2024:DHC:5189

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

% ***Judgment reserved on:10.04.2024***
Judgment pronounced on: 15.07.2024

\+ CM(M) 1845/2024, CM APPL. 8064/2024 (stay), Fresh CM APPL. 21436/2024—filed by petitioner for addl. Doc.

M/S CRI LIMITED ..... Petitioner
Through: Mr. Dipak Kumar Jena and Mr. R. K. Poswal, Advs.

versus

PRAN NATH MEHTA & ORS. ..... Respondents
Through: Mr. Amit Sibal, Sr. Adv. with Mr. Anirudh Bakhru, Mr. Vidit Garg and Ms. Vijay Laxmi Rathi, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

JUDGMENT

1. The present petition under Article 227 of the Constitution of India has been preferred impugning the order dated 22.11.2023 passed by the Learned District Judge (Commercial – 11), Central, Tis Hazari Courts, Delhi ("Trial Court") in CS(COMM) No. 3996/2021 titled as "*Pran Nath Mehta & Ors. vs M/s CRI Limited*" whereby the application moved on behalf of the petitioner herein under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure ("CPC") was dismissed. The petitioner herein is the defendant and respondents are the plaintiffs before the Learned Trial Court in the captioned suit.

2. The factual framework of the case unveils with the owner Smt. Raj Rani (deceased), who was predecessor in interest of the respondents, letting

out the first and second floor of the suit property i.e. 2E/26, Swami Ram Tirath Nagar, Jhandewalan, New Delhi 110055 ("*Tenanted Premises*"), to the petitioner/tenant M/s NCR Limited (later as M/s CRI Limited/petitioner herein) in the year 1971.

3. Deceased Smt. Raj Rani, the landlady alleged to have sent a legal notice dated 26.03.1994 to the petitioner seeking an increment of rent at 15% and the petitioner sent a reply to the aforesaid notice protesting the same. Therefore in 1997, the landlady filed an eviction petition bearing no. RC ARC 78084/2016 titled as *"Smt. Raj Rani Mehta vs CRI Ltd. & Ors."* under Section 14(1)(a)(b) and (j) of the Delhi Rent Control Act, 1958 ("DRC") against the petitioner/tenant and impleaded 5 others as respondents. The said petition was stated to be pending adjudication before the Court of Learned Additional Rent Controller-01, Central, Delhi (in short "ARC") learned ARC as on the date of filing of the present petition before this court.

4. Thereafter, the Petitioner filed an application bearing no. M. No. 33/02 under Section 26(3) of DRC Act which was disposed of on 18.10.2005 and on the undertaking by the parties, the petitioner was directed to pay the rent at Rs. 2,875/- per month for the tenanted premises.

5. The respondents on 20.05.2015 filed an application under Section 15(1) of DRC Act before the Learned ARC, Delhi for recovery of difference of arrears of rent from 1994 and further sought the fixation of rent at Rs. 3,478.70 /- per month. The said application was allowed vide order dated 16.07.2019 by the learned ARC, Delhi and the petitioner was directed to pay

the difference of arrears of rent from 01.05.1994 and the petitioner challenged the said order vide RCT Petition No. 131 of 2019.

6. Thereafter, the respondents filed the present suit bearing no. CS(COMM) No. 3996/2021 against the petitioner seeking possession, recovery of arrears of rent, interest, mesne profit, damages and for permanent and mandatory injunction on 30.09.2021. To contest the suit, the petitioner filed the written statement on 23.02.2022 and also an application under Order VII Rule 11 read with Section 151 of CPC for rejection of plaint on 24.02.2022 contending that the suit filed by the respondents is not maintainable and is barred by sections 6, 11 and 12(c) and 12A of the Commercial Courts Act and Section 50 of the DRC Act.

7. Respondents filed a reply to the aforesaid application. Vide the impugned order, the said application was dismissed by the learned trial court. Hence, the present petition before this Court.

SUBMISSIONS OF THE PARTIES

8. Mr. Dipak Kumar Jena, learned counsel for the petitioner primarily laid emphasis on the arguments that the learned trial court failed to appreciate that the suit was barred by virtue of Section 50 of DRC Act as the rent of the suit premises is below Rs. 3,500 per month i.e. 3478.75 and it is fixed by the learned ARC-01 vide order dated 16.07.2019, the petitioner is regularly tendering rent to Respondents under Section 27 of the DRC before the learned ARC. The order dated 16.07.2019 was challenged before Rent Control Tribunal (in short "RCT") vide RCT no. 131/2019 and while allowing the application under Section 15(1) of DRC Act, the same was set aside by the Learned Principal District and Sessions Judge vide order dated

11.04.2023 and also dismissed the RCT No. 133/2019 filed by the respondents which is reflected in the order dated 11.05.2013 of the learned Trial Court. Reliance is placed on ***Sarwan Kumar & Anr. Vs. Madan Lal Aggarwal*** (2003) 4 SCC 147.

9. It was submitted that the petitioner has admitted in paragraph 4 of the suit that the tenancy was terminated by the alleged notice dated 14.12.1995 and thereafter the eviction suit was filed by the respondents, which is currently pending adjudication before the learned ARC and thus the commercial suit for possession is barred by law.

10. Learned counsel also submitted that the suit is barred by Section 10 of CPC as the respondents have claimed the same and similar relief in Eviction Petition bearing no. RC ARC No. 78084/2016 which is pending adjudication before the Court of learned ARC, Delhi. Further, the suit is also barred by Sections 6, 11, 12A & 12(1)(c) of the Commercial Courts Act, 2015 and contravenes the mandatory provisions of the Act.

11. Learned counsel placed reliance on ***Santosh Vaid & Anr. Vs Uttam Chand*** in CM(M) 48/2011 to contend that if the eviction is prohibited, the possession cannot be said to be unauthorized and the question of mesne profits thus do not arise.

12. Further reliance was also placed on the following judgements:

- ***Atma Ram Properties (P) Ltd. vs M/s Escorts Ltd.*** (2012) 188 DLT 126.
- ***Raj Rani vs Subodh Kumar*** CRP No. 4 of 2013 & C.M. No. 671 of 2013.
- ***Thakur Rangji Maharaj Trust vs A.J. Printers*** in CS(OS) 2813/2011.
- ***Tilak Raj Narula vs M.L. Sethi*** CS(OS) 838/2006.

13. Per Contra, Mr. Amit Sibbal, learned Senior Counsel appearing on behalf of the respondents contended that at the outset, the provisions of DRC Act will no longer be applicable to the suit premises as per Section 3(c) of the DRC Act which states that the Act shall not apply to premises where the monthly rent is more than Rs. 3500/-.

14. It was submitted that the monthly rent was increased vide notices dated 26.03.1994 & 16.02.2015 as well as 28.03.2018, at each instance of increase in rent was after time period of atleast three year, vide the aforesaid notices which were issued under Section 6A of the DRC Act conveying the intention for an increment in the rent at the rate of 10%. By virtue of the notice dated 28.03.2018, the rent stood increased to Rs. 3826/-.

15. Learned Senior Counsel submitted that Section 6A of the DRC Act provides that the rent may be increased by 10% every 3 years and therefore the tenant became liable to pay the increased rent at 10% at each instance of enhancement of rent. Furthermore, the increment of rent was lawfully effected by giving notice of intention to increase rent by virtue of Section 8 of DRC Act. Since, after 28.03.2018, the rent was increased to Rs. 3826/-.

16. It was contended that in addition to the averments in the plaint, the petitioner has admitted the receipt of the notices mentioned above whereby the petitioner was communicated the respondents' intention to increase rent by 10% at each instance. Thus, it is also a settled position that once receipt of the said notice giving intention to increase rent in terms of Section 8 of DRC Act is admitted, then the rent stands increased after the expiry of 30 days from the date of the respective notice, provided that parameters like quantum of rent or the date from which the increase is to take effect are in

accordance with Section 6A and 8 of DRC Act. Reliance was placed on ***Deepak Nijhawan & Anr. v RN Abrol*** 2015 SCC OnLine Del 14321, ***Nopany Investments (Pvt.) Ltd. vs Santokh Singh (HUF)*** 2008 2 SCC 728, ***West Coast Paper Mills Ltd. vs Asha Kapoor*** MANU/DE/8153/2007, ***Rohini Varshnei vs RB Singh*** MANU/DE/1708/2008 & ***JS Dhillon vs Continental Profiles Ltd.*** MANU/DE/0438/2003.

17. Learned Senior Counsel placed emphasis on the settled law that while deciding an application under Order VII Rule 11 of the CPC, the averments in the plaint are to be taken as correct. Placing reliance on ***Soumitra Kumar Sen vs Shyamal Kumar Sen & Ors*** MANU/SC/0171/2018. It was submitted that a bare perusal of the plaint evidently show that the DRC Act is not applicable to the suit by virtue of Section 3(c) of DRC Act and is not barred by the Section 50 of DRC Act, which bars the jurisdiction of the civil courts. Moreover, the stand of the petitioner is misplaced as Section 12A of Commercial Courts Act is not applicable in case of urgent relief sought by the respondents as per the provisions of Commercial Courts Act.

18. Concluding the submissions, the learned Senior Counsel submitted that the suit has been properly valued and requisite Court fees was paid on the basis of annual rent of the suit property, placing reliance on the judgment of this Court in ***Mrs. Soni Dave vs. M/s Trans Asian Industries*** AIR 2016 Delhi 186.

ANALYSIS AND CONCLUSION

19. This Court has gone through the record with references thereto and considered the respective submissions of the counsel for the parties.

20. The provision under Order VII Rule 11 CPC has been dealt with in

extenso by the Hon'ble Supreme Court, in the case of ***Madanuri Sri Rama Chandra Murthy vs. Syed Jalal*** (2017) 13 SCC 174 has held as under –

> *"The plaint can be rejected under Order 7 Rule 11 CPC if conditions enumerated in the said provision are fulfilled. The power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. The question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."*

21. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decision on the exercise of powers under Order VII Rule 11 CPC to the facts of this case, it is noticed from the pleadings in the plaint read with documents placed by the respondent on record that on 01.12.1989, the monthly rent of the suit premises was Rs. 2,875/-, vide notice dated 26.03.1994 effective from 01.05.1994 with increase in rent at @ 10% the monthly rent came to be Rs. 3,162.50/-, the receipt of the notice dated 26.03.1994 is not denied rather the notice is responded to by the petitioner.

22. Vide notice dated 16.02.2015 effective from 01.04.2015, the rent was

further increased @ 10% and the monthly rent was Rs. 3,478.70/-. Then vide notice dated 28.03.2018 effective from 01.05.2018, the rent was increased @ 10% and monthly rent is stated to be Rs. 3,826.62/-. The receipt of this notice is also admitted by the petitioner and the said notice was responded by the petitioner. Going by the averments made in the plaint, it is observed that relying upon Section 6A of DRC Act, which permits the rent agreed upon between the landlord & Tenant to be increased by @ 10% every three years. Further, Section 8 of the DRC Act also prescribes the lawful increase in rent shall be due and recoverable after the expiry of 30 days from the date on which the notice is given.

23. Since at the stage of consideration of application under Order VII Rule 11 CPC, the defence of the petitioner cannot be considered and from meaningful reading of the plaint, it cannot be said that suit is barred by Section 50 of DRC Act. It is settled law that at the stage of consideration of application under Order VII Rule 11 CPC, the Court is not to hold a mini trial.

24. In addition to above, it is also contended by the petitioner that the suit is not properly valued and further suit is also barred by Section 12 (1)(c) of Commercial Courts Act, 2015 and that the respondents have not followed the mandate of Section 12 A of Commercial Courts Act. The learned Trial Court has rightly observed that the respondents have correctly valued the suit on the basis of annual rent of the suit property for the purpose of suit valuation and Court fees. With respect to mandate of Section 12 A of Commercial Courts Act, the respondents have stated that they had sought urgent ad-interim relief by filing applications under Order XV-A CPC,

Order XXVI Rule 9 CPC and Order XXXIX Rule 1 & 2 read with Section 151 CPC.

25. Further, there is no infirmity in the observations of the learned Trial Court that material issue of law and fact in an Eviction proceeding under DRC Act and suit for possession under the Transfer of Property Act are on different parameter and the plaint cannot be rejected on this ground.

26. In the light of the aforesaid, there is no ground to interfere with the impugned order. However, it is made clear that all the questions of law and facts available to the parties are left open as at this stage this Court has only considered the application under Order VII Rule 11 CPC.

27. Consequently, the petition along with pending application is hereby dismissed.

SHALINDER KAUR, J.

JULY 15, 2024/ss