IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

Date of decision: 15th February, 2012

CM(M)48/2011

SANTOSH VAID & ANR. ....Petitioners
Through: Mr. Som Dutta Sharma, Adv.

Versus

UTTAM CHAND ..... Respondent
Through: Mr. Himal Akhtar, Adv.

AND

RSA 116/2011

AMRIT LAL GHAI ....Appellant
Through: Mr. J.M. Bari, Ms. Shweta Bari, Advs. with Appellant.

Versus

DARSHAN SINGH ..... Respondent
Through: None.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. CM (M) 48/2011 under Article 227 of the Constitution of India is preferred impugning the order dated 25th October, 2010 of the Civil Judge dismissing the suit filed by the petitioners therein as barred by the provisions of the Delhi Rent Control Act, 1958. Though technically speaking, a

CM(M) Petition under Article 227 of the Constitution of India against such dismissal of suit does not lie, the remedy of first appeal being available thereagainst, but notice thereof was issued. After notice the Learned Single Judge before whom the said CM(M) 48/2011 came up for hearing, being in doubt as to the correctness of the view taken by the another Single Judge of this Court in M/s. Pearey Lal Workshop Pvt. Ltd. v. Raghunandan Saran Ashok Saran 155 (2008) DLT 145 (Pearey Lal) and being of the view that the same required looking into by a Larger Bench, vide order dated 12th May, 2011 referred the CM(M) Petition to a Larger Bench. That is how the same is before us.

2. RSA 116/2011 has been preferred impugning the judgment dated 9th April, 2010 of the Civil Judge rejecting the plaint in the suit preferred by the appellant as well as the judgment dated 4th March, 2011 of the Learned Additional District Judge dismissing the first appeal preferred by the appellant. The said RSA 116/2011 came up for consideration before the same Learned Single Judge of this Court, who had made the reference aforesaid; finding the legal issue entailed therein to be the same as in CM(M) 48/2011, the said RSA 116/2011 was also directed to be listed before us.

3. Needless to mention, the reference to us is of the legal question. However since the reference order does not frame the said legal question, before framing the same, it is deemed expedient to set out the background facts.

4. The suit subject matter of CM(M) 48/2011 was filed for recovery of possession of immovable property and for arrears of and future damages for use and occupation. It was the case of the petitioners/plaintiffs in the plaint that the said immovable property had been let out to the respondent/defendant therein on 3rd November, 1987 at a monthly rent of Rs.150/-; that the respondent/defendant had not paid rent w.e.f. 1st July, 2009; that they as landlords had determined the tenancy of the respondent/defendant vide notice dated 5th January, 2010; that the respondent/defendant w.e.f. 1st February, 2010 was liable to pay damages for use and occupation of the premises @ Rs.10,000/- per month. Para 5 of the plaint is significant and is set out herein below:-

"5. That the Defendant has lost protection of the provisions of DRC Act, 1958 with regard to suit premises after taking into account the inflation, fall

in value of rupees, charges (sic changes) in the wholesale price index since 1987 till date. If the value of Rs.150/- is considered in this context, this amount would not be less than Rs. 10,000/-. The MCD has started claiming house tax as per the basis of Unit Area System instead of rent received by the landlord. The provisions of Sections 4,6&9 of DRC Act were declared unconstitutional in 1992 RLR 149."

5. The respondent/defendant in CM(M) 48/2011 inter alia pleaded that the suit as framed was barred by the provisions of the Delhi Rent Act. Accordingly a preliminary issue to the said effect was framed. The petitioners/plaintiffs, to contend that the suit was not so barred, relied on Pearey Lal (supra).

6. The Learned Civil Judge in the judgment impugned in CM(M) 48/2011 held the judgment of the Learned Single Judge of this Court in Pearey Lal to be not coming to the rescue of the petitioner/plaintiff since there were no allegations of sub-tenancy in the present case as found in Pearey Lal. It was further held that Pearey Lal itself had observed the need for a mechanism to balance the interest of the tenant and the landlord and for the landlord to claim increase in rent keeping in view the price index; that the Courts could not assume the role of the legislator or of filling in the lacunae in the law. Reliance was placed on Model Press Pvt. Ltd. v. Mohd. Saied 155 (2008) DLT 403 where a Division Bench of this Court held that where the rent of the premises agreed between the parties was below Rs.3,500/- per month, the Civil Court would not have jurisdiction. It was further held that since the petitioners/plaintiffs themselves had admitted the rent to be Rs.150/- per month, Section 50 of the Delhi Rent Act barred the jurisdiction of the Civil Court.

7. The petitioners in CM(M) 48/2011 have pegged their case on Pearey Lal only.

8. The case of the appellant in the plaint in the suit from which RSA 116/2011 has arisen, also was that he was the owner/landlord of the immovable property subject matter thereof and the respondent/defendant was a tenant therein since the year 1984 at a rent of Rs.260/- per month; that after increases in rent, the rent at the time of institution of the suit was Rs.485/- per month; that he was entitled to rent comparable to the valuation of the rupee in the year 1984 when the premises were let out; that Rs.260/- of the year 1984 was equivalent to Rs.6,500/- in the year 2009 when the suit was filed; that the appellant/plaintiff thus in the year 2009 was entitled to

rent @ Rs.6,500/- per month from the respondent/defendant; that similar premises were then also being let out at the rent of about Rs.10,000/- per month; that the respondent/defendant had however inspite of demand failed to pay rent at the said rate of Rs.6,500/- per month. Accordingly suit was filed claiming arrears of rent at the rate of Rs.6,500/- per month. Reliance was placed on Raghunandan Saran Ashok Saran v. Union of India 95 (2002) DLT 508 (DB).

9. The respondent/defendant in RSA 116/2011 in his written statement took the plea of the claim in the suit being barred by the provisions of the Delhi Rent Act. Accordingly a preliminary issue was framed and the Learned Civil Judge held that the Division Bench of this Court in Raghunandan Saran (supra) had only struck down Sections 4,6 & 9 of the Delhi Rent Act and not the Act in its entirety; that as per Section 6A r/w Section 8 of the Delhi Rent Act, rent could be increased by the landlord every three years by 10%; that the appellant/plaintiff however instead of claiming such increase was demanding the equivalent value as in the year of letting; that when the law i.e. Delhi Rent Act provided for a specific manner to increase the rent, the increase in any different manner could not be claimed. It was thus held that the appellant/plaintiff had no cause of action. The appellant/plaintiff in the first appeal before the Learned Addl. District Judge also invited attention to Abdul Jalil v. Special Judge, E.C. Act/Addl. District Judge, Allahabad (2007) 2 RCR Civil 520 (Allahabad) and to Pearey Lal aforesaid. However the first Appellate Court held that Section 6A of the Delhi Rent Act had not been struck down in Raghunandan Saran; that Abdul Jalil (supra) was not applicable; that Pearey Lal was also not applicable since in that case rent of particular amount was not claimed and there was no increase in rent. The judgment of the Learned Civil Judge was thus affirmed.

10. The appellant in RSA 116/2011 has again pegged his case on Pearey Lal and has argued that depriving a landlord from rent equivalent in value to the rent at the time of letting amounts to violation of rights of the landlord. The counsel for the appellant during the hearing has also referred to Milap Chandra Jain v. State of UP 2001 (2) RCR (Civil) 686 (Allahabad), judgment dated 12th March, 2010 of the same Learned Single Judge of this Court who has pronounced the judgment in Pearey Lal, in CM (M) 539/2009 titled Smt. Leena Joseph v. Mohd. Fazil and on Mohd. Ahmad v. Atma Ram Chauhan AIR 2011 SC 1940.

11. In the aforesaid backdrop the legal question for adjudication can be framed as under:-

Whether in the case of premises fetching rent of less than Rs.3,500/- per month, the owner / landlord can claim increase in rent other than as provided under Sections 6A & 8 of the Act or have the rent increased in proportion to the rate of inflation or devaluation of money and if so on what basis and/or to what extent?

12. The Delhi Rent Act was enacted to provide for the control of rents and evictions in the Union Territory of Delhi. The same, as originally enacted, applied to all premises in Delhi save premises belonging to the Government; Section 4 thereof disentitled the landlord from claiming any rent in excess of standard rent of the premises as defined and to be fixed under Sections 6 & 9 of the Act; Section 7 permitted increase in rent only in the event of the landlord incurring any expenditure on improvement, addition or alteration in the premises and that too with the approval of the Rent Controller; Section 14 prohibited the landlords from, notwithstanding anything to the contrary contained in any other law or contract, recovering possession from the tenant save on the grounds mentioned therein and after satisfying the Rent Controller (constituted under the Act and as distinct from Civil Courts) that such grounds existed; Section 50 barred the Civil Court from entertaining any suit in so far as it related to the fixation of standard rent in relation to premises to which the Act applied and/or to any other matter which the Rent Controller was empowered by or under the said Act to decide.

13. The position thus was that even if the premises were let out for say five years and the said time had expired, the landlord could not evict the tenant unless one of the grounds of eviction (viz. non payment of rent, subletting, misuser, non-use, self requirement etc.) specified under the Act was available. There was no provision in the Act for increase in rent also, save if the landlord carried out any improvement in the premises. On the contrary, the tenant if had agreed to pay the rent of say Rs.5,000/- per month could within two years from taking the premises on rent apply to the Rent Controller for fixation of standard rent of the premises and which generally was much lower than the agreed / market rent. Even if the tenant continued in the premises after the term of letting had expired, the landlord had no way to have the rent increased.

14. An amendment to the Delhi Rent Act was made w.e.f. 1st December, 1988. The premises, monthly rent whereof exceeded Rs.3,500/- were taken

out of the purview of the Act; Section 6A was incorporated enabling the landlord to have the rent increased by 10% every three years by issuing a notice under Section 8 intimating to the tenant of his desire to so have the rent increased and the increased rent became due and recoverable after expiry of 30 days from the date on which the notice was given.

15. A Division Bench of this Court in Raghunandan Saran Ashok Saran held that Sections 4,6 & 9 of the Delhi Rent Act relating to standard rent had not taken into account the huge difference between the cost of living in the past and the present time and did not pass the test of reasonableness and had become obsolete and archaic and accordingly struck down the same. However the only effect of the said judgment is that a tenant could not apply to have the standard rent thereof determined and thus could not avoid paying agreed rent, as he was able to before this judgment. Undoubtedly the Division Bench, while so striking down the said provisions, did observe that the said provisions dealing with the standard rent did not take into account the rise in the consumer price index and the huge costs required for maintaining the tenanted premises and there was no justification for not updating the frozen rents but all this was in the context of striking down Sections 4,6&9 only. Thus the said judgment cannot be said to be a judgment on the proposition that landlords are entitled to have the rent increased as per the consumer price index or rate of inflation.

16. In Pearey Lal, doubts as to the correctness of the view wherein have led to this reference, the premises were let out in the year 1956 at a rent of Rs.400/- p.m. and the rent had remained the same. In the year 2008 the landlord filed a suit in the Court of Civil Judge for recovery of possession of the premises from the tenant and for mesne profits. The said suit was valued for the relief of possession for purposes of court fee and jurisdiction at Rs.4800/- i.e. on the basis of annual rent. The tenant applied under Order 7 Rule 11 CPC contending the suit to be barred by Section 50 of the Delhi Rent Act. The landlord in reply contended that the premises were outside the purview of the Delhi Rent Act since the tenant had sublet the premises and the rent paid by the subtenant for the premises, though to the tenant, was in excess of Rs.3500/- p.m. The Civil Judge dismissed the application under Order 7 Rule 11 CPC holding that the question whether the premises were outside the purview of the Delhi Rent Act or not was subject matter of evidence. In challenge to the said order by the tenant before this Court, the said finding of the Civil Judge was affirmed. (We may notice that this Court in P.S. Jain Co. Ltd. v. Atma Ram Properties (P) Ltd 65 (1997) DLT 308

and Atma Ram Properties Pvt. Ltd v. Pal Properties (India) Pvt. Ltd 91 (2001) DLT 438 had already held that in the event rent payable by the subtenant to the tenant is more than Rs.3500/- p.m. the premises would be outside the scope of Delhi Rent Act even if the rent payable by the tenant to the principal landlord was less than Rs.3500/- p.m.) While doing so some observations were made to the effect that there was no justification for keeping the rents frozen and not allowing the landlords to reap present value of the rent originally agreed. However, the said observations were also in the context of the tenants while paying old rents subletting the tenancy premises at much higher market rents. It would thus be seen that the said judgment cannot be said to be laying down that a landlord is entitled to have the rent increased to keep pace with inflation or devaluation. Rather, when it was urged that the landlord ought to value the suit and pay court fees as per market rent, the learned Judge observed "If the Court cannot tell a tenant to pay rent at the present day market value of the property or taking into account the present value of rent of Rs. 400/- fixed in 1956, the Court cannot tell the landlord to pay the court fee on the present day market value in order to get the premises vacated".

17. It would thus be seen that Pearey Lal cannot be said to be an authority in favour of the right of a landlord to have the rent increased to bring it at par with the consumer price index or to account for the rate of inflation. It is the settled position in law (See Jitendra Kumar Singh v. State of U.P. (2010) 3 SCC 119) that a judgment is a precedent on what it decides and not on other things. Though certain observations of wide sweep were certainly made in the said judgment but that judgment also towards the end accepts that the Court cannot tell a tenant to pay the rent at the present day market value.

18. In that view of the matter, we feel that the reference to the Larger Bench was not really called for. Be that as it may, since we are seized of the matter it is deemed appropriate to deal with the issue.

19. A Coordinate Bench in Model Press Pvt. Ltd. (supra) has already held that for landlords who are receiving rent of less than Rs.3,500/- per month there is no provision available to unilaterally increase the rent to bring it at par with market rent. Though Pearey Lal was not noticed but it was observed that notwithstanding the decision in Raghunandan Saran, the legislature had not filled up the vacuum created in law with Sections 4,6 & 9 of the Rent Act being held ultra vires and had not put any mechanism for increase in rent in place thereof. Unfortunately the provision for increase in rent as

introduced by amendment to the Act w.e.f. 1st December, 1988 with insertion of Section 6A was not noticed by the said Division Bench.

20. A Single Judge of this Court in the order dated 5th December, 2005 in CM (M) 948/2004 titled Kamlesh Bagga v. Mahinder Kaur held:

"Counsel for the respondent submits that although in the plaint the rent has been admitted to be Rs.715/- per month but by legal notice dated 22.04.2003 increase of Rs.20,000/- per month based on the judgment of the High Court in Raghunandan Saran Ashok Saran Vs. UOI 2002 RCR 149 where the High court has struck down Section 4, 6 and 9 of the Delhi Rent Control Act. He also submits that the Court has held that a triable issue has been raised whether Section 50 of the Delhi Rent Control Act is a bar which can only be deciding (sic decided) after adducing evidence.

Heard counsel for the parties and have carefully gone through the submissions made by the parties and perused the orders under challenge. To my mind, contractual rent below Rs.3,500/- (Rupees Three Thousand Five Hundred) attracts the provisions of the Delhi Rent Control Act. Any contractual rent below the aforesaid figure would be governed under the Delhi Rent Control Act. In that event, a contractual rent of Rs.715/- would squarely bring the case under the Delhi Rent Control Act. Increase of rent from the contractual rent under the Delhi Rent Control Act can only be done by recourse to Section 6A thereof. A unilateral notice increasing rent beyond ten percent is not permissible under Section 6A of the Delhi Rent Control Act and cannot be acted upon to take the case out of the purview of the Delhi Rent Control Act.

In that view of the matter, the plaint itself reads that the contractual rent is Rs.715/- which has been raised by a notice dated 02.04.2003 to Rs.20,000/- taking the case out of the purview of the Delhi Rent Control Act is not tenable.

The reference made by learned counsel for the respondent of the Delhi High Court judgment does not support the proposition that Section 6A has also been rendered ultra vires."

We find SLP(Civil) No. 11536/2006 preferred thereagainst to have been dismissed in limine on 14th July, 2006.

21. Another Single Judge of this Court in Tilak Raj Narula v. M.L. Sethi 164 (2009) DLT 39 was also faced with a claim of a landlord, of the rent fixed at Rs.141.75p per month in the year 1962, having stood increased in the year 2006 to Rs.25,000/- per month owing to inflation. It was again held that the landlord, the rent of whose premises was less than Rs.3,500/- per

month, could claim increase of rent only in accordance with Sections 6A & 8 of the Act and not otherwise.

22. We put our imprimatur on the judgments of the Single Judges of this Court in Kamlesh Bagga and Tilak Raj Narula (supra). The same have correctly interpreted the provisions of the Delhi Rent Act.

23. In so far as the reliance by the counsel for the appellant in RSA 116/2011 on other judgments supra is concerned:-

i. Milap Chandra Jain (supra) struck down the provisions in the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 pertaining to standard rent. Again though certain observations anti allowing rent to remain frozen were made but again the said judgment cannot be said to be laying down that a landlord is entitled to unilaterally increase the rent in accordance with the consumer price index and/or the rate of inflation;

ii. Abdul Jalil was a case where the Allahabad High Court in exercise of powers under Article 226 of the Constitution of India increased the rent, however that was in the context of UP Rent Act (supra). As far as Delhi is concerned, as aforesaid, w.e.f. 1st December, 1988 a provision for increase in rent does exist. Once the legislature has provided for something to be done in a particular manner, then it has to be done in that manner and not in any other manner (See Chandra Kishore Jha v. Mahavir Prasad (1999) 8 SCC 266). The legislature having provided for increase in rent by 10% only and after three years, is deemed to have prohibited increase of more than 10% and before three years.

iii. Mohd. Ahmed (supra) was also a case where the Supreme Court gave certain suggestions/laid guidelines to minimize landlord-tenant litigation. The same were again in the context of UP Rent Act. The same also have no application to the position as prevailing in Delhi.

iv. In Smt. Leena Joseph (supra) a Single Judge of this Court exercising powers under Article 227 of the Constitution of India, as a matter of fact, found the rent agreed to be Rs.4,000/-per month. The same can also not be read as a precedent for the landlords in Delhi being entitled to so unilaterally increase the rent.

24. The counsel for the appellant in RSA 116/2011 in the list of judgments filed has also referred to :-

(i) M/s Nopany Investments Pvt. Ltd. v. Santokh Singh AIR 2008 SC 673 but we are unable to find any relevance thereto in the present context. The same merely lays down that the landlord can in accordance with Section

6A (supra) raise rent by 10% every three years but has to serve a notice of increase of rent under Section 8 to be entitled to such increase.

ii. Aboobacker v. Vasu (2004) 1 RCJ 129 where a Division Bench of Kerala High Court held a suit under Section 9 of the CPC for determination of fair rent to be maintainable. However the same was in the context of the Kerala Buildings (Lease and Rent Control) Act, 1965 which did not contain any provision for increase in rent as in Section 6A of the Delhi Act.

25. The views taken by the Allahabad and by the Kerala High Courts cannot be accepted in Delhi in the face of the legislature in its wisdom having already made a provision for increase in rent and in the face of the bar contained in Section 50 of the Delhi Rent Act.

26. Rate of rent is a matter of contract and can be varied in accordance with agreement only and not unilaterally. The Rent Control Legislations enacted in the pre-independence and immediately after independence era to prevent exploitation of tenants provided a statutory mechanism enabling a tenant to, notwithstanding having entered the premises with a promise to pay rent at a certain rate, apply to the Rent Controller/Court for fixation of standard rent which as aforesaid was generally lower than the prevalent market rent. However, with the passage of time, several Courts have found such provisions in the State Rent Legislations entitling tenants to wriggle out of the agreed rent to be archaic and struck down the same. Else the rent agreed between the landlord and the tenant binds both of them and neither is entitled to unilaterally vary the same during the period for which it has been agreed. On the expiry of the said period, if unable to agree on extension / renewal of the lease at a mutually agreed rate, the remedy of the landlord is only to evict a tenant and to for the period of unauthorized occupation recover mesne profits defined in Section 2(12) of the CPC as profits which the person in wrongful possession actually received or might with ordinary diligence have received. A landlord cannot be heard to while not wanting to evict the tenant, as per his own calculation claim increased rent. However, if the premises are within the purview of the Rent Act which prohibits the landlord from evicting the tenant for the reason of expiry of the term for which the premises were let out, the landlord cannot while being so prohibited be permitted to claim mesne profits or increase in rent unless permitted under the Rent Act. If the eviction is prohibited, the possession cannot be said to be unauthorized and the question of mesne profits does not arise. If it were to be held that though owing to the prohibition against eviction contained in the Rent Control Legislations, the landlord is not

entitled to evict the tenant but is nevertheless entitled to recover mesne profits for the period after the expiry of the period for which the premises were let out, the same would result in reducing the Rent Control Legislation to a dead letter and defeating its purpose. The same cannot be permitted. Thus, in the absence of a provision in the statute it cannot be held that a landlord is entitled to market rent from a protected tenant.

27. The Apex Court in Chander Kali Bai v. Jagdish Singh Thakur AIR 1977 SC 2262 held that the occupation of a tenant in a premises governed by the Rent Control Legislation becomes unauthorized and wrongful only after an order of eviction under the said legislation is passed against him and mesne profits can be recovered for the period thereafter only and not from the date of determination of tenancy since such a tenant continues to be a tenant (statutory tenant) till order of eviction under the Rent Control Legislation is passed. A Division Bench of this Court in Hindustan Steel Pvt. Ltd. v. Usha Rani Gupta AIR 1969 Delhi 59 held that in case of property of which rent is controlled by the Rent Control Act the landlord cannot complain of having suffered any loss by being deprived of possession of the property, beyond the rent for which the property is let out to the tenant holding over except to the extent of any permissible increase of rent under the Rent Control Act itself.

28. Even though the 10% increase in rent every three years provided for under the Delhi Rent Act may be perceived by some as inadequate but that is no reason for this Court to provide for a higher or more frequent increase. The same falls in legislative domain. This Court cannot step into the shoes of legislature (see Union of India v. Deoki Nandan Aggarwal 1992 Supp(1) SCC 323). It may be noted that Section 6A (supra) was inserted in the Delhi Rent Act with effect from 1st December, 1988 to quell the criticism thereof of being unevenly balanced against the landlord. The Legislature in its wisdom having considered increase in rent as provided in Section 6A as appropriate to balance the rights of the landlord and the tenant governed by the provisions of the Delhi Rent Act, it is not for this Court to delve into the validity thereof particularly in exercise of appellate/revisionary jurisdiction.

29. We accordingly answer the question framed by us herein above as under:-

A landlord of a premises governed by the Delhi Rent Control Act, 1958 is entitled to have increase(s) in rent only in accordance with Section 6A and 8 thereof and not otherwise; such a landlord cannot approach the Civil Court

contending that the rent stands increased or should be increased in accordance with the inflation or cost price index; the jurisdiction of the Civil Court in this regard is barred by Section 50 of the Delhi Rent Act.

30. The reference is decided accordingly. Axiomatically, the suits, subject matter of both CM(M) No. 48/2011 and RSA No. 116/2011, are found to be not maintainable. CM(M) No. 48/2011 and RSA No. 116/2011 are accordingly dismissed.

No order as to costs.

Sd/-
RAJIV SAHAI ENDLAW, J

Sd/-
ACTING CHIEF JUSTICE