued the notice, claiming the increase, every three years, the same will only bar the remedy of the landlord of recovering increased rent for a period of more than three years prior to the institution of the suit but cannot be said to bar the right of the landlord to such increase in rent and the tenant would be liable to at least from after 30 days

after the issuance of the notice, pay the rent so increased cumulatively for the past several periods of three years each. Reference is also made to *M/s. Nopany Investments (P) Ltd. Vs. Santokh Singh* AIR 2008 SC 673.

16. As far as the reference to *M/s. Nopany Investments (P) Ltd.* is concerned, the same does not address the issue aforesaid. The said judgment of the Supreme Court is a precedent on there being no bar to increase under Section 6A read with Section 8 to above Rs.3500/- per month owing to the pendency of proceedings for eviction under the Rent Act.

17. As far as the other contention of the counsel for the plaintiff is concerned, besides the fact that the principle of *stare decisis* commands this Bench to be bound by the judgment in *M/s. Atma Ram Properties Pvt. Ltd.* supra, I even otherwise concur with the view taken therein. Section 6A does not provide that the rent agreed upon between the landlord and the tenant ‘shall stand increased by 10% every three years’; rather it provides that the said rent ‘may be increased by 10% every three years’. It is also not as if the increase is automatic, every three years. For the landlord to have the rent so increased, the landlord is required to give a notice under Section 8. It follows that where the landlord does not chose to give such a notice, the rent will not be increased under Section 6A. The word “may” in Section 6A read with

Section 8 clearly lays down a self contained mechanism for having the rent increased and the necessary concomitant whereof is that where the said mechanism has not been followed, the rent will not stand increased. Reference in this regard can also be made to the judgment of the Division Bench of this Court in *Santosh Vaid & Anr. Vs. Uttam Chand* 188 (2012) DLT 293 and to Atma *Ram Properties (P) Ltd. Vs. M/s Escorts Ltd.* 188 (2012) DLT 126.

18. Mention may also be made of *National Co-operative Consumer Federation of India Ltd. Vs. Jwala Pershad Ashok Kumar Chopra* 74 (1998) DLT 842 where it was held that the increase in rent under Section 6A was permissible immediately after incorporation thereof in the Rent Act with effect from 1st December, 1988 and without waiting for a period of three years to elapse therefrom. If the argument of the plaintiff were to be accepted, it will enable the landlord to have the rent increased for all periods of three years prior to 1st December, 1988 for which the rent had not been increased, taking the rent beyond Rs.3500/- per month and the premises outside the ambit of the Rent Act in one go. This does not appear to be the intention of the legislation.

19. The Supreme Court in *Joginder Pal Vs. Nawal Kishore Behal* (2002) 5 SCC 397 has held that the Courts should adopt a reasonable and balanced approach while interpreting Rent Control legislations and assume that equal treatment has been meted out to both, landlords and tenants. It was however clarified that while interpreting such of the provisions as take care of the interest of the landlord, the Court should not hesitate in leaning in favour of landlords as such provisions are engrafted in Rent Control legislations to take care of those situations where the landlords too are weak and feeble and feel humble. Applying the said principle, the expression “requirement of the landlord” was interpreted to include requirement of his family members also.

20. In my view, the language, “by 10% every three years” in Section 6A makes it abundantly clear that the right to have the rent increased has to be exercised “every three years” and to read the same as “at the rate of 10% every three years” would be violating the legislative intent and language. Though Section 6A is undoubtedly for the benefit of the landlord and to enable the landlord to avail the increase permitted therein and which provision for increase in rent did not earlier exist but the same cannot be a reason to interpret it to mean what does not follow from its plain language.

21. I am therefore of the view that the plaint as filed does not disclose a cause of action and the claim therein is barred by law.

22. As far as the amendment claimed by the plaintiff is concerned, even if the same were to be allowed, the same would still not infuse any life into the suit. A firm is a compendium name for its partners. Even if the plaintiff were to prove that the defendant M/s A.J. Printers was a partnership firm of Shri K. Narendra and Shri Anil Narendra and had ceased to exist, Shri Anil Narendra would continue to be the tenant in the premises and the plaintiff would still not be entitled to the relief of possession or *mesne* profits claimed in the suit.

23. It was also the contention of the counsel for the plaintiff that the defendant, in the pending proceedings under the Rent Act, had admitted the rent of the premises to be in excess of Rs.3,500/- and the premises being outside the ambit of the Rent Act. Though the suit of the plaintiff is not founded on the said plea but nevertheless on the request of the counsel for the plaintiff, while reserving the judgment, opportunity was given to the counsel for the plaintiff to file documents in this regard.

24. The counsel for the plaintiff has since filed documents i.e. copies of orders dated 3rd February, 2012 and 11th April, 2012 of the Rent Controller (South) in E-217/09/86 but which do not show any admission by the defendant of the rent of the premises being in excess of Rs.3,500/- per month. The stand of the defendant in the proceedings before the Rent Controller is found to be that the plaintiff cannot be permitted to blow hot and cold and while before the Rent Controller plead the premises to be within the ambit of the Rent Act, before this Court plead to the contrary. The same does not amount to an admission of the rent having stood increased to Rs.4,425/-, for it to be said that the plaintiff has agreed to such increase.

25. The suit is thus clearly misconceived and the plaint therein is rejected; however no order as to costs.

RAJIV SAHAI ENDLAW, J.

MARCH 05, 2014.

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