

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

+ **RSA No.29/2015**

**Decided on : 20<sup>th</sup> January, 2015**

**BHARTIYA LOK SURAKSHA SANSTHAN & ANR ..... Appellants**

Through: Mr.Krishna Dev Pandey, Adv.

versus

**AJAI PRATAP& ANR.**

**..... Respondents**

Through: None.

**CORAM:**

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

**V.K. SHALI, J. (ORAL)**

**CM No. 1063/2015**

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

**CM No. 1064/2015**

1. The delay of 83 days in re-filing the appeal is condoned as sufficient cause is shown.

**RSA No.29/2015**

1. This is a regular second appeal filed against judgment, order and decree dated 16<sup>th</sup> August, 2014 passed by learned Additional District Judge.
2. I have heard the learned counsel for the appellants.

3. The only question which is formulated by the learned counsel for the appellants is that the Civil Court does not have jurisdiction to try and decide the matter with regard to the eviction of the present appellants. It has been contended that the rate of rent of the appellants/defendants in respect of the tenanted premises was only Rs.1,000/- per month while as the trial court has taken the monthly rate of rent as Rs.5,000/- and thus has fallen into error. Accordingly it is contended that this is a substantial question of law which arises for consideration before this Court.

4. I have heard the submission made by the learned counsel for the appellants.

5. The respondents/plaintiffs has filed a suit for ejectment of the present appellants/defendants from the suit premises in the Civil Court. Apart from possession, the respondents had also claimed arrears of rent, electricity and water charges as well as mesne profits. It was the case of the respondents/plaintiffs that the appellants was inducted as a tenant @ Rs.5,000/- per month which he had failed to pay consequently resulting into filing a suit against the present appellants.

5. Appellants took the plea that they were admittedly tenants, however, the rate of rent was Rs.1,000/- and because of that fact the jurisdiction of the Civil Court was barred to entertain the suit for ejectment. Reliance was placed on Section 50 of the Delhi Rent Control Act, 1958.
6. After framing of the following issues, the Court recorded the evidence of the parties.

“1. Whether the suit of the plaintiff is barred in view of the Section 50 of the DRC Act? OPD

2. Whether the plaintiff has suppressed material fact or has not come to the Court with clean hands? OPD

3. Whether the suit of the plaintiff is not maintainable for want of cause of action? OPD.

4. Whether the plaintiff is entitled to the decree of the suit amount as prayed for? OPP

5. Whether the plaintiff is entitled to the decree of possession against the defendant, as prayed for?

6. Relief.”

7. The very first issue framed was as to whether the suit of the respondents/plaintiffs was barred in view of Section 50 of the Delhi

Rent Control Act, 1958. The onus of proof of said issue was put on the appellants/defendants.

8. In order to prove the aforesaid issue, the respondent No.1 had examined himself as a witness as PW-1. He had deposed that the appellants/defendants had specifically mentioned the rate of rent as Rs.5,000/- in respect of the tenanted premises. PW-2, a property dealer had stated that similar premises in the area would have fetched around Rs.9,000/-. Both these witnesses were subjected to cross-examination, however, their testimony was not discredited. The appellant No.2/defendant No.2 entered into the witness box and supported his case that the rent was Rs.1,000/- per month, however, previously while cross-examining PW-1, the appellants' counsel gave a suggestion that the rent at the time of conception of the tenancy was Rs.1,500/- The learned trial Court, after analysing the evidence took note of the fact that the stand of the appellants/defendants in the written statement was at variance with the cross-examination to which the respondent No.1/plaintiff No.1 was put and accordingly disbelieved the testimony of appellants/defendants. It held that the jurisdiction of the civil suit was not barred.

9. The aforesaid holding that the jurisdiction of the civil court was not barred, was upheld by the First Appellate Court on the appeal filed by the present appellant. The aforesaid holding is sought to be challenged in the present second appeal.

10. The question as to whether the rent of the premises was 'X' or 'Y' is a question of fact which has concurrently being decided against the appellants by the two courts below. Holding that the rent of the suit premises was Rs.5,000/- and because of the said reason, the jurisdiction of the Civil Court is not barred under Section 50 of the Delhi Rent Control Act as admittedly the rent has been held to be more than Rs.3,000/-. Accordingly the aforesaid submission in my view does not raise any substantial question of law and is only a question of fact. It does not, however, warrant issuance of notice to the respondents. The appeal of the appellants is accordingly dismissed as being without any merit.

**CM Nos.1062/2015**

1. No further directions are called for on this application.
2. The application stands disposed of.

**V.K. SHALI, J**

**JANUARY 20, 2015/nk**