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

+ C.R.P. 175/2014 & CM No.20727/2014 (for stay)

MEERA KAPOOR

..... Petitioner

Through: Mr. Ravinder Kumar, Adv.

Versus

RAJ KISHAN

..... Respondent

Through: Ms. Vandana Sharma & Mr. Abhay S.
Kushwaha, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.07.2017

1. This Revision Petition under Section 115 of the CPC impugns the order (dated 23rd September, 2014 in Suit No.193/2014 filed by the respondent /plaintiff of the Court of JSCC/ASCI/GJ, North West District, Rohini Courts, Delhi) of dismissal of the application filed by the petitioner / defendant under Order VII Rule 11 of the CPC.

2. The petition was entertained and notice thereof issued and the counsel for the respondent / plaintiff has been appearing. Vide *ex parte* order dated 17th December, 2014 in this petition, the proceedings in the suit were stayed. However the said stay order was vacated vide subsequent order dated 26th August, 2015.

3. The respondent / plaintiff instituted the suit from which this petition arises, pleading i) that the petitioner/defendant is a tenant under the respondent / plaintiff in a portion of the premises at WZ-53, Shakur Pur, Village Delhi-110034 at a rent of Rs.1,000/- per month excluding electricity and water charges as per sub-meter reading; ii) that the petitioner / defendant

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had stopped paying rent since January, 1994 onwards; iii) that the respondent / plaintiff in or about the year 1996 instituted a petition for eviction of the petitioner / tenant and the petitioner / tenant was directed to deposit rent at the rate of Rs.50/- per month; iv) that the petitioner / tenant failed to make the said deposit also; v) however the respondent / plaintiff could not pursue the said petition for eviction and the same, on 12th February, 2002 was dismissed in default; vi) that the petitioner / defendant has not been paying electricity and water charges also since the year 2002; vii) that a sum of Rs.2,37,000/- was due from the petitioner / defendant towards arrears of rent from 1st January, 1994 to 30th September, 2013 at a rate of Rs.1,000/- per month; viii) a sum of Rs.71,100/- was also due from the petitioner / defendant towards electricity charges for the period 1st January, 1994 to 30th September, 2013 at the rate of Rs.300/- per month; ix) however the claim for rent was being confined for the period of three years preceding the suit i.e. for Rs.36,000/- only and the claim for electricity charges was similarly confined for three years preceding the suit at Rs.10,800/-; x) that the premises in occupation of the petitioner / defendant were capable of fetching rent in the market of Rs.10,000/- per month; xi) that considering the market rent, the respondent / plaintiff issued notice dated 7th September, 2013 to the petitioner / defendant to enhance the rent to Rs.8,000/- per month with effect from 1st October, 2013; xii) that though the notice was served on the petitioner / defendant but the petitioner / defendant did not lodge any protest, thereby admitting the enhancement in rent; xiii) however the petitioner / defendant did not start paying the rent at enhanced

rate; xiv) that the respondent / plaintiff vide notice dated 15th November, 2013 terminated the tenancy of the petitioner / tenant.

Accordingly, reliefs in the suit, of recovery of possession of the premises in the tenancy of the petitioner / defendant (i) of permanent injunction restraining the petitioner / defendant from parting with possession of the premises; and, (ii) of recovery of arrears of rent / *mesne profits* and future *mesne profits* were claimed in the suit.

4. The petitioner / defendant applied under Order VII Rule 11 of the CPC contending i) that the suit was barred by Section 11 of the CPC for the reason of the petition for eviction earlier filed by the respondent / plaintiff having been dismissed in default; ii) that no notice of enhancement of rent had been served; and, iii) that the monetary claim in the suit was barred by time.

5. The learned Additional Senior Civil Judge (ASCJ) has dismissed the application vide the impugned order reasoning i) that it is a mixed question of law and fact as to whether the rate of rent stood increased to Rs.8,000/- per month or it is a valid revision of rent as per applicable provisions of law and the same can be decided only after appreciation of evidence to be led by the parties during trial; ii) it is also a mixed question of law and fact whether the demand for recovery of arrears of rent and electricity charges is beyond limitation period or not; iii) that even if the suit for recovery of possession was barred by Section 50 of the Delhi Rent Control Act, 1958, as the monthly rent was within the limits prescribed by the said Act, the respondent / plaintiff could always seek relief of permanent injunction restraining the petitioner / defendant from creating third party interest over the tenanted premises and of recovery of arrears of rent and electricity charges.

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6. I have enquired from the counsel for the respondent / plaintiff as to how the suit for the relief of recovery of possession was maintainable.

7. The counsel has no answer.

8. Section 6A of the Delhi Rent Control Act, by which a premises rent whereof is less than Rs.3,500/- per month is governed, provides for enhancement of rent every three years by 10% over the last paid rent by following the procedure as prescribed in the Act i.e. of issuance of a notice of intent by the landlord to enhance the rent.

9. It is not understandable how the respondent / plaintiff could by notice enhance the rent even if it be Rs.1,000/- per month, to Rs.8,000/- per month. The same is against the legislative provisions contained in the Rent Act.

10. As far as the plea of the rent having so stood enhanced owing to the same being as per the market rent and the petitioner / defendant having not objected to the same is concerned, though it is open to a landlord and tenant to by mutual agreement enhance rent so as to take the premises beyond the purview of the Rent Act but there is no plea in the plaint of any such agreement. The plea in the plaint is of the rent having so stood enhanced by the petitioner / defendant not objecting to the enhancement demanded by the respondent / plaintiff. The same cannot take the place of an agreement and there is no mandate on any person to respond to demands which have no basis in law.

11. The question is no longer *res integra*. The Division Bench of this Court in **Santosh Vaid Vs. Uttam Chand** 188 (2012) DLT 293 has held that in view of Section 6A of the Rent Act, the rent cannot be unilaterally enhanced to bring it at par with the market rate.

12. The learned ASCJ has thus clearly showed and displayed lack of knowledge of law in holding that the questions whether the enhancement of rent is valid or not being a mixed question of law and fact requiring trial.

13. The suit as per averments in the plaint, insofar as for recovery of possession, was thus clearly barred by Section 50 of the Delhi Rent Control Act, 1958 and the plaint, insofar as claiming the said relief, was liable to be rejected.

14. As far as the claim for permanent injunction and recovery of arrears of rent and electricity charges is concerned, the plea in the application of the petitioner / defendant under Order VII Rule 11 of the CPC was of the claim therein being barred by time. I may in this regard notice that in para 20 of the plaint, the petitioner had confined the claim for recovery of arrears of rent to Rs.36,000/- and for recovery of arrears of electricity charges to Rs.10,800/- for three years preceding the suit; but the petitioner in para 20 has also claimed rent at the enhanced rate of Rs.8,000/- per month from 1st October, 2013 to 28th January, 2014 i.e. amounting to Rs.29,333/- and to which the respondent / plaintiff has been held above to be not entitled.

15. I have attempted to have the surviving claim in the suit for recovery of arrears of rent and electricity charges and permanent injunction settled; however the same has not been possible owing to the petitioner / defendant claiming the rent to be Rs.50/- per month and the respondent / plaintiff claiming the rent to be Rs.1,000/- per month.

16. The petition is accordingly partly allowed.

17. The plaint in the suit from which this petition arises, in so far as claiming the relief of recovery of possession and future *mesne profits* and

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arrears at the rate of Rs.8,000/- per month is rejected.

18. The respondent / plaintiff is directed to, before the next date of hearing before the suit Court, file amended plaint confining the reliefs to recovery of money as above and for injunction.

19. After the pleadings have been completed, the learned ASCJ before whom the suit now be pending, to recast the issues and to proceed with the suit.

20. At this stage, the counsel for the respondent / plaintiff states that she withdraws the suit from which this petition arises and will take proceedings for eviction of the petitioner / defendant before the Rent Controller.

21. The respondent / plaintiff is at liberty to withdraw the suit before the suit Court.

22. For filing the petition for eviction, no liberty is required, as the respondent / plaintiff can always do so.

23. A copy of this order be placed before the ACR Committee of the learned ASCJ who has penned the impugned order and be also forwarded to the learned ASCJ.

RAJIV SAHAI ENDLAW, J

JULY 25, 2017

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