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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 02.08.2023

+ **CM(M) 99/2023 & CM APPL. 3344/2023**

KAMLESH KUMAR SINGH

..... Petitioner

Through: Mr. Bhanu Sanoriya and Mr. Manu Padalia, Advocates

versus

SAVITA YADAV

..... Respondent

Through: None.

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CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the judgment dated 30.09.2022 passed by the Rent Control Tribunal, North, Rohini Courts, Delhi ('RCT') in RCT Appeal No. 01/2022, titled as '*Sh. Kamlesh Kumar Singh v. Smt. Savita Yadav*', whereby the RCT dismissed the appeal filed by the Petitioner and upheld the eviction order dated 04.12.2021 passed by the Rent Controller, North District, Rohini Courts, Delhi ('Rent Controller') in eviction petition no. 28/2016.

2. Brief facts leading to filing of present petition are as under:

2.1 The Respondent herein filed an eviction petition under Section 14(1)(a) and (j) of the Delhi Rent Control Act, 1968, against the Petitioner claiming herself to be the landlady with respect to two rooms and one shop in House



No. 25, Gali No. 1, comprised in Khasra No. 15 (Min), Ambedkar Nagar Extn., Haider Pur, Delhi – 11008 ('tenanted premises').

2.2 The Petitioner herein filed his written statement to the eviction petition, *inter alia*, raising a preliminary objection that there doesn't exist a landlord and tenant relationship between the parties. The Petitioner stated that the Respondent has failed to file any rent agreement, rent receipts executed between them or any other document which can prove the tenancy of the Petitioner.

2.3 The Rent Controller after considering the matter *vide* order and judgment dated 04.12.2021 allowed the eviction petition filed by the Respondent herein and directed the petitioner herein to either deposit in Court or to pay to the Respondent, the arrears of rent with effect from March 2010 till date at the rate of Rs. 2,500/- per month along with statutory interest @15% per annum thereupon within one month from the date of order.

2.4 The Petitioner herein being aggrieved filed an appeal before the RCT assailing the order and judgment dated 04.12.2021, which as well was dismissed by the RCT upholding the decision passed by the Rent Controller.

3. The learned counsel for the Petitioner states that the Courts below fell in error in not appreciating that there is no relationship of landlord and tenant between the parties. He states that thus, the only remedy that was available to the Respondent was to file a civil suit for recovery of possession of the property bearing House No.25, Gali No. 1, comprised in Khasra no. 15 (Min), Ambedkar Nagar Extn., Haider Pur, Delhi-110088 ('subject property').

3.1 He states that there is no written rent agreement between the parties and during the course of evidence no rent receipt was also placed on record. In support of the said contention, he relies upon the testimony of the Petitioner,



who was cross-examined as RW-1 and Ms. Shimla Devi, wife of the Petitioner, who was examined as RW-2.

3.2 He states that the Rent Controller and the RCT have erred in concluding that there exists a relationship of landlord and tenant between the parties by relying upon a statement signed between the parties before the SHO, P.S. Shalimar Bagh, which has been marked as Ex-RW-1/P1. He states that the said statement only evidences existence of relationship of landlord and tenant, however, the said statement as well does not prove that the rent was below Rs. 3,500/- and therefore the Rent Controller does not have any jurisdiction to entertain the eviction petition under the provisions of the DRC Act.

3.3 To a query from this Court, he states that he is not aware and he has no instructions on the rate of the rent, which the Petitioner was paying to the Respondent. He states that as per the record no rent was being paid as relationship itself is disputed.

4. This Court has heard the learned counsel for the Petitioner and perused the record,

5. The eviction petition was filed by the Respondent, landlady, under Section 14 (1)(a) and (j) of the DRC Act.

6. The parties led evidence and the Rent Controller after perusing the evidence has returned a detailed finding with respect to the status of the Respondent as the landlady of the subject property. The relevant portion of the judgment dated 04.12.2021 reads as under:

27. *The ownership/landlord status of the petitioner has been denied by the respondent and he has claimed himself to be the owner of the premises in question. Petitioner has proved copy of Khatoni pertaining to year 1982-82 as Mark A wherein name of the father in law of the petitioner Sh. Munshi Ram has been mentioned as the person in occupation of land measuring 10 biswas in Khasra No. 15 min. at Village Haiderpur. On the other hand, respondent has put up a case that premises in question was occupied by his father Late Sh. Pati Ram, who was a freedom fighter. His father came into the possession of*



the premises in question in the form of Jhuggi No.1, Gali No.3, Ambedkar Nagar, Delhi way back in the year 1974. Respondent has failed to file any ownership document in support of his claim. Even if we go by the version of respondent that his late father occupied Jhuggi No.1 in 1974, then there has to be some documentary proof in the form of allotment by the then Slum Department, MCD which is now being taken over by DUSIB. If any person is occupant of jhuggi then an allotment/occupancy slip used to be issued by the then Slum Department, MCD to support the fact that any particular person is occupying the jhuggi. No such document has been filed by the respondent. Surprisingly, respondent has not filed any document from 1974 to 1998. If his father alongwith his family was occupying the premises in question then there ought to have been documentary proof in the form of Voter ID card, gas connection, phone connection, etc. No explanation is available with the respondent as to why no such document is available with him of the said period. Respondent has tried to show his possession over the premises in question on the basis of various documents in the form of MTNL Connection application, Delhi Jal Board fine receipt, goods purchased by him during the course of his business of General Store, Voter ID card, Ration Card, police complaints, MTNL bill, certificate of verification issued by Controller, Legal Metrology, notice issued by ACMM Court, etc. All these documents proved by the respondent are 1998 onwards and not prior to that. This fact is not in dispute that respondent is not in possession of the premises in question as claimed by him. In fact, this is the case of the Petitioner that one shop was rented out to the respondent somewhere in 1998 and subsequently, in the year 2001 two rooms were also rented out for residential purposes to the respondent. Therefore, the period of occupation of respondent of the premises in question since 1998 is not under dispute. In absence of any ownership documents of the premises in question, respondent has failed to support his stand that he is the owner of the property whereas petitioner has put up a better case by proving khatoni in the name of her father in law.

28. *Petitioner has stated that there were 14 rooms constructed in the property which were let out to different tenants alongwith the respondent. When respondent denied the relationship of tenant/landlord between the parties, petitioner has proved rent agreement of another tenant namely Aklu Mandal as Ex. PW1/8 and acknowledgment of another tenant namely Lal Baba as Ex. PW1/9. These documents have been proved by the petitioner to prove the fact that other tenants were also occupying the other rooms constructed in the entire property of 200 sq. yds. These documents have been proved by her by way of an additional affidavit and she has been cross examined by ld. Counsel for the respondent. Not even a single suggestion has been given on behalf of respondent that Ex. PW1/9 are false and fabricated documents. In this cross examination as RW1 respondent has denied the suggestion that Aklu Mandal and Lal Baba were tenants in the same premises of H. No. 25 Gali No.1 somewhere in the year 2007. If this is the version of the respondent then suggestions should have been put to petitioner in her cross examination that*



documents Ex. PW1/8 and Ex. PW1/9 are false and fabricated as Aklu Mandal and Lal Baba were never tenants of the petitioner. Non specific denial on behalf of respondent qua tenancy of Aklu Mandal and Lal Baba and authenticity of Ex. PW1/8 and Ex. PW1/9 reflects that they were tenants of the petitioner as stated by her and this fact supports her theory that 14 rooms were existing in the entire property. Law is settled that in civil litigations a party need not to prove a fact beyond reasonable doubt but existence of any fact has to be considered on the scale of preponderance of probability. It is highly probable that Algu Mandal and Lal Baba were tenants of the petitioner as claimed by her.

29. *On 25.02.2005 a complaint was filed by the petitioner against the respondent which is Ex. RW1/P1 wherein she has stated that premises in question bearing No. 25/15, Gali No.1 Haiderpur was given on rent to the respondent. A dispute arose between the parties on account of payment of rent but respondent undertook to vacate the property in April or May and on this assurance she did not pursue her complaint with the police against the respondent. This statement of the petitioner has also been signed by the respondent wherein he wrote that Savita Yadav had called on number 100 but now the matter has been settled. Respondent has tried to put up a case that this complaint was filed by the petitioner on account of an water dispute, however, there is no mention of any dispute in Ex. RW1/P1. No other documentary proof has been filed by the respondent to support his theory of water dispute qua complaint dated 25.02.2005. Respondent has admitted his signature on Ex. RW1/P1 in cross examination. The police proceedings have also been admitted by RW2 Smt. Shimla Devi, who happens to be the wife of the respondent. She has failed to identify the signature of the respondent on this document but has admitted that the matter was compromised between the parties in the police station. The contents of this document Ex. RW1/P1 also makes the case of the petitioner more probable that respondent is the tenant of the petitioner and she is the landlord. Therefore, this court is of the considered view that petitioner has successfully proved her status as landlord of the tenant/respondent.*

(Emphasis Supplied)

7. The Trial Court in order to conclude that the Respondent is the landlady, duly considered rent agreement dated 29.08.2007 (Exhibit PW-1/8) and written undertaking (Exhibit PW-1/9) which were executed by other tenants occupying separate portion in the subject property, who admitted the Respondent to be the landlady *qua* the portions of subject property.

8. The Trial Court has also considered the Khatoni of Khasra no. 15 Min of village Haiderpur, Delhi, for the year 1982-83 which duly recorded the



name of the father-in-law of the Respondent as the person in possession.

9. The Rent Controller has also duly considered the compromise statement executed between the parties (Exhibit RW1/P1) on 25.02.2005 the contents whereof duly evidence the relationship of landlord and tenant between the parties. The said document reads as under:

“It is requested that I, Savita Yadav, W/o Rajendra Kumar is resident of H.No 228 Haider Pur, Ambedkar Nagar, Delhi. I have given my H. No. - 25/15, G-02 Haider Pur, Ambedkar Nagar, Delhi to Kamlesh Kumar S/o Patiram on rent. With whom today on 25-2-05, we had an oral argument on rent, but now, Kamlesh Kumar will vacate the said premises, in the beginning of April or May. Satisfied with the above, I do not want any police action regarding it.”

(Emphasis Supplied)

The execution of the said compromise statement by the Appellants has been duly proved during the evidence.

10. The Trial Court therefore after considering the evidence of the parties came to the finding of the existence of relationship of the landlady and tenant. The Appellate Court as well after perusing the evidence on record upheld the findings of the Rent Controller and concluded that relationship of landlady and tenant exists between the parties. The relevant finding of the RCT in the impugned judgment dated 30.09.2022 reads as under:

11. The claim of the appellant that the property in question was in occupation of his father since the year 1974 and after the death of his father, he has become the owner of the said property. However, no document worth name could be produced by the appellant from 1974 to 1998 which may even indicate that any such property was in occupation of the father of the appellant or the appellant. There is an admission on behalf of the appellant that the said jhuggi is on the government land, which indicates that it was illegally occupied by the father of the appellant and thereafter the appellant. If it was so and in any case in such circumstances, it is highly unlikely that there would be any document of ownership nevertheless the possession can always be shown. This becomes all the more relevant since the respondent herein claims that the appellant became the tenant in the year 1998, which has been a specific claim of the respondent. It has been the stand of the respondent that the appellant was, prior to having been inducted as a tenant in respect of the shop by the husband of the respondent,



was a tenant of another person in the same village Haiderpur and the address i.e., House No.1, Gali No.3, was that of the said landlord Sh. Surender Yadav. The appellant, it is asserted, is misusing the said address in order to put forth the false claim. In respect of this aspect, the respondent herein has examined Sh. Vikram Yadav i.e. the son of Sh. Surender Yadav as PW2, who categorically stated that the respondent i.e. the appellant herein, was a tenant in House No. 1, Gali No.3, Ambedkar Nagar, Haiderpur, Delhi and had obtained election identity card, ration card etc. at the said address. Whereas the electricity connection of the said tenanted property was in the name of PW2 as can be seen through the document Ex. PW1/15. As against the evidence led by the respondent, the appellant herein has not brought in anything to uproot the said facts.

12. There is another issue with regard to the address of the tenanted premises. The appellant has claimed that Jhuggi No./House No.1, Gali No.3, Ambedkar Nagar, Delhi, is in possession of the appellant since the year 1974 though his father and now it is in his possession. The claim of the respondent herein whereas is that the appellant is a tenant in respect of her property which has a different number i.e. House No.25, Gali No.1, Ambedkar Nagar, Delhi. This aspect has also been dealt with by the trial court in the impugned Judgment. In this context, the site plan, which was got prepared and filed on behalf of the respondent before the trial court, the respondent herein has examined the draftsman as PW6 who has held his ground in the cross examination. The appellant, while examined as RW1 has admitted about certain aspects of the site plan Ex. PW1/1 that he is in possession as owner in respect of two rooms points X1 to X4 and points Y1 to 4, which is in respect of the shop. The appellant has voluntarily claimed himself to the owner in respect of latrine, bathroom and kitchen. The site plan substantiates the claim of the respondent herein and her claim that she tried to get bathroom etc. constructed, which was obstructed by the appellant. It reflects that the respondent has come up with a truthful claim inasmuch as the site plan reflects the damaged WC and bathroom, thus, the case of the respondent appears to be more credible and believable.”

11. Both the Courts below have returned a concurrent finding of fact with respect to existence of relationship of landlady and tenant between the parties and the Respondent herein has failed to point out any error in the said finding.

12. The contention of the Respondent that the Rent Controller has no jurisdiction under DRC Act, is a bogus plea. The Respondent has specifically contended that the rent of the premises was fixed at Rs. 2,500/- per month. The Petitioner herein on the other hand, has not led any evidence to show that the rent was beyond Rs. 3,500/-. The Trial Court, in fact, has also returned a

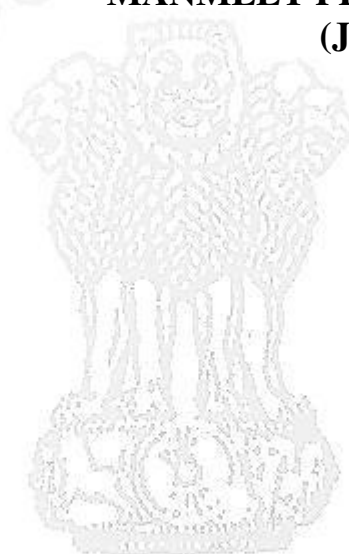


finding that the Petitioner herein is in arrears of rent from February, 2004 to till date and held that the Petitioner is liable to pay arrears with effect from March, 2010 till date @ Rs. 2500/- per month along with statutory interest of 15%. Therefore, the said plea of lack of jurisdiction is also without any merit.

13. Accordingly, the present petition is dismissed. Pending applications, if any, are also disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 2, 2023/rk/aa



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