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

+ **Date of Decision: 11.08.2015**

% **RSA 267/2015**

RAJ KUMAR Appellant

Through: Mr. S.K. Duggal, Advocate.

versus

MEER SINGH @ MEERU Respondent

Through: Mr. Sunil Sehrawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment dated 04.03.2015, passed by the Id. ADJ-03,(South-West), Dwarka Courts, New Delhi in RCA No. 14/14 tilted *Raj Kumar V. Sh. Meer Singh @ Meeru*, whereby the First Appellate Court has dismissed the appeal filed by the appellant/ defendant. The said first appeal had been preferred by the appellant/defendant to assail the decree passed by the Trial Court in Suit No.255/2011, where the Trial Court had decreed the suit for recovery of possession, damages and mesne profits in favor of the plaintiff/ respondent vide judgment dated 30.05.2014.

2. The respondent/ plaintiff is the owner of property bearing No. 18, Vinoba Enclave, Main Bahadurgarh Road, CRPF Camp, Jharoda Kalan,

New Delhi and the appellant/ defendant was inducted as a tenant in respect of one shop (suit property) in the aforesaid property at the monthly rent of Rs. 2,000/-, exclusive of electricity and other charges in January 2005. The rent was enhanced to Rs.2,500/- in January 2007, and thereafter from January 2010, the rent was enhanced to Rs. 3,500/- per month, excluding electricity and water charges. The appellant/ defendant stopped paying rent from the month of February, 2010, and thereafter stopped paying water and electricity charges as per his consumption. Consequently, the plaintiff/ respondent terminated the tenancy of the appellant/ defendant vide notice dated 03.03.2010, thereby calling upon the appellant to pay arrears of rent up to February 2010, and also to hand over the vacant peaceful possession of the suit property on or before 31.03.2010. On non-compliance of the notice, the respondent filed the suit for recovery of possession, arrears of rent, damages/ mesne profit and permanent injunction against the appellant before the Trial Court. Upon being summoned, the defendant/appellant filed his written statement contesting the claim of the plaintiff.

3. In his written statement, the defendant did not dispute the relationship of landlord and tenant between him and the plaintiff, but contended that he was inducted as a tenant in July 2001, and not in January 2005. He also contended that the initial rent was Rs. 600/- and not Rs. 2,000/- as averred by the plaintiff. The defendant averred that the rent was increased from time to time, and the same was lastly increased to Rs.950/- per month. The defendant further denied that in January 2007 the rent was increased to Rs. 2,500/- per month, and that in January 2010, the same was increased to

Rs.3,500/- per month. The defendant has further denied all claims made by the plaintiff in the plaint.

4. The Trial Court vide order dated 22.03.2011 framed the following issues:-

- i. Whether the plaintiff is entitled to recovery of possession as prayed for? OPP
- ii. Whether the plaintiff is entitled to recovery of arrears of rent as prayed for? OPP
- iii. Whether the plaintiff is entitled to damages/mesne profit as prayed for? OPP
- iv. Whether the Plaintiff is entitled to permanent injunction as prayed for? OPP
- v. Relief.

5. The parties led their respective evidence and examined two witnesses each. The plaintiff deposed as PW-1 and the defendant deposed as DW-1.

6. The aforesaid issues were decided in favour of the plaintiff and the suit decreed. Aggrieved by the judgment, the appellant filed a Regular Civil Appeal No.01/2012. The First Appellate Court vide order dated 05.09.2012 set aside the judgment and decree passed by the Id. Trial Court, and remanded the case back with directions to the Court to frame an appropriate issue with regard to its jurisdiction in view of the provisions of Section 50 of the Delhi Rent Control Act (DRC Act).

7. In view of the aforesaid, the Id. Trial Court framed an additional issue vide order 30.05.2013 as follows:-

“Whether the civil court has subject matter jurisdiction regarding the suit in question or whether the present suit be tried under the provisions of Delhi Rent Control Act?”

8. The defendant examined two more witnesses in respect of the additional issue aforesaid. Mr. Bijender Singh, Halka Patwari was examined as DW-3, and Mr. Anil Kumar from Planning Department, MCD, Delhi was examined as DW-4.

9. In support of the submission that the suit was barred by Section 50 of the DRC Act, the defendant contended that the suit property falls within the area of village Jharoda Kalan, which had already been urbanized by virtue of notification under section 507(a) of Delhi Municipal Corporation Act, 1957 (DMC Act). However despite repeated opportunities, no such notification was produced by the defendant. Even the witnesses examined on behalf of the defendant, i.e. Mr. Bijender Singh, Halka Patwari (DW-3) and Shri Anil Kumar Sharma, Planning Department, MCD, Delhi (DW4) failed to support the case of the defendant in this regard. Finally, the defendant relied upon the notification No.F-11/45/92-LSG/15422 dated 30.12.1993 issued by the Administrator of NCT of Delhi in exercise of power conferred by Section 5(2) of the Delhi Municipal Corporation Act, 1957.

10. Vide this notification, Delhi was divided into wards, irrespective of the fact as to whether a particular area was rural or urban. As per the said notification, village Jharoda Kalan falls within Ward No. 50 i.e. village Issapur, Municipal Ward. On the basis the said notification, learned counsel

for the defendant/appellant had sought to argue that since village Jharoda Kalan falls in Ward 50 and within the jurisdiction of the MCD, therefore, the same shall be deemed to be urbanized and is governed by the provisions of the Delhi Rent Control Act, 1958.

11. The Id. Trial Court rejected this submission by observing as follows:

*“even if the case of the defendant is accepted that the village Jharoda Kalan stood urbanized by virtue of the aforesaid notification, it being not the case of the defendant that aforesaid village as on the date of the commencement of Delhi Rent Control Act, 1957, in the absence of notification under Section 1(2) of Delhi Rent Control Act, suit property in question cannot be said to be governed by the provisions of Delhi Rent Control Act. The law is well-settled in this regard by celebrated judgment of Hon’ble Supreme Court of India in **Mittar Sen Jain v. Shakuntala Devi** (2000) 9 SCC 720. No such notification under Section 1(2) of the Delhi Rent Control Act has been brought to the notice of this court by Id. Counsel for defendant despite repeated opportunities and as such jurisdiction of this court is not barred by section 50 of the Delhi Rent Control Act.”*

Hence, this issue was decided against the defendant and in favour of the plaintiff. All other issues were decided in favour of the plaintiff and the suit was decreed in the favour of the plaintiff.

12. Aggrieved by the judgment and decree of the Id. Trial Court, the defendants filed first appeal being RCA No. 14/2014. By the impugned judgment, the same has been dismissed and the findings of the trial court affirmed.

13. The Id. ADJ held that in the absence of a notification under sub-Section (2) of Section 1 of the Delhi Rent Control Act, suit property in

question cannot be said to be governed by the provisions of the DRC Act. He further held that the Ld. Trial Court had the jurisdiction to try the suit as the suit property did not fall under the ambit and purview of the DRC Act. The Ld. ADJ, therefore, dismissed the first appeal.

14. The submission of counsel for the appellant, once again, before this Court is that the suit property is situated in an urbanized village and, therefore, the municipal corporation has jurisdiction over the suit property. On that basis, it is claimed that the suit property is governed by the DRC Act.

15. Merely because the suit property may be governed by the DMC Act on account of urbanization, it does not follow that the DRC Act is applicable to the suit property. The Supreme Court in ***Mitter Sen Jain v. Shakuntala Devi***, (2009) 9 SCC 720 has squarely held, while dealing with the case of a property falling in Sagarpur – in respect whereof, a notification under Section 507 of the Delhi Municipal Corporation Act had been issued on 24.10.1994, that the said notification would not pull the property in question within the ambit of the DRC Act. The Supreme Court, inter alia, observed as follows in the said decision:

“It is on the strength of this notification, learned Counsel urged that once the area has been included as urban area within the Delhi Municipal Corporation ipso facto, the Delhi Rent Control Act shall be applicable the argument is totally misconceived. Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area.

It is admitted that no notification has yet been issued under the proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act specifying Sagarpur area within the Schedule of the Act. In absence of such a notification, the provisions of Delhi Rent Control Act cannot be enforced to the area, namely, Sagarpur”.

16. It is not the appellants case that a separate notification has been issued under Section 1(2) of the DRC Act extending the application of the said Act on the area in question, namely, Jharoda Kalan, New Delhi. Therefore, even if the submission of the appellant were to be accepted that village Jharoda Kalan is urbanized, and the DMC Act applies to the said village, it does not follow that the DRC Act *ipso facto* applies to the properties falling in Jharoda Kalan.

17. No perversity or patent illegality is pointed out in the consistent findings returned by the courts below to call for interference by this Court in the present second appeal. No substantial question of law arises for consideration by this Court. Accordingly, the present appeal is dismissed as being without any merit.

VIPIN SANGHI, J

AUGUST 11, 2015