

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

RSA No.287/2007

DATE OF DECISION : November 21, 2007

Sh.Vijay Kumar Appellant
through: Mr.K.S.Goswami, Adv .

VERSUS

Smt.Sunita Sharma Respondent
through: Nemo.

PRADEEP NANDRAJOG, J.

1. I would be referring to the respondent as the plaintiff. I would be referring to the appellant as the defendant.

2. Alleging that the defendant was a tenant in respect of the suit premises bearing No.1/9559, Gali No.2, Pratap Pura, West Rohtash Nagar, Shahdara and that the defendant was a tenant under an oral lease at a monthly rent of Rs.1500/- and that the tenancy was determined, suit was filed for ejectment and mesne profits. Prayer made in the suit was to grant damages from 7.2.2004 to 6.7.2004 and future mesne profits till ejectment. Defendant opposed the suit inter alia pleading that the suit property was governed by the provisions of the Delhi Rent Control Act. Since admitted rent was less than Rs.3500/-, civil court had no jurisdiction to entertain the plaint.

3. On the pleadings of the parties 5 issues were framed relating to the jurisdiction of the civil court to entertain the plaint and the entitlement of the plaintiff for a decree of ejectment as also mesne profits.

4. At the trial, to prove whether the suit property was governed by the Delhi Rent Control Act, PW-1, Anil Kumar, Halqa Patwari appeared. He proved that Shahdara and Village Uldhan Pur formed separate revenue estates.

5. It being not in dispute between the parties that the suit property was on land falling in the erstwhile revenue estate of Village Uldhan Pur, learned Trial Judge opined that by virtue of proviso to Sub-Section (2) of Section 1 of the Delhi Rent Control Act, 1958 there being no notification under the Delhi Rent Control Act extending the said Act to the revenue estate of Village Uldhan Pur, civil court had jurisdiction to entertain the plaint. On the issue of determination of the lease, plaintiff proved notice Ex. PW1/3 and the postal receipt under which notice was posted being PW1/4 as also acknowledgment card evidencing service of EX.PW1/3 upon the defendant. Acknowledgment card was exhibited as Ex. PW1/8.

6. Plea of the defendant was that vide order dated Ex. PW1/11 issued by the DCP, Delhi he was externed for a period of 6 months with effect from 11.11.2003 from the Union of Territory of Delhi. That the termination notice Ex. PW1/3 being dated 12.5.2004 he could not have received the same.

7. In view of the testimony of PW-1 a finding was returned that the suit was maintainable. Notwithstanding Ex. PW1/3, PW1/4 and PW1/8 learned Trial Judge held that there was no valid determination of the lease. Yet in spite thereof decree was passed. Mesne profits were awarded with effect from May, 2001.

8. The defendant filed a first appeal registered as Appeal N.11/2007. The same has been dismissed by the learned Appellate Judge.

9. It is urged in the second appeal that the area in question is governed by the Delhi Rent Control Act, 1958 and that there is no valid determination of the lease. Lastly it is urged that mesne profits could not have been awarded prior to 7.2.2004 for the reason there was no prayer made in the suit for grant of mesne profits prior to 7.2.2004.

10. Pertaining to the first contention, suffice would it be to state that the testimony of PW-1 clearly brings out that Village Uldhan Pur forms a separate revenue estate and Shahdara forms a separate revenue estate. The testimony further brings out that the revenue estate of Shahdara included certain villages but excluded Village Uldhan Pur. The notification extending Delhi Rent Control Act to the revenue estate of Village Shahdara, though not formally brought on record, in any case excludes Village Uldhan Pur. There exists no notification extending the provisions of the Delhi Rent Control Act to Village Uldhan Pur. Thus, the view taken by the learned Trial Judge and the first Appellate Judge on the issue of applicability of Delhi Rent Control Act, 1958 is correct.

11. On the issue of determination of the lease, as noted above plaintiff proved the notice of determination being the notice dated 12.5.2004 as Ex.PW1/3. Postal receipt under which the notice was posted was proved as Ex.PW1/4. Acknowledgment card was proved as Ex. PW1/8. Learned Trial Judge has discussed the 3 documents in para 14. The discussion reads as under :-

“14. The defendant admitted that the acknowledgment due (Ex.PW1/8) bears the correct address of the shop. There is no written lease deed between the parties. In the absence of contract, in view of the provisions of section 106 of Transfer of Property Act, 1992, the tenancy of the defendant shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee by 15 days notice. In these circumstances, the plaintiff has not successful in proving that the lease of the defendant has been terminated.”

12. The finding of the learned Trial Judge is not happily worded. On the one hand learned Judge has noted that the defendant admitted that the acknowledgment card Ex. PW1/8 bears the correct address of his shop. Yet in spite thereof a finding has been returned that the plaintiff has not successfully proved the termination of the lease.

13. As noted above in spite thereof suit has been decreed.

14. The learned Appellate Judge has discussed, once again in para 14 of the decision of the Appellate Court, the impact of the A.D. card and has returned a finding that the plaintiff succeeded in establishing that the lease was determined.

15. The view taken by the Appellate Judge is correct. The discussion on the subject by the learned Trial Judge is fairly inchoate.

16. The plea raised by the appellant that there is no valid determination of the lease is accordingly without any basis.

17. The last plea taken by the appellant needs consideration for the reason in the plaint claim for mesne profits was restricted with effect from 7.2.2004. Court fee was paid accordingly. In spite thereof, both courts have awarded mesne profits with effect from May, 2001.

18. Following substantial question of law is framed :-

(A) Whether in view of the pleadings in the plaint, the courts below were justified in awarding mesne profits to the plaintiff with effect from May, 2001 till 7.2.2004?

19. Since a short question arises for consideration appeal is not being formally admitted. It can be disposed of at the After Notice Miscellaneous stage.

20. Issue notice to the respondent by ordinary process and registered AD post returnable for 18.1.2008.

CM No.15934/2007

Allowed subject to just exceptions.

CM No.15933/2007

In view of the question of law framed, question of restoration of possession of the suit property does not arise. CM is dismissed.

CM No.15932/2007

For the reasons noted here-in-above disposing CM No.15933/2007 the instant application is dismissed.

CM No.15931/2007

Issue notice to the respondent returnable for 18.1.2008.

In the meanwhile operation of the impugned judgment and decree is stayed to the limited extent in that money decree pertaining to mesne profits with effect from May, 2001 till 7.2.2004 shall remain stayed.

Dasti.

Sd/-

PRADEEP NANDRAJOG, J.