

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

**SUBJECT : DELHI RENT CONTROL ACT**

Date of Judgment: 08.02.2012.

C.R.P. 137/2011 & CM No. 17492/2011

UCO BANK

..... Petitioner

Through Mr. Dilip Aggarwal, Adv.

versus

RAMESH KUMAR CHAWLA

..... Respondent

Through Mr. Tara Chand Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 08.07.2011 vide which the application filed by the defendant under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking rejection of the plaint on the ground that there is a bar of Section 50 of the Delhi Rent Control Act (DRCA) and the present suit for possession is not maintainable had been declined.

2 There is no doubt to the proposition that to deal with an application under Order 7 Rule 11 of the Code, the averments made in the plaint alone have to be scrutinized and not the defend as sought to be set up by the defendant.

3 Record shows that the present suit is a suit for recovery of possession and mesne profits/damages. The plaintiff Ramesh Kumar Chawla claims himself to be the owner of the disputed premises i.e. C-1/1, Lal Quarter,

Krishan Nagar, Delhi having been let out to the defendant for bank business and lease deed in this respect has been executed in the year 1976 for a period of 10 years. Contention in para 9 is that the defendant is paying `925/- per month as user charges of the premises since 1976 whereas the present value of the suit premises is much more; the market rent being about `9,000/- per month; further contention being that the defendant has in fact sublet these premises to some other person from whom he is charging an exorbitant amount; the defendant is in illegal occupation of the premises. The plaintiff has further averred that a legal notice dated 19.07.2010 was served upon the petitioner calling upon him to vacate the premises but he has failed to do so; in para 15 it has further been stated that the defendant is not protected by the DRCA as the present value of the suit premises has escalated and the user charges would be more than `9,000/- per month; however in the same para, it has been admitted that the rent in 1976 had been fixed at `925/- per month; present suit for possession as also for damages/mesne profits has been filed.

4 Written statement was filed. Thereafter an application under Order 7 Rule 11 of the Code had been filed; the averments made in this application have been perused. The contention of the defendant is that the lease of the demised premises has been created in the year 1976 @ `750/- per month; it was thereafter enhanced to `925/- per month w.e.f. 18.02.1976; it is pointed out that admittedly no notice has been given to the defendant for enhancement of rent and as such the last paid rent is only `925/- per month; the submission of the plaintiff that the premises have been sublet by the defendant to another person is only a ground for eviction which can be pleaded in eviction proceedings which have to be filed before the Additional Rent Controller; bar of Section 50 prohibits filing of a civil suit.

5 Reply to the said application was filed disputing this position.

6 However it is not in dispute that a lease deed dated 23.03.1977 had in fact been executed between the parties; this lease deed has in fact been relied upon by the plaintiff in the plaint. As per this document, the premises had been let out to the defendant @ `750/- per month; it is also not in dispute that thereafter the rate of rent was enhanced to `925/- per month. It is also an admitted fact that no notice has been given by the plaintiff to the tenant seeking enhancement of rent; contention of the plaintiff being that in terms thereof, market rates have escalated and presently the value of the suit premises has enhanced and the present user charges as per market rate would be `9,000/- which in fact entitles the plaintiff to file the present suit and

which has disentitled the defendant to the relief under Section 50 of the DRCA.

7 This submission of the petitioner is clearly bereft of any merit. Admittedly the suit premises had been let out at the last monthly rate of `925/- which even as per the plaintiff has not since changed. His only contention which is evident from the averments made in the plaint that `9,000/- are the present user charges and thus the bar of Section 50 will create a hurdle.

8 Section 50 of the DRCA reads as under:-

“50. Jurisdiction of civil courts barred in respect of certain matters -

(1) Save a otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant there from or to any other matter which the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.

(2) If, immediately before the commencement of this Act, there is any suit or proceeding pending in any civil court for the eviction of any tenant from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, such suit or proceeding shall, on such commencement , abate.

(3) If, in pursuance of any decree or order made by a court, any tenant has been evicted after the 16th day of August, 1958, from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, then, notwithstanding anything contained in any other law, the Controller may, on an application made to him in this behalf by such evicted tenant within six months from the date of eviction, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.

(4) Nothing in sub-section (1) shall be construed as prevailing a civil court from entertaining any suit or proceeding for the decision of any question of

title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises.”

9 It clearly stipulates that no civil Court will entertain any suit or proceedings in so far as it relates to the fixation of standard rent in relation to any premises to which the Act applies or to eviction of any tenant therefrom or to any matter which the Controller is empowered by or under the Act to decide. All premises where the rent is below `3,500/- per month, come within the domain and jurisdiction of the Rent Controller. It is thus clear from the averments made in the plaint itself that the bar of Section 50 applies and the jurisdiction of civil Courts is thus barred. This is clear from the averments in the plaint itself. Court in these circumstances had no option but to reject the plaint. The impugned order is thus an illegality. It is accordingly set aside. The plaint is rejected.

10 Petition disposed of.

Sd/-  
INDERMEET KAUR, J