

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

+ **CM(M) No.815/2014**

% **5th September, 2014**

SMT. VIJAY SHARMA Petitioner
Through: Mr. Vishal Bhatnagar, Advocate with
Mr. Nitin Sharma, Advocate.

VERSUS

SMT. BHAGWANTI DEVI Respondent
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This is a petition by the tenant impugning the concurrent judgments of the courts below; of the Additional Rent Controller dated 28.1.2012 and the Rent Control Tribunal dated 13.2.2014; by which the eviction petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') for non-payment of rent was decreed. Eviction order however was not passed and benefit of Section 14(2) of the Act has been given to the petitioner/tenant and which aspect has become final as the

respondent/landlady has not challenged the grant of benefit of Section 14(2) as per which when there is a first default under Section 14(1)(a) there is no eviction if the tenant deposits the rent pursuant to an order under Section 15(1) of the Act.

2. In a petition for non-payment of rent, three aspects are required to be established. First is the relationship of landlord and tenant. Second is the service of demand notice, and third is non-payment of arrears within two months of service of the demand notice.

3. So far as the aspect of relationship of landlord and tenant is concerned, the Additional Rent Controller has dealt with this aspect in paras 12 to 16 of the judgment dated 28.01.2012 and these paras read as under:-

“12. There exist relationship of landlord and tenant:

It is stated by the petitioner that she is the owner and landlady of the suit premises. The respondent on the other hand denied the relationship of landlord with the petitioner. It is stated by the respondent that petitioner is not the landlord of the suit premises. The petitioner examined herself as PW-1 and placed on record the mutation letter issued by the MCD which is proved as Ex. pW1/A. The petitioner also deposed on Oath that she is the owner of the suit premises. The petitioner has also relied upon the Relinquishment Deed executed in her favour by other legal Heirs i.e. original owner/landlord. The petitioner examined another witness PW-2, official of L&DO Department, who proved the mutation letter dated 07.08.03 in favour of the petitioner which is proved as ExPW2/A.

The respondent on the other hand has merely denied the ownership of the petitioner but no other independent witness is examined by the respondent that petitioner is not the landlord of the suit premises.

13. In the present case the petitioner is claiming herself as landlord being owner of the suit premises. It is the admitted case of the respondent the petitioner is one of the legal heir of deceased Smt. Ram Pyari who was the original owner/ landlord of the suit premises, therefore, it is clear that petitioner is not a totally strange. Smt. Ram pyari, original owner is admittedly expired, therefore, even by virtue of succession the petitioner is one of the co-owner of the suit premises. Secondly the petitioner has proved on record the Relinquishment Deed executed in her favour and the mutation letter from the L&DO Department. The respondent has no right to dispute the title documents of the petitioner. Moreover, the respondent has failed to produce any document on record to prove that any other person is the owner of the suit premises.

14. In view of above discussions, I am of the considered opinion that the petitioner is able to prove her prima-facie ownership in the suit premises by virtue of Relinquishment Deed and mutation letter. Therefore, being owner the petitioner is the landlord of the suit premises.

The respondent has taken the objection that petition U/S 14 (1)(D) filed by the petitioner was dismissed as there was no relationship of landlord and tenant between the parties. However, the perusal of the order of dismissal of petition U/S 14 (1) (D) of DRC Act reveals that the same was dismissed because it was found to be not maintainable on the ground that neither the petitioner nor her husband has let out the suit property to the respondent. It is clear that there was no finding about the fact whether the relationship of landlord and tenant is in existence between the parties, therefore, this contention of respondent is not tenable in the eyes of law.

15. The next question arise for determination is whether the notice of attornment was given by the petitioner to the respondent. The respondent has denied the knowledge of ownership of the petitioner, however, in the evidence by way of affidavit the respondent herself

has stated that the petitioner start claiming herself sole owner of the suit property after alleged execution of the Relinquishment Deed dated 03.05.03. This admission of the respondent in her evidence by way of affidavit makes it clear that respondent was having knowledge about the execution of Relinquishment Deed dated 03.05.03 in favour of the petitioner. Therefore, it is clear that the respondent was having knowledge about the ownership of the petitioner since execution of the Relinquishment Deed dated 03.05.03.

16. Therefore, in view of the above discussions I am of the considered opinion that the petitioner is able to prove the existence of relationship of landlord and tenant between the petitioner and the respondent regarding the suit premises i.e. Duplex flat No. 23, First Floor, Gur Mandi, Delhi-7. (underlining added)

4. In my opinion, the Additional Rent Controller was perfectly justified in holding that the respondent was the landlady of the premises because the petitioner admitted that the original owner/landlord of the suit premises was Smt. Ram Pyari, the predecessor-in-interest of the respondent. Also, the respondent/landlady has proved the mutation letters issued both by the MCD and the L&DO accepting the respondent as the owner of the premises, and which are Ex.PW1/A and Ex.PW2/A. In any case, the Additional Rent Controller rightly notes that since the respondent/landlady is one of the co-owners, therefore, she was the landlady of the premises. I may, in this regard, add that as per Section 2(e) of the Act, the expression 'landlord' includes a person who is entitled to receive the rent and since the co-owner is entitled to receive the rent, and therefore the respondent/landlady would

therefore be entitled to send the notice and file the petition under Section 14(1)(a) of the Act.

5. So far as the aspect of service of notice dated 9.2.2005 is concerned, the same is not disputed and this has been so held in para 21 of the judgment of the Additional Rent Controller dated 28.01.2012, and which para 21 reads as under:-

“21. Service of notice of demand upon the respondent.

It is stated by the petitioner that the legal notice dated 09.02.05 was served upon the respondent through registered AD and UPC. The respondent in her written statement has admitted the receipt of the legal demand notice dated 09.02.05. The facts admitted by the parties need not to be proved. Therefore, on the basis of admission of the respondent, I hold that the legal demand notice dated 09.02.05 was duly served upon the respondent.”

Accordingly, in my opinion, it is also proved that the legal notice dated 9.2.2005 was served upon the petitioner/tenant.

6(i) The next aspect which arises is whether the petitioner/tenant has satisfied the notice by paying the arrears of rent due. Arrears of rent due were claimed by the respondent/landlady at Rs.1,000/- per month from January, 2002, however, both the courts below have held that the rate of rent is not Rs.1,000/- per month but Rs.350/- per month and therefore this finding is in favour of the petitioner/tenant and petitioner/tenant therefore is liable to pay rent only at Rs.350/- per month. The question is whether the arrears of rent at

this rate have been cleared within two months of service of the notice dated 9.2.2005.

7. So far as the period for payment/deposit by the petitioner/tenant is concerned, the courts below have held that the liability of the petitioner/tenant was to pay not from January, 2002 but from 3.5.2003 because the payment of rent was not due to the respondent/landlady prior to becoming owner of the premises, and the respondent/landlady became owner of the premises only w.e.f 3.5.2003. This aspect with respect to the period for payment/deposit by petitioner/tenant within two months of being served the notice dated 9.2.2005 has been considered by the Additional Rent Controller in paras 18 to 20 of the judgment dated 28.1.2012, and which paras read as under:-

“18. Existence of arrears of rent legally recoverable on the date of service of demand notice:-

It is stated by the petitioner that the respondent is in arrears of the rent w.e.f. January ,2002 till date The respondent on the other hand stated that she has paid the rent upto 30.04.04 to one Sh. Gopi son of Smt. Prem Kumar. It is stated that the rent w.e.f. 01.05.04 to 28.02.05 is deposited U/S 27 of DRC Act.

The petitioner examined herself as PW-1 and deposed on Oath that the respondent was in arrears of the rent since January ,2002. It is admitted by the petitioner that her mother used to receive the rent upto her death and she never issued any rent receipt. In the present case the petitioner is claiming her ownership since 03.05.03 by virtue of Relinquishment Deed dated 03.05.03. The petitioner in her evidence has also stated that she become the owner of the tenanted premises on execution of the Relinquishment Deed EX PW 1/B. On this issue it is stated by the

counsel for the respondent that the petitioner has no right to claim the arrears of rent prior to her becoming owner/landlord of the suit premises. Ld. counsel for the respondent has relied upon one judgment of Hon'ble Supreme Court reported as (1994) 5 SCC 261, wherein Hon'ble Supreme Court has held that :-

" In view of proviso to Section 109 of T.P. Act appellant assignee was not entitled to rent before the assignment . Whatever might have been due prior to the lease deed could not constitute arrears of rent , it was merely actionable claim".

19. I have perused the judgment relied upon by Ld. counsel for the respondent and have gone through the provision of Section 109 of T.P. Act. As per the provision of Section 109 of T.P. Act, if there is no specific assignment about arrears of rent the transferee has no right to claim the arrears of the rent. The petitioner has failed to disclose any assignment for her right to receive the arrears of rent prior to her becoming owner of the suit premises. Therefore, in the present facts and circumstances , I hold that the petitioner has no right to claim the arrears of rent prior to her becoming the owner of the suit premises i.e. 03.05.03. The petitioner is entitled to claim the rent only after 03.05.03.

20. The respondent in the present case has stated that the rent upto 30.04.04 was paid to one Sh. Gopi, but the respondent has failed to produce any rent receipt or documentary proof regarding payment of rent to Sh. Gopi upto 30.04.04. The respondent has failed to examine any other independent witnesses to corroborate her statement that the rent was paid upto 30.04.04. The submissions of the respondent also seems to be contrary to her own admission because the respondent in her examination in chief has stated that since from execution of Relinquishment Deed dated 03.05.03 the petitioner was claiming herself the owner of the suit premises. When there was a dispute regarding the existence of relationship or two or more persons were claiming the rent, than the respondent was having no right to make the payment of rent to alleged Sh. Gopi. The respondent has not even examined said Gopi to prove that rent was paid upto 30.04.04 therefore, story of respondent does not seems to be plausible.

Therefore, in the present facts and circumstances, I hold that the respondent was in arrears of the rent since 03.05.03.”

(underlining added)

8. The issue therefore is that whether the petitioner/tenant has cleared arrears of rent at Rs.350/- per month from 3.5.2003 till February, 2005 inasmuch as the legal notice is dated 9.2.2005 i.e for rent due upto February, 2005.

9. The only case of the petitioner/tenant is that the rent was deposited in a petition under Section 27 of the Act at Rs.350/- from 1.5.2004 to 28.2.2005, and therefore even as per the case of the petitioner/tenant, the arrears of rent at Rs.350/- per month have not been deposited from 3.5.2003 to 30.4.2004 and consequently for this period the demand notice remained unsatisfied and since the demand notice was not satisfied, the courts below were justified in decreeing the petition under Section 14(1)(a) of the Act.

10. I may note that there was a provision of second appeal being Section 39 of the Act and which provision was repealed way back in the year 1988 making it clear that the legislature did not want a second appeal to be filed. Once a second appeal cannot be filed, petitions under Article 227 of the Constitution of India cannot be treated as second appeals, and therefore the scope of challenge to concurrent judgments passed by the Additional Rent Controller and Rent Control Tribunal would be extremely limited. In the

present case, not only the judgments cannot be interfered with under Article 227 of the Constitution of India, but also the impugned judgments in fact are such which could not have been interfered with in the first appeal or even in the second appeal because the aforesaid observations show that reasoning and conclusions of the courts below are flawless.

11. Dismissed.

SEPTEMBER 05, 2014
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VALMIKI J. MEHTA, J