

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

+ **RC.REV. 158/2014**

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Reserved on: 5th February, 2015
Decided on: 10th February, 2015

VIMLA DEVI

..... Petitioner

Through

Mr. Saurabh Chauhan and Mr. Varun
Jain, Advocates

versus

SUNIL DUA

..... Respondent

Through

Mr. Rajeev Sharma and Mr. Gagan
Minocha, Advocates

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the impugned judgment dated 27th August, 2013 the learned ARC has dismissed the eviction petition filed by the petitioner under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (in short the DRC Act) on the ground that since the rent as per the notice dated 30.12.2008 was ₹3630/- P.M. the petition does not fall under the purview of the DRC Act.

2. The petitioner sought eviction of the respondent from shop No.6, A Block Market, Ashok Vihar, Phase-I, Delhi (in short the tenanted premises) which were let out vide agreement dated 16th November, 2010 at a monthly rent of ₹3000/-. Though as per the agreement it was provided that the rent

would be enhanced @ 10% per year, however the same was not acted upon and as per the petitioner in the eviction petition the rent was enhanced to ₹3300/- per month with effect from 1st December, 2005. Though the ground for eviction was bona-fide requirement of the tenanted premises as the petitioner contends that due to financial constraint she was compelled to sell the residential property owned by her and shift to rented accommodation and that her elder son Vijay Mehta was not able to run any business, was unemployed and thus the tenanted premises was bonafidely required for herself and for her son to carry out the business to earn her livelihood. Leave to defend was granted and thus a written statement was filed by the respondent. However, the issue regarding bona-fide requirement is not relevant to the decision of the present petition as in the leave to defend application and in the written statement, the respondent took the plea that the petitioner having sent a notice to the respondent on 30th August, 2008 increasing the rent to ₹3630/- from January 2009 in terms of the Section 6A of DRC Act, the eviction petition under the provisions of DRC Act was not maintainable.

3. Learned counsel for the petitioner contends that though the petitioner issued the notice on 30th December, 2008 seeking enhancement of the rent by 10% from January, 2009 however the respondent/tenant did not accept the same and in his various petitions filed under the DRC Act he continued paying the rent @ 3200/- per month. His further grievance is that during trial when he wanted to cross-examine the tenant in relation to the rent amount admitted by him in DR-52/2008 and DR-257/2008 under Section 27 of the DRC Act and the current rate of rent being paid by the respondent to

the petitioner, the questions were disallowed on the ground that the eviction petition was for bona-fide requirement of the petitioner and the said questions had no relevance. This is despite the fact that there was a specific objection of the respondent that an eviction petition under the provisions of DRC Act was not maintainable as by way of notice dated 30th December, 2008 the rent stood enhanced to ₹3630/- per month and is hit by Section 3(c) of the DRC Act. Having disallowed the question after arguments were heard and the Court was required to pass the judgment, the Court suo-moto examined the respondent under Order 10 CPC on 14th August, 2013 wherein he admitted receiving the notice dated 30th December, 2008 and stated that though the rent stood increased to ₹3630/-, however on legal advice he continued paying the rent @ ₹3200/- per month. This being a self serving plea of the respondent the same could not be used against the petitioner.

4. The learned ARC in view of the notice dated 30th December, 2008 exhibited as Ex.PW-1/3 being admitted by both the parties came to the conclusion that it had no jurisdiction to try the eviction petition and dismissed the same without returning any finding on the merits of the case.

5. Thus, the issues before this Court are whether having sent the statutory notice in terms of Section 6A and 8 of the DRC Act the rent stood enhanced to ₹3630/- per month, despite there being no evidence of the parties as to how the rent stood enhanced to ₹3300/- P.M. or ₹3200/- P.M. w.e.f. 1st December, 2005 and whether the denial of right to cross-examine the respondent on this point by the learned ARC caused serious prejudice to the petitioner.

6. Section 6A and 8 of the DRC Act read as under:

“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).

7. A Division Bench of this Court in M/s. Shalimar Paint Ltd. Vs. Bani Jagtiani Trust & Ors. 2004 (1) RCR 137 upheld the decision of the Trial Court wherein it was held that after expiry of three years of tenancy when a notice was duly served for increase of rent by 10% the rent stood increased to ₹3630/- per month after the expiry of one month from the date of service of notice and thus the suit premises went outside the purview of the Delhi Rent Control Act and the provisions there under could no longer be made applicable to the suit property. This Court in Kamlesh Bagga & Anr. Vs. Mahender Kaur CM(M) 948/2004 decided on 5th December, 2005 held that increase of rent from actual rent under the Delhi Rent Control Act can only be done by recourse to Section 6A thereof. A unilateral notice increasing rent beyond 10% is not permissible under Section 6A of the Delhi Rent

Control Act and cannot be acted upon to take the case out of the purview of the Delhi Rent Control Act. The decision in Kamlesh Bagga has been approved by the Division Bench of this Court in Santosh Vaid & Anr. Vs. Uttam Chand & Ors. 188 (2012) DLT 293 (DB).

8. Similar question arose in Thakur Rangji Maharaj Trust Vs. A.J. Printers 2014 (2) RCR 46 wherein this Court reiterating the decision in Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd., 202 (2013) DLT 649 held that the landlord was entitled to increase rent under Section 6A and for that the landlord has to exercise the entitlement and once the landlord has failed to exercise his right/entitlement at the expiry of three years from last agreed rent it amounts to waiver of right and the landlord cannot exercise such right retrospectively after number of years according to his whim and fancy. It was thus held that a landlord by way of a single notice cannot ask for any number of enhancement of 10% each for the past period as was contended. This Court further noted that the language “by 10% every three years” in Section 6A DRC Act makes it abundantly clear that the right to have the rent increased has to be exercised “every three years” and to read the same as “at the rate of 10% every three years” would be violating the legislative intent and language. Though Section 6A DRC Act is undoubtedly for the benefit of the landlord, to enable the landlord to avail the increase permitted therein, which provision for increase in rent did not earlier exist but the same cannot be a reason to interpret it to mean what does not follow from its plain reading.

9. In the light of the well-settled legal position noted above, it has to be thus seen in the present case that whether in view of the notice dated 30th

December, 2008 Ex.PW-1/3 by the petitioner to the respondent which is duly admitted having been received by the respondent and a reply sent thereof dated 12th February, 2009 the rent stood increased to ₹3630/- thus taking out the eviction petition from the jurisdiction of the Delhi Rent Control Act.

10. In the notice Ex.PW-1/3 the petitioner stated that the premises was let out vide rent agreement dated 16th November, 2002 for a fixed period of three years on a monthly rent of ₹3000/- per month exclusive of water, electricity charges which was required to be enhanced after every one year by 10%, however the respondent defaulted in making the payment. It is further stated that though enhancement of the rent @10% was agreed after every one year, however after three years i.e. from 1st December, 2005 the rent stood enhanced to ₹3300/- per month. Thereafter vide notice dated 30th December, 2008 it is stated that the rent is liable to be increased by 10% every three years in terms of provision of DRC Act and thus the rent is enhanced @ ₹3630/- from January, 2009.

11. However, no notice of enhancement has been placed on record by the petitioner by virtue of which the rent stood enhanced to ₹3300/- per month from 1st December, 2005. In the evidence by way of affidavit the petitioner did not state as to how the rent got increased @ ₹3300/- per month with effect from 1st December, 2005 as no notice in this regard was exhibited. Even PW-2 the son of petitioner stated that the rent stood enhanced to ₹3300/- per month with effect from 1st December, 2005 but was silent as to how the same was increased.

12. The factum of enhancement of the rent to ₹3300/- with effect from 1st December, 2005 is disputed by the respondent No.1 According to him an oral agreement of lease was entered between respondent and Smt. Vaishali Ahuja for a perpetual period on a monthly rent of ₹3200/- after the expiry of initial lease on 14th November, 2005. The respondent further deposed that under Section 27 DRC Act the respondent filed applications being DR-52/2008 and DR-257/2008 wherein he deposited a sum of ₹3200/- and ₹19,200/- as rent for the period. Later the petitions were dismissed in default.

13. Admittedly no rent was paid by the respondent to the petitioners after the so called increase in the rent from 1st December 2005 except by depositing the same in the petitions as noted above. Thus the increase of rent from 1st December, 2005 to ₹3300/- or ₹3200/- was admittedly not by a written agreement nor by statutory notice as contemplated under Section 6A of the DRC Act.

14. When the petitioner wanted to cross-examine the witness on these aspects the learned ARC did not permit the cross-examination on the ground that the same was not relevant for eviction on the ground of bona-fide requirement ignoring the fact that the objection of the respondent was with regard to the jurisdiction of the learned ARC to try the eviction petition for which the rate of rent was material. The questions which were disallowed were:

“Q. Do you agree that you have not deposited any rent amount in the petitions bearing No. DR-52/2008 and DR-257/2008 u/S 27 of DRC Act.

Question disallowed as not relevant for the present proceedings.

Q. Have you paid rent from 2009 to 2013?

Question is disallowed being irrelevant as the present petition pertains to bonafide requirements of petitioner.

Q. What is the current rate of rent paid by you to the petitioner?

Counsel for petitioner submits that he wants to show the conduct of witness by present questions. However, the present petition is for bona-fide requirement of petitioner and aforesaid question is not relevant for the same. Hence question is disallowed.”

15. After having rejected cross-examination of the respondent on the aspect of the rent, the learned ARC just prior to pronouncement of judgment after the evidence of both sides was concluded, recorded the statement of the respondent under Order X CPC.

“Q3. Whether you admit that by virtue notice dated 30.12.2008, the rent of the premises in question stands increased from ₹3300/- to ₹3630/- per month with effect from January, 2009?

A. I was explained by my counsel to continue to pay ₹3200/- per month as rent even after receiving the notice and if any suit is filed by the petitioner for arrears of rent, then you can pay the balance amount.

Q4. So that means that you have accepted vide notice dated 30.12.2008 rent stands increased to ₹3630/- with effect from January, 2009?

A. Yes.

Q5. Whether you have replied to the said notice dated 30.12.2008?

A. Yes.”

16. The respondent thus made a self serving well thought after statement which was not tested by the petitioner on cross-examination and thus cannot be utilized. Moreover there being no statutory notice under Section 6A DRC Act increasing rent from ₹3000/- to ₹3300/- the learned Judge could not have framed question No.3 as noted above.

17. Even as per the version of the respondent that the parties entered into an oral agreement after the expiry of lease in November, 2005 on a monthly rent of ₹3200/- then by way of notice dated 30th December, 2008 the petitioner could not have enhanced the rent beyond 10%. As by way of the statutory notice under Section 6A DRC Act the landlord cannot increase the rent by more than 10% after three years and not in one go for the last six years, the notice dated 30th December 2008 Ex.PW-1/3 is non-est in law and on the basis thereof the learned ARC could not have come to the conclusion that since the rent of the tenanted premises was @ ₹3630/- P.M. the eviction petition could not be entertained under the provisions of the DRC Act. The last admitted rent between the parties being ₹3000/- P.M. and Ex.PW-1/3 being a non-est document, the eviction petition was maintainable.

18. Consequently the impugned judgment is set aside and the matter is remanded back for deciding the eviction petition on merit.

19. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

FEBRUARY 10, 2015
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