

IN THE COURT OF SHRI GIRISH KATHPALIA,
DISTRICT & SESSIONS JUDGE (HQ)
& RENT CONTROL TRIBUNAL (CENTRAL)
TIS HAZARI COURTS, DELHI.

RCT No. 29/2018 & RCT No. 147/2018

SHRI SUDHAKAR SINGH
S/o LATE SHRI PRABHU SINGH
R/o AM-22, SHALIMAR BAGH
NEW DELHI

.....APPELLANT

VERSUS

SHRI SATISH MAHAJAN
S/o SHRI GURDAS MAL MAHAJAN
R/o H-16/77, GALI No.4, GOVIND GARH,
TANK ROAD, KAROL BAGH, NEW DELHI

ALSO AT :
2/79, SUBHASH NAGAR,
NEW DELHI 110018

.....RESPONDENT

Date of filing : 28.02.2018
First date before this court : 16.07.2019
Arguments concluded on : 25.02.2020
Date of Decision : 12.05.2020

Reason for delay in pronouncement of Judgment : Covid19 Lockdown

Appearance : Shri J.M. Kalia, counsel for appellant
Shri C.P. Wig, counsel for respondent

COMMON JUDGMENT

1. The above two appeals between same parties involve identical questions of law, so the same are taken up together for disposal. Upon notice of appeals, the respondent entered appearance through counsel. I heard learned counsel for both sides and examined the trial court records.

2. In appeal RCT No. 29/18, the appellant landlord has assailed order dated 27.01.2018 whereby application of the respondent tenant for deposit of rent for the period from 01.01.2017 to 31.12.2017 under Section 27 of the Delhi Rent Control Act was allowed granting liberty to the appellant landlord to withdraw the rent without prejudice to rights and contentions of the parties. In appeal RCT No 147/18, the appellant landlord has assailed order dated 30.08.2018, whereby application of the respondent tenant for deposit of rent for the period from 01.01.2018 to 31.12.2018 under Section 27 of the Delhi Rent Control Act was allowed granting liberty to the appellant landlord to withdraw the rent without prejudice to rights and contentions of the parties.

3. In order dated 27.01.2018, impugned in RCT No. 29/18, the learned Additional Rent Controller noted that main objection of the

present appellant landlord was that the tenanted premises were no more in existence as the same had already been demolished, leaving behind an open plot of land, which does not fall within the ambit of the Delhi Rent Control Act, as also held by the Rent Control Tribunal in order dated 27.05.2016 pertaining to the same premises. Having noted the aforesaid, the learned Additional Rent Controller held that since the objections had been filed by the present appellant landlord beyond statutory period of 30 days, the same could not be read, therefore, the rent deposit petition had to be allowed on technical grounds.

4. In order dated 30.08.2018, impugned in RCT No. 147/18 also the learned Additional Rent Controller noted the similar objection that since the tenanted premises had already been demolished, the provisions under the Delhi Rent Control Act including Section 27 thereof did not apply. Having observed the aforesaid, the learned Additional Rent Controller held that since there was no dispute about relationship of landlord and tenant between the parties, the objection raised was not sustainable, therefore, the rent deposit petition was allowed.

5. During final arguments, learned counsel for appellant landlord contended that the learned Additional Rent Controller fell into error by ignoring the specific findings of the Rent Control Tribunal that the provisions under the Delhi Rent Control Act would not apply to the

parties since the tenanted premises had already been demolished. It was further argued by learned counsel for appellant landlord that the proviso to Section 27(4) of the Act stipulates a right to be heard and for that purpose, no limitation period is fixed. It was also argued that in the impugned order dated 30.08.2018, observation of the learned Additional Rent Controller that relationship of landlord and tenant between the parties is not in dispute was contrary to record, and that observation being the foundation of the decision, the impugned order suffers non application of mind.

6. On the other hand, learned counsel for the present respondent tenant argued that despite demolition of the tenanted shop, tenancy between the parties continued since whether the Delhi Rent Control Act would apply or not has to be adjudged keeping in mind the time of inception of tenancy and not subsequently. Since at the time of inception of tenancy, the tenanted shop was in existence, the provisions under the Act must apply.

7. In rebuttal arguments, learned counsel for appellant landlord argued that once the tenanted shop got demolished, tenancy came to an end and in that regard order passed by the Rent Control Tribunal having not been challenged, has attained finality.

8. The provision under Section 27 of the Delhi Rent Control

Act stipulates that where the landlord does not accept any rent tendered by the tenant or refuses to deliver rent receipt or where a bonafide doubt exists as to who is entitled to the rent, the tenant may deposit such rent with the Rent Controller. The rent so deposited with the Rent Controller has to be accompanied with an application by the tenant disclosing particulars mentioned in Section 27(2) of the Act. The provision under Section 27(3) of the Act stipulates issuance of notice of rent deposit to the landlord or the rent claimants. If an application for rent withdrawal is made, the Controller after recording satisfaction of entitlement of the applicant shall order payment of rent to such applicant vide Section 27(4) of the Act. Proviso to Section 27(4) of the Act stipulates that prior to directing payment of deposited rent, the Rent Controller shall give an opportunity to be heard to all persons named by the tenant in rent deposit application as rent claimants. If at the time of filing the rent deposit application or within 30 days of receipt of notice, the landlord or the rent claimant complains that contents of the rent deposit application are untrue, the Rent Controller shall hear the tenant and thereafter if satisfied that the contents of the rent deposit application were materially untrue, the Rent Controller may impose fine on the tenant, to be paid to the landlord as compensation vide Section 27(5) of the Act. Where, on complaint of the tenant, the Rent Controller after hearing the landlord is satisfied that the landlord without any reasonable cause refused to accept rent, fine may be imposed on the landlord to be paid to the

tenant as compensation.

9. In the present case, as mentioned above, the appellant tenant filed written submissions/objections to the rent deposit application, mainly claiming that since the tenanted shop already stood demolished, the provisions under the Delhi Rent Control Act do not apply, so the rent deposit application be dismissed. It was not a complaint alleging that contents of the rent deposit application were untrue. In other words, what was filed by the appellant tenant before the learned Additional Rent Controller was not a complaint contemplated by Section 27(5) of the Delhi Rent Control Act. That being so, in my considered view, the limitation period of 30 days after receipt of notice of rent deposit application shall not apply to the present case.

10. Further, as mentioned above, by way of order dated 27.05.2016 between the same parties pertaining to the tenanted shop, the then Rent Control Tribunal specifically held that since the tenanted premises stood demolished and thus ceased to exist, the provisions under the Delhi Rent Control Act cannot continue to apply. That order, having not been challenged, attained finality and was binding on the learned Additional Rent Controller. That being so, even if the appellant landlord had not filed formal objections, the learned Additional Rent Controller, after order dated 27.05.2016 of the Rent Control Tribunal

was brought to his notice, could not have ignored the same.

11. Further, admittedly the tenancy between the parties was with respect to the tenanted premises and not the land underneath the same. What remains as on date is only the land underneath and that being so, provisions of the Delhi Rent Control Act shall not apply to the dispute between the parties.

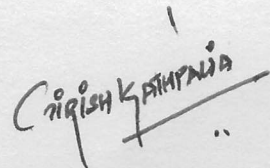
12. As regards order dated 30.08.2018, impugned in RCT No. 147/18, suffice it to record that the only ground on which the objection against the rent deposit application was dismissed by the learned Additional Rent Controller was that the jural relationship of landlord and tenant between the parties is not in dispute, but that finding recorded by the learned Additional Rent Controller is contrary to record. In the very first paragraph of the objections filed by the appellant landlord before the learned Additional Rent Controller, it was pleaded that the relationship of landlord and tenant does not exist between the parties. On this count itself, the said impugned order loses sustainability.

13. Therefore, I am unable to uphold order dated 27.01.2018 impugned in RCT No. 29/2018 and order dated 30.08.2018 impugned in RCT No. 147/18, so the same are set aside.

14. Both appeals are allowed and consequently, both rent deposit applications are dismissed.

15. A copy of this judgment be sent to the learned trial court along with trial court record. Appeal files be consigned to records.

Announced in the open court on
this 12th day of May, 2020



(GIRISH KATHPALIA)
District & Sessions Judge (HQ)
Rent Control Tribunal (Central)
Tis Hazari Courts
Delhi (a)

SUDHAKAR SINGH MAHAJAN
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