

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.19/2015**

Decided on : 6th February, 2015

ANIL PATHAK & ANR Appellant

Through: Mr.Sanjeev Bajaj, Advocate.

Versus

ARVIND GOYAL Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI**

V.K. SHALI, J. (ORAL)

CM No.836/2015

1. Allowed subject to deficiency being rectified.
2. The application stands disposed of.

RSA No.19/2015

1. The present regular second appeal has been filed seeking to set aside the order of the learned trial court dated 05.04.2014 and of the first appellate court 15.11.2014, both of which have returned a concurrent finding against the appellants.

2. The respondent/plaintiff had filed a suit for permanent injunction, eviction and mesne profits against the respondents seeking ejectment of the appellants/defendants from the suit property i.e. Property bearing No.201, Mukund House, Azadpur Commercial Complex, Delhi-33 and the same was decreed by the trial court in favour of the respondent/plaintiff and against the appellants/defendants. To reach such a finding, the trial court found that the landlord-tenant relationship between the parties stood admitted. It was confirmed by an order passed on 25.01.2007 in the proceedings before the Addl. Rent Control Tribunal where the appellant/defendants had admitted the respondent/plaintiff as their landlord and had also paid the rent. The last paid rent was Rs.3,850/- per month which was voluntarily increased by the appellants/defendants and continued to be paid during the pendency of the suit. Thus, the applicability of the Delhi Rent Control Act, 1958 was negated and the rent being in excess of Rs.3,500/-, the matter ought to have been disposed on the basis of the said admission by the appellants under Order 12 Rule 6 CPC. There was absolutely no need for trial in the matter and the parties have been unnecessarily burdened with the same. In this regard, the court found support from *Skyland International Private*

Ltd. v. Kavita P. Lalwani ; 191 (2012) DLT 594. Without finding any fault with the notice issued by the respondent/plaintiff under Section 106 of the Transfer of Property Act to the appellants, the court observed that the service of summons of a suit for possession is itself sufficient notice to quit in view of the judgment in *Jeevan Diesel Vs. Jasbir Singh Chadha; 185 (2011) DLT 402.*

3. The appellants/defendants challenged the said order before the first appellate court which also concurred with the views taken by the trial court and the appeal was dismissed both on merits and being barred by time.

4. With respect to the judgment relied upon by the learned counsel for the appellants/defendants in *Mohammad Ahmad and Anr. vs. Atma Ram Chauhan and Ors.*; Civil Appeal No.4422 of 2011 decided on 13.05.2011 taking the plea that if the present and prevalent market rent assessed and fixed between the parties is paid by the tenant then no eviction proceedings can be initiated by the landlord for a period of five years, the first appellate court found that the facts of the said case were entirely different from the present case. The case reported related to UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The

present appeal had been filed by the appellants/defendants against the impugned judgment passed in a suit filed by the respondent/plaintiff for eviction and as per Section 50 of the Delhi Rent Control Act if the rate of rent is more than Rs.3,500 per month, then it is beyond the purview of the Delhi Rent Control Act. Hence, the argument could not be substantiated in the eyes of law.

5. Also on the count of delay in filing the appeal, the first appellate court observed that it is the duty of the applicant to explain the delay on day to day basis and in the absence of the same, the application is not maintainable and the discretion available to the court under Section 5 of the Limitation Act, 1963 has to be exercised to advance substantial justice for which the appellants had failed to make out a case.

6. I have gone through the instant regular second appeal, the submissions made by the learned counsel for the appellant and also through the concurrent finding returned by the two courts below. I do not find any fault with the same and no question of law much less a substantial question of law arises in the matter. The two courts have returned a concurrent finding that the appellant is a tenant and the rent is more than Rs.3,500/- and, therefore, he does not have the protection of

the Rent Act. The judgment which had been relied upon by the appellant for enhancement of rent and consequently non-eviction was a case under the Rent Act. Therefore, it will not be proper to apply the said judgment to the facts of the present case as the facts of the two cases are totally different.

7. Accordingly, the present regular second appeal is dismissed.

CM No.835/2015

1. In view of the dismissal of the appeal, no further directions are called for on this application.

2. Dismissed.

V.K. SHALI, J

FEBRUARY 06, 2015/dm