

\$~17.

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

+ **RSA 325/2015**

DR ABHAY SADASHIV BAPAT

..... Appellant

Through: **Mr. S Prasad, Advocate**

versus

JAI PAL TAYAL

..... Respondent

Through: **Mr. Pradeep Verma, Advocate**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

%

04.09.2015

C.M. No. 18204/2015

Exemption allowed, subject to all just exceptions. The application stands disposed of.

Cav 927/2015

Learned counsel for the respondent/caveator has appeared and the caveat stands discharged.

RSA 325/2015 & C.M. Nos.18203/2015, 18205/2015

1. The present second appeal is directed against the judgment and decree dated 30.04.2015 passed by the learned ADJ-02, Patiala House Courts, New Delhi in RCA No.1558/2013 preferred by the appellant/defendant. By the said first appeal, the appellant/defendant sought to assail the judgment and decree dated 07.11.2013 passed by the learned Civil Judge-01 in C.S. No.119/2013 partially decreeing the suit of the respondent/plaintiff under Order 12 Rule 6 CPC.

2

2. The respondent/plaintiff filed the aforesaid suit praying for a decree of ejectment, damages and mesne profits. The suit was premised on the relationship between the plaintiff and the defendant as landlord and tenant respectively. The plaintiff claimed that the defendant was a tenant in the suit property. The tenancy of the defendant had been terminated vide notice dated 27.04.2013.

3. In the written statement, the defendant/appellant admitted the relationship of landlord and tenant and receipt of the notice. The defendant raised the objection that the suit is barred under section 50 of the Delhi Rent Control Act, 1958. In view of the aforesaid admissions, the plaintiff moved the application under Order 12 Rule 6 seeking a partial decree for ejectment. The objection of the defendant/appellant with regard to the applicability of the Delhi Rent Control Act, 1958 was rejected by the Trial Court on the premise that the suit property was not covered by the provisions of the said Act. In this regard, reliance is placed by the Trial Court on the judgment of the Supreme Court in *Mitter Sen Jain v. Shakuntala Devi*, (2000) 9 SCC 720.

4. The Trial Court held that as per section 1(2) of the Delhi Rent Control Act, the applicability of the said Act is to the limits of New Delhi Municipal Committee and Delhi Cantonment Board and to such other urban areas within the limits of MCD as are specified in the first schedule. The proviso states that the Central Govt. may extend the provisions of the Delhi Rent Control Act to any other urban area by notification. The Trial Court observed that Dabri and Sagarpur were declared as urban areas in 1994 and the defendant had not brought on record any notification of the Central

3

Govt. by which the provisions of the Delhi Rent Control Act had been made applicable to Dabri and Sagarpur. In view of the admissions made by the defendant, the partial decree for ejectment was passed. The First Appellate Court has concurred with the said finding and dismissed the appeal preferred by the appellant.

5. The submission of Counsel for the appellant is that even if it were to be accepted that the tenancy in respect of the suit property is not protected under the Delhi Rent Control Act, the Delhi (Urban Areas) Tenancy Relief Act, 1961 govern the field, and the appellant/tenant was entitled to protection under the said Act. I may note that no such averment was raised by the appellant before the Trial Court. Even before the First Appellate Court, it appears that the said argument was not raised in the appeal itself. In any event, I have heard Counsel for the appellant on his aforesaid submission.

6. Section 1(2) of the Delhi (Urban Areas) Tenancy Relief Act lays down the areas to which the said Act extends, which reads:

“(2) It extends to the areas in the Union Territory of Delhi which, immediately before the 1st day of November, 1956 were included in a municipality or in a notified area under the provisions of the Punjab Municipal Act, 1911, or in a cantonment under the provisions of the Cantonments Act, 1924, but shall not apply to the areas owned by the Central Government or the Delhi Development Authority constituted under the Delhi Development Act, 1957 or any local authority”.

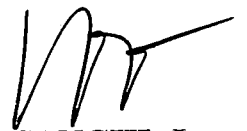
7. Therefore, it would be seen that the said Act extended to those areas in the Union Territory of Delhi which, immediately before the 1st day of November 1956, were included in a municipality, or in a notified area under

4

the provisions of the Punjab Municipal Act, 1911, or in a cantonment under the provisions of the Cantonment Act, 1924. Admittedly, the suit property- which falls in Sagarpur was not included in a municipality, or in a notified area under the provisions of Punjab Municipal Act, or in a cantonment under the provisions of Cantonments Act, immediately before 01.11.1956. The said sub-section goes on to specifically exclude from the operation of the said areas owned by the Central Govt. or the Delhi Development Authority constituted under the Delhi Development Act, or any local authority. The Delhi (Urban Areas) Tenancy Relief Act, therefore, has no application to the said property falling in Sagarpur.

8. Reliance placed on the definition clause of "Land" contained in the Punjab Tenancy Act is, therefore, of no avail. The appellant seems to be reeling under the misconception that the suit property necessarily should be governed - either by the Delhi Rent Control Act, or by some other law for providing protection to tenants. However, it is clear that the suit property- since it is not governed by the Delhi Rent Control Act or the Delhi (Urban Areas) Tenancy Relief Act, would be governed by the Transfer of Property Act in the matter of relationship of landlord and tenant.

9. I find absolutely no merit in the present appeal and no substantial question of law arises for consideration by this Court. Dismissed.



VIPIN SANGHI, J

SEPTEMBER 04, 2015

sr