

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

**SUBJECT : DELHI RENT CONTROL ACT**

Date of Judgment: 08.02.2012.

CM(M) 1438/2011 & CM No. 22420/2011

ASHOK KUMAR AHUJA & ANR ..... Petitioner  
Through Mr. J.P. Sengh, Sr. Advocate with  
Mr. A.C. Bhasin and Mr. Amit Bhasin, Advs.

Versus

GULAB RAI KHANCHANDANI ..... Respondent  
Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 16.11.2011 passed the Rent Control Tribunal (RCT) endorsing the finding of the Additional Rent Controller (ARC) dated 27.03.2010 whereby the eviction petition filed by the landlord Gulab Rai Khanchandani seeking eviction of his tenant Ashok Kumar Ahuja and another on the ground under Section 14 (1)(a) of the Delhi Rent Control Act (DRCA) had been decreed in his favour; admittedly benefit of Section 14 (2) of the DRCA had already been granted to the tenant and this being a case of second default, the ARC had decreed the eviction petition in favour of the landlord; the impugned judgment had also endorsed this finding.

2 The present petition has been filed under Article 227 of the Constitution of India. At the outset, it may be noted that the powers of superintendence to be exercised by the High Court are supervisory powers and interference in the concurrent fact finding of the two Courts below is warranted only if there is a flagrant perversity or a manifest injustice which

has accrued to the other party in the absence of which interference is not called for.

3 Record shows that the landlord had filed the eviction petition seeking eviction of his tenant from the two shops bearing No. A-4, ground floor, Inder Puri, New Delhi on the ground that the tenants have committed a second default in payment of rent.

4 Admittedly the tenant was initially a tenant under Sakhi Bai, the mother of the petitioner. Vide order dated 13.07.2001 passed in eviction petition No. 158/1996 the tenant had been given the benefits of Section 14 (2) of the DRCA. On 06.07.2005, the rent of the premises which was initially `1,500/- per month had been increased to `1,650/- per month to be effective from October, 2005. Contention of the landlord is that the tenant had illegally deposited the house tax of the tenanted premises in their own name without knowledge or permission of the landlord but he had not remitted the rent for the period w.e.f. October, 2005. Legal notice dated 08.11.2006 was served upon the tenant asking him to pay up the arrears of rent from 01.10.2005. In spite thereof, the rent was not tendered. Eviction petition was accordingly filed.

5 Written statement had disputed these averments. Contention was that there was a mutual agreement between the parties that they would pay rent @ `1,500/- per month till 31.03.2006 and thereafter enhanced rent of `1,650/- would be paid only w.e.f. 01.04.2006. Further contention of the tenant was that he had also been requested by the landlord to deposit the house tax as per the past practice; contention of the tenant being that he has in fact sent two cheques of `6,001/- and `4,950/- towards rent for the period from 01.09.2005 to 30.06.2006; even after the receipt of legal notice, cheque for `4,350/- was sent clearing rent up to 31.12.2006; further contention being that since an amount of `9,449/- was already deposited by the tenant qua the property tax, they have cleared arrears of rent up to 31.12.2006 and they are not liable for eviction.

6 Evidence was led by the respective parties. One witness was examined on behalf of the plaintiff and correspondingly one witness was examined on behalf of the defendant. Contention of the petitioner before this Court is the that it is an admitted fact that the tenant has paid house tax and in fact the house tax receipts Ex.RW-1/PX2, Ex. PW-1/7 and Ex. PW-1/ 8 are in the name of the tenant; the landlord had never raised any objection to

this payment of tax made by the tenant; even otherwise, there could be no possible reason as to why the tenant would have paid the house tax; it was clearly with a view that this amount shall be adjusted against the rent liability of the tenant. Further contention of the tenant being that on 08.11.2006 i.e. on the date of issuance of legal notice, if these adjustments are considered, admittedly no amount of rent was due to the landlord.

7 Both the fact finding Courts have delved into this submission now urged by the petitioner in deep depth and detail. The tenant in his written statement has in fact admitted that he was in arrears of rent; this was in para 8 (VI) of his written statement which was corresponding para to the eviction petition where the averment of the petitioner was that the tenant was in arrears of rent. RW-1 in a part of his cross-examination has also admitted that prior to 2004, he has never deposited any house tax; the question of a past practice thus being in favour of the tenant for depositing the house tax did not lie in the mouth of the tenant. The fact finding returned by the two courts below was based on the oral and documentary evidence led by the respective parties; conclusion being that the house tax was deposited by the tenant in the absence of consent of the landlord; this could not be a compliance of Section 27 of the DRCA which is a special provision available to a tenant that in case the landlord is not accepting the rent, he is permitted to deposit the same before the Controller.

8 Admittedly the tenant has been granted the benefit of Section 14 (2) of the DRCA on 07.01.2003. Legal notice dated 08.11.2006 had called upon the tenant to pay the arrears of rent, he failed to comply with the same. His contention that his deposit of house tax should have been adjusted against the arrears of rent had not been found favour with both the courts below. These findings of fact were based on cogent evidence. There is no manifest error or illegality which has been pointed out by the learned counsel for the petitioner in this fact finding returned by the courts below which in any manner calls for any interference by this Court.

9 This Court is sitting in its power of superintendence under Article 227 of the Constitution of India and unless and until a flagrant injustice or a manifest illegality has been committed by the two courts below, powers of interference are limited. The Apex Court in Waryam Singh Vs. Amarnath AIR 1954 SC 215 a judgment of the Constitution Bench has laid down the guidelines which were to be followed by the High Courts in exercise of its powers of superintendence. This Court is not an appellate forum. Merely

because another view than the view taken by the court below is a possible view, the High Court may not interfere in its powers of superintendence. No patent illegality has also been pointed out by learned counsel for the petitioner.

10 In this background, the impugned judgment does not call for any interference.

11 Petition is without any merit. Dismissed.

Sd/-  
INDERMEET KAUR, J