

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

% *Judgment Reserved on: January 30, 2017*
Judgment Delivered on: February 02, 2017

+ **RSA 377/2016**

AMRIK SINGH Appellant
Through: Appellant in person

versus

RAJPAL KAUR & ORS Respondents
Through: Mr. Shekhar Dasi & Mr. Akhilesh
Srivastava, Advocates

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

1. The appellant before this Court was plaintiff in Civil Suit Nos. 1848/08 & 1849/08 which had been filed against the respondent/tenant seeking recovery of arrears of rent with interest in respect of separate periods.
2. The Civil Suit No. 1849/08 was decreed on 10th July, 2009 holding the appellant/plaintiff to be entitled to recover arrears of rent @ ₹532 per month for the period 1st July, 1995 to 30th June, 1996 after making adjustments of the rent already deposited by the respondent/tenant in terms of the order passed by the learned ARC and learned RCT. Vide order dated 25th January, 1985 passed in IA No. 6942/84 filed in Suit No. 1891/1984, the appellant/plaintiff was also appointed as receiver of one-third of income from property No. 2382-83, Gali No. 12, Beadon Pura, Karol Bagh, New

Delhi wherein the respondent is a tenant.

3. The prayer of the appellant/plaintiff to claim interest was declined by learned Trial Court observing that the respondent/tenant cannot be faulted for not making the payment of rent at the enhanced rate as said fact was subjudice and the respondent/tenant had complied with the direction given by the Court in this respect.

4. Feeling aggrieved by the order of the learned Trial Court, the appellant herein preferred RCA No.55-56 of 2011. The First Appellate Court considered all the calculations given by the appellant as well his claim to seek interest on the amount due @ 15% per annum under Section 26 of Delhi Rent Control Act and also contending that interest was payable by the tenant on the amount due @ 24% per annum.

5. The First Appellate Court declined to interfere on the issue of non-payment of interest for the reasons that the respondent/tenant could not be faulted for making the payment at the enhanced rate that the matter was subjudice before Supreme Court. Both the appeals were dismissed by the First Appellate Court observing that the appellant cannot be allowed to avail parallel or rather multifarious remedies on the same issue and waste the judicial time. Thus both the appeals were dismissed with cost of ₹20,000/- to be deposited with DLSA.

6. The order of the First Appellate Court was challenged by the appellant by filing CM(M)737/2013 wherein vide order dated 11th November, 2016 while observing that the order impugned could be challenged by way of filing second appeal, with the consent of the parties the CM(M) 737/2013 was ordered to be converted into Regular Second Appeal with direction to be listed before the Roster Bench.

7. The appellant who has been conducting his case in person throughout has filed brief written synopsis and legal points wherein history of all the litigations between the parties and the amount due and payable to him by the respondent/tenant have been detailed. The prayers made in the written submission are as under:-

- (i) To pass decree for ₹4,59,509.21 as stated in statement at Annexure-III in three suits 588/85, 428/89 & Suit No.260/91 with cost and interest.
- (ii) Pass decree for ₹3,46,980.91 in two suits 1848/08 & 1849/08 with as stated in appellant statement for use of store room.
- (iii) Pass decree for ₹3,46,980.91 @24% per annum.
- (iv) To pass decree for making total payment of ₹8,06,501.12

8. While giving opportunity to make submissions the appellant has contended that whatever he has to say, the same is mentioned in the written synopsis. He submits that he is 90 years old and not getting any money hence the direction be issued to the respondent to pay the amount due to him towards arrear of rent being enhanced from time to time with interest @ 24% per annum.

9. Learned counsel for the respondent/tenant has made the following submissions:-

- (i) Apart from a petition for eviction filed under Section 14(1)(a) of Delhi Rent Control Act, two civil Suit Nos.1848/08 and 1849/08 were also filed by the appellant/plaintiff seeking recovery of arrears of rent which have been decreed by the learned Trial Court but the prayer for award of interest has been declined as respondent/tenant was not at fault.
- (ii) The eviction petition was disposed of giving benefit under Section 14(2) of Delhi Rent control Act directing the respondent/tenant to deposit

arrears of rent to the tune of ₹7050/- which stands complied with. The said order was challenged before Rent Control Tribunal as well before the High Court but all the petitions filed in that regard by the appellant have been dismissed.

(iii) While decreeing the two civil suit Nos.1848/08 and 1849/08 in favour of the appellant, the learned Trial Court directed that the amount already deposited with the Additional Rent Controller shall be adjusted. Even that judgment has been complied with by the respondent/tenant. The first appeal bearing RCA No. 55-56 of 2011 stand dismissed on 1st February, 2013 which have been impugned initially by filing CM(M) 737/2013 which later on converted into Regular Second Appeal.

(iv) The only issue involved is about calculation of rent and interest thereon which does not give rise to any substantial question of law.

(v) The SLP No. 5765/09 filed by the appellant/plaintiff has already been dismissed by the Supreme Court.

10. In the instant case the relationship of the landlord and tenant is not disputed. The Civil Suits filed by the appellant/plaintiff have already been decreed in respect of arrears of rent. The prayer for grant of interest @ 15% or @ 24% as claimed by the appellant/plaintiff did not find favour with the Courts below.

11. The SLP (Civil) D.No.5765/2009 preferred by the appellant has also been dismissed by the Supreme Court on 27th September, 2010 by passing the following order:-

'Heard petitioner, who is appearing in person. We find no merit in this petition for special leave. It is dismissed.'

12. The legal position is well settled that the first appeal is a matter of

right to a litigant and the First Appellate Court is supposed to re-appreciate the entire evidence in the light of arguments on behalf of the appellant. The second appeal cannot be entertained in a casual manner and would lie only in cases where substantial question of law is involved. Thus, mere appreciation of facts or impugning the entries or contents of documents or calculations in respect of the amount due and payable under any contract cannot be held to be raising a substantial question of law. The general rule is that second appeal cannot be entertained on the issue of facts and the High Court cannot disturb the findings of the fact given by the Courts below.

13. On perusal of the judgment impugned, I find that the First Appellate Court has taken into consideration all the calculations given by the appellant/plaintiff as well the calculation of arrears at the enhanced rate. The relevant paragraphs No.42 to 45 read as under:-

'42. In accordance with the spirit of that order, learned Trial Court held that the appellant was entitled to recover the rent at the rate of ₹532.40 w.e.f. 01.07.1995 to 30.06.1998 (as notice Ex.PW1/2 bears the date of 21.04.1995 & by virtue of Section 1(1) DRCA, the increased rent is effective after the expiry of 30 days from the date on which the notice was given, and as per the order dated 05.09.1998 passed by Ld.ARC, the rent was last increased @ ₹484/- per month w.e.f. 01.07.1992 and the three years period accordingly came to end on 30.06.1995) after giving adjustment to the rent already deposited by the respondent at the rate of ₹484/- per month in terms of the directions issued by Ld.ARC. However, since appellant had claimed the enhanced rate @ ₹532/- per month only, instead of ₹532.40, hence, claimed rent of ₹532/- was allowed by Ld.Trial Court for the period already mentioned above.

43. As far as the interest was concerned, the appellant was not held entitled to claim the same as the respondent could not be faulted upon for not making the payment of the rent at the

enhanced rate as the said fact was subjudice before the Court and the respondent had also complied with the direction given by the Court in this respect time and again.

44. In view of above facts and circumstances, since the Hon'ble Supreme Court is already admittedly seized of the dispute, both the appeals are filed before this Court would not even be maintainable, as the appellant cannot be allowed to avail parallel or rather multifarious remedies on one and the same point. In view of the pendency of the same subject matter before the Hon'ble Supreme Court in the SLP, this Court can not even entertain these two appeals and the appeals are being dismissed with costs of ₹20,000/- in all for having been a gross abuse of process of law and having been consumed much precious judicial time on this like frivolous appeal, which is nothing but an agitation and re-agitation, of the same point over and over again before different forums.

45. The costs would be deposited with DLSA and receipt be placed on record within 15 days from today, where after the file would be consigned to Record Room and Trial Court Record shall be sent back alongwith copy of this order.'

14. While dismissing the appeal the First Appellate Court had been compelled to observe the manner in which the same point is being reagitated by the appellant. The SLP preferred by the appellant/plaintiff has also been dismissed. There should be an end to litigation. Claim of interest on the arrears of rent has been declined by the Courts below mainly on the ground that the respondent/tenant could not be blamed as he was complying with all the Court's order in that regard. Thus grant or non-grant of interest in a suit claiming arrears of rent, does not give rise to any substantial question of law so as to entertain this second appeal.

15. A prayer has been made by the appellant before this Court that the

First Appellate Court imposed a cost of ₹20,000/- on him though he was bonafide litigating for his cause and first appeal was a matter of right for him. He has prayed for waiver of costs of ₹20,000/- imposed by the First Appellate Court. The appellant also submits that he is 90 years old suffering from various ailments and conducting this litigation in person even at this age. Hence on humanitarian ground, at least cost imposed by the First Appellate Court may be waived.

16. While acceding to the request of the appellant to waive the cost of ₹20,000/- imposed by the First Appellate Court and waiving the same, on merits, I am of the considered opinion that in view of the above discussion, no substantial question of law is involved in this appeal so as to require interference by the High Court in exercise of jurisdiction under Section 100 of CPC.

17. Accordingly, the impugned order dated 11.02.2013 is modified only to the extent of waiver of cost and on merits, this RSA No.377/2016 is dismissed.

18. No costs.

19. LCR be sent back alongwith copy of this order.

PRATIBHA RANI
(JUDGE)

FEBRUARY 02, 2017
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