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

+ RSA 107/2024, CM APPL. 36447/2024 & CM APPL. 54173/2024

BALDEV RAJ

.....Appellant

Through: Mr. Rajinder Pal Singh and Mr. Sahil
Goel, Advs.

versus

HARBANS LAL SALUJA (SINCE DECEASED) TH. LRS

.....Respondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

08.10.2024

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1. The present appeal has been filed being aggrieved by the judgment and decree dated 17.05.2024 in Regular Civil Appeal No. 32/21, passed by the learned Additional District Judge-02, North-West, Rohini, Delhi whereby, the judgment and decree dated 16.10.2021 passed in Civil Suit No. 59314/2016 by learned Senior Civil judge-Cum-Rent Controller (N-W), Rohinin Courts, Delhi has been affirmed.

2. The facts of the instant case would manifest that the plaintiff/respondent had instituted a suit for recovery of possession, arrears of rent, mesne profits/damages and permanent injunction with respect to first floor of the property bearing no. D-14/97, Sector 8, Rohini, Delhi-110085 (*hereinafter referred to as 'Suit Property'*). The said suit was decreed in terms of recovery of possession of the suit property and recovery of arrears



w.e.f june, 2014 to the date of handing over the possession @3600/- per month, along with *pendente lite* and future interest at 6% per annum from the date of filing of suit till realization.

3. The defendant/appellant thereafter, challenged the judgment and decree of the Trial Court before the first Appellate Court, which upheld the same holding therein, that there existed a rent agreement between the parties, who were bound by the consented terms and conditions, therein.

4. Learned counsel appearing on behalf of the defendant/appellant submits that the rate of rent was disputed by the defendant/appellant. Therefore, the increase of rent stood barred by Section 6 A of the Delhi Rent Control Act, 1958. He further submits that, in addition, the rent agreement executed between the parties is forged and fabricated and genuineness of the same was not established.

5. I have considered the submissions made by the learned counsel appearing on behalf of the defendant/appellant and have also examined the record.

6. It is to be noted that the first Appellate Court and the Trial Court have come to a concurrent finding of fact with regard to the non- applicability of Section 6 A of the Delhi Rent Control Act, 1958. The Courts below did not find any reason to doubt the genuineness of the rent agreement and its terms. The first Appellate Court in its judgment and decree dated 17.05.2024 has held as under:-

“9) I do not find any reason to take a view different from the view taken by the Ld. Civil Judge. The tenant is just trying to wriggle out from the evidence adduced before the Civil Judge. I am satisfied on the available material that agreement was duly executed. The finding of Ld. Civil Judge that Rs. 100/- was to be increased after 11 months is also accepted because there is no material on record which goes against the



claim of the respondent / plaintiff. There is further no material on record to support the defendant/ tenant in his claim that increase was to be made after 3 years.

10) In view of the aforesaid, it is held that Rs. 100/- was to be increased every 11 months and therefore, by the time of filing of the suit, the rate of rent would have been more than Rs.3500/-. Consequently, the tenant is liable to vacate the property.

11) So far as arrears of rent is concerned, the Ld. civil Judge has dealt with the same in following manner:

“onus of the present issue lies upon the plaintiff. As per the plaintiff, defendant had stopped making payment of rent since June, 2014. Relationship with plaintiff Harbans Lal being landlord of defendant has been admitted on part of the defendant. Defendant has failed to adduce any cogent evidence that rent agreement Ex. PW 1/8 was not executed between the parties. While deciding issue no. 1, it has already been held that rate of rent at the time of sending legal notice would not be below Rs.3500/-. On the basis of rent agreement Ex. PW1/8 and as per the averments of the plaintiff, the rate of rent on 01.06.2014 was Rs.3600/- per month. Defendant has failed to place any document on record in his evidence, that the rate of rent was Rs.1900/- on 01. 06.2014 or that he had made payment of Rs.2,45,000/- in the year 1993 to the mother of the plaintiff. In view of admission of relationship on part of defendant and in absence of any documentary evidence to show that defendant was making payment of rent to the plaintiff after June, 2014, the onus to prove the present issues stands discharged on part of plaintiff and thus, present issues stand decided in favour of plaintiff and against the defendant. Accordingly defendant shall pay arrears of rent to the plaintiff at the rate of Rs. 3600/- per month on the basis of rent agreement Ex. PW 1/8. At this stage, it is clarified that as the plaintiff has failed to establish the prevalent market rate of rent/ damages, the rent/ damages/ mesne profits shall be paid to him at the rate similar to the rate of rent which was supposed to be paid by the defendant in terms of rent agreement Ex. PW1/8 as on 01.06.2014 i.e. at the rate of Rs. 3600/- per month.”

12) Entire thrust of the Ld. Counsel for the appellant during the argument remained on the fact that the tenancy was protected under Delhi Rent Control Act. I do not find any reason to take any view different from the Ld. Civil Judge regarding the rent. The material available on record fully justifies the reasoning and finding of Ld. Civil Judge. The arrears of rent as allowed by the Ld. Civil Judge is also accepted. The judgment dated 16.10.2021 is upheld.”



7. The relevant provision of the Delhi Rent Control Act, 1954 would elucidate that Section 6 A of the Act does not bar the enhancement of rent by consent. Therefore, there is no applicability of the Delhi Rent Control Act, 1958 in the present facts of the case.

8. With respect to the argument regarding genuineness of the rent agreement, the same has been validated by the Trial Court as well as the first Appellate Court. Further, it is settled position of law that the Court has a limited jurisdiction while entertaining a second appeal in terms of Section 100 of the Code of Civil procedure, 1908. It is, thus, evident that the facts of the present case do not give rise to a substantial question of law warranting any adjudication by this Court.

9. The case of ***Narayanan Rajendran & Another Versus Lekshmy Sarojini & Others***¹ has dealt extensively with scope of Section 100 and has held that it only empowers the Court to deal with the substantial question of law that arises out of the second appeals and not otherwise. The rationale behind Section 100 of the act as discussed in the instant case is extracted below:-

62. The rationale behind allowing a second appeal on a question of law is, that there ought to be some tribunal having a jurisdiction that will enable it to maintain, and, where necessary, re-establish, uniformity throughout the State on important legal issues, so that within the area of the State, the law, in so far as it is not enacted law, should be laid down, or capable of being laid down, by one court whose rulings will be binding on all courts, tribunals and authorities within the area over which it has jurisdiction. This is implicit in any legal system where the higher courts have authority to make binding decisions on question of law.

¹ CIVIL APPEAL NO.742 OF 2001



10. The Court, therefore, in exercise of its jurisdiction under Section 100, also does not find any reason to interfere with the findings of the Trial Court and the first Appellate Court.

11. Accordingly, in absence of any substantial question of law having been arisen, the appeal stands dismissed.

PURUSHAINdra KUMAR KAURAV, J

OCTOBER 8, 2024/p