

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 23.08.2011

CM(M) No. 973/2011 & CM Nos.15566-67/2011

GEORGE GOMES Petitioner
Through: Mr. M.S. Vinaik, Advocate.

Versus

SMT. RAJ KARNI KAPOOR (SINCE DECEASED THROUGH LEGAL
HEIRS)
.....Respondent

Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 09.05.2011 which has endorsed the findings of the trial Judge dated 15.04.2008 whereby the eviction petition of the landlord under Section 14 (1)(h) of the Delhi Rent Control Act (DRCA) had been decreed.

2 The present eviction petition had been filed under the aforementioned provision; the tenanted premises comprised of three bedrooms, two bathrooms, kitchen, loft, balcony on front of the property bearing No. E-39, First Floor, Lajpat Nagar-III, New Delhi. Contention was that the defendant had acquired an alternate accommodation i.e. residential SFS Flat No. 38, Basant Enclave, New Delhi and as such benefit of Section 14 (1)(h) of the DRCA be accorded to the plaintiff.

3 The defendant in his written statement had denied this contention; he had stated that he has no concern with this flat in question as the same was sold to one Sunayna Behl who is now the owner. This defence of the

defendant had been shattered in the evidence. The Court had noted that the defendant has not come to the Court with clean hands; he had denied the very existence of this alternate accommodation had belonged to him whereas the evidence had showed otherwise.

4 The ARC in its order had examined the evidence led by the defendant on this score i.e RW-1 & RW-2. In the evidence, the witnesses had taken a contrary stands; RW-1 had stated that this property had been let out by him to one Kulwant Singh on 01.06.1988; RW-2 was Kulwant singh; the contradiction in their versions had been noted; RW-1 had stated that Kulwant Singh was working in Ashoka Hotel whereas Kulwant Singh had come into the witness box and had denied this statement. The whole case set up by the defendant at the time of evidence was that this fact about alternate allotment in favour of the defendant was known to the plaintiff as way back as in 1985; this could not be substantiated.

5 RCT vide its impugned judgment had affirmed the finding of the ARC who had noted that there was nothing on record to show that the plaintiff had come to know about this purchase of the flat by the defendant as way back as in 1985; testimony of PW-1 on this score that she had come to know about this only in 2006 was believed by the impugned order. The impugned order had in these circumstances correctly noted that the provision of Article 66 of the Limitation Act have no applicability whatsoever. The vehement contention of learned counsel for the petitioner is that Article 66 of the Limitation Act has not been construed in its correct perspective; delay and latches had come in the way of the plaintiff to get her claim decreed under Section 14 (1)(h) of the DRCA. This contention as already noted was ill-founded; ARC was the first fact finding Court and it had disbelieved this submission. Appeal under Section 38 of the DRCA is maintainable only on a substantial question of law; RCT had nevertheless examined the evidence and disbelieved this version. This court is sitting in a supervisory jurisdiction. It is not an appellate forum. The right of second appeal under Section 39 of the DRCA has now been abrogated; the supervisory jurisdiction of this court is not a substitute for an appellate forum; unless and until there is a patent illegality or a manifest error apparent on the face of the record which has caused a grave injustice to another, interference is not warranted. This is not one such case where interference is called for. Petition is without any merit.

6 Dismissed.

Sd/-
INDERMEET KAUR, J.