

In the matter of :

(1) Sh. Ramji Lal,
S/o Bansl Dhar,
R/o House No.42, Manohar Park,
East Punjabi Bagh,
New Delhi-110026.

.....Plaintiff

VS.

(1) Shri Suleman,
W/o Sh. Chhotey Khan,
R/o House No.42, 2nd Floor,
Manohar Park, East Punjabi Bagh,
New Delhi-110026.

.....Defendant

Date of institution of the suit : 04.09.2013
Date of reserving order : 07.07.2020
Date of pronouncement : 16.07.2020

J U D G M E N T

1. This is a suit for recovery of Rs.1,20,750/- as arrears of rent due against defendant.



2. Brief facts of the case as per the plaintiff are that he inducted the defendant as tenant in one tin shed room at 2nd Floor of the house No.42, Manohar Park, East Punjabi Bagh, New Delhi @ 1500/- per month excluding electricity and water charges were @ Rs.250/- per month. That the defendant lastly paid a sum of Rs.2000 (Rs 1500 rent November 2007 and Rs.500 towards electricity and water charges for October and November 2007) vide receipt dated 19.11.2007. That a sum of Rs.31500/- is due as arrears of rent, electricity and water for 18 months. That the plaintiff sent a legal notice dated 31.03.2009, whereby tenancy was also terminated besides demanding of arrears of rent. That a false reply was sent by the defendant but did not make any payment of arrears of rent. That the matter was adjudicated upon as per law by the court of Ld. SCJ / RC (E), Delhi by holding the rate of rent @ Rs.1500/- per month. That an eviction order was passed against the defendant on 05.08.2013.

3. In the W/S of defendant, certain preliminary objections were taken by the defendant i.e. suit was without cause of action and barred by limitation. It is also pleaded that the defendant has already deposited the admitted rent of Rs.500/- per month from June 2009 till date as per



order dated 28.09.2012 passed by Ld. SCJ / RC (E), Delhi. The rate of rent @ Rs.1500/- is also denied by the defendant.

4. There is no replication filed by the plaintiff to the WS filed by the defendant.

5. On the basis of the pleadings of the parties, following issues were settled on 07.12.2013 :-

1. ***Whether the suit is barred by limitation ? OPD***
2. ***Whether the suit is to be stayed as per provisions of section 10 of CPC ? OPD***
3. ***Whether the rate of rent is Rs.500/- per month ? OPD***
4. ***Whether there is no cause of action in filling the present suit ? OPD***
5. ***Whether the plaintiff is entitled to recovery of Rs.1,20,750/- ? OPP***
6. ***Whether the plaintiff is entitled to interest on the amount***

Now, issue-wise findings are as under :-

8. **ISSUE NO.4 : Whether there is no cause of action in filling the present suit ? OPD**

The onus to prove this issue was put upon the defendant, who has pleaded that the suit does not disclose a valid cause of action.

Law is well settled that while deciding the issue of cause of action, only the averments of the plaint are to be seen and considered. Through the present case, the plaintiff has demanded the arrears of rent from the defendant @ Rs.1500/- per month. After the perusal of the plaint, the suit is found having a valid cause of action. Hence, the issue is decided against the defendant and in favour of the plaintiff.

9. **ISSUE NO.2 : Whether the suit is to be stayed as per provisions of section 10 of CPC ? OPD**

The onus to prove this issue was also put upon the defendant and is based on the objections raised by the defendant in the W/S. It is pleaded by the defendant that the suit was liable to be stayed U/s 10 CPC till the disposal of the Appeal. Section 10 CPC applies where matter in issue is also directly and substantially in issue in a previously instituted



suit between the parties to this case.

There is no 'previously instituted suit' between the parties to this case. In the absence of a previously instituted suit, the issue is decided against the defendant and in favour of the plaintiff.

10. **ISSUE NO.1 : Whether the suit is barred by limitation ?**

OPD

The onus to prove this issue was put upon the defendant, who has pleaded that the suit was barred by the law of limitation as the plaintiff was claiming the rent for more than 3 years.

It is the plea of the plaintiff that he is not pressing the rent barred by law of limitation. The plaintiff has claimed the arrears of rent @ Rs.1500/- per month for 69 months. Although, the year and month of commencement of those 69 months is not disclosed in the plaint. No doubt, the period of limitation is 3 years. So, the court has no hesitation in holding that the rent beyond a period of 3 years on the date of filing of the suit was barred but the remaining is recoverable. The issue is accordingly decided against the defendant and in favour of the plaintiff.

11. **ISSUE NO.3, 5, 6 & 7 : Whether the rate of rent is Rs.500/- per month ? OPD,**



Whether the plaintiff is entitled to recovery of

Rs.1,20,750/- ? OPP And

Whether the plaintiff is entitled to interest on the amount of Rs.1,20,750/-, if yes, at what rate and for what period ?

OPP

All these issues are inter-connected. Hence, for the sake of convenience and for the avoidance of repetition, the same are taken up together. The onus to prove the issue no.3 was put upon the defendant and that of the remaining issues was upon the plaintiff.

It is the plea of the plaintiff that the defendant was inducted as a tenant in the suit premises @ Rs.1500/- per month excluding

inclusive of electricity and water charges.

12. So far as the arrears of rent are concerned, during the course of arguments, Ld. Counsel for the plaintiff did not press the relief by submitting that the defendant has paid the same to the plaintiff during the pendency of the case. The Ld. Counsel for the plaintiff has pressed only for the electricity and water charges @ Rs.250/- per month for a period of 3 years before the institution of the suit.

13. In his evidence affidavit, the plaintiff (PW1) re-affirmed the contents of the plaint. During his cross-examination, it was admitted by the plaintiff (PW1) at page no.1 itself that he had not filed any document on record w.r.t electricity and water consumption by the defendant. It was also deposed that the defendant was provided with a sub-meter of electricity and separate meter of water. For the sake of arguments, if the story of the plaintiff is presumed to be correct, it is beyond understanding as to why a separate sub-meter of electricity and separate water meter was installed when the defendant was supposed to pay a fixed amount i.e Rs.250/- per month for the consumption of electricity and water in the suit premises.

Moreover, during the cross-examination of the defendant



(DW1), it was deposed that the rate of charges of electricity and water charges Rs.250/- per month. It was also stated to be true by him that he deposited the electricity and water charges in the court. Putting of this suggestion to the defendant by the side of the plaintiff itself, shows an admission on the part of the plaintiff that the charges of electricity and water were deposited by the defendant in the court.

14. In view of the above, there is no requirement to decide the issue no.3, 5 & 7 qua the rate of rent and the arrears of rent since not pressed by the plaintiff. So far as the issue relating to the amount of water and electricity @ Rs.250/- per month is concerned, the court has no hesitation in holding that as per the suggestion put to the defendant (DW1) by the side of the plaintiff, it is an admitted fact that the same was also deposited in the court by the defendant.

In view of the above, the issues no.5 & 6 are accordingly decided against the plaintiff and in favour of the defendant.

15. **RELIEF.**

In view of the findings on the above issues, **the plaintiff is not found entitled to any relief. Hence, the suit is dismissed.**

No order as to cost.



Decree-sheet be prepared.

File be consigned to Record Room, after due compliance.

PRONOUNCED ON
16th of July 2020.


(RAJINDER KUMAR)
SCJ/RC(WEST)/DELHI