

(2001) 09 DEL CK 0186

In the Delhi High Court

Case No : Regular Second Appeal No. 102 of 2001 and CMs 267-269 of 2001

Annick Chaymotty @ Devayani

APPELLANT

Vs

Prem Mohini Mehra

RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Delhi Rent Control Act, 1958 — Section 2, 50
Transfer of Property Act, 1882 — Section 105

Citation : (2002) 95 DLT 312 : (2002) 61 DRJ 511

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : Chandershekhar and Ashutosh Kumar, for the Appellant; K.K. Bhuchar Atul Bhuchar and Pushkar Sood, for the Respondent

Final Decision : Dismissed

Judgement

Mahmood Ali Khan, J.—The short question that arises for determination in this revision petition is whether the rent of the premises in occupation of the appellant/tenant is Rs. 3620/- p.m. and the Civil Court has jurisdiction to entertain a civil suit filed by the respondent for the ejectment of the petitioner from the premises.

2. The factual matrix of the case, briefly stated, is that the appellant is a tenant on the first floor of House No. 21A, Amrita Shergill Marg, Delhi under the respondent. She had initially rented this premises @ Rs. 1200/- p.m. which was later on increased to Rs. 1320/- p.m. In addition, she was paying Rs. 2300/- p.m. to the respondent for additional facilities provided in the premises. After terminating the tenancy of the appellant by service of a notice of quit, the respondent filed a civil suit for possession and recovery of mesne profit against the appellant. Subsequently, respondent gave up the claim of mesne profit. The appellant contested the suit by filing a written statement. The relationship of landlord and tenant between the parties was admitted and so was admitted the

service of the notice of termination of tenancy. However, it was contended that the monthly rent was Rs. 1320/- only and the amount of Rs. 2300/- over and above this sum was being paid to the respondent towards additional facilities provided to the tenant and that this sum was not part of the rent. It was, Therefore, pleaded that the jurisdiction of the civil court in the rate of rent being less than Rs. 3500/- per month, was barred by Section 50 of Delhi Rent Control Act.

3. Based on the admissions made in the written statement, the respondent filed an application under Order 12 Rule 6 CPC for passing a decree for possession against the appellant. The defense of the appellant to this Application was also similar to the defense raised in the written statement. The learned Civil Judge held that there was relationship of landlord and tenant between the parties; there was admission of service of notice of quit on the appellant and the total amount of monthly rent payable by the appellant to the respondent was Rs. 3620/- per month; and the Civil Court had jurisdiction to try the suit. Accordingly, a decree for possession of the premises was passed by him against the petitioner.

4. The appellant is aggrieved by this order and has come up in appeal.

5. On the request of the parties, arguments were heard for disposal.

6. The argument of the counsel for the appellant is that as per the lease agreement, copy of which is at page 31 (annexure 2), the premises was taken on rent @ Rs. 1200/- per month on 16.3.1991. Besides as shown by the letter dated 16.3.1991 (page 33 of the paper book) sent by the appellant to the respondent a sum of Rs. 2300/- p.m. was used to be paid by the appellant to the respondent for the additional facilities provided to the tenant and this agreement was to continue during the entire period of the occupation of the premises by the tenant. The copy of the written statement produced before the court showed that the rent of Rs. 1200/- was enhanced by 10% subsequently making it Rs. 1320/- by mutual agreement. Besides, the appellant was also paying Rs. 2300/-. It was pleaded in the written statement that separate receipt for Rs. 2300/- was being issued by the respondent and this sum was not rent of the premises.

7. In view of the admission made in the written statement and the letter of petitioner dated 16.3.1991 by which she agreed to pay additional sum of Rs. 2300/- every month throughout her occupation of the tenancy premises, the onus was heavy upon the appellant to reveal in the written statement as to what those additional facilities were for which she was to pay separately Rs. 2300/- to the land-lady, if it was not to be regarded as a payment made towards additional facilities in the premises making it part of rent. It was not done by her though she asserted that the amount of Rs. 2300/- was not part of the rent. However, in the memorandum of appeal it is alleged by the appellant that the amount of Rs. 2300/- was being paid to the land-lady for taking care of her students who came for learning dance in her absence from the house. The appellant is said to be an

Indian Classical (Bharatnatyam) Dancer, and in term of the lease agreement she was permitted to practice dancing from 9.3 AM to 12.00 noon and 4.00 PM to 6.00 PM. The allegation that she was paying this sum of Rs. 2300/- to the landlady for her services for looking after her students till she came back home was not disclosed in the written statement and reason for not disclosing it has also not been given. A copy of the letter annexure P3 by which she had agreed to pay Rs. 2300/- for additional facilities provided to the tenant. In fact, the lease deed dated 16.3.1991 did not mention that the appellant will give lessons in dancing in the premises and the students would be coming there. It is not denied that the receipts issued for payment of this amount by the respondent did not mention that it was by way of remuneration/compensation to the respondent for the services rendered to the appellant.

8. The argument of the counsel for the respondent is that the rent of the premises was Rs. 3500/- which was split up in two sums, one sum of Rs. 1200/- and the other of Rs. 2300/-, by the respondent for the purpose of some tax benefit. It is stated that it was also being paid along with the amount of Rs. 1200/- which was later on increased to Rs. 1320/- making the total payment of a sum of Rs. 3620/- and that this sum was being paid for the premises and the facilities provided in the premises, Therefore, the consolidated sum will be the rent of the premises. Counsel for the appellant has cited a number of case law but admitted that none of them comes to the rescue of the appellant in this case.

9. The controversy centres around the word "rent". What does the expression "rent" can note and what is the rate of rent paid by the appellant in respect of the rented premises is the moot question. Agreed rent is Rs. 1200/- per month in terms of the lease agreement with 10% increase over it by mutual agreement between parties making it at the rate of Rs. 1320/- per month. Another sum of Rs. 2300/- per month was paid towards facilities provided by landlord. The parties are silent in their pleadings about the facilities for which this sum was agreed to be paid in addition to the agreed rent during the continuance of tenancy. Now the landlady says it was split up to save taxes. The petitioner, tenant, conversely, contended it was paid for the services rendered by landlady to take care of her students in her absence from house. Salient feature of this payment remained that it was being paid for the facilities provided to the tenant and it was payable for the entire period of the tenancy.

10. The words "lease" and "rent" are not defined by the Rent Act but definition of these expressions is given in Section 105 of the Transfer of Property Act. It is extracted as under:

"Lease Defined.- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lesser, lessee, premium and rent defined. -- The transferor is called the Lesser, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

11. The word "premises" has, however, been defined by Clause (i) of Section 2 of Delhi Rent Control Act as under:-

"premises" means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose, and includes:-

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;

(ii) any furniture supplied by the landlord for use in such building or part of the building;

but does not include a room in a hotel or lodging house."

12. Reading the definition of lease in Transfer of Property Act with the definition of word "premises" in Delhi Rent Control Act conjunctly it appears that the leased premises is not only a building or part of building but also the land and other things appertaining to it and also furniture and other fixtures provided by the landlord. The word "includes" indicates that the definition of premises given in Clause (i) of Section 2 of Delhi Rent Control Act is not exhaustive and some other facilities and amenities provided in the premises and necessary for beneficial enjoyment of the premises will also be part of the leased premises. Any money, share of crops, service or any other thing of the value agreed to be paid by the tenant for the premises rented and the facilities/amenities provided therein will squarely be covered by the definition of word "rent".

13. The word "rent" as defined by Section 105 of Transfer of Property Act postulates money, share, services or other things rendered by the lessee to the Lesser. The definition is comprehensive enough to include within its meaning, all payments made by the tenant to the landlord not only for use and occupation of the premises rented but also payment made for fixtures and fittings and all other amenities provided in the premises to the tenant by his landlord. Two fixed sums of money are being paid by the appellant to the respondent every monthly and will continue to be paid by her through out the terms of her tenancy. The Explanation of the respondent that the rent was paid in two parts to save taxes, in the absence of any evidence to the contrary, is acceptable. Had the amount been paid for care taking of students it would have been clearly spelt out in the letter dated 16.3.1991 and the nature of services rendered by landlady must have been described to bind her with the agreement. The facilities to be provided were kept concealed in the letter. The letter was written on the same day on which the tenancy started. From all these facts and circumstances there is irresistible conclusion that the sum of both these payments constituted the consolidated rent. So rent of the premises is Rs. 3620/- p.m. as alleged by the

respondent and not Rs. 1320/- as claimed by the appellant.

14. This view finds support from large number of decisions of the Supreme Court and various High Courts on this subject. Fittings and fixtures form part of the premises let out and rent of the premises and fittings and fixtures will be rent Surjit Singh Vs. H.N. Pahilaj, Term "premises" as defined in Section 2 of Rent Control Act was made enough to cover tenancies with their special incidents and the consolidated monthly rent for the amenities provided by the landlord came within comprehensive sense in which the word "rent" was used by the Act (Karani Properties Limited v. Augustine and Ors. AIR 1957 SC 20). Rent was more than Rs. 3500/- per month inclusive of property tax. Civil Court has jurisdiction eventhough the rent exclusive of property tax is falling below Rs. 3500/- per month (Roger Enterprises Pvt. Ltd. v. Renu Vaish 1998 (1) RCR 539). Word "rent" included not only what is originally described as rent in the agreement but those payment which are made for amenities provided by the landlord under agreement and rent includes all payments agreed to be paid by the tenant to his landlord for use and occupation not only of the building but also furnishing, electric installation and other amenities P.L. Kureel Talib Mankab, Vidhan Parishad Vs. Beni Prasad and Another,). The payment made towards maintenance charges of the premises rented out and also for providing amenities to the tenant is rent Sewa International Fasions Vs. Suman Kathpalia and Others,

15. The facts and the principles of law discussed above fully fortifies view taken by the courts below that the amount of Rs. 2300/- was part of the rent and the total rent of the premises payable by the appellant to the respondent was Rs. 3620/-. it was more than the stipulated amount of Rs. 3500/- and has taken out the premises from the purview of the provisions of Delhi Rent Control Act. The civil court has jurisdiction to try the suit for the ejectment of the tenant from the premises.

16. Counsel for the appellant has not challenged the ejectment order before this court on any other ground. However, it has been submitted by him in case the petition is dismissed, the appellant may be given some time for vacating the premises. He submitted that the appellant was a French woman, who is an Indian Classical (Bharatnatyam) dancer and is living in the premises for the past over 10 years and she should be given time to search for an alternative accommodation and vacate the premises, otherwise, she would be on road immediately.

17. For the reasons stated above, I do not find any infirmity in the orders of the two courts below. The appeal, Therefore, has no merit and it is dismissed. However, in the totality of the facts and circumstances, I give to months time to the petitioner to vacate the premises on her filing an undertaking to that effect on affidavit. Parties shall bear their own costs.