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

Judgment reserved on: 14.12.2015

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Judgment delivered on: 23.12.2015

+ **RSA 76/2012**

DEEPAK NIJHAWAN AND ANR

..... Appellants

Through: Mr. Uttam Datt and Mr. Saksham
Marwah, Advocates

versus

RN ABROL

..... Respondent

Through: Mr. S.S. Handa and Mr. Shiva
Handa, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present appeal is directed against the judgment and decree dated 23.12.2012 passed by the First Appellate Court, namely, the learned ADJ, Central-17, Delhi in RCA No.17/2011 preferred by the appellants/plaintiffs. The First Appellate Court dismissed the said first appeal and affirmed the judgment and decree dated 04.04.2011 passed by the Trial Court, namely, Civil Judge, Central-5, Tis Hazari Courts, Delhi in Suit No.472/2010. The Trial Court had similarly dismissed the suit of the appellant/plaintiff for possession, recovery of arrears of rent, mesne profits and damages.

2. The case of the plaintiffs/appellants was that they had initially let out the suit property bearing no.1337, Ground Floor, Sector-D, Pocket-1, DDA Flats, Vasant Kunj, New Delhi to the respondent/defendant on 18.06.1988 on an initial rent of Rs.2,500/- excluding water, electricity and other charges. The said lease was for a period of three years w.e.f. 19.06.1988. Consequently, the said initial lease expired on 19.06.1991. The plaintiff claimed that the same had been extended by the parties upto 30.06.1992 on 21.03.1991. The plaintiff claimed that on that occasion, the rent was enhanced by 10% to Rs.2750/- p.m.

3. The plaintiff sent a notice dated 08.07.1994 to increase the rent by resort to section 6A, read with section 8 of the Delhi Rent Control Act, 1958 (DRC Act). In this notice, the plaintiff claimed that the rent had been increased from Rs.2,500/- by 10%, w.e.f 19.06.1991. The plaintiff sought a further increase of 10% w.e.f. 19.06.1994 thereby increasing the rent to Rs.3025/- p.m.

4. The plaintiff claimed that he issued a second notice claiming further increase of rent by 10% on the pre existing rent, on 01.11.1997, thereby increasing the rent to Rs.3,328/-. Another notice of increase of rent was issued on 19.06.2000, thereby increasing the rent by another 10% on the pre existing rent of Rs.3361/- p.m. The plaintiff claimed that since the rent had gone beyond Rs.3500/-, the monthly tenancy of the defendant was terminated vide notice dated 25.10.2001. According to the plaintiff, the defendant did not respond to either of the aforesaid three notices. However, the defendant sent a communication dated 10.02.1993, as per which he agreed to increase the rent w.e.f. February 1993 by 10% to Rs.2750/- over

the pre existing rent of Rs.2500/- p.m. Thereafter, the present suit was filed on 13.01.2005, *inter alia*, claiming possession/ejectment, arrears of rent and mesne profits.

5. The defendant upon service of summons filed the written statement. The defendant denied any increase of rent w.e.f. 19.06.1991 as claimed by the plaintiff. The defendant claimed that the rent had been increased by him to Rs.2,750/- p.m. with effect from 01.02.1992. The defendant claimed that the suit was barred under section 50 of the DRC Act as the rent was below Rs.3500/- p.m.

6. On the pleadings of the parties, the trial court framed the issues – one of the issues being whether the suit is barred under section 50 of the DRC Act. The parties led their respective evidence. The plaintiff exhibited the aforesaid three notices dated 08.07.1994, 01.11.1997 and 19.06.2000 as Ex. PW-1/6, Ex. PW-1/8 and Ex.PW-1/11 respectively. The plaintiff also produced the defendants letter dated 10.02.1993, as aforesaid, seeking to enhance the rent from Rs.2750/- w.e.f. 01.02.1993. The same, however, does not appear to have been given an exhibit mark. On the said aspect, the plaintiffs witnesses not cross examined. Thus, this communication of the defendant can be read in evidence. The trial court returned the finding that the plaintiff had not been able to establish the 10% increase of rent w.e.f. 19.06.1991. Consequently, the trial court held that each of the notices issued by the plaintiff dated 08.07.1994, 01.11.1997 and 19.06.2000 (Ex. PW-1/6, Ex. PW-1/8 and Ex.PW-1/11 respectively) were premature, as 10% increase had not become due when the said notices were issued, since the last increase by 10% had taken place w.e.f. 01.02.1993. Consequently,

the next 10% increase would take place only w.e.f. 01.02.1996, and the further two increases would take place w.e.f. 01.02.1999 and 01.02.2002. Consequently, the suit was held to be barred as the monthly rent was found to be below Rs.3500/- p.m.

7. The First Appellate Court has concurred with the said findings of the Trial Court.

8. The submission of counsel for the appellant is that the respondent had denied even the receipt of the said notices which were sent by registered post. However, the trial court raised the presumption against the respondent/defendant and held that the said notices were duly served on the defendant. Mr. Datt submits that the services of the notices has been established. It follows that the contents of the said notices were also to the knowledge of the respondent/defendant. However, he failed to respond to the said notices. Thus, the averments made by the plaintiff/appellant in the notice dated 08.07.1994 – to the effect that the first increase in rent had been affected on 19.06.1991, stood uncontroverted and was deemed to be admitted. He submits that in the light of the said deemed admission, the finding of the two courts below – that the revision of rent to Rs.2,750/- p.m. had not taken place on 19.06.1991 is perverse, being contrary to the evidence.

9. In support of his submission that the failure to respond to the notice leads to raising of a deemed admission against the noticee, he has placed reliance on the judgment of this court in *Kalu Ram v. Sita Ram*, 1980 RLR (Note) 44. In this decision, it was held that where the plaintiff before filing

the suit had served the defendant with a notice making serious allegations - that the defendant was a trespasser and that his possession was illegal, the failure of the defendant to refute the allegations showed that the defendant had nothing to deny, and hence it was a fit case for raising adverse presumption against him.

10. Reliance has also been placed on the Division Bench judgment of this court in **Krishan Kumar Aggarwal v. Life Insurance Corporation**, RFA (OS) No.93/2010 decided on 29.08.2014, wherein the court observed that no explanation having been rendered by the respondent as to why the letter and legal notice sent by the appellant were not repudiated, or even replied, the contents of the communications were deemed to have been admitted. In this regard, the Division Bench placed reliance on **Rakesh Kumar & Anr. V. Hindustan Everest Tool Ltd.**, (1988) 2 SCC 165, and **Hiralal Kapur v. Prabhu Choudhury**, (1988) 2 SCC 172. Reliance has also been placed on **Metropolis Travels & Resorts (I) Pvt. Ltd. V. Shri Sumit Kalra & Anr.**, 98 (2002) DLT 573, which refers to and follows **Kalu Ram** (supra).

11. Mr. Datt submits that since the respondent did not respond to the notice dated 08.07.1994, and did not controvert the categorical assertion of the appellant that the first increase in rent had taken place w.e.f 19.06.1991 to Rs.2750/- p.m., the presumption should have been raised that the rent was increased on 19.06.1991 to Rs.2750/-.

12. He has also referred to the judgment of the Supreme Court in **Harcharan Singh v. Shivrani & Ors.**, AIR 1981 SC 1284, wherein the

court held – with regard to section 27 of the General Clauses Act, 1897, that when the said section raises the presumption that the service shall be deemed to have been effected, it means that the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under Illustration (f) of section 114 of the Evidence Act, whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it, the same has been received by the addressee.

13. Learned counsel further submits that, in any event, the notices dated 08.07.1994, 01.11.1997 and 19.06.2000 (Ex. PW-1/6, Ex. PW-1/8 and Ex. PW-1/11) would take effect from the date the same could legally take effect, even if it were to be assumed that the rent was increased to Rs.2750/- w.ef. 01.02.1993, and not earlier. He submits that on the reading of section 6A of the DRC Act, the rent may be increased by 10% every three years. Section 8 of the said Act only requires that the landlord has to issue the notice if he wishes to increase the rent of any premises. The purpose of the notice is to convey the intention of the landlord to the tenant that he shall make the increase, insofar as such increase is lawful under the Act. It is submitted that there is nothing to say that such a notice could not be issued in advance, i.e. before the date the increase becomes due. In case notice is issued in advance, i.e. even prior to the date when increase is due in terms of section 6A, the increase would take effect, insofar as such increase is lawful under the Act, from the due date.

14. Mr. Datt, therefore, submits that the finding returned by the trial court that the three notices were issued prematurely is erroneous being a result of misunderstanding of the law. The notice could not be termed as a premature notice. A notice issued in advance is a good notice, and the same would take effect on the date that it could take effect, under the law. He further submits that the suit was actually filed on 13.01.2005, i.e. even after the expiry of three years from the date when the last increase was made on 19.06.2000. He further submits that during the pendency of the suit, without prejudice to the rights and contentions of the appellant, the plaintiff served two more notices on the respondent, increasing the rent vide notice dated 07.07.2011 and 24.09.2014. Thus, in any event, the rent of the premises stands increased to Rs.3500/- p.m. and the premises is outside the purview of the DRC Act. He submits that since the relationship between the landlord and tenant stands admitted and the initiation of legal proceedings itself is sufficient notice of termination of the tenancy, the respondent is liable to be ejected from the suit property.

15. On the other hand, learned counsel for the respondent has supported the impugned judgment of the courts below. He submits that the appellant could not establish the increase in the monthly rent to Rs.2750/- w.e.f. 19.06.1991. Since the first increase took place from 01.02.1993, the further increase could not take place before the expiry of three years. He submits that the issuance of three notices was premature. He submits that section 8 provides that notice issued thereunder shall take effect “*after the expiry of thirty days from the date on which the notice is given*”. Consequently, the notice could be given only when the same could take effect, i.e. after the

expiry of three years from the date when the rent was last revised. The earliest the notice under Section 8 could be issued was thirty days prior to the expiry of the period of three years from the last revision/fixation of the rent.

16. Having considered the submissions of learned counsel, I am of the view that the submission of Mr. Datt premised on the failure of the respondent/defendant to reply to the notice Ex. PW-1/6 dated 08.07.1994 – that it tantamounts to admission by the respondent/defendant that the first revision of rent had taken place w.e.f. 19.06.1991, has no merit. Even if the several decisions relied upon by the appellant, namely, ***Kalu Ram*** (supra); ***Krishan Kumar Agarwal*** (supra), ***Rakesh Kumar*** (supra), ***Hiralal Kapur*** (supra), and; ***Metropolis Travels & Resorts (I) Pvt. Ltd.*** (supra) are pressed into service, at the highest, what could be said is that a presumption arose in favour of the appellant/plaintiff that the first increase in rent from Rs.2,500/- to Rs.2750/- p.m. became effective from 19.06.1991. At this stage, it is essential to examine as to what is it that the appellant claimed in the first notice dated 08.07.1994 (Ex. PW-1/6), which was not responded to by the respondent/defendant. In this notice, insofar it is relevant, the appellant/plaintiff stated:

“Your 2nd revision of rent has also become due w.e.f. 19.06.1994. The arrears of the 1st revision from 19.06.1991 to 31.01.1993 are also due to you. The rent stand revised to Rs.2,750/- + Rs.275/- = Rs.3,025/- w.e.f. 19.06.1994.

The rent for July 1994 which has become due at the revised rate has also been paid so far”.

(Emphasis supplied)

17. Thus, the appellant/plaintiff while claiming that the arrears of the first revision from 19.06.1991 to 31.01.1993 are due, does not elaborate as to how the rent was first revised from 19.06.1991. The appellant does not claim that the revision of rent on 19.06.1991 was effected mutually. He also does not say that the revision of rent from 19.06.1991 was effected by invoking Section 6A read with Section 8 of the Act. The plaintiff did not produce any notice for increase of rent from 19.06.1991 in terms of Section 6A read with Section 8 of the DRC Act. Retrospective increase in rent is clearly not permitted under the DRC Act (Refer *Thakur Rangji Maharaj Trust v. A.J. Printers*, 2014 (2) RCR (Rent) 462). From February 1993, undisputably, the defendant/respondent paid rent @ Rs.2,750/-. The presumption, if any, that arose in favour of the appellant/plaintiff on account of the failure of the respondent/defendant to reply to the notice dated 08.07.1994 (Ex. PW-1/6) was a rebuttable presumption, and the denial of the said increase by the defendant in his written statement, sufficiently rebutted the said presumption. In my view, there was nothing more required of the respondent/defendant to rebut the said presumption. It then fell upon the appellant/plaintiff to prove - by leading positive evidence, that the rent was indeed revised for the first time to Rs.2,750/- w.e.f. 19.06.1991, which the plaintiff failed to do. Moreover, in second appeal this Court would not interfere with concurrent findings of fact returned by the two Courts below, unless it is shown that the said findings are perverse. It cannot be said that the finding returned by the Trial Court and affirmed by the First Appellate Court, that the first revision of rent took place only w.e.f. 01.02.1993 to Rs.2,750/-, and not from 19.06.1991, is a finding which is not premised on the facts/evidence brought on record upon

application of standard of proof of preponderance of probabilities. Thus, the said finding does not call for interference by this Court in second appeal.

18. In the aforesaid background, the following substantial question of law arises for consideration of this court:

“Whether the three notices issued by the appellant/plaintiff dated 08.07.1994, 01.11.1997 and 19.06.2000 (Ex. PW-1/6, Ex. PW-1/8 and Ex. PW-1/11 respectively) were not in accordance with Section 8A of the DRC Act, 1958; ineffective and inoperative for the purposes of revising the rent in terms of Section 6A of the said Act, because they were given more than 30 days in advance of the date when the rent became revisable under Section 6A of the Act?”

19. To answer the aforesaid substantial question of law, it is necessary to examine and analyse Sections 6A and 8 of the Act, which read as follows:

“6A. Revision of rent – Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent. every three years.”

“8. Notice of increase of rent. – (1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in section 106 of the Transfer of Property Act,

1982 (4 of 1882).”

20. A reading of Section 6A shows that, statutorily, the rent of any premises covered by the Act may be increased by 10% every three years. There are two facets of Section 6A. First– that the rent may be increased by 10%, and second – that the said increase can take place every three years. Section 8, in effect, provides that to trigger the increase of rent in terms of Section 6A, a landlord – who wishes to so increase the rent, is required to convey his intention to make the increase by giving a notice of his intention to the tenant. It also provides that upon service of the notice conveying his intention to increase the rent, *“insofar as such increase is lawful under this Act”*, the increased rent shall be due and recoverable in respect of the period of tenancy after the expiry of thirty days from the date on which such notice is given. Therefore, even if the landlord issues a notice conveying his intention to increase the rent: (i) in excess of what is lawful under the Act, or (ii) from a date prior to when it is lawful to so increase the rent under the Act, the increase shall take place only to the extent and from the date, that is lawful under the Act.

21. Learned counsel for the respondent has, however, sought to lay emphasis on the words *“it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given”*. The submission of learned counsel for the respondent is that if a notice given in advance of the date - when the increase is lawful under the Act is considered to be valid, the same would lead to an incongruity, because, while the thirty day period from the date when the notice is given would expire prior to the expiry of three years of

the previous increase, by force of Section 8, the rent would stand increased upon expiry of thirty days of the notice, which would go contrary to the limitation imposed by Section 6A of the Act. Section 6A of the Act permits upto 10% increase in rent every three years, which means that the rent cannot be increased prior to expiry of three years from the previous revision by resort to Section 6A read with Section 8 of the Act.

22. Learned counsel for the respondent has argued that the notice under Section 8 conveying the intention of the landlord to increase the rent must, necessarily, be issued not earlier than, when thirty days are left for expiry of three years from the previous revision (or if there has been no previous revision, the rent has remained unchanged, or after that date.

23. A plain reading of Section 8, in my view, does not put any fetters on the right of the landlord to issue a notice under the said provision, read with Section 6A, in advance of the date when the rent could become statutorily revisable by 10% under Section 6A of the Act. There is nothing to suggest in the said provision that if a notice is given in advance, such that the period of thirty days after the issuance of notice expires prior to the rent becoming revisable under Section 6A, such notice would not take effect from the date when the rent becomes revisable by resort to Section 6A of the Act.

24. Section 8, in essence, requires that the landlord should convey his intention to the tenant that he desires to increase the rent. The purpose of the said notice is merely to compel the tenant to start paying the increased rent in terms of Section 6A from the date it is so payable, and to the extent that it is so payable. If, the increase by 10% is due in terms of Section 6A,

on the expiry of thirty days from the date when the notice is given, the tenant is bound to pay the increased rent on such expiry of thirty days. If, however, on expiry of the said period of thirty days from the date of the notice the rent is not revisable under Section 6A – because the previous revision took place less than three years ago, or the rent was fixed less than three years ago, the tenant is not bound to revise the rent on the date when the period of thirty days expires from the date of the notice. But when he already has notice of the intention of the landlord to increase the rent, he cannot ignore this communication of the intention of the landlord, and not pay the increased rent, atleast, on the date that the said increase is legally enforceable. It is for this reason that Section 8 uses the expression “... *and insofar as such increase is lawful under this Act ...*”. What is lawful increase under the Act is the increase of 10% over the previous rent every three years. Thus, even if a landlord were to issue a notice under Section 8 demanding the higher increase – let say 20% increase, and before the expiry of three years of the previous revision of rent – let say on the expiry of two years, the increase shall be due and recoverable only to the extent of 10%, and only on the expiry of three years of the previous revision. A notice sent in advance, or for seeking an increase in excess of 10% would, therefore, have to be read as one seeking increase in rent which is lawful under the Act, i.e. it has to be read as a notice for increase of rent by 10% and as a notice demanding increase of rent from the date of expiry of three years from the previous revision. It cannot be ignored or rendered ineffective merely on account of being issued somewhat in advance of the date when the revision of rent is due.

25. Section 108(2) of the Act provides that every notice under sub-section (1) shall, inter alia, be given in the manner provided in Section 106 of the Transfer of Property Act (“TPA”). The manner in which a notice under Section 106 of the TPA is required to be given underwent a significant change by Section 2 of Act 3 of 2003 w.e.f. 31.12.2002. Section 106(3), after the substitution of the new provision, states that a notice issued under Section 106(1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section (which is fifteen days notice in case of a lease from month to month, and six months notice in case of a lease from year to year), where the suit or proceeding is filed after the expiry of the period mentioned in Section 106(1). Thus, the intendment of the law is that so long as a clear notice is issued, the same does not lose its efficacy merely because it may have been served in advance, or it may be short of the required period. The purpose of this amendment was to obviate the injustice that used to result on account of a highly technical approach vis-a-vis the period for which the notice was given, and when the same took effect. A strictly technical approach of the Court vis-a-vis a notice under Section 106 led to many a causes being defeated and delayed. The Parliament, therefore, amended the law in 2002 to root out the hyper technical approach, and substitute it with a more realistic, pragmatic and common sense approach. The said amendment has been given retrospective effect [see *Lord Chloro Alkali Ltd. Vs. Mohinder Pal Singh Khurana & Others*, 200 (2013) DLT 206 (DB)]. To accept the submission of the respondent – which too is premised on a highly technical approach, and not a commonsense approach, would be to fall in the same trap from which the

Parliament rescued the landlord while amending Section 106 TPA. In my view, on a realistic, pragmatic and common sense interpretation of Section 8, it is clear that a notice under the said provision could be given in advance of expiry of 30 days from the three-year period when the rent was last fixed/ revised, and would be effective from the date when it can take effect; and to the extent it can take effect, in terms of Section 6A of the Act.

26. I may refer to the three decisions, wherein the Courts have had occasion to deal with the issue – whether the statutory notice issued under the different provisions of law would be considered as of no effect, on account of a technical flaw.

27. In *Daya Singh Vs. Bhagwan Singh and Sons & Others*, 12 (1976) DLT 305, the landlord served a notice on the tenant requiring payment of arrears of rent from September 1962 to October 1963. Since the same was not complied with, the landlord filed an eviction petition under Section 14(1)(a) of the DRC Act in 1969. The landlord filed an application before the Rent Controller requesting him to pass an order for payment of arrears which were legally recoverable. On that day, undisputedly, arrears only from 01.04.1969 were legally recoverable as the previous arrears were barred by time, and could not be recovered in a Court of law. The Controller allowed the application and repelled the contention of the tenant that the notice of demand had exhausted itself and was not available to constitute a good cause of action for passing an order under Section 15(1) of the DRC Act. The Tribunal reversed the decision of the Rent Controller on the premise that the notice of demand issued by the landlord did not claim arrears of rent legally recoverable in the petition, and could not form

the basis of an order under Section 15(1) of the DRC Act. The landlord appealed to this Court. This Court held that the requirement of law is not that the landlord must demand only the legally recoverable arrears of rent. So far as the landlord is concerned, he is entitled to contend that a time barred rent is payable to him, and although his remedy to receive the same may be barred, still his right to obtain the same remains intact – since limitation bars the remedy and does not (unless otherwise provided by the law) extinguish the right. Reliance was placed on a Full Bench judgement of the Punjab High Court in *Rullia Ram Hakim Rai Vs. S. Fateh Singh*, AIR 1962 Punjab 256. In this decision, the Punjab High Court held that the landlord could serve a notice demanding time barred rent as well, and the tenant in order to escape the eviction was bound to pay the whole of it. (The learned Single Judge noticed the distinction with regard to recoverability of the arrears of rent in the DRC Act, by holding that the tenant is not required to pay anything more than what was legally recoverable). The relevant observations made by the learned Single Judge in this decision read as follows:

“(6) Again there may be genuine and bona fide dispute between the landlord and tenant, e.g., some amount may have been deposited by the tenant with the Controller under section 27 of the Act, which the landlord may not have realised or known about, or the tenant may be entitled to some adjustment, i.e., under section 13 of the Act, or there may be some genuine dispute about the contractual rate of rent or the period for which it was due. Under the circumstances, to hold that the tenant can escape the fulfillment of his obligation to pay the rent by pointing out any technical default in the notice of the landlord would be to place a premium on a defaulting tenant and its result would be wholly undesirable. In

*Lalshankar Mulji Joshi v. Kantilal Mohanlal Parikh**, the Bombay High Court found that a notice could not be invalid merely because the rent had been demanded for the month for which it was not due. It was observed that it was well settled that a liberal construction should be put upon a notice to quit in order that it should not be defeated by inaccuracies either in the description of the premises or the name of the tenant or the date of the expiry of the notice ; and that the test of its sufficiency was not what its contents would mean to a stranger ignorant of all the facts and circumstances touching the premises to which the notice purported to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances and the mistakes should not be construed with a desire to find faults. In this decision the High Court purported to follow a decision of the Supreme Court in *Raghunath Ravji Dandekar v. Anand Narayan Apte*, decided on 5th April, 1966 where their Lordships of the Supreme Court while considering the validity of a notice, which demanded Rs. 7,000.00 when actually, according to the courts below only Rs. 6,900.00 were due observed that they were not able to understand how the notice to quit under the Transfer of Property Act would be bad because of a mistake or oversight in demanding more than was due under section 12(2) of the Rent Act.

(7) x x x x x x x x x

(8) *It, therefore, follows that the notice of demand, if otherwise bona fide need not be confined to the legally recoverable amount. For compliance with it the right of the tenant under the Act is to pay or tender the legally recoverable amount only and that too within two months of the date of the service of the notice.*

(9) x x x x x x x x x

(10) *Consequently the law does not impose an obligation upon the landlord to demand in the notice only the legally recoverable rent. He is free to demand such rent as he*

bonafide believes legally and properly due to him but the duty is cast upon the Controller by the provisions of sub-section (1) of section 15 of the Act, as well as sub-section (2) of the said section for ordering payment of only legally recoverable rent from the tenant. As such the argument that notice of demand must also be in respect of the legally recoverable rent is fallacious and is not supported by the scheme or language of the statute or any authority.

(emphasis supplied)

* AIR 1972 Bom. 373

28. In the present case – though the appellant has not been able to establish that the rent was increased w.e.f. 19.06.1991, from the three notices issued by the appellant, namely Ex. PW-1/6, Ex. PW-1/8 and Ex. PW-1/11, it is evident that he was under a bona fide belief that the rent stood increased on 19.06.1991 to Rs.2,750/-. Thus, even if such an increase had not taken place as believed and claimed by the appellant/ landlord, the notices Ex. PW-1/6, Ex. PW-1/8 and Ex. PW-1/11 do not become invalid even in respect of the legally enforceable increase in rent, which is lawful under the DRC Act.

29. In ***RakeshKumar & Another Vs. Hindustan Everest Tool Ltd.***, (1988) 2 SCC 165, the landlord filed a petition under Section 14(1)(a) and (j) of the DRC Act. The Rent Controller passed an order under Section 15(1) of the DRC Act, directing the tenant to deposit the arrears within one month from the date of the passing of the order and to continue to deposit the monthly rent by the fifteenth of each succeeding month. The tenant did not make the deposit. The Rent Controller passed an eviction order in the petition under Section 14(1)(a), which was upheld by the Rent Control Tribunal. This Court, in further appeal, set aside the eviction order on the

ground that there was no proper notice or demand to pay arrears in terms of proviso to Section 14(1)(a) of the DRC Act. The Supreme Court set aside the judgment of this Court. The Supreme Court in its decision held as follows:

“10. On reading the notice along with the letter dated 1st June, 1982 it appears that the respondent was in arrears of rent for the months mentioned hereinbefore and was intimated that in default of payment of rent the eviction would follow in accordance with law. This is the proper way of reading the notice and in our view the appropriate logical way in which notices of such type should be read. These notices must be read in common sense point of view bearing in mind how such notices are understood by ordinary people. That is how the appellant, it appears from the reply and the background of the previous letter to be mentioned hereinafter understood the notice.

11. More or less, a similar notice was considered by the Delhi High Court in Shri Ram Sarup v. Shri Sultan Singh etc., (1977) All India Rent Control Journal, Vol. II 552 where Mr. Justice V.S. Deshpande, as the learned Chief Justice then was, held that the notice of the landlord stating therein about the arrears of rent and threatening to file a petition for eviction against the tenant was sufficient and the learned Judge held that the notice of demand could be expressed or implied and the conduct of the landlord showed that the demand was implied. We are in respectful agreement with the approach to such type of notices taken by the High Court in that case.”

(emphasis supplied)

30. Thus, the Supreme Court opined that a notice of demand issued by the landlord must be read in a commonsense way, bearing in mind how such notices are understood by ordinary people. It was the conduct of the landlord in issuing the notice – whereby he communicated his intention to

seek increase of rent under Section 6A, which is relevant. An inaccuracy with regard to the amount of increase that the appellant/ landlord was entitled to, or about the date from which the said increase could be claimed, does not affect the validity of the notice, the purpose of which is only to communicate the intention of the landlord to the tenant that he demands increase of rent from the date, which is lawful under the Act.

31. I may also refer to the judgment of this Court in ***Union Bank of India Vs. Sushila Goela & Others***, 125 (2005) DLT 161, rendered by a Division Bench. The Division Bench while dealing with the aspect of validity of a notice under Section 106 of the Transfer of Property Act observed as follows:

“14. In law the object of a notice is to inform the other party as to the intention of the person issuing the notice, i.e. that he wants the premises back. In our opinion, this intention was clearly communicated to the defendant bank. It is settled position of law that notice under Section 106 Transfer of Property Act is not to be scrutinized by hair splitting precision. It is not a pleading but a mere communication of the intention of the recipient.

15. A Division Bench of this court in Capital Boot House v. Intercraft Limited (Division Bench)** while dealing with a similar notice held that the idea of a notice is only to communicate the intention of the owner and the object of the notice is to give sufficient time to vacate. Such notice is to be liberally construed. The court further held that the real point in such cases was that the person on whom the notice is served should understand that his tenancy has been terminated and he should vacate at the end of the period of tenancy.

16. Similarly, in V. Kamalaksha Pai v. Keshava Bhatia it***

was held that as long as the notice does not mislead it is valid in law.”

(emphasis supplied)

** 1999 (51) DRJ 245 (DB)

*** AIR 1972 Ker. 110

32. In the present case, the respondent was neither misled by the notice Ex.PW-1/6, nor did he misunderstand the purport of the said notice. He did not respond to this notice. However, from his communication dated 10.02.1993, it is evident that he was aware of the demand for increase of rent made by the appellant/ landlord. In this communication, he, *inter alia*, stated:

“As wanted by you people, I confirmed that from this month onward I will deposit the rent of Rs. Two Thousand Seven Hundred and Fifty only, (Rs. 2,750/-) instead of Rs. Two Thousand Five Hundred only (2,500/-) per month.”

(emphasis supplied)

33. From the above extract, it is clear that the respondent/tenant had notice of the intention of the appellant/landlord to increase the rent. The respondent/landlord understood the said notice Ex. PW-1/6 in the same way in which it was sent. Pertinently, it is not the respondents case that apart from Ex. PW-1/6, increase in rent was sought by the appellant/landlord in any other way.

34. Thus, in the light of the aforesaid discussion, I conclude that the notices Ex. PW-1/6, Ex. PW-1/8 and Ex. PW-1/11 were valid and effective, and the same did not lose their efficacy, merely because they were issued sometime prior to the date and the statutory increase under Section 6A of

the DRC Act became due. The said notices would, in terms of Section 8 itself – which provides “*insofar as such increase is lawful under this Act*” take effect from the date when the rent became revisable by 10% upon expiry of the last due revision. Consequently, Ex. PW-1/6 dated 08.07.1994 took effect from 01.02.1996 (since admittedly the rent was increased to Rs.2,750/- w.e.f. 01.02.1993), thereby increasing the rent to Rs.3,025/- (Rs.2750+Rs.275 (10%)). Similarly, the second notice Ex. PW-1/8 dated 01.11.1997 took effect from 01.02.1999, thereby increasing the rent to Rs.3,327.50 (Rs.3025+Rs.302.50 (10%)). The third notice Ex. PW-1/11 dated 19.06.2000 took effect from 01.02.2002, thereby increasing the rent to Rs.3,650.25 (Rs.3327.50+Rs.332.75 (10%)). Consequently, with effect from 01.02.2002, the rent crossed the threshold limit of Rs.3,500/-, and the tenancy in respect of the suit property was no longer protected under the DRC Act. The suit was filed much later, i.e. 01.03.2005, when the legally recoverable rent was Rs.3,650.25.

35. The finding returned by the courts below that the tenancy in respect of the suit property was protected under Section 50 of the DRC Act when the suit was filed is, therefore, clearly erroneous – it being premised on a wrong understanding and appreciation of the law. The said finding is, accordingly, set aside.

36. The relationship between the parties as landlord and tenant is not in dispute. The filing of the suit itself tantamounted to notice to quit by the plaintiff/landlord to the defendant/tenant as held by this Court in ***Jeevan Diesel and Electrical Ltd. Vs. Jasbir Singh Chhadha (HUF) & Another***, (2011) 182 DLT 402, by placing reliance on ***Nopany Investments (P) Ltd.***

v. Santokh Singh (HUF), (2008) 2 SCC 728. Thus, the appellant/plaintiff is entitled to passing of a decree on admission under Order 12 Rule 6 CPC. Accordingly, the suit of the appellant/plaintiff for ejectment of the respondent/defendant is passed in respect of the suit property shown in red colour in the site plan filed with the plaint in property no.1337, Ground Floor, Sector D, Pocket I, DDA Flats, Vasant Kunj, New Delhi.

37. So far as the claim of the appellant for arrears of rent and damages is concerned, the suit is remanded back to the Trial Court for determination of the arrears of rent and damages from the date of termination of the contractual tenancy till delivery of possession.

38. The parties shall appear before the Trial Court on 17.02.2016 for further proceedings. The record of the courts below be sent back immediately.

39. The appeal stands disposed of in the aforesaid terms with costs quantified at Rs.25,000/-.

VIPIN SANGHI, J

DECEMBER 23, 2015

sr