

\$~21.

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

+ **Date of Decision: 05.11.2015**

% **RSA 88/2014**

SHRI SANJAY & ANR. Appellants

Through: Mr. Sunil Malhotra, Advocate

versus

SHRI CHHAJU RAMRespondent

Through: M/s N.S.Dalal, Devesh Pratap Singh
& Ruchika Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 17.02.2014 passed in RCA No. 44/13 preferred by the appellants to assail the judgment and decree passed by the trial court, namely, the learned Civil Judge in civil suit No. 306/13/96 whereby the respondent/plaintiff's suit for possession, recovery of arrears of rent, damages and permanent injunction was decreed.

2. The respondent-plaintiff filed the aforesaid suit on the premise that he had purchased the suit property from the erstwhile owner-Smt. Kanta Devi by registered sale deed on 19.03.2010. In a portion of the said property, in Shop bearing property No. 2, the defendant No. 1 was a tenant, as per information gathered by the plaintiff from the erstwhile owner-Smt. Kanta Devi, at a monthly rent of Rs. 3,600/-. The plaintiff was informed that the

rent had lastly been received @ Rs. 3,600/- per month by way of cheque of Rs. 3,400/- and cash of Rs. 200/- for the month of March, 2009. The plaintiff stated that this position was acknowledged by the erstwhile owner- Smt. Kanta Devi, in writing. After the purchase of the suit property, the plaintiff issued a legal notice to the defendant No. 1 asking him to pay rent to the plaintiff @ Rs. 3,600/- per month. The said notice was replied vide reply dated 07.05.2010 wherein defendant No. 1 admitted that he is the tenant but claimed that the rate of rent is Rs. 600/- per month. The defendant No.2 also sent a reply through the same counsel, claiming that he himself was a tenant in the suit premises. The plaintiff vide legal notice dated 01.02.2011, terminated the tenancy and called upon the defendants to vacate the suit premises. The plaintiff claimed that defendant No. 2 has no concern with the suit premises - which was a shop, as he was an employee of Maharaja Agarsen Hospital. In any event, since both the defendants claimed rights in the suit property, the plaintiff instituted the aforesaid suit against both of them.

3. The defendants filed a common written statement. Pertinently, in the written statement, in reply to para 2, the defendants admitted the payment of Rs. 3,600/- to Smt. Kanta Devi. However, it was claimed that the said amount was paid as arrears of rent for a period of 6 months i.e. from October, 2008 to March, 2009. The defendants claimed that the rate of rent was Rs. 600/- per month which was being paid to Smt. Kanta Devi, regularly.

4. The defendants also claimed that the suit was barred under Section 50 of the Delhi Rent Control Act.

5. In view of the pleadings of the parties, the trial court framed the issues and the primary issue was with regard to the rate of rent of the suit property. On the said issue, hinged the issue of jurisdiction of the civil court as it depended on the determination of the rate of rent, whether the suit property was covered by the Delhi Rent Control Act, or not.

6. The trial court returned findings in favour of the plaintiff on the said issue. The trial court observed that the plaintiff had produced Kanta Devi, as PW2, who had deposed that the rate of rent was Rs. 3,600/- per month and the same was paid for the month of March, 2009-Rs. 3,400/- by cheque and Rs. 200/- in cash. The trial court also observed that she was not challenged in her cross-examination on the said aspect, as there was no question put to her in this regard. The trial court placed reliance on the judgment of the Punjab & Haryana High Court in *M/s Chunni Lal DWarka Nath Vs. Hartford Fire Insurance Co. Ltd.* AIR 1958 Punjab 440, wherein the High Court had held that a party should put to each of the opponent's witnesses so much of his case, as concerns that particular witness. If no such questions are put, the Court presumes that the witnesses account has been accepted. In the light of the aforesaid, the trial court returned a finding that the rate of rent was Rs. 3,600/- per month. The trial court also held that it was defendant No. 1 who was the tenant. DW1-Ved Prakash, stated in his cross-examination that reply sent by both the defendants through Shri Ram Kumar, Advocate, i.e. Ex.PW1/6 and Ex.PW1/7 are correct. I may note that in para 12 of the judgment of the trial court, instead of DW1, DW2 has been typed. Consequently, the suit was decreed by the trial court. The first appellate court has also concurred with the said finding of fact.

7. The submission of Mr. Malhotra, learned counsel for the appellant, is that the trial court and the first appellate court have ignored the evidence led by the defendants/appellants which clearly showed that the rent earlier was Rs. 500/- and Rs. 600/- per month. The rent agreements produced by the appellants have also been ignored. Mr. Malhotra submits that if the rent had been increased to Rs. 3,600/- as claimed by the plaintiff-respondent, there would have been a recording to this effect in a document. However, none was produced. He further submits that the amendment of the Delhi Rent Control Act had come into force in the year 1988, and there was no reason for the appellant-defendants to revise the rent beyond Rs. 3,500/- per month and loose the protection afforded to the tenants under the said Act.

8. Having heard learned counsels for the parties, I am of the view that there is no merit in the present appeal and there is no perversity in the findings returned by the trial court and the first appellate court on the aspect of rate of rent of the premises in question.

9. This Court while dealing with a regular second appeal would not interfere with the findings returned by the trial court which are concurred by the first appellate court, and which are premised on appreciation of evidence, unless it is shown that the said findings are perverse. To say that the findings are perverse, it is essential for the appellant to establish that the findings have been arrived at by ignoring the evidence brought on record, or by consideration of extraneous evidence. Alternatively, it is essential for the appellant to establish that the findings are such that they could never have been arrived at on the basis of the evidence led and brought on record. In the present case, the appellant has failed to establish any perversity in the

findings returned by the trial court and the first appellate court vis-à-vis the rate of rent. The reliance placed by the appellant on the earlier agreements/rent receipts, etc. to say that the rent was Rs. 600/- per month, is of no avail. The said evidence only establishes that the rate of rent, at the time when the agreement was entered into or the rent receipts were issued, was the one recorded in the said documents. It does not pertain to the rate of rent that may have been paid in subsequent years. The submission of Mr. Malhotra that had the rate of rent being increased to Rs. 3,600/- per month- as claimed by the plaintiffs, the same would have been recorded in some instrument, is also of no avail. It is not necessary for parties to record variation of the terms of the tenancy agreement in writing, and by their conduct, they can vary the said terms including the rate of rent if the parties have mutually agreed verbally. As per mutual agreement, a tenant can start paying the enhanced rent.

10. Pertinently, the appellants did not dispute the fact that they made payment of Rs. 3,600/- to the erstwhile owner – Smt. Kanta Devi in March, 2009. All that was claimed was that the said represented rent for a period of six months @ Rs. 600/- per month i.e. from October, 2008 to March, 2009. However, the appellants did not produce the rent receipts in respect of the said payment of Rs. 3,600/- per month. It is extremely pertinent to note that PW2-Kanta Devi was not cross-examined at all on the aspect of the rate of rent, even though, she had categorically stated in her examination-in-chief that monthly rent of the shop was Rs. 3,600/- per month and that she had received last payment towards rent for the month of March, 2009, by way of cheque for Rs. 3,400/- and Rs. 200/- in cash. In fact, the cross-examination

of PW2-Kanta Devi shows that the appellants/defendants sought to shift their stand, as it was suggested to PW2 that the rate of rent throughout was Rs. 500/- per month. Pertinently, even for the period after March, 2009, the appellants/defendants did not produce any rent receipt to show that the rent was paid by them @ Rs. 500/- or Rs. 600/- per month or that the same was so accepted by Kanta Devi, the erstwhile landlady.

11. As to why a tenant would agree to make payment of rent at an enhanced rate is not difficult to fathom. It is well known that with the passage of time and over a large span of period, the rates of rent generally rise and judicial notice can be taken note of the fact that during the period with which the present case is concerned, the rates of rent rose substantially over a period of time. Merely because the appellants agreed to pay rent @ Rs. 3,600/- per month and thereby forego the protection of the Delhi Rent Control Act, is no reason to assume that they did not agree to pay rent at the higher rate, or that the same was not so paid. It has been established on record that the appellants had paid rent for March, 2009 @ Rs. 3,600/- per month.

12. In view of the above, I find no merit in the present appeal and dismiss the same leaving the parties to bear their own respective costs. The interim order passed by this Court on 21.03.2014 stands vacated. The amount deposited by the appellant during the pendency of the appeal be released to the respondent unconditionally forthwith.

VIPIN SANGHI, J.

NOVEMBER 05, 2015

sl