

\$~13

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

+ RSA 41/2017

MOINUDDIN KHAN

..... Appellant

Through: Mr.S.H.Nizami, Advocate

versus

SEWA SINGH

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **03.02.2017**

CM No.4372/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

RSA 41/2017

1. By way of this Regular Second appeal filed under Section 100 CPC, appellant is impugning the concurrent judgments of the Courts below i.e. of the trial Court dated 31st October, 2011 and of the First Appellate Court dated 22nd August, 2016 whereby the decree in respect of suit for possession, permanent injunction and mesne profits/arrears of rent has been passed in favour of the respondent/plaintiff.

2. Mr.S.H.Nizami, learned counsel for the appellant has drawn the attention of this Court to the statement of PW-2, Anil Kumar (on page 87 of paper book), wherein in reply to the Court question as to when the rent

agreement was executed he stated that first rent agreement was in the year 1999 and second rent agreement was in the year 2002. When the Court questioned again about the quantum of rent, he answered that rent was ₹3,000/- per month.

3. Learned counsel for the appellant submits that since rate of rent is stated to be ₹3,000/-, which is below ₹3500/-, the jurisdiction of Civil Court is barred.

4. Mr.S.H.Nizami, Advocate appearing on behalf of the appellant has raised the following contention & urged that this appeal does give rise to substantial question of law by questioning the jurisdiction of the Civil Court that passed the impugned decree was barred u/s 50 of DRC Act.

(i) The First Appellate Court had noted in the impugned judgment that the appellant/defendant in the written statement vaguely pleaded the rate of rent below ₹3500/- per month without specifying the exact rate of rent.

(ii) The plaintiff had supported his statement with original counter foils of the rent receipt duly signed by the tenant. There is no evidence that the counter foils have been forged by the landlord.

(iii) The contention about the suit being barred under Section 50 of DRC Act has been dealt with in para Nos.21 to 23 of the impugned judgment which reads as under:-

“21. Further, the defendant has contended that this suit is barred under Section 50 of DRC Act merely on the ground of rate of rent not exceeding three thousand and five hundred rupees, which he could not prove. Even otherwise, the provisions of DRC Act are not applicable merely on the ground of rate of rent being not exceeding three thousand and five hundred rupees. It has been held by the Hon'ble Supreme Court in Mitter Sen Jain vs. Shankutla Devi, 2000 (SC2)-GJX-0981-SC as follows:-

“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 the 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.”

22. Admittedly, no notification has been produced under the proviso in sub-Section (2) of Section 1 of the DRC Act specifying the area where suit property is situated within the schedule of the Act. In the light of law laid down by Hon'ble Supreme Court in Mitter Sen Jain's case (supra) and in absence of such a notification, it cannot be decided that provisions of DRC Act are applicable.

23. In view of the above discussion and in the light of documents produced on behalf of the plaintiff, I am of the clear view that rent of the tenanted premises was above ₹3500/- and the provisions of DRC Act are not applicable.”

5. It may be noted here that in the affidavit exhibit PW-2/A in para 3 the monthly rent was agreed to be ₹3,000/- on 5th August, 1999 which was increased to ₹3150 with effect from 1st July, 2002. The case of the respondent/plaintiff is that the rent had been increased from time to time and at the time of institution of suit the last rent paid was ₹3800/- per month.

6. Thus, there are concurrent findings of the fact by the Courts below on the issue of rate of rent to be above ₹3500/- which has been proved by oral and documentary evidence.

7. The scope for interference with the concurrent findings of the Courts below while exercising jurisdiction under Section 100 of the Code of Civil Procedure is very limited as re-appreciation of the evidence is not permissible unless it is shown by the appellant that the Courts below have

misdirected themselves in appreciating the question of law.

8. The Regular Second Appeal can be entertained if it raises a substantial question of law. Appreciation of evidence is within the domain of the original Court and of the First Appellate Court which appreciation of evidence cannot be interfered with merely because two views may be possible and the Courts below have taken one possible view.

9. Since the instant appeal does not involve substantial question of law, the same is hereby dismissed.

10. No costs.

CM No.4371/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

FEBRUARY 03, 2017

'pg'