

IN THE HIGH COURT OF DELHI AT NEW DELHI
SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 01.03.2012.

CM(M) 127/2004

HARISH CHAND RASTOGI Petitioner
Through: Mr. C.Harishankar and Mr. C.M. Jayakumar, Advocates.

versus

CHANDERWATI THRU L.R'S Respondent
Through: Mr. Parag Chawla, Advocate.

AND

RSA 122/2003 and CM Nos. 364/2003 & 2253/2004

HARISH CHAND RASTOGI Petitioner
Through: Mr. C.Harishankar and Mr. C.M. Jayakumar, Advocates.

versus

CHANDERWATI THRU L.R'S Respondent
Through: Mr. Parag Chawla, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. A regular second appeal is pending against the order of the Additional District Judge dated 21.03.2003. This was the order passed by the Additional District Judge in RCA 57/1999. Vide order dated 21.03.2003, the appeal filed by the defendant against the judgment and decree dated 06.05.1989 had been dismissed. CM No.127/2004 has arisen out of the order dated 23.10.2003; this order had dismissed the review petition filed by the defendant seeking a review of judgment and decree dated 21.03.2003.

2. Record shows that this is an unfortunate dispute between a mother and a son; the mother Chanderwati had filed a suit for possession and mesne profits against her son Harish Chand Rastogi; this was qua the property Nos.5703-07 and 5718-22 now known as Barwali Kothi, Nai Sarak, Delhi (as depicted in green colour in the site plan). The contention of the plaintiff was that the property No. 5706 along with premises No. 5707 had been leased out to Punjab National Bank; the property was surrendered to the plaintiff and she had put her locks upon the same; there was a store near this room which was also under the lock and key of the plaintiff; the defendant along with his two brothers were the partners of M/s Manoal Sain Joodhian who was a tenant under the plaintiff in respect of the portions bearing No.5719-22; her husband was also a partner earlier. The defendant has taken forcible possession of property No. 5706 and the store bearing No. 5720 and has started carrying on his business under the name and style of M/s Mangal Sain Jog Dhian; present suit for possession and mesne profits was accordingly filed.

3. Oral and documentary evidence was led; respective contentions of the parties were considered. The suit of the plaintiff was decreed on 06.05.1989; the first appeal against that judgment was also dismissed on 21.03.2003; the review petition seeking a review of this judgment dated 21.03.2003 was disposed of on 20.05.2003; while dealing with the review petition besides the review petition not having any merit, it was also filed belatedly i.e. after a delay of 4- ½ months; on the ground of limitation also, the review petition has been dismissed.

4. Before the first appellate Court, a statement was made by the counsel for the defendant that only issue No. 6 is the subject matter of arguments as in view of the judgment of the High Court passed in SAO No. 16/1990 (titled M/s Mangal Sain Jog Dhian Vs. Sh. Hari Shankar Rastogi & Others) dated 07.11.2002 where the benefit of Section 14 (2) of the Delhi Rent Control Act (DRCA) had been given to the tenant, the other issues were not pressed. Issue No. 6 related only to the mesne profits; it reads as under:-
“Whether the defendant is liable to pay mesne profits, if so, at what rate and for which period: OPP”

5. Before the first appellate Court, the arguments on issue No. 6 alone were addressed. The first appellate Court vide its judgment dated 21.03.2003 after examination of oral and documentary evidence endorsed the finding of the trial Court wherein the mesne profit at the rate of Rs.30/- for the period

from 12.07.1991 to 13.07.1991 had been granted. The first appeal was disposed of in the above terms.

6. As noted supra, the review petition seeking a review of the judgment dated 21.03.2003 had been dismissed on 20.05.2003; the main ground in the review petition was that the contention of the defendant's counsel before the first appellate court that arguments would only be addressed on issue No. 6 was not a correct statement made on his behalf; however that submission did not find favour with the reviewing Court who has noted that this grievance of the plaintiff has been sought to be addressed belatedly and even otherwise it was also not within the parameters and guidelines laid down under Order XLVII of the Code.

7. In this background, these two petitions have to be viewed. Section 100 of the Code provides that a regular second appeal shall be entertained only on a substantial question of law; on the basis of evidence adduced by the respective parties, a fact finding had been returned by the two fact finding Courts below i.e. Civil Judge in its judgment and decree dated 06.05.1989 and Additional District Judge dated 21.03.2003 whereby the Court had noted that Rs.30/- would be the amount of mesne profits which should be allowed to the plaintiff for the period from 12.07.1991 to 13.07.1991. This being a fact finding does not in any manner amounts to a question of law within the meaning of Section 100 of the Code.

8. It is well settled that the existence of a 'substantial question of law' is the sine qua non for the exercise of the jurisdiction under the amended provisions of Section 100 of the Code of Civil Procedure. The phrase "substantial question of law" as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means- of having substance, essential, real, of sound worth, important or consideration. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely.

9. No substantial question of law being arisen on issue No. 6 on which alone the judgment dated 21.03.2003 was passed; the regular second appeal is not maintainable; it is dismissed.

10. The review petition had also been considered the guidelines which have to be considered by the Court while dealing with a review petition; unless and until there is an error apparent on the face of the record; a

material irregularity or the evidence has come into the knowledge of the party which was earlier not available to a party insptie of due diligence, a review petition cannot be entertained. The Court has noted that there was no explanation for the delay of 4- ½ months in preferring this review petition. On merits as also on the ground of limitation the order dated 23.10.2003 dismissing the review petition seeking a review of the order dated 21.03.2003 was passed. This Court is sitting in its power of superintendence under Article 227 of the Constitution of India and unless and until there is an apparent illegality or an error committed by the Court below, interference is not called for. This is not one such case.

11. CM (M) No. 127/2004 is also without any merit. Dismissed.

Sd/-
INDERMEET KAUR, J