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

+ CM(M) 1063/2015 and CM APPL.25258/2015 (stay) &
CM APPL.16592/2018 (O.XXII rule 3 CPC)

ANEES AHMED

..... Petitioner

Through: Mr. V. Shukla, Advocate with
Ms. Aparna, Advocate

versus

AZAD

..... Respondent

Through: Mr. V. Tyagi, Advocate with
Mr. S.K. Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **25.04.2018**

The petitioner concededly is the tenant in premises described as property No.271-272, Khureji Khas, Delhi-110051 under the respondent (landlord). The respondent had instituted an eviction case (E. No.136/2011) on 02.04.2011 on the ground under Section 14(1)(a) of the Delhi Rent Control Act, 1958, alleging non-payment of rent at the rate of Rs.1,000/- per month with effect from November, 2007, in spite of notice of demand dated 16.10.2010.

The said proceedings eventually resulted in eviction order being passed by the additional rent controller (ARC) on the ground that the petitioner had failed to comply with the directions in the interim order under Section 15(1) of the Delhi Rent Control Act, 1958. The petitioner challenged the said decision before the rent control tribunal in appeal (MCA No.

06/2015) which was dismissed by judgment dated 21.07.2015, upholding the order of eviction whereby the benefit of protection under Section 14(2) of the Delhi Rent Control Act, 1958 stands declined.

At this stage it is stated that the petitioner had died on 29.11.2017. An application under Order XXII Rule 3 of the Code of Civil Procedure, 1908 (CPC), it being CM APPL. 16592/2018 has been submitted.

The learned counsel for the respondent submits no objection to the prayer in the said application which stands allowed. The cause of action having survived, the legal representatives of the petitioner stand substituted.

The prime contention raised by the petitioner is that in an eviction petition on the ground of non-payment of rent, instituted on 02.04.2011, he could not be called upon to pay the arrears of rent for the period which had become time barred. He points out that it is only the legally recoverable arrears of rent which could have been subject-matter of directions under Section 15(1) of the Delhi Rent Control Act, 1958 and since the eviction petition had been instituted on 02.04.2011, the interim directions under Section 15(1) of the Act, which were adopted by the final order by ARC, for payment of arrears *w.e.f.* November, 2007 was bad in law.

After some hearing, the counsel for the respondent fairly conceded that the impugned orders of the ARC and the rent control tribunal suffer from error and infirmity in above aspect. Thus, the directions in terms of Section 15(1) of the Delhi Rent Control Act, 1958 are modified. It is held that the liability of the petitioner to pay arrears of rent and future rent during the pendency of the petition would be *w.e.f.* 01.04.2008 and not from November, 2007 as had been directed.

In the above facts and circumstances, it will be proper that the question as to whether order under Section 15(1) of the Delhi Rent Control Act, 1958, as modified above, has been duly complied with by the petitioner tenant or not so as to be entitled to the protection under Section 14(2) of the Delhi Rent Control Act, 1958 ought to be re-examined by the additional rent controller.

Ordered accordingly.

Thus, while setting aside the order of eviction passed by the ARC as upheld by the rent control tribunal in appeal and the order dismissing the appeal of the petitioner, the proceedings before the ARC are revived. The ARC shall examine the question with reference to Section 14(2) of the Delhi Rent Control Act, 1958 in light of the modifications as directed above.

The parties are directed to appear before the ARC on 17th May, 2018.

The petition and the applications filed therewith stand disposed of in above terms.

APRIL 25, 2018
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R.K.GAUBA, J.