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

Decided on: 18th January, 2018

+ CM(M) 391/2016

NIRMAL DEVI

..... Petitioner

Through: Mr. J.C. Mahindro, Advocate

versus

POONAM & ORS

..... Respondents

Through: Respondent no.1 in person

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner admittedly is the landlady qua the respondents in respect of the demised premises described as property bearing no.L-26/8, Laxmi Nagar, Delhi-110 092. It appears the premises were let out initially in the name of Mr. Kamal Kumar at the agreed monthly rent of Rs.400/-. Mr. Kamal Kumar having died on 15.02.2005, the respondents have stepped into his shoes and have become the tenants under the petitioner.

2. The petitioner issued a legal notice on 07.08.2007, through counsel, demanding payment of arrears of rent, *inter alia*, stating that by virtue of the discretion vested in him under Section 6A of Delhi Rent Control Act, 1958, he was entitled to increase the rent. He also alleged that the respondent had run into arrears, not having paid the

rent with effect from 01.03.2005. While demanding the payment of arrears of rent at the agreed rate of Rs.400/- p.m. with effect from 01.03.2005 and at Rs.440/- p.m. with effect from 01.09.2005 alongwith interest at the rate of 15% p.a. in terms of Section 26 of Delhi Rent Control Act, 1958, the petitioner also sought a compliance or response to the said legal notice within two months of the date of its receipt. It appears the respondent sent a reply on 16.08.2007 denying being in arrears of rent or being liable to pay the rent at the rate, or for the period, or interest as demanded, referring in this context to deposit of rent under Section 27 of Delhi Rent Control Act, 1958.

3. The Additional Rent Controller, by an interim order under Section 15(1) of Delhi Rent Control Act, 1958, passed on 14.07.2009, declined to grant any benefit to the landlady / petitioner vis-a-vis the increased rate of rent or interest on the arrears as alleged. He bound the respondents with the direction for payment of arrears of rent with effect from March 2005 at the agreed rate of rent of Rs.400/-.

4. The case went to trial and resulted in judgment dated 23.10.2013 of the Rent Controller whereby it was found that the respondents had committed a default within the mischief of Section 14(1)(a) of Delhi Rent Control Act, 1958, the claim for increased rate of rent at Rs.440/- having, however, been repelled. Conspicuously, the judgment of the Rent Controller would not dwell at all on the demand of interest in terms of Section 26 of Delhi Rent Control Act, 1958, the same not being properly construed or applied to the case.

5. The Rent Control Tribunal appears to have short-shrifted the issue by observing that since the order under Section 15(1) of Delhi

Rent Control Act, 1958 passed on 14.07.2009 had not been challenged by appeal, the contention about non-payment of interest could not be raised at such a stage. The judgment of the Rent Control Tribunal would not deal with the issue of increase of rent in terms of Section 6A of Delhi Rent Control Act, 1958.

6. In the considered view of this court, the approach of both the authorities below has been improper and deficient. The order under Section 15(1) of Delhi Rent Control Act, 1958 passed on 14.07.2009 was only tentative and interim in nature. At the conclusion of the trial on the main petition for eviction on the ground of non-payment of rent, it was incumbent on the part of the Rent Controller to pass a fresh order, by either adopting the earlier (interim) order or by modifying it, as required or deemed proper on the basis of evidence led and the finding on facts returned. But it was necessary for the Rent Controller to pass a fresh order in which the previous tentative order would have subsumed and merged. It is only thereafter that the Rent Controller should have proceeded to examine the issue of compliance (or non-compliance) for considering whether the tenant was entitled to the protection in terms of Section 14(2) of Delhi Rent Control act, 1958. The need for such exercise to be undertaken appears to have escaped the notice of both the authorities below.

7. In the above facts and circumstances, this court initially mulled over the propriety of remanding the matter to the Rent Controller for passing of an effective order. But then, it having been brought to the notice of this court that the Rent Controller had rejected the contention of the petitioner vis-a-vis the increase of rent, it would be proper if this

issue is considered first by the first appellate authority and thereafter needful directions are issued.

8. In the above facts and circumstances, the judgment of the Rent Control Tribunal dated 29.01.2016 is set aside. The matter is remanded to the Rent Control Tribunal for fresh consideration and fresh adjudication. The parties are directed to appear before the Rent Control Tribunal on 16.02.2018.

9. The petition is disposed of in above terms.

JANUARY 18, 2018

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R.K.GAUBA, J.



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