

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

+ **RFA No. 700/2018**

% **27th August, 2018**

M/S ATMA RAM PROPERTIES PVT. LTD. Appellant

Through: Mr. Amit Sethi, Advocate
(9811050339)

versus

M/S ALLIED MOTORS LTD. & OTHERS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

CM No. 34266/2018 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 700/2018 & CM No.34265/2018 (stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff/landlord in the suit impugning the Judgment of the Trial Court dated 2.8.2018 by

which the trial court has rejected the plaint under Order VII Rule 11 CPC and held that the civil court has no jurisdiction to entertain the suit for possession and *mesne* profits filed by the appellant/plaintiff. In essence the trial court has held two aspects against the appellant/plaintiff/landlord. Firstly it is held that the amount of house tax payable by a tenant will not become part of the rent, and once that is not part of the rent, the rent payable by the respondent/defendant/tenant cannot be said to have increased beyond Rs.3,500/- per month for the suit/subject premises ceased to have protection under the Delhi Rent Control Act, 1958. Secondly, it was held by the trial court that when a legal notice is given under Section 6A of the Delhi Rent Control Act for increasing of the rent, the rent will be increased prospectively by 10% and that it cannot be that by giving one legal notice rent can be retrospectively increased for dozens of years.

2. The facts of the case are that the appellant/plaintiff filed the subject suit for possession with respect to the suit premises being a Showroom No. 4 (sometimes referred as Showroom No.5), alongwith the Quarter No.11 and 45, Atma Ram Mansion (Scindia House),

Connaught Circus, New Delhi (admeasuring approximately 8849.33 sq. ft on the ground floor and mezzanine floor of the property) and for *mesne* profits. The cause of action which was pleaded in the suit was that the appellant/plaintiff/landlord purchased the suit premises by a registered Sale Deed dated 31.5.1980 and the respondent no.1/defendant no.1 was an old tenant in the suit premises. Appellant/plaintiff has pleaded that it sent a Legal Notice dated 13.6.2007 for increasing the rent under Section 6A of the Delhi Rent Control Act whereby the rent was to be increased from the existing rent of Rs.1802.37 per month to Rs.3193/-. It was then pleaded in para 9 of the plaint that the respondent no.1/defendant no.1/tenant had let out the part of the tenanted premises to respondent no. 3/defendant no.3/partnership firm of which defendant nos. 4 and 5 are partners, and this illegal sub tenant defendant no.3 was paying a sum of Rs.345/- per month to respondent no. 1/defendant no.1 through cheques, and thus the total rent for the suit premises became Rs.3193 plus Rs. 345 i.e Rs.3538/- and hence the rent of the suit premises was going beyond Rs.3500/- per month, therefore by virtue of Section 3(c) of the Delhi Rent Control Act the suit premises fell outside the

protection of the Delhi Rent Control Act. It was additionally pleaded by the appellant/plaintiff that the respondent no. 1/defendant no.1 is liable to pay the house tax in terms of the Lease Agreement entered into by the respondent no. 1/defendant no.1 with the erstwhile landlord on 31.7.1946, and therefore when the house tax would be added to the rent of Rs.1802.37 per month or to Rs.3193/- per month then the suit premises would fall outside the protection of the Delhi Rent Control Act. Though no figure of house tax was pleaded in the plaint, but in the replication filed by the plaintiff to the written statement of the respondent/defendant, it was pleaded that the property tax per year came to Rs.16,46,034/- per annum i.e Rs.1,37,170/- per month, and therefore on this basis it was contended that the rent being more than Rs.3500/- per month, the suit premises will no longer have protection of Delhi Rent Control Act and hence the civil suit for possession and *mesne* profits was liable to be decreed in favour of the appellant/plaintiff/landlord and against the respondent no.1/defendant no. 1/tenant.

3. As already stated, trial court has held that by giving a notice under Section 6A of the Delhi Rent Control Act, rent cannot be

increased retrospectively and rent will only be increased prospectively only on notice being given after every three years that rent is increased by 10% every three years and it cannot be that by one notice rent can be retrospectively increased for dozens of years by increased rent of 10% for every past three year period. It is further held by the trial court that even if a tenant is liable to pay property tax, the property tax content does not become part of the rent in view of the recent judgment of the Supreme Court in the case of *Atma Ram Properties Pvt. Ltd. vs. The Oriental Insurance Co. Ltd* (2018)2 SCC 27 being a case of the present appellant/plaintiff itself.

4. In my opinion, the appeal has no merit and is liable to be dismissed. The reasons are stated hereinafter.

5. So far as the aspect that rent could not have been increased retrospectively for dozens of years in view of Section 6A of the Delhi Rent Control Act, the provisions of Section 6A of the Delhi Rent Control Act read with Section 8 of the said Act are reproduced as under:-

“Section 6A. Revision of rent. - Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions

of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent. every three years.

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Section 8. Notice of increase of rent.- (1) Where a landlord wishes to increase the rent of any premises, he shall Notice of give the tenant notice of his intention to make the increase and in so far as such of rent increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in section 106 of the Transfer of Property Act, 1882” (emphasis is mine)

6. A reading of the provisions of Sections 6A and 8 shows that there is an entitlement of the landlord to increase the rent by 10% every three years in view of Section 6A, and the provision of Sub-Section 1 of Section 8 makes it clear that the rent which is increased will be due and recoverable only for the period of tenancy after the expiry of 30 days from the date on which notice is given. Therefore, even on an elementary reading of the provisions of Section 6A and 8 of the Delhi Rent Control Act, it becomes clear that a landlord such as the appellant/plaintiff could not have legally increased the agreed rent of Rs.1802.37 per month straightway to Rs.3193/- per month i.e at best the rent would be increased by 10% more than Rs.1802.37 per month. Once that is so, even if the rent paid by the sub-tenant/defendant no.3 of Rs. 345/- per month is added, the total rate of

rent payable for the suit premises will not be above Rs.3500/- per month, and once that is so, the civil court would not have jurisdiction in view of the bar contained in Section 50 of the Delhi Rent Control Act, i.e since the rent would be less than Rs.3500/- per month, hence the suit premises would have protection under the Delhi Rent Control Act, and therefore the civil suit for possession and *mesne* profits in the civil court would not be maintainable and this is so rightly held by the trial court.

7. The next aspect to be determined by this Court is as to whether the property tax content if payable by a tenant to a landlord, whether the same is or is not part of the rent. Learned counsel for the appellant/plaintiff has placed reliance upon the judgment of the Supreme Court in the case of ***Raju Kakara Shetty Vs. Ramesh Prataprao Shirole and Another (1991) 1 SCC 570*** and the recent judgment of a Division Bench of three Judges of the Supreme Court in the case of ***M/s Popat & Kotecha Property & Ors. Vs. Ashim Kumar Dey*** Civil Appeal No(S). 8149/2018 decided on 9.8.2018. Learned counsel for the appellant/plaintiff has also sought to distinguish the judgment of the Supreme Court in the case of ***Atma Ram Properties***

Pvt. Ltd.(supra) on the ground that in the facts of the present case, the property tax which is payable by the respondent/defendant/tenant is not by virtue of Section 7(2) of the Delhi Rent Control Act but under the proviso to Section 7(2) which states that in case the tenancy agreement is prior to 1.1.1952 then the property tax has to be paid by the tenant and in the present case the Lease Agreement is entered into prior to 1.1.1952 inasmuch as the Lease Agreement in the present case is dated 31.7.1946.

8. In the case of *Atma Ram Properties Pvt. Ltd (supra)* the issue which arose, and which was to be decided by the Supreme Court, was that even if property tax is payable by a tenant to a landlord, whether the property tax amount payable, does or does not become part of the rent. This issue was crystallized by the Supreme Court in para 15 of its judgment and answered in para 30 of the judgment with rationale being given of a non-obstante clause in Section 14 of the Delhi Rent Control Act to prevail over the general enactments as reasoned in paras 23 and 28 of the judgment. These paras read as under:-

15. The question for consideration in this appeal is entirely different. The question is whether non-payment of property tax recoverable from the tenant as rent can be a ground for his eviction/ejectment from the premises. The Rent Act is beneficial and also restrictive in nature. It is primarily an Act to provide for the control of rents and evictions. It is settled that while interpreting the provisions of this Act, the courts are under a legal compulsion to harmoniously read the provisions of the Act so as to balance the rights of the landlord and the obligations of the tenant towards each other, keeping in mind that one of the objects of the legislature while enacting the Rent Act was to curb the tendency of the greedy landlords to throw out the tenants paying lower rent and to rent out the premises at the market rate. Section 14 occurring in Chapter 3 of the Rent Act provides for controlling of eviction of tenants. It puts an embargo as regards recovery of possession of any premises at the instance of the landlord unless the Controller satisfies himself as regards existence of any of the grounds specifically referred to in the proviso appended thereto.

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23. As seen from the abovementioned judgments, this Court has held that an earlier enactment will prevail over a latter enactment even if, there is a non obstante clause in the latter enactment, if it were to be held that the earlier enactment is a special enactment on the particular subject being in issue.

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28. The object of the Rent Act is to provide protection to tenants who under common law, including the Transfer of Property Act could be evicted from the premises let out to them at any time by the landlord on the termination of their tenancy. It restricts the right of the landlord to evict the tenant at their will. It is a special law in relation to landlord and tenant issue. Therefore, the Rent Act has to prevail insofar as the landlord and tenant issue is concerned.

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30. Therefore, we are of the view that though the Rent Act is an earlier Act when compared to the NDMC Act, it is a special enactment with regard to the matter in issue and has a non obstante clause. The NDMC Act is not a special enactment insofar as the landlord-tenant issue is concerned and it contains Section 411 which provides that other laws are not to be disregarded. Section 67(3) of the NDMC Act merely gives a right to recover the tax in respect of the premises as rent. It does not override the Rent Act insofar as obviating the effect of Section 7(2) of the Rent Act is

concerned. In our opinion, the tax recoverable from the tenant under Section 67(3) of the NDMC Act as arrears of rent by the appellant cannot be considered to be forming part of the rent for the purpose of seeking eviction/ejectment of the respondent who defaults in payment of such recoverable tax as rent. (underlining added)

9. In view of the categorical ratio of the Supreme Court in the case of *Atma Ram Properties Pvt. Ltd (supra)* that even if property tax is payable by a tenant yet such amount which is recoverable by the landlord from the tenant will not become part of the rent. In my opinion, the mere fact that in the present case, property tax is recoverable under an agreement between the parties being the Lease Agreement dated 31.7.1946 will only mean that property tax will be recoverable because of an agreement and not because of a Statute being the relevant provisions of the Delhi Municipal Corporation Act 1957 or New Delhi Municipal Corporation Act 1994 as applicable to Delhi, yet the property tax content (if the same is recoverable as per agreement between landlord and tenant) the same does not become part of the rent for being argued that civil court has jurisdiction (and not the Rent Controller), in view of the ratio of the judgment of the Supreme Court in the case of *Atma Ram Properties Pvt. Ltd (supra)*. It is reiterated that the Supreme Court has held that property tax even if payable will not become part of the rent, for civil

court to have jurisdiction, and therefore whether the property tax is payable either as per statute being section 7(2) of the Delhi Rent Control Act or as per an agreement as per proviso to section 7(2) of the Delhi Rent Control Act, will not make any difference, i.e the property tax content payable whether under statute or an agreement will not become part of the rent.

10. So far as the judgments which are relied upon by the learned counsel for the appellant/plaintiff in the cases of ***Raju Kakara Shetty (supra)*** and ***M/s Popat & Kotecha (supra)*** are concerned, it is seen that these judgments were in the proceedings under the Rent Acts of the relevant States being the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and the West Bengal Premises Tenancy Act, 1947, and accordingly it was held in the said judgments in the proceedings under the Rent Acts that the amounts which are recoverable towards property tax or education cess if not paid by a tenant then tenant would be liable to eviction in terms of the proceedings initiated under the respective Rent Acts. I am not called upon to decide in the present case as to whether non-payment of property tax by a tenant will or will not entitle a landlord to file

proceedings under Section 14(1)(a) of the Delhi Rent Control Act, as the proceedings before the Court arise from a civil suit which is filed by the appellant/plaintiff in a civil court alleging that the suit premises do not have protection of Delhi Rent Control Act. In case any proceeding are filed by the appellant/plaintiff under the Delhi Rent Control Act by alleging that the amount payable as property tax will be part of the rent for the purpose of proceedings under Section 14(1)(a) of the Delhi Rent Control Act and on non-payment of such amount of property tax, once the same is legally payable by the tenant, whether the tenant is liable to eviction in proceedings under Section 14(1)(a) of the Delhi Rent Control Act will be decided in those proceedings, and which issue is left open.

11. In view of the aforesaid discussion, I do not find any merit in the appeal. Dismissed.

AUGUST 27, 2018/ib

VALMIKI J. MEHTA, J