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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 10th April, 2018

+ CM (M) 1236/2017 and CM No. 42896/2017

KHALIFA CHAIN SUKH

..... Appellant

Through: Mr. Ram Krishan Saini, Adv.

Versus

AJIT SINGH

..... Respondent

Through: Mr. Mayank Wadhwa, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is aggrieved by the orders dated 09.07.2012 of the Additional Rent Controller and dated 29.07.2017 of the Rent Control Tribunal on his prayer for an order to be passed under Section 15 (1) of Delhi Rent Control Act, 1958, against the respondent in the context of his petition (E-16/11) seeking an order of eviction on the ground of non-payment of rent under Section 14 (1) (a) of Delhi Rent Control Act, 1958 respecting shop no. 7 (private) in premises no. 3-A/112, Sat Nagar, W.E.A., Karol Bagh, New Delhi-110005.

2. The respondent does not dispute in the pleadings that he is a tenant in the said shop. The petitioner has brought the case for eviction on the ground that the respondent is an old tenant, paying rent at Rs.330/- per month which is subject of increase at 10% under Section 6-A of Rent Control Act, 1958. It is his case that the tenancy

is subject matter of the rent agreement and that rent when paid was duly acknowledged by receipts, copies of the rent agreement and counter-foils of the rent receipts being part of the material on which the petitioner places reliance. According to the case of the petitioner, the respondent had run into arrears of rent it not having paid or tendered, with effect from 01.05.1995, this inspite of notice of demand issued on 12.11.2010 as was duly served. The respondent is contesting the said proceedings by denying that he is the tenant under the petitioner, his averments being that he is a tenant under Delhi Development Authority (DDA) since 01.01.1989 and further that he has been regularly “*tendering the rent*” to DDA.

3. The Additional Rent Controller found no case made out for an order under Section 15 (1) of the Delhi Rent Control Act, 1958, being passed for the reason that the respondent had raised the dispute about absence of landlord-tenant relationship between the parties. This view has been upheld by the Rent Control Tribunal dismissing the appeal (RCT Appeal No. 30339/2016) by order dated 29.07.2017.

4. The orders of the authorities below have been challenged by the petition at hand on which notice was issued by order dated 06.11.2017. On 27.11.2017, the petitioner moved another application (CM 42896/2017) seeking to place on record further documents. Notice of the said application was also issued and served. No reply has been filed even though sufficient opportunity was available.

5. The issue is short and there is no reason why the petition should linger on, particularly when the matter has been hanging fire, after filing of the eviction petition, for the last 7 years.

6. From the pleadings and the documents on record, it is clear that the respondent does not dispute his status vis-a-vis the subject premises as a tenant. There is no clear averment as to the rate of rent paid by him. In these circumstances, it has to be assumed that the rate of rent pleaded in the petition for eviction is not disputed. The pleadings of the respondent as to he being a tenant under DDA are vague in as much as it is supported by a document described as provisional receipt (page 74 of the paper book) which is towards 'recovery of damages', it being issued on 05.11.1996, there being no reference whatsoever to the premises to which it pertains. The payment of damages cannot be treated as payment of rent. Be that as it may, what *prima facie* should clinch the issue in favour of the petitioner is the admission on behalf of the respondent as made by his counsel before the Rent Control Tribunal on 18.07.2016 (page 16 of the paper book). The counsel representing the respondent had expressly admitted in said statement that the respondent was inducted in the premises as a tenant by the appellant only i.e. the petitioner before this Court.

7. Though the matter would require inquiry and trial on the issues of facts, it being the burden of the petitioner to prove in accordance with law the rent deed and the counter-foils of the rent receipts as indeed the other documents giving rise to the cause of action for filing a case of this nature, the respondent - concededly a tenant - cannot be permitted to continue enjoying the premises without making any payment.

8. In the above facts and circumstances, it would be just and proper to direct an order for deposit of the rent under Section 15 (2) of the Delhi Rent Control Act, 1958 rather than the payment directly to the petitioner.

9. Thus, the impugned orders of the Additional Rent Controller and the Rent Controller Tribunal are set aside. It is directed that the respondent will deposit with the additional rent controller the arrears of the rent at the rate of Rs.330/- per month with effect from 01.01.2008 (the eviction petition was filed on 13.01.2011) upto date within 30 days hereof and thereafter continue to make deposit of the rent at the said rate month by month by the seventh day each consecutive month during the pendency of the eviction proceedings. The rent controller shall allow such deposits to be made in terms of Section 15 (2) of the Delhi Rent Control Act, 1958 and disburse the amounts thus deposited at the conclusion of the inquiry/trial in light of the findings returned. Needless to add, any default in strict compliance with these directions would entail consequence in terms of Section 15 (7) of the Delhi Rent Control Act, 1958. The compliance with these directions, however, would undoubtedly be without any prejudice to the rights and contentions of the respondent.

10. The petition and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

APRIL 10, 2018/uj