

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR RECOVERY

RFA 829 of 2005

Reserved on : 14.11.2008

Date of Decision: 04.12.2008

Ms.Rohini Varshnei APPELLANT
Through: Mr.Dinesh Aganani and Mr.Narendra Kalia, Advocates

Versus

R.B.Singh RESPONDENT
Through: Mr.Vikram Nandrajog and Mr.L.K.Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

SANJAY KISHAN KAUL, J.

1. A lease deed was executed on 24.10.1996 by Smt.Shakun Vohra, the owner in favour of Ms.Rohini Varshnei as tenant (appellant herein) in respect of second floor of House No.G-72, 2nd Floor, Masjid Moth, Residential Scheme, New Delhi consisting of two rooms with one attached bathroom, kitchen, covered verandah, open terrace and servant's bathroom. The lease provided for a rent of Rs.3,500/-per month for the premises and the fittings and fixtures. The tenant was also liable to pay Rs.50/- as water charges and electricity charges had to be paid according to the bills received from the authorities.

2. Smt. Shakun Vohra executed a registered sale deed dated 21.11.2001 in favour of Sh.R.B.Singh (respondent herein) in respect of the said second floor with terrace rights along with undivided, impartible and individual share in the plot measuring 180 square metres.

3. The respondent served a notice through counsel on the appellant dated 09.05.2002 informing her about the sale. The notice also stated that the rent being paid was low as per the prevalent rent and notified the appellant to increase the rent by 10 per cent with effect from 21.06.2002, which would amount to Rs.3905/- per month. This notice was replied to by the appellant on 23.05.2002 wherein the factum of the respondent being the landlord was denied in view of the absence of any notice. The right to claim increase in rent was also denied. A copy of the sale deed by which the respondent purchased the property was sought for. The counsel for the respondent thereafter vide letter dated 28.06.2002 forwarded a copy of the sale deed.

4. The respondent served legal notice through counsel dated 22.07.2002 terminating the tenancy and seeking possession of the property by 20.08.2002. The notice also provided that in order to avoid any ambiguity, if the appellant considered the tenancy month as per the English calendar, the date of expiry may be taken as 31.08.2002. This notice was replied to by the appellant through counsel on 02.08.2002.

5. The respondent thereafter filed a suit for recovery of possession and for recovery of arrears of rent, damages/mesne profits. This suit was contested by the appellant. The respondent also moved an application under Order 12 Rule 6 of the Code of Civil Procedure, 1908 ("the said Code" for short). This application has been allowed by the impugned order dated 14.10.2005 by the learned Addl.District Judge.

6. Learned counsel for the parties were heard and they have also filed their written synopsis. The Trial Court Record was called and has been perused.

7. In the suit, the respondent made a categorical assertion about the sale of the property to him in para 2 of the plaint which has not been denied. In para 3 of the plaint, the respondent claimed that the monthly rent was Rs.3550/-, but the appellant has claimed the rent as Rs.3,500/- per month. The receipt of notice as referred to aforesaid is not denied and in fact has been replied to by the respondent. The only real defence raised in the written statement is the protection under Delhi Rent Control Act, 1958 ("the said Act" for short) on account of the fact that the rent was Rs.3,500/- per month and thus the jurisdiction of the Civil Court is barred as per the provisions of Section 50 of the said Act. In respect of the aforesaid plea, it may be noticed that originally the said Act did not envisage a distinction between the premises

deriving different rates of rent per month, but in pursuance of the amendment to the said Act carried out with effect from 01.12.1988 the provisions of Section 3 of said Act were amended by incorporating clause (c). In terms of the said incorporation, the said Act is not to apply to any premises whether residential or not whose monthly rent exceeds Rs.3,500/-. Thus if the rent is only Rs.3,500/- and not in excess thereof than the jurisdiction of the Civil Court would be barred while on the other hand if the rent is in excess thereof, such protection would not be available. The amendment carried out by Act 57 of 1988 referred to aforesaid also incorporated Section 6A which reads as under: “6A. Revision of rent”“Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.”

8. The effect of the aforesaid provision is that starting from 01.12.1988, the landlord of a premises as provided by the said Act is entitled to claim enhancement of rent by 10 per cent every three years.

9. The application of the respondent has to be examined keeping in mind the aforesaid provisions of the said Act. The application is filed under Order 12 Rule 6 of the said Code, which reads as under: “ORDER XII - ADMISSION (THE FIRST SCHEDULE) 6. Judgment on admissions (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

10. It is trite to say that in order to obtain a judgment on admissions, the admissions must be clear and unequivocal. In the matter of landlord and tenant, there are only three aspects which are required to be examined: i) A relationship of landlord and tenant; ii) Expiry of the tenancy by efflux of time or determination by valid notice to quit; and iii) The rent of the premises being more than Rs.3,500/- per month in view of the provisions of the said Act. 11. In the present case, there is no dispute about the landlord and tenant relationship in view of the respondent having acquired the

property through a registered sale deed and there being an unequivocal admission in that behalf in the written statement.

12. The tenancy was for a period of two years commencing from 01.11.1996 and expiring on 31.10.1998. There is no subsequently registered lease deed and thus the appellant was a month to month tenant. A legal notice of determination of tenancy has also been issued on 22.07.2002, the receipt of which is not in dispute. The notice is clear and unambiguous. In view of the aforesaid, the only aspect which thus arises for consideration is about the rate of rent since it is the case of the respondent that the rate of rent is Rs.3,550/- per month inclusive of water charges while it is the case of the appellant that the rate of rent is Rs.3,500 per month and Rs.50 per month as water charges was never paid separately as the water was never supplied.

13. A reading of the impugned judgment shows that the Trial Court has taken note of the observations made by the Apex Court in Pushpa Sen Gupta v. Sushma Ghosh; (1990) 2 SCC 651 which defined the expression "rent" as to include not only what is strictly understood as rent but also payment in respect of the amenities or other services provided by the landlord under the terms of tenancy. Since water is an amenity being provided by the landlord, the Trial Court deemed it appropriate to take the amount for the same and club it with the lease amount to come to the conclusion that the total rent is Rs.3550/-.

14. Learned counsel for the appellant assailed the aforesaid reasoning to contend that no such decision was possible on an application under Order 12 Rule 6 of the Code and such matters could at best have been decided after evidence had been led by both the parties.

15. Learned counsel for the respondent, on the other hand, submitted that even if the aforesaid plea raised on behalf of the appellant was taken on its face value, the same would not come to the aid of the appellant for the reason that the said Act itself provided for an increase of rent by 10 per cent every three years. Such notice of increase of rent had been issued on 09.05.2002. No doubt the increase was sought on the basis of monthly rent of Rs.3550/- with 10 per cent increase on the same, but it is not the case of the appellant that she paid the 10 per cent increase on the rent amount less water charges. The appellant denied the liability to pay the increase of rent. The submission of the respondent thus is that assuming that the premises were protected by the said Act originally, on the notice dated 09.05.2002

being served, the rent would increase at least to Rs.3,850/- per month with a ten per cent increase as provided in Section 6A of the said Act and thereafter the premises would be outside the purview of the said Act. The notice of termination of tenancy has been issued subsequently on 22.07.2002, the receipt of which is not denied.

16. We may notice that learned counsel for the appellant has referred to three judgments to support its stand on the manner of construction of Order 12 Rule 6 of the said Code while dealing with such issues. The first judgment of learned Single Judge of this Court is RFA 106/206 Surinder J.Sud v. R.R.Bhandari decided on 25.03.2008. However, a reading of the said judgment shows that in the facts of the case, there was no admission of either the relationship of land and tenant or the monthly rent. In fact, the learned Judge noticed that there was no admission about the title of the landlord. The second judgment is in RFA 299/2004 Sh.Arun Kumar Jain and Anr.v. Raghubir Saran Charitbale Trust and Ors decided on 21.09.2007 by a Division Bench of this Court. There were four reasons set out in the judgment why the application under Order 12 Rule 6 could not be allowed though in that case also on 10 per cent increase of rent being sought, the total rent had exceeded Rs.3,500/- The first was the factum of agreement of sale between the parties in respect of the tenanted property and continued negotiations even subsequently. Secondly, a suit for specific performance having been filed in that behalf before the District Judge. The third aspect was that there was in fact no application under Order 12 Rule 6 of the said Code while the learned judge sought to pass an order on a non existing application and did not suo motu exercise power under Order 12 Rule 6 of the Code giving credence to the plea of non application of mind by the Trial Court. The fourth aspect was the existence of various factors showing complete non application of mind by the learned Trial Court to the factual matrix on record. The next judgment referred to is FAO (OS)228 of 2008 Daljeet Singh Anand v. Harjinder Singh Anand decided on 02.09.2008. The facts of the case, in fact, bear no relevance to the controversy in question.

17. On examination of the rival contentions of learned counsel for the parties, we find no merit in the plea of the appellant. Our decision is predicated on the important aspect of the respondent having sought increase of 10 per cent of the rent in terms of Section 6A of the said Act and the appellant's failure to increase the rent. This is a statutory entitlement of the respondent and on the failure of the appellant to increase the rent, it would amount to non payment of the appropriate rent. Once the earlier rent of

Rs.3,500/- is at least not in dispute, the 10 per cent increase would take the rent to Rs.3850/- and thus take the dispute outside the protection of the said Act. This is naturally the consequence of the notice dated 09.05.2002.

18. Before filing of the suit, the appellant had issued a notice determining the month to month lease and seeking possession on 20.08.2002, receipt of which is not disputed and the notice has been replied to. At the stage when such possession was sought, the correct undisputed rent would have been Rs.3850/- assuming that the original rent was only Rs.3,500/- per month and not Rs.3,550/- per month. Thus these three ingredients required for passing a decree for possession also stands satisfied. We may also notice that the aforesaid approach would amount to adopting a different reasoning than the Trial Court while passing a judgment on admission under Order 12 Rule 6 of the said Code but that itself would not make any difference since the judgment is predicated on the legal pleas advanced by the parties and factual matrix available on the record.

19. It may also be observed that in Para 6 of his plaint the respondent categorically stated that on issuance of legal notice dated 09.05.2002 the appellant was called upon to increase the rent by 10% w.e.f. 21.06.2002 and therefore rents stood increased from 3,500 to 3,850 w.e.f. 21.06.2002. It has also been stated that the said notice was duly received and acknowledged by the appellant who also sent a reply dated 23.05.2002 through her counsel. In the aforesaid reply the appellant simply denied the right of the respondent to increase the rent which is untenable in view of the right available to the respondent to increase the rent under Section 6A of the DRC Act.

20. In these circumstances, the appellant having accepted the receipt of the notice became liable to pay the rent at the enhanced rate, that is, by adding 10% which would make the rent to 3,850 even if the rent is taken as 3,500 as on 09.05.2002. The suit has been filed only thereafter i.e. on 20.10.2004, at which time, the enhanced rate had become payable.

21. A reference can also be made to the judgment of this Court in Nischint Bagga Vs. Goliath Detectives Pvt. Ltd. and Anr; 78 (1999) DLT 432 where following observations have been made: “7. Therefore, after receipt of the notice under Sections 6A and 8 of the Act, the rent became more than Rs. 3,500 per month and consequently the tenant lost the protection of the Delhi Rent Control Act. Section 6A and Section 8 reads as under: “6-A. Revision of rent”“Notwithstanding anything contained in this Act, the standard rent,

or where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.” “8. Notice of increase of rent”“(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and insofar as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of tenancy after the expiry of thirty days from the date on which the notice is given. (2) Every notice under Sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882).” 8. The receipt of notice dated 7.4.1994 calling upon defendant No. 1 to increase the rent at the rate of 10% per annum in terms of Sections 6A and 8 of the Delhi Rent Control Act, 1958 is admitted. The increase of 10% in the last paid rent makes it Rs.3,850 per month which excludes applicability of the Delhi Rent Control Act, 1958 to the suit premises. In other words, the defendants cannot claim any protection of the Delhi Rent Control Act when the rent is beyond Rs. 3,500 per month.”

22. On hearing of the matter, an endeavour was made to find out if the appellant was willing to vacate the tenanted premises subject to some further time being granted, but response of the counsel for the appellant was that the appellant wanted to only purchase the property!

23. We are thus of the considered view that the respondent is entitled to a decree on admission albeit for different reasons than the Trial Court. We thus sustain the decree passed by the impugned order and dismiss the appeal with costs quantified at Rs.10,000/-.

24. We may also observe that insofar as the prayer made by the appellant for damages and other reliefs is concerned, that being subject matter pending before the Trial Court, the same will be decided by the Trial Court in accordance with law.

25. The Trial Court Record be sent back and the parties to appear before the Trial Court on 12.01.2009.

Sd/-
SANJAY KISHAN KAUL, J.

Sd/-

