

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

+ CM(M) 1301/2013
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23rd July , 2014

SHASHI BHUSHAN LAL Petitioner
Through: Mr. Braj Bhushan Lal, Adv.

VERSUS

KANSHI RAM Respondent
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. There was a Section 39 in Delhi Rent Control Act, 1958 (hereinafter referred as to 'the Act') which provided for filing of a second appeal. Second appeal could be filed only on limited ground of there existing a substantial question of law. The provision of Section 39 has been repealed by Act 57 of 1988 w.e.f 1.12.1988. Once second appeal cannot lie, a petition under Article 227 of the Constitution of India cannot be filed as a substitute for a second appeal. These observations I am making because if scope of hearing of a second appeal is limited, then the scope of hearing a petition under Article 227 of the Constitution of India is further limited, and also it is

a discretionary jurisdiction to be exercised only when there is occasioned gross injustice.

2. In the present case, both the courts below have arrived at a finding of fact with respect to the period from which the rent of Rs.525/- per month is payable i.e w.e.f 1.6.1998. The respective contentions and evidence both documentary and oral, has been considered by the courts below to give finding of fact of the rent being payable at Rs.525/- per month w.e.f 1.6.1998. Also, correct reasons have been given for claiming the arrears of rent prior to three years of sending of the legal notice and only on non-compliance of which the limitation period commences for filing a petition under Section 14(1)(a) of the Act for non-payment of rent. It is also noted that no period of limitation is provided for filing a petition under the Act and to which aspect I may further note that in some Rent Control Act of certain States it has been held by the Supreme Court that limitation period will be of 12 years as the eviction petition is qua an immovable property. The relevant conclusions of the impugned judgment are as under:-

13. The relationship of landlord and tenant between the parties is not in dispute. In the demand notice Ex.AW1/3 the landlord has claimed that tenant was in arrears of rent w.e.f. 01.06.1998. The eviction petition was filed on 29.01.2003. The limitation period for legally recoverable arrears of rent is three years. The question arises whether the period of three years should be prior

to legal demand notice or prior to filing of eviction petition. The question assumes importance as there is considerable gap in the present case between the legal demand notice E.AW1/3 dated 06.11.2000 and filing of eviction petition on 29.01 2003. The phraseology of Section 14(1) (a) of the Act shows that the phrase “legally recoverable” regarding arrears of rent is used in respect of two months notice of demand for arrears of rent to be served upon by the landlord to the tenant as indicated in this provision of law. The **Bhimsen Gupta’s case (supra)** relied upon on behalf of tenant does not pertain to DRC Act and deals with Bihar building (Lease, Rent and Eviction) Control Act, 1982. In that case instead of using the word “arrears of rent legally recoverable” the expression used was “lawfully payable”. In **Bhimsen Gupta’s case (supra)** some distinction is indicated between phrases “lawfully payment” and “lawfully recoverable”. Therefore, **Bhimsen Gupta’s case (supra)** does not apply to the case u/s 14 (1) (a) of the Act.

14. **In Kamla Bakshi’s case (supra)** relied upon by the Id. Counsel for the landlord the Hon’ble Supreme Court has held the landlord is entitled to recover to rent immediately preceding to the issuance of demand notice. In **Divender Singh’s case (Supra)** also a case u/s 14 (1) (a) of the Act our Hon’ble High Court has clarified that if notice is not complied within statutory period of two months, then landlord may file eviction petition after three years as limitation act is not applicable to rent control proceedings. Therefore, what matters is that the arrears of rent should pertain to the period of legally recoverable arrears of three years up to issuance of demand notice of two months u/s 14 (1) (a) of the Act. The period of three years of legally recoverable rent is not to be counted prior to the date of filing of eviction petition in the light of **Devender Singh’s case (supra)** and **kamla Bakshi’s case (supra)**.

15. It is true that admission by a party of a fact in cross examination is an important piece of evidence, this admission can be used against the party making it. In the cross examination on 22.09.2004, the landlord has admitted it correct that he had no dispute with the tenant prior to 21.10.2000. He did not specify in this statement that he had no dispute with the tenant with regard

to 'arrears of rent' prior to 21.10.2000. Therefore, this statement or admission made by the landlord in the cross examination may give several interpretations. It may be interpreted to mean that despite non payment of rent he did not raise dispute upto 21.10.2000 with tenant. It may also mean that the landlord had not quarreled with the tenant nor initiated any litigation or legal action against the tenant prior to 21.10.2000. It may also mean that there was no dispute with the tenant as the tenant had paid rent upto 21.10.2000. The position, therefore, should have been got clarified from the landlord in the further cross examination by the tenant. Rather as pointed out by Id. Counsel for the landlord in the next line in the cross-examination the landlord has stated that even before 1998 the tenant was not payment rent regularly. This further statement of landlord erodes the value of earlier admission that there was no dispute prior to 21.10.2000. It is a settled legal position the admission of the parties either in the form of documents or in the pleadings or statements on oath made before court should be read and interpreted as a whole. Therefore, in the given facts and circumstances by reading the statement of landlord made before Ld. ARC as a whole it cannot be interpreted to mean that there was no dispute as to arrears of rent upto 21.10.2000, more so, when the parties are at dispute prior to 21.10.2000 and afterwards also with regard to rate of rent of tenancy premises.

17. But the benefit of this document can be derived by the tenant when it is not replied, challenged or contested by the landlord. The question is whether there is no reply to the letter dated 07.11.2000 by the landlord in the case? Admittedly, the landlord got issued legal demand notice dated 06.11.2000 which according to tenant was served upon him on 14.11.2000 as according to tenant it was sent as a counter blast to Ex.AW1/5 the letter of the tenant Since, legal demand notice Ex.AW1/3 claiming arrears of rent from 01.06.1998 is issued by the landlord to the tenant and admittedly served upon the tenant after the date of his letter Ex.AW1/5 which is dated 07.11.2000 and it is argued on behalf of tenant that it was sent as a counter blast by antedating to legal demand notice, the letter of the tenant Ex.AW1/5 dated 07.11.2000 cannot be treated as uncontroverted

or unchallenged. If the contention of tenant is accepted then the legal demand notice Ex.AW1/3 which was received by the tenant on 14.11.2000 has disputed the facts stated in EX.AW1/5. If the contention of landlord is accepted and legal demand notice was got prepared on 06.11.2000 as stated by the landlord in the cross examination on 22.09.2004 before Ld. ARC and also his statement that he did not replay E.AW1/5 and voluntarily stated that he had already sent notice dated 06.11.2000 through his counsel, there was no need for sending any further reply to ExAW1/5. The matter can be looked from either angle and it cannot be said that facts stated in Ex.AW1/5 remained unconverted or undisputed by the landlord. In this view of the matter and facts and circumstances of the case and in view of legal demand notice Ex AW 1/3 served upon the tenant, the **Kaveripatnam Subbaraya Setty's case (Supra)** and **Kanshi Ram's case (supra)** would not help the tenant.

3. Once two views are possible, and the conclusions which are arrived at by the courts below are plausible and possible, merely because another view is possible, the extraordinary and discretionary jurisdiction under Article 227 of the Constitution of India cannot be exercised or invoked by a litigant.

4. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

JULY 23, 2014
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VALMIKI J. MEHTA, J.