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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM (M) 1076/2021 & CM No. 5820/2022

SH. VINEET GARG Petitioner

Through: Mr. Dhananjai Jain, Adv.

versus

SH. DHIRENDER SHARMA Respondent

Through: Mr. Vikrant Arora, Mr. Arpit
Sharma and Mr. Ujwal Ghai, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% 25.05.2022

1. The order, dated 2nd November, 2021, passed by the learned Senior Civil Judge/the learned Rent Controller (“the learned RC”) in RC ARC 29/16 (*Dhirender Sharma v. Vinit Garg*), from which the present proceeding emanates, adjudicates an application filed by the petitioner (who was the respondent in the proceedings before the learned RC) seeking permission to carry out repairs in the premises forming subject matter of the said proceedings.

2. RC ARC 29/16 is an eviction petition which was instituted by the respondent against the petitioner under Clause (e) of the proviso to Section 14(1) of the Delhi Rent Control Act, 1958 (the “DRC Act”), read with Section 25-B thereof. Leave to defend was granted on 25th July, 2017.

3. Thereafter, the petitioner, as the respondent before the learned



RC, moved an application under Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking permission to carry out repairs in the premises forming subject matter of the proceedings which, according to him, were in a dilapidated condition. The petitioner attributed blame on the respondent for having failed to keep the premises in good shape. The petitioner, in its application, sought grant of permission to carry out repairs in the aforesaid premises, along with certain other incidental interim reliefs which were not pressed before the learned RC.

4. Apropos the prayer for permission to carry out repairs in the premises, the learned RC observes that mandatory notice, as required by Section 44(2) of the DRC Act, had not been issued by the petitioner, before seeking the aforesaid relief

5. Apart from this, the learned RC has also observed that the photographs which were placed on record by the petitioner did not disclose that the premises required extensive repairs, as the petitioner had sought to contend.

6. Insofar as the photographs are concerned, the petitioner has also placed the said photographs on record in the present proceedings. Having gone through the photographs, I am constrained to observe that it is quite possible to take a view different from that which was taken by the learned RC, regarding the condition of the premises, as reflected in the photographs. Having said that, the learned RC ought not to have returned any finding regarding the condition of the



premises merely on the basis of photographs and was expected, at least, to depute a local commissioner to visit the premises before returning any such finding.

7. This Court is, however not expressing any opinion on the condition of the premises, as in my view, it is not necessary to do so to dispose of the present proceedings.

8. Section 44(1) and (2) of the DRC Act, read thus:

“44. Landlords duty to keep the premises in good repair.

(1) Every landlord shall be bound to keep the premises in good and tenantable repairs.

(2) If the landlord neglects or fails to make, within a reasonable time after notice in writing, any repairs which he is bound to make under sub-section (1) the tenant may make the same himself and deduct the expenses of such repairs from the rent or otherwise recover them from the landlord:

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.”

9. The scheme of Section 44(1) and (2) is clear and unequivocal. Section 44(1) requires every landlord to keep the premises in good condition. Section 44(2) deals with a situation in which the landlord fails to do so, and envisages issuance of a notice by the tenant to the landlord and, on the landlord failing to make repairs within a reasonable period, entitles the tenant to carry out the said repairs and deduct the expenses of the repairs from the rent payable to the



landlord, or otherwise to recover the expenses from the landlord.

10. As such, the DRC Act does not envisage a tenant *suo motu* carrying out repairs of the premises. What is required in case premises are found to be in need of repairs, is a notice from the tenant to the landlord under Section 44(2), with the right vested in the tenant, on the landlord failing to take steps within a reasonable period, to carry out the repairs in herself or himself and recover the costs thereof from the landlord in the manner envisaged by Section 44(2).

11. On Section 44(2) being brought to the notice of Mr. Jain, learned Counsel for the petitioner, his submission is that the provision applies only where the tenant seeks to recover the expenses of repair from the landlord. Inasmuch as his client was not seeking to recover any such expenses from the landlord, he submits that no action arose for his client to invoke Section 44(2).

12. It is a well settled principle, from the times of *Taylor v. Taylor*¹, *Nazir Ahmed v. King-Emperor*² and *State of U.P. v. Singhara Singh*³ that, if an Act is required by law to be done in a particular manner, it may be done in that manner alone or not done at all. The DRC Act is a self-contained legislation. It envisages a particular scheme of things, in a situation in which tenanted premises are in need of repair. That scheme of things is to be found in Section 44(2). If, therefore, a tenant finds the premises in his occupation to be in need of repair, the remedy

¹ (1875) 1 Ch. D 426

² 1936 SCC OnLine PC 3

³ AIR 1964 SC 358



with him would be to take recourse to Section 44(2).

13. This aspect has been noticed by the learned RC as well, in the impugned order dated 2nd November, 2021. Para 8 of the impugned order specifically grants liberty to the petitioner to carry out necessary repairs in the premises after following a protocol of Section 44(2) and after issuing notice to the respondent landlord.

14. That being so, I do not see how the impugned order calls for any interference by this Court, least of all exercise of the jurisdiction vested in it by Article 227 of the Constitution.

15. The petition is accordingly, dismissed, reiterating the liberty which already stands reserved in para 8 of the impugned order dated 2nd November, 2021.

C.HARI SHANKAR, J

MAY 25, 2022/kr