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

% Judgment delivered on: 16.03.2023

+ CM(M) 250/2023 & CM APPL. 7648/2023

SEEMA RAO AND ANR Petitioners

versus

MRS. REKHA MAINI AND ORS Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sachin Jain and Mr. Ajay Kumar
Agarwal, Advocates.

For the Respondent : Mr. Gaurav Seth, Mr. Navjot Kwatra
and Mr. Vipin Malik, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the impugned judgment and order dated 20.10.2022 passed in RCT No. 01/20 titled as “*Rekha Maini & Ors. vs. Ms. Seema Rao etc.*”, whereby the appeal under Section 38 of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) has been allowed overturning the judgment rendered by the learned ARC *vide* the impugned order 24.02.2020 dismissing the eviction petition under Section 14 (1) (a) of the DRC Act, 1958 filed by the respondent.
2. The facts noted by the learned Trial Court *vide* order dated 24.02.2020 are extracted hereinbelow:-

2.1 It is averred in the petition that the husband of the respondent no. 1 Late Sh. Ramesh Kumar Maini in the year 2001 had let out the premises in question to the petitioners. Sh. Ramesh Kumar Maini left for his heavenly abode on 22.03.2007 leaving behind his legal heirs i.e. respondent no. 1 to 4. Respondent no. 5 and Sh. Ramesh Kumar Maini being real brothers had jointly purchased the premises in question in the year 2000.

2.2. It is further averred that after the death of Sh. Ramesh Kumar Maini, respondents were not having the document i.e. rent agreement executed in regard to the premises in question and as the rentals were being paid by the petitioner no. 2 to Ramesh Kumar Maini during his lifetime, the respondent no. 5 served a legal notice dated 31.03.2018 upon petitioner no. 2 terminating his tenancy on the ground that the petitioner no. 2 was a defaulter in making payment of rent and was under the arrears of rent w.e.f April, 2005 at the monthly rent of Rs. 3400/- per month. An eviction petition bearing no. E-258/2008 was filed U/s 14 (1) (a) of DRC Act against the petitioner no. 2, wherein the petitioner no. 2 in his written statement alleged that the tenancy in respect of premises in question was created in favour of his wife i.e. petitioner no. 1 herein. The petitioner no. 2 also alleged that Sh. Ramesh Kumar Maini as the landlord/owner of the property and further alleged that the monthly rentals of the premises in question as Rs. 2200/- per month. The said eviction petition was disposed of as withdrawn with liberty to file fresh petition vide order dated 31.10.2011 of the Ld. Court.

2.3. It is further averred by the respondent that respondent no. 1 to 4 being the legal heirs of Late Sh. Ramesh Kumar Maini and respondent no. 5 served a legal notice dated 02.01.2011 upon the petitioners, vide registered post and speed post, terminating their tenancy as the petitioners being habitual defaulters had not cleared the arrears of rent of the premises in question w.e.f. 01.04.2005 at the contractual rate of Rs. 3400/- per month.

2.4. It is also averred that the respondents have also filed another eviction petition U/s 14 (1) (e) of DRC Act against the petitioners, which is pending before the Ld. ARC, Karkardooma Courts. It is further averred that till date, despite the service of the legal notice, the petitioners have not paid the arrears of rent.

2.5. It is also averred that the rent agreement, which was not traceable at the time of filing of eviction petition bearing no. E-181/2011 filed U/s 14 (1) (e) DRC Act, came across the respondent no. 1 at the time whitewash was going on just prior to Deepawali in the month of October, 2013. It is further averred that the said document clearly reflects that the rate of rent was settled at Rs. 3300/- per month in the year 2011. Hence, the present petition has been filed seeking eviction of the petitioner on the ground of non-payment of rent.

2.6. Petitioners filed a reply wherein they disputed the relationship of landlord and tenant. It was submitted that the suit

premises was let out by Sh. Ramesh Kumar Maini (husband of the respondent) to the petitioners in the year 2001 at a monthly rate of Rs. 1800/- which was increased from time to time and the present agreed rent was Rs. 2800/- per month. It was further averred that petitioner has paid the rent to the respondents upto date.

3. The controversy in the present can be crystallized in two pertinent issues, one being whether the petitioner is a tenant of the respondent, and two whether the petitioner was in arrears of rent entitling the respondent to an eviction decree under Section 14 (1) (a) of the Act.

4. Learned counsel appearing for the petitioner strenuously argued and took this Court to the original order passed by the learned Trial Court and particularly to page 57 and to para 12 to submit that the Rent Agreement which is stated to have been executed between the respondent and the petitioner was in fact held out in the name of Late Sh. Ramesh Kumar Maini, the husband of the petitioner and no signatures of either Late Ramesh Kumar Maini or the petitioner was appended to the said written agreement.

5. Learned counsel also further submitted that the said Rent Agreement was, admittedly, not produced in original before the learned Trial Court, whereupon the learned Trial Court concluded that in the absence of a document, exhibited and proved in accordance with law, the recitals therein cannot be considered as evidence.

6. Learned counsel submits that in the absence of such document, the edifice of the submission, that there exists landlord-tenant relationship gets demolished.

7. Learned counsel submits that the learned Trial Court had

categorically observed in its order that the signature of the respondent as Rekha appears thereon, whereas the name contained as one of the parties to such document, is Late Ramesh Kumar Maini. Having regard to that, learned counsel submits that the said document was rightly construed to be unreliable and the learned Trial Court had rightly discarded the same. He thus, submits that if the very substratum of the case of the respondent is eschewed from consideration, the question of existence of landlord-tenant relation does not arise.

8. The other limb of the argument of the learned counsel is on the issue of rate of rent, which was vehemently disputed. On that, learned counsel brought the attention of this Court to para 17 of the Trial Court order to submit that the learned Trial Court had very categorically, while scrutinizing the documents as also the evidence filed on record, had come to the conclusion that there is contradiction insofar as the rate of rent is concerned. In that, while in the agreement Mark 7, dated 24.06.2021, the aggrieved rate of rent has purportedly been mentioned as Rs. 3,300/- per month, however, in the legal notice, Ex. PW-1/2, the same was mentioned as Rs. 3,400/- per month.

9. It was further noticed that in the eviction petition, the rent has again been mentioned at Rs. 3,400/-, however, in the affidavit of evidence of the respondent, Ex. PW-1/A, the same has been mentioned as Rs. 3,300/-. Thus, on that said basis, the learned Trial Court had come to the conclusion that the rate of rent stands not only disputed but also contradicted by the respondent herself.

10. Learned counsel next vehemently and strenuously argued the issue of interest forming part of the arrears of rent and submitted thereon

that unless there was a demand of interest, which accrued on the delayed payment of rent, the non-payment of such interest along with the arrears of rent, would not, automatically be considered as violation of the orders under Section 15 (1) of the Act, entitling the respondent for a decree of eviction under Section 14 (1) (a) of the Act.

11. Learned counsel relied upon the judgment of the Co-ordinate Bench of this Court in *Mohd. Saied vs. Model Press (P) Ltd.* reported in ILR (2010) 111 Delhi 433, rendered on 17.02.2010, to submit that this Court had held that unless there is a specific demand by way of either a notice or an averment in the pleadings, it cannot be construed that the non-payment of interest along with the arrears of rent as directed, under the orders passed under Section 15 (1) of the Act, will automatically entitle the landlord to a decree under Section 14 (1) (a) of the Act.

12. In other words, the reasoning in the said judgment of *Mohd. Saied (supra)*, would be, that the interest component of the arrears of rent ought to be demanded separately, if not done so, would not be violation of Section 15 (1) of the Act.

13. Learned counsel further drew the attention of this Court to the grounds of the appeal, as raised by the respondent before the Rent Control Tribunal to submit that there was not even a single ground on the aspect of interest forming part of the arrears of rent to be considered to be a violation for non-payment of the same.

14. Learned counsel submits that there is not a whisper either in the grounds of appeal or even in the eviction petition regarding the non-payment of interest along with the arrears of rent.

15. Learned counsel further referred to the manner in which the

learned RCT dealt with the onus of proof in respect of exhibit Mark 7 Rent Agreement is concerned.

16. Learned counsel submits that in ordinary parlance, the assertions made by a party producing a document ought to be on the party which produces that document and not the one which disputes the admissibility of the same, unless an original is produced.

17. Learned counsel further submits that since, admittedly, the original was never produced before either the learned Trial Court, or even before the learned RCT, the onus of proving or disproving the Rent Agreement, could not have been shifted upon the petitioner under Section 106 of the Evidence Act, 1872.

18. Learned counsel submits that having regard to the fact that the learned RCT placed the burden upon the petitioner and not the respondent, it thus, committed material irregularity in law and produce.

19. Learned counsel further submitted that the learned RCT on its own concluded that the LR's of the landlord have automatically stepped into the shoes of the original landlord and ought to be now considered as landlord for maintaining the petition under Section 14 (1) (a) of the DRC Act.

20. Learned counsel also stresses on the grounds raised in the eviction petition, whereby it was categorically admitted by the respondent that the said Rent Agreement, now marked as exhibit Mark 7, was untraceable, at the time when the petition under Section 14 (1) (e) of the Act was filed by the respondent. On that basis, learned counsel submits that the said document appears to be an absolute forgery and a sham document and ought not to have been relied upon by the learned RCT.

21. Learned counsel further referred to Section 14 (2) of the Act and submitted that the mere fact that the arrears of rent as directed to be paid under Section 15 (1) of the Act, not having the component of interest accrued thereon should not be read against the petitioner/ tenant for the reason that the payment of arrears of rent was made, as directed vide the orders of the ARC, and no opposition or objection in respect of non-inclusion of arrears was made at all by the respondent or its counsel and referred to the order dated 08.08.2017 passed by the learned Trial Court.

22. On the basis of above submissions, learned counsel submits that the impugned order of the learned RCT ought to be quashed and set aside and that of the learned Trial Court be upheld and sustained.

23. Learned counsel also submits that the question of arrears of rent was not decided even by the learned ARC and, therefore, to pass a decree of eviction under Section 14 (1) (a) of the Act is absolutely unsustainable in law.

24. Since the issue of arrears of rent under Section 14 (1) (a) was not decided by the learned ARC and was left open, it was incumbent upon the learned RCT to have examined this and remanded the matter back to the learned ARC for a decision on the same. Having not done so, it infracts the law and is unsustainable.

25. *Per contra*, Mr. Gaurav Seth, learned counsel for the respondent/ landlord submits that so far as the submission concerning exhibit Mark 7 is concerned, learned counsel submits that the same can be considered as a document only for the collateral purposes of showing rent of Rs. 3,300/- per month.

26. Learned counsel further submitted that the submission of the

petitioner that the respondent is not a landlord and that the respondent has miserably failed to prove the landlord-tenant relationship is unfounded.

27. Learned counsel submits that the learned RCT in paras 21 to 24 of the impugned judgment discussed the aspect and concluded that as per the cross examination, it has been brought out that the petitioner had admitted that the respondent is the wife of Late Sh. Ramesh Kumar Maini as also the fact that one Mr. Ashok Kumar Maini used to collect the rent in respect of the suit property. Particularly, learned counsel submits that the learned RCT, after examining the cross examination of the parties, had concluded that on the basis of the evidence as brought on record, there was no dispute that the respondent would step into the shoes of Late Sh. Ramesh Kumar Maini and would be now substituted as a landlord.

28. That apart, learned counsel also submitted that the order under Section 15 (1) of the Act, passed by learned ARC, was never challenged by the petitioner till date and has been acted upon, though not in accordance with law, but nevertheless, has been acted upon and arrears of rent have been deposited by the petitioner.

29. On the submission of the petitioner that no demand for interest as a part of arrears of rent have ever been raised by the respondent, Mr. Seth, learned counsel appearing for the respondent, draws attention of this Court to the legal notice dated 02.11.2011 issued by the respondent, which has not been disputed, and which bears the demand for arrears of rent along with interest @ 15%. On that basis, learned counsel submits that not only the arrears of rent were demanded but also the interest

accrued thereon, was also demanded.

30. Learned counsel submits that vide the order dated 08.03.2017, the learned ARC had categorically directed the petitioner to pay the rent before 15th day of the month in which the rent would accrue to the respondent/landlord. However, a sum of Rs. 88,000/- as arrears for several months, was deposited with the Court and not with the respondent, violating the sanctity of the order itself.

31. Learned counsel further submits that even in the subsequent years too, rent was not paid prior to 15th day of such month and as such, the violation of Section 15(1) of the Act continued during the pendency of the trial. To buttress his arguments, learned counsel submits that neither before the learned RCT nor even before this Court, any rent challan has been filed in support of the contention that there has been no arrears of rent at all.

32. This Court has considered the contentions of the rival parties as well as considered the documents which are placed on record as also the impugned judgment.

33. So far as the issue of the Rent Agreement is concerned, this Court has considered the fact that no original document of exhibit Mark 7 was ever produced before the learned Trial Court or even before the learned RCT.

34. The law of evidence on photocopies is too well-settled in that, no reliance can be placed on such photocopies which have no evidentiary value, and thus cannot be considered by the Court at all. So far as the finding rendered by the learned ARC on this issue, the same is upheld by this Court on that score alone.

35. However, having said that, the fact that the petitioner was subjected to cross examination, where the petitioner has categorically admitted that the respondent is the wife of Late Sh. Ramesh Kumar Maini the admitted original landlord, as also the fact that one Sh. Ashok Kumar Maini (Relative of respondent) was the one who used to collect rent from the petitioner in respect of the suit property is concerned, those remain unrebutted.

36. It is also observed that the learned RCT, had categorically reached a finding that the petitioners have nowhere challenged the status or the relationship of the respondent with Late Sh. Ramesh Kumar Maini and had concluded on that basis, along with other evidences, that the respondent had stepped into the shoes of late husband and would be entitled to claim herself to be the landlord of the subject suit premises.

37. Considering, the aforesaid observation of the learned RCT on facts, that there is no challenge to the status of respondent *qua* Sh. Ramesh Kumar Maini is concerned, it can be construed safely that the respondent would be entitled to maintain the petition under Section 14 (1) (a) of the Delhi Rent Control Act, 1958, as the landlord.

38. The second aspect which has to be dealt with by this Court, is the one based on the judgment relied upon by the learned counsel for the petitioner in *Mohd. Saied (supra)*.

39. It is clear from the reading of the facts as obtaining in that case, the demand for arrears of rent were never made by the petitioner in that particular case, as against the tenant and, as such, the ratio laid down therein, would not be applicable to the facts of the present case. The reason being that the respondent had indeed issued a legal notice dated

02.11.2011, whereby not only the arrears of rent but also the interest @ 15% which the respondent is statutorily entitled to, was demanded from the petitioner.

40. Admittedly, the payment was never made on time even after the said demand was raised, *vide* the aforesaid legal notice. The issue of whether interest accruing on the arrears of rent, would form part of the arrears of rent, is no more *res integra* and has been settled by this Court in the judgment of **Raghubir Singh vs. Sheela Wanti & Anr.**, reported in 2009 SCC OnLine Del 388. Para 12 of the judgment is extracted hereunder :-

12. This amendment was inserted by the legislature in 1988. The amendment makes it abundantly clear that the rent is to be paid month by month and where any default occurs for payment of rent, the tenant has to pay simple interest @ 15% per annum from the date of which such payment of rent became due till the date when it is paid. Thus, the legislature made it clear that in case the rent is not tendered month by month by the tenant, the tenant incurs additional legal liability of paying interest @ 15% on the amount due for the delayed period. This additional liability has become part of the rent. A landlord can recover from the tenant only legally recoverable arrears rent and the landlord has no liberty to recover beyond what has already been agreed upon between the parties or the market rent. Where the rent is not paid by month to month, the interest over the rent, as levied by the statute, becomes part of the legally recoverable rent and it cannot be said that unless there is an amendment in Section 14(1)(a) or Section 15, the provisions of Section 26 would not apply. The rent due would mean that the rent due as per law and where the law specifically provides that if rent is not paid for the month when it is due, it has to be paid with interest of 15% per annum, then the rent due would include the rent plus the interest over it. The tenant in this case had been tendering rent with a gap of six month or nine month or so and had not been tendering rent month by month. The tenant had to tender rent along with accrued interest of 15% per annum to the landlord in view of the statutory provisions of DRC Act. In the case in hand, the landlord had specifically demanded interest of 15% over the delayed rent from the tenant vide notice of demand and once this notice is made, non tendering of rent with interest, tantamount to non fulfillment of obligation under Section 14(1)(a) of DRC Act. I consider that the tender made by the tenant

was not in accordance with law and was not a valid tender.”

Thus, this Court is of the considered opinion that the ratio laid down in *Raghibir (Supra)* is squarely applicable to the facts of the present case.

41. This Court has also observed that there is no serious opposition or rather there is no opposition at all to the fact that in the years, subsequent to the order dated 08.03.2017, rent was never paid on time and interest was never made inclusive of the said payment in any case.

42. Having regard thereto, it is clear that the violation of Section 15 (1) (a) of the Act is clear and the protection to the tenant/ petitioner under Section 14 (2) of the Act would obviously not accrue.

43. In view of the aforesaid, this Court is of the considered opinion that the impugned judgment of the learned RCT is sustainable in law and the eviction, as directed therein, is upheld.

44. For the foregoing reasons, the petition is devoid of any merits and dismissed as such with no order as to costs. The pending application also stands disposed of.

TUSHAR RAO GEDELA, J.

MARCH 16, 2023/nd