

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Date of Judgment: 21.03.2011

RSA No.50/2011

HINDU SHIKSHA SAMITI

.....Appellant

Through: Mr.Vikas Mahajan, Advocate.

Versus

SMT.SARABJIT KAUR & ANR.

.....Respondents

Through: Mr. Rajat Aneja, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 10.01.2011 which had endorsed the findings of the trial Judge dated 16.01.2010 whereby the suit filed by the plaintiffs Sarabjit Kaur & Another seeking possession and damages/mesne profits of the suit property bearing No. C-8/8, Krishna Nagar, Delhi had been decreed. This decree had been passed on an application under Order 12 Rule 6 of the Code of Civil Procedure (hereinafter referred to as the 'Code').

2 Two concurrent findings of fact have been assailed in the second appeal. On behalf of the appellant, it has been pointed out that the decree could have followed under Order 12 Rule 6 of the Code only if there was a clear and categorical admission made by the defendant which is not so in the instant case. Attention has been drawn to the averments made in the plaint. It is pointed out that the plaint itself is confused and there is no specific averment that the rent of the suit property was more than Rs.3,500/-. Para 4 has been highlighted. This submission of the learned counsel for the appellant is negated by the contents of para 4. Para 4 specifically pleads

that the rent of the premises was initially Rs.3,000/- per month which was subsequently enhanced to Rs.3,300/- per month and thereafter to Rs. 3,630/- per month. The rent of Rs.3,630/- was to be effective w.e.f. 01.10.2006. The corresponding para of the written statement has also been perused. There is no dispute about this specific averment made in this plaint. It has also nowhere been objected in the written statement that the rent being below Rs.3,500/- per month, a suit for possession would not lie and the bar of Section 50 of the Delhi Rent Control Act is applicable as is now the argument sought to be urged before this Court.

3 Before the first appellate court, the defendant had also moved an application under Order 6 Rule 17 of the Code seeking permission to amend his written statement to the effect that the rent was below Rs.3,500/- per month. This application had been dismissed on 15.12.2010. Defendant had been granted permission to raise the legal plea on non-joinder of the trustees by the plaintiff; this plea was answered in the impugned judgment in paras 14-17. No argument has been addressed on this issue today.

4 The impugned judgment calls for no interference. The suit of the plaintiff seeking possession of the suit property had been rightly decreed. Relationship of landlord and tenant was not disputed; there was a specific averment that the rent was more than Rs.3,500/- per month; it was Rs.3,630/- per month which was effective w.e.f. 01.10.2006. The termination of tenancy of the defendant is also not in dispute. It was terminated vide legal notice dated 07.11.1980. This has also not been argued before this Court.

5 The substantial questions of law have been embodied at page 28 of the body of appeal. No such substantial question of law has arisen. The two concurrent findings of the fact of the courts below call for no interference. Appeal is without any merit.

6 Appeal is dismissed in limine.

7 At this stage, learned counsel for the appellant submits that since a school is running in the aforementioned premises and it has more than 100 children and a staff of 10-12 teachers, he seeks some time to vacate the suit property. Counsel for the respondents has pointed out that the execution proceedings are pending. In view of the submission that a school is running in the aforementioned premises and it will necessarily cause hardship to the

students and teachers, (subject to an undertaking to be furnished by an authorized representative of the appellant within one week from today to be furnished to the respondents that he will vacate the suit property within three months.) prayer for vacation of the suit property after three months from today is accepted. On this condition, permission is granted to the appellant to vacate the suit property within three months.

8 A copy of this order be given dasti to both parties under the signatures of the Court Master.

Sd/-
INDERMEET KAUR, J.