

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

**SUBJECT : DELHI RENT CONTROL ACT**

Date of Judgment: 14.3.2012

CM(M) 1561/2010

MST. SARVARI BEGUM AND ANR. .... Petitioner  
Through Mr. A.P.S. Ahluwalia, Sr. Adv. with Mr.S.S. Ahluwalia, Adv.

versus

AKHTAR ALAM AND ANR. .... Respondents  
Through Mr. Alok Sharma, Adv. for R-1.  
Mr. S.K. Kalia, Adv. for R-2.

CORAM:  
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The order impugned before this court is the order dated 17.05.2000 passed by the Additional Rent Control Tribunal (ARCT); this order had reversed the finding of the Additional Rent Controller (ARC) dated 22.05.1982. Vide order dated 22.05.1982, the eviction petition filed by the landlord-Mr. Salim under Section 14(1)(b) of the Delhi Rent Control Act (DRCA) had been decreed. The impugned judgment had been reversed this finding; eviction petition had been dismissed.

2 Record shows that the landlord-Salim had filed an eviction petition against Zahirudin and Akhtar Alam; premises in dispute are two shops bearing No. 1211 and 1212 Churiwala, Jama Masjid, Delhi (as depicted in red colour in the site plan filed in the Trial Court). Contention of the petitioner was that Zahirudin (hereinafter referred to as 'the tenant') had sub-let the premises to Akhtar Alam (hereinafter referred to as the 'sub-tenant') without the consent, oral or in writing of the landlord; the sub-tenant is now in possession of the premises; ground of sub-letting has accrued in favour of the landlord; eviction petition had accordingly been filed under the aforementioned provisions of law.

3 Written statement was filed by both the respondents separately. Contention of the tenant was that the sub-tenant was allowed to do his business temporarily from the disputed premises but thereafter he had refused to hand back the vacant possession of the suit premises to the respondent No. 1; in fact respondent No. 2 has not paid rent to respondent No. 1 for the lost more than two years.

4 In the written statement filed by the respondent No. 2, his plea was that he is an independent tenant in the suit premises and the respondent No. 1 was never a tenant; it was respondent No. 2 who was a tenant in the disputed premises and in fact he has been paying rent all along.

5 Oral and documentary evidence was led by the respective parties. 4 witnesses were examined on behalf of the landlord and 12 witnesses had come into the witness box on behalf of the tenant. The ARC on the basis of the oral and documentary evidence had passed eviction decree in favour of the landlord on 22.05.1982; his finding returned was that the premises had been sub-let to the sub-tenant; the ground under Section 14(1)(b) of the DRCA had been proved by the landlord.

6 Impugned judgment had reversed this finding.

7 Record has been perused. This case has a chequered history. Learned counsel for the petitioner has vehemently argued that the first appellate court while reversing the finding of the trial judge has not adverted to the evidence either oral or documentary; he has returned a cursory finding without going into details of the said evidence and on this ground alone the impugned judgment is liable to be set aside. To support his submission he has placed upon a judgment of the Apex Court reported in AIR 2011 SC 2906 State Bank of India Vs. M/s Emmsons International Ltd. wherein the court while dealing with the scope of an appeal before the first appellate court had quoted with approval the observation made in its earlier judgment reported in (2001) 3 SCC 179 Santosh Hazari Vs. Purushottam Tiwari and which observation inter alia reads as follows:

“.....The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of act and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings

supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.... while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.....”

8 This submission of the learned counsel for the petitioner has force and is in fact borne out from the record. Impugned judgment has not discussed the five witnesses who had been examined on behalf of the landlord and the twelve witnesses who had been examined on behalf of the tenant. This is a fit case for remand. Accordingly the matter is remanded back to the first appellate court i.e. the court of RCT which will be Rent Control Tribunal of the District Central, Tis Hazari Courts, Delhi who shall thereafter dispose of the appeal after passing a reasoned order keeping in view the evidence both oral and documentary which were adduced before the ARC. This is especially so in view of the fact that the RCT had chosen to reverse the finding of the ARC.

9 Parties are accordingly directed to appear before RCT (Central District), Tis Hazari Courts, Delhi on 23.3.2012 at 10.30 AM who shall endeavour to dispose of the appeal as expeditiously as possible and preferably within an outer limit of four months from today.

10 With these directions, petition is disposed of.

Sd/-  
INDERMEET KAUR, J