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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ RSA 113/2024 and CM APPL. 37756/2024

SH.OM PRAKASH

S/O SH. MANAK CHAND

**R/O M/S JANKI JEWELLERS E-1,
CHANAKYA PLACE, PART-1,40 FEET ROAD,
UTTAM NAGAR, NEW DELHI-59**

.....APPELLANT

(Through: Mr. Sourav Goel, Advocate.)

Versus

**1. SMT JOGINDER SOLANKI
W/O LATE SH JAGDISH SOLANKI**

**2. SH.SUDEEP SOLANKI
S/O LATE SH. JAGDISH SOLANKI**

**3. MS.AMBIKA SOLANKI
D/O LATE SH.JAGDISH SOLANKI
R/O C-2/368, JANAKPURI, NEW DELHI-59**

**4. MS. MEENA SOLANKI
D/O LATE SH.JAGDISH SOLANKI
R/O C-2/368, JANAK.PURI, NEW DELHI-59**

**5. MS.RAINA SOLANKI
D/O LATE SH.JAGDISH SOLANKI
R/O C-2/368, JANAK.PURI, NEW DELHI-59**

**6. MS ARPANA SOLANKI
D/O LATE SH.JAGDISH SOLANKI**



R/O C-2/368, JANAKPURI, NEW DELHI-59

.....RESPONDENTS

(Through: Mr. Akil Rataeeya, Ms. Aroma Rataeeya, Mr. Harsh Gulia,
Mr. Ramit Sehrawat and Mr. Sunny Dagar, Advocates.)

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Reserved on: 27.11.2024

Pronounced on: 17.12.2024

J U D G M E N T

The instant appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) seeks to assail the judgment and decree dated 20.05.2024 passed by the Additional District Judge-04, South-West District, Dwarka Courts, Delhi in RCA No.128/2023 dismissing the appellant's appeal and affirming the judgment and decree dated 21.10.2023 passed by the Trial Court, thereby, decreeing the civil suit for possession and recovery of rent filed by the respondent/plaintiff.

2. The facts of the instant case would indicate that the respondent/plaintiff was the owner of a shop bearing no. 3 ad-measuring (20' x 7'6'') out of property bearing no. 01, Block - E, situated at Chanakya Place, Uttam Nagar, New Delhi -110059. The said property was given on rent to the appellant/defendant *vide* lease deed dated 14.01.2000 on a monthly rent of Rs.2,500/- and the said monthly rent was increased from Rs.2,500/- to Rs.3,500/- in June 2011.

3. On 15.07.2013, the respondent/plaintiff sent a legal notice thereby increasing the rent from Rs.3,500/- per month to Rs.3,850/- per month. The appellant/defendant replied the same on 22.07.2013. Thereafter, another



legal notice dated 14.08.2014 was sent by the respondent/plaintiff.

4. The respondent/plaintiff, then terminated the tenancy of appellant/defendant *vide* notice dated 11.02.2016. Thereafter, a civil suit bearing no.27001/2016 was filed by the respondent/plaintiff for recovery of possession of the suit property, rent and permanent injunction. The same was dismissed as being not maintainable *vide* judgment dated 21.02.2018. The appeal against the said judgment was also dismissed and thereafter, the respondent/plaintiff again sent a legal notice dated 06.09.2018 increasing the monthly rent by 10%. Another legal notice of termination of tenancy dated 10.01.2019 was sent by the respondent/plaintiff. The appellant/defendant did not pay rent from September 2014, therefore, the respondent/plaintiff filed the present civil suit for possession, arrears of rent and damages/ mesne profits.

5. On notice being issued, the appellant/defendant mainly contested the civil suit on the premise that monthly rent was increased to Rs.3,850/- per month; that no notice of increase was ever served on the appellant/defendant. The suit property has already been acquired by the Delhi Development Authority (DDA) and no cause of action has arisen in favour of the respondent/plaintiff.

6. On the basis of the pleadings, the Trial Court *vide* order dated 05.08.2019 framed the following issues:-

"(i) Whether plaintiffs are entitled to decree of possession of the suit property in their favour and against the defendant? OPP

(ii) Whether plaintiffs are entitled to decree for recovery of arrears of rent to the tune of Rs.1,83,400/-? OPP

(iii) Whether plaintiffs are entitled to damages and mesne profits for illegal use and occupation of the suit property by defendant with effect



from 20.10.2019? OPP

(iv) Whether legal notice for demand of increase of monthly rent from Rs.3,500/- to Rs. 3,850/- was served upon the defendant? OPP

(v) Whether rate of rent at present is Rs. 3,850/-? OPP

(vi) Whether suit is not maintainable, being covered under DRC Act? OPD

(vii) Relief."

7. All the aforesaid issues *vide* judgment and decree dated 21.10.2023 have been decided in favour of the respondent/plaintiff, therefore, the appellant/defendant preferred the first appeal which was dismissed *vide* the judgment and decree dated 20.05.2024. Aggrieved by the same, the appellant/defendant has approached this Court in the instant appeal.

8. Learned counsel appearing on behalf of the appellant/defendant submits that the impugned judgment and decree is illegal and improper inasmuch as, the Courts below have failed to appreciate that the civil suit itself was not maintainable in view of the provisions of the Delhi Rent Control Act, 1958 ("*DRC Act*"). He submits that the legal notice dated 06.09.2018 as dispatched on 11.09.2018 was illegal and invalid and was contrary to the provisions of Section 8 of the DRC Act.

9. He further submits that as per the provisions of the DRC Act, 30 days time is required to be granted, whereas, the respondent/plaintiff has granted only 20 days time for an increase of rent from Rs.3500/- per month to Rs.3,850/- per month. He submits that the increase of rent was made effective from 01.10.2018, whereas, the notice itself was dispatched on 11.09.2018, therefore, the increase of rent and the legal notice both are illegal and improper.



10. Another prong of the appellant/defendant's submission rests on the fulcrum that according to him there is no conclusive evidence tendered by the respondent/plaintiff indicating the service of legal notice. He further submits that in the absence of clear proof, service of notice ought not to have been accepted and thus, the appeal raises substantial question of law.

11. I have heard the learned counsel appearing on behalf of the appellant on admission and have perused the record.

12. Before dilating on the merits of the case, it is pertinent to peruse the findings of the Courts below. The records of the Courts below would clearly indicate that the Trial Court while deciding issues nos.(iv), (v) and (vi) has held that the monthly rent of the suit property was found to have been increased to Rs.3,850/- per month w.e.f. 15.10.2018. The Trial Court held that since the notice was dated 06.09.2018 and the rent was increased w.e.f. 15.10.2018 therefore, recorded the conclusion that under the facts of the present case, the protective umbrella of provisions of the DRC Act had ceased to exist in favour of the appellant/defendant from 15.10.2018. The relevant extracts of the Trial Court's judgment read as under:-

"10. Onus to prove issue no.(iv) and (v) was upon the plaintiffs and onus to prove issue no.(vi) was upon the defendant. However, all the said three issues are based on decision on the question as to whether rent of the suit property was ever increased from Rs.3,500/- per month to Rs.3,850/- per month. It is the case of the plaintiffs that rent of the suit property was increased to Rs.3,850/- by way of legal notice dated 06.09.2018. The said legal notice along with original postal receipt was tendered into evidence by PW-2 as Ex.PW2/2 (colly). Defendant has denied receipt of the said legal notice and has taken the plea that the same was never delivered to him. However, during the cross-examination of DW-1, it was admitted by defendant that address as mentioned on the said legal notice is the correct address of defendant. Postal receipt which has been tendered into evidence by plaintiff along with the said legal notice as part of Ex.PW2/2 (colly) shows that the said legal notice was duly dispatched



by plaintiff at the correct address of defendant. In these circumstances, presumption under Section 27 of General Clauses Act comes into play and it must be presumed that the said legal notice dated 06.09.2018 was duly delivered to defendant. It is also very pertinent to note here that tracking report filed by plaintiff with respect to delivery of the said legal notice mentions that delivery was attempted, but that door was locked and that due intimation was served upon the addressee on two occasions, i.e. on 12.09.2018 and 13.09.2018. It is also very pertinent to note here that report on summons sent to defendant by way of registered A.D also mentions a similar report by stating that addressee was not found despite repeated visits and intimation and that servant / agent refused to accept the summons. Thus, it appears that defendant had made it a habit of not accepting delivery of any notice / summons sent to him by way of post. It is clear that defendant deliberately did not accept delivery of legal notice dated 06.09.2018, despite due intimation and repeated attempts at service. In these circumstances, defendant cannot take the plea of non-service of notice upon him as the said service was clearly evaded by him deliberately.

11. It must also be noted here that it has been stated by plaintiff that the said legal notice dated 06.09.2018 was also affixed at the suit property by plaintiff no.2. The same was reiterated by PW-2 during his testimony. In this regard, one pen drive containing video footage of the said affixation was put to defendant during his cross-examination as DW-1: However, defendant refused to identify premises seen in the said pen drive and stated that he cannot identify the said premises. However, defendant did not assertively deny that the premises seen in the said pen drive is not 'the suit property. As against this, there is categoric statement of PW-2 to the effect that premises seen in the said pen drive (Ex.PW1/D3) is the suit property and the same shows that notice dated 06.09.2018 was also affixed on the suit property. Thus, there is no doubt with respect to service of the said notice upon the defendant.

12. Perusal of the said notice dated 06.09.2018 clearly shows that plaintiffs had stated in the said legal notice that rate of rent was being increased from Rs. 3,500/- per month to Rs. 3,850/per month, with effect from 01.10.2018. It has been admitted by defendant that rate of rent was earlier increased to Rs.3,500/- per month from July, 2011. As per Section 6A of DRC Act, 1958, in case where no standard rent is fixed, rent may be increased by 10%every three years. Thus, as per the said section, plaintiffs were legally entitled to increase the rent to Rs.3,850/- per month in the year 2018. Further, as per Section 8 of DRC Act, 1958, where landlord wishes to increase the rent, such



increase may be effected by giving a written notice to the tenant and the same shall be effective after expiry of 30 days from the date of giving of notice. In the instant case, as stated above, monthly rent was, increased to Rs.3,850/- by way of written notice dated 06.09.2018. Since the said notice was dispatched on 11.09.2018 (as per postal receipt which is part of Ex.PW2/2), said increase can be deemed to have come into effect from 15.10.2018. Hence, it is clear that monthly rent of the suit property had been increased to Rs.3,850/- with effect from 15.10.2018."

13. Furthermore, the Appellate Court as well while affirming the findings rendered by the Trial Court held as under:-

"19.The validity of the notice for a rent increase depends on meeting these requirements. The date of increase of rent prior to the completion of the 30-day period from the receipt of the notice does not render the notice invalid. If the period falls short of the statutory period, the statutory period will be considered, but such an anomaly will not invalidate the notice.

20.The intention behind Section 8(1) of the DRC Act is to provide tenants with adequate time to adjust to a rent increase and to ensure that landlords follow a standardized procedure for rent hikes. By setting a 30-day notice period, the Act aims to prevent arbitrary and immediate rent increases that could unfairly burden tenants. The provision safeguards tenants' interests by mandating a notice period, ensuring they have sufficient time to arrange for the increased rent or to make other necessary arrangements, such as finding alternative accommodation if the increase is untenable for them.

21. Interpreting Section 8 (1) of the DRC Act to invalidate a notice merely because the effective date mentioned precedes the 30-day period would undermine the statute's purpose. Such a strict interpretation would allow tenants to evade legitimate rent increases on technical grounds, even when they have been adequately notified and had ample time to respond. The law should be interpreted to promote fairness and practicality, ensuring that both parties' rights and obligations are balanced.

22. Furthermore, the procedural requirements outlined in Section 106 of the TPA are designed to ensure that the notice is properly documented and delivered, thereby minimizing disputes over whether the tenant was informed. These procedural safeguards enhance the transparency and reliability of the notice process, protecting both



landlords and tenants.

23. In conclusion, the increased rent becomes due and recoverable only after the expiry of the 30-day notice period, irrespective of the date mentioned in the notice. The notice remains valid as long as it meets the writing and delivery requirements specified in the DRC Act and the TPA. Thus, the defendant's argument regarding the invalidity of the notice due to the mentioned date of increase is not sustainable, and the rent increase to Rs. 3,850/- is legally enforceable from the appropriate date.

*24. The judgment in **Atma Ram Properties Pvt. Ltd. (supra)** relied upon by the defendant does not support the argument put forth by the learned counsel for the defendant. 'The relevant part of the judgment, which merely explains Sections 6A and 8 of the DRC Act, does not add any substantive value to the defendant's case. It reiterates the statutory provisions that landlords are entitled to increase the rent by 10% every three years and that the increased rent becomes due and recoverable only after the expiry of 30 days from the notice. This explanation does not invalidate the notice issued by the plaintiffs nor does it provide any basis for the claim that the rent increase was unlawful. Hence, the judgment cited by the defendant fails to bolster their argument and does not affect the validity of the learned trial court's findings.*

25. Upon careful examination of the facts, legal provisions, and arguments presented, this Court finds no infirmity or irregularity in the findings of the learned trial court regarding the rent rate of the suit property during the relevant period. The learned trial court correctly applied the provisions of Sections 6A and 8 of the Delhi Rent Control Act (DRC Act) to determine that the rent was validly increased to Rs. 3,850/- per month as per the notice dated 06.09.2018."

14. It appears that the arguments raised by the appellant/defendant in this appeal have also been canvassed before Trial Court as well as Appellate Court. The contention of non-adherence to the prescription of 30 days period as mentioned in Section 8 of the DRC Act has already been dealt by the Courts below. As per Section 8 of the DRC Act, where a landlord wishes to increase the rent, such increase may be affected by giving a written notice to



the tenant and the same shall be effective after the expiry of thirty days from the date on which the notice is given.

15. In the instant case, the monthly rent was increased to Rs.3,850/- by way of a written notice dated 06.09.2018. The said notice was dispatched on 11.09.2018, and said increase deemed to have come into effect from 15.10.2018. It is, thus seen that with respect to the argument that the suit itself was not maintainable, the Court is of the considered opinion that the provisions of the DRC Act would have no application when it was proved that the monthly rent had been increased to Rs.3,850/- w.e.f. 15.10.2018 i.e, after the expiry of thirty days. The Court, therefore, does not find any substance in the argument advanced on behalf of the appellant/defendant.

16. Furthermore, the argument that whether the notice of termination of tenancy was duly served upon the appellant/defendant also falls flat. A postal envelope containing the said legal notice was tendered into evidence by PW-2 as Ex.PW-2/3 which clearly shows that it was duly dispatched by the respondent/plaintiff to the correct address of the appellant/defendant. The service was found to have been deliberately avoided. Non-delivery of the said notice was due to *malafide* conduct of the appellant/defendant.

17. Be that as it may, the service of the legal notice is a factual exercise and cannot be looked into a second appeal, especially when the second appeal is filed against the concurrent findings of the Courts below. Even otherwise, filing of a suit for eviction/ possession is itself sufficient to ascertain the intention to quit tenancy and therefore, no separate notice for termination of tenancy is required.

18. Reliance can be placed on a decision in the case of *Nopany*



Investments Pvt. Ltd. v. Santokh Singh,¹ wherein, the Supreme Court held that filing of suit is itself a notice to quit on the tenant and therefore, no notice to quit under Section 106 of the Transfer of Property Act, 1882 is necessary to enable the landlord to get the decree of possession. The observations of the Supreme Court are reproduced hereunder:-

“In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant.”

19. It is thus seen that once the relationship between the appellant/defendant and the respondent/plaintiff of being a tenant and landlord remains undisputed, the tenancy being terminated, therefore, no fault can be found in the conclusion recorded by the Courts below in granting the decree of possession and mesne profits as well. Whether the land has been acquired by DDA will have no significance, even otherwise there was nothing on record to substantiate the aforesaid submission. In any case, the relationship of the landlord and tenant has not been disputed by the appellant/defendant before the Courts below or even before this Court.

20. Furthermore, the exposition of law under Section 100 of CPC clearly elucidates that the second appeal can only be entertained if the instant appeal raises a substantial question of law. Furthermore, a bare perusal of the record would indicate that both the Courts below are at *ad-idem* with respect to the conclusion they rendered.

21. As it is the settled exposition of law, that as a Court of the second

¹ 2008 (2) SCC 728.



appeal, the Court would not interfere in the impugned judgment on the ground of erroneous findings of fact, however, gross or inexcusable the error may seem to be.² It is pertinent to point out that after the amendment in 1976, the scope of the second Appellate Court under Section 100 CPC was further curtailed and only in cases wherein substantial questions of law arise, the second appeal is permissible. A second appeal under Section 100 CPC is now confined to cases where a question of law is involved and such question must be a substantial one.

22. Furthermore, the rigors of Section 100 CPC are more stringent when the second appeal is filed assailing the concurrent findings of the Courts below. In *Bholaram v. Ameerchand*³, the second Appellate Court set aside the impugned judgment on the ground that the findings were perverse and disregard to the material available on record. However, the Supreme Court while setting aside the High Court judgment held that even if we accept the rationale of the High Court at best it could be termed as an error in findings of fact but that itself would not entitle the High Court to interfere in the absence of a clear error of law.

23. In the *Thiagarajan v. Sri Venugopalaswamy B. Koil*⁴, the Supreme Court observed that where the findings of the fact by the lower Appellate Court are based on evidence, the second Appellate Court cannot ouster such finding and substitute it with its own finding on reappraisal of evidence merely on the ground that another view was possible. The Supreme Court further observed that it is the obligation of the Courts of law to further the

² Ramratan Shukul v. Mussumat Nandu (1892) 19 Cal 249 (252) (PC).

³ (1981) 2 SCC 414.

⁴ (2004) 5 SCC 762.



clear intendment of the legislature and not frustrate it by excluding the same.

24. Interference in the concurrent findings of the fact is permitted but only in exceptional circumstances. As a second appeal is not the third trial on facts and the first Appellate Court is the final arbiter of facts, this interference by the second Appellate Court is a rarity rather than regularity. In *Jai Singh v. Shakuntala* ⁵, the Supreme Court held that it is permissible to interfere even on questions of fact but it has to be done only in exceptional circumstances. The Court observed as under:-

“6. ... While scrutiny of evidence does not stand out to be totally prohibited in the matter of exercise of jurisdiction in the second appeal and that would in our view be too broad a proposition and too rigid an interpretation of law not worthy of acceptance but that does not also clothe the superior courts within jurisdiction to intervene and interfere in any and every matter—it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible—it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection.”

25. In *P. Chandrasekharan v. S. Kanakarajan* ⁶, the Supreme Court laid down the exposition of law that the interference in the second appeal is permissible only when the findings are based on a misreading of evidence or are so perverse that no person of ordinary prudence could take the said view. More so, the Court must be conscious that intervention is permissible provided the case involves a substantial question of law which is altogether different from the question of law.

26. Therefore, on the conspectus of the enunciation of law as expounded in the judicial precedents cited above and analysis, this Court is not inclined to

⁵AIR 2002 SC 1428.

⁶(2007) 5 SCC 669.



interfere in the findings of the learned Trial Court and first Appellate Court as the instant appeal raises no substantial questions of law.

27. Accordingly, the appeal stands dismissed.

28. All pending applications are also disposed of.

PURUSHAINDRA KUMAR KAURAV, J

DECEMBER 17, 2024

Nc/am