
(1998) 11 DEL CK 0014
In the Delhi High Court
Case No : C.M. (M) No.233 of 1998

Indian Air Gases Limited

APPELLANT

Vs

Tarawati Sood (Smt.)

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Delhi Rent Control Act, 1958 — Section 3(C), 6

Citation : (1999) 48 DRJ 203

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. R.S. Endlaw, for the Appellant; Mr. J.R. Midha, for the Respondent

Judgement

C.M. Nayar, J.—The present petition arises out of an application u/s 15(2) of Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") whereby respondent was sought to be directed to pay or deposit rent of the tenanted premises at the rate of Rs.3630/- per month with effect from April 1,1996.

2. The petitioner was inducted tenant on a monthly rent of Rs.3,000/- vide lease-deed dated July 10, 1978 and was called upon by the respondent through notice dated December 5, 1992 to increase rent by 10 per cent. The rent was increased to Rs.3,300/- with effect from 1st February, 1993. Another 10 per cent increase fell due after three years of previous increase u/s 6A of the Act and the respondent sent notice dated January 30, 1996 calling upon the petitioner to increase the rent to Rs.3,630/- per month. This notice was sent through registered post and it was duly served for which postal receipt and AD card were filed with the application. Despite service of notice petitioner did not pay due rent at the rate of Rs.3,630/- per month. Therefore, the respondent/landlady moved the proceedings u/s 15(2) of the Act. This plea was opposed by the petitioner and it was argued that even increase of rent earlier to Rs.3,300/- was illegal and void. The increased rent was paid on the understanding that respondent will withdraw the present proceedings.

3. The learned Additional Rent Controller assessed the pleadings of the parties and came to the conclusion that the respondent was entitled to get rent enhanced by 10 per cent after she issued notice for such enhancement to the petitioner which, prima facie, appeared served on the record on the basis of registered cover notice and AD card as well as postal receipts which were placed on record. The findings are recorded in paragraph 5 which are reproduced as follows:

"Now second contention is that respondent had disputed service of demand notice from the petitioner issued u/s 8 of the Delhi Rent Control Act conveying respondent her intention to increase the rent by 10% as entitled to u/s 6-A of the Delhi Rent Control Act. Respondent's contention is that when the same has been denied then there is no other course left with this Court except to provide an opportunity to refute/rebuttable presumption of service of notice for which procedure u/s 37 of the Delhi Rent Control Act has to be followed. Now I do not find such a contention is acceptable to an extent that in a petition u/s 14-D of the Delhi Rent Control Act where the Court has to pass an order u/s 15(2) of the D.R.C. Act only by taking a prima facie of circumstances and material available on record. If Respondent should be allowed an opportunity to lead evidence that will give rise to parallel proceedings. Respondent has been granted a reasonable opportunity to show cause now except a plea that notice for increase in the existing rate of rent by 10% has not been effected on respondent no other plea has been raised in support of non service of that notice. Petitioner has placed A/D card which was addressed to the respondent on suit premises address sent along with registered cover containing notice for increase in the rent. Now respondent's plea is that A/D did not bear stamp of the respondent company, There is no plea in the entire reply that this A/D card did not bear signature of any authorised person of respondent's company. Petitioner has also placed certificate of postage under which also the above demand notice was sent to the respondent company. The respondent only contention is that it should be given an opportunity to refute this rebuttable presumption. I do not find after this Court takes a prima facie view about the service of this demand notice upon the respondent an opportunity by evidence has to be given to the respondent to rebut the presumption. It is not only the case of presumption but prima facie the case showing service of notice effected upon the respondent. By this notice dated 30th January 1996 petitioner asked the respondent to pay rent by 10% increase as three years period had lapsed since existing rate of rent of Rs.3300/- came into effect. Further this increase has to come into effect after one month of service of this notice. Learned counsel for the respondent point out that postal receipts filed in support of this application showed date as 19-2-96. Similar U.P.C. bears date of 19-2-96. If service is deemed to have been effected in the month of Feb.1996 then increase by 10% must be placed from 1st April 1996 as tenancy commenced from 1st day of every month. Lastly the arguments of learned respondent was that if such increase bring the rent to an amount more than Rs.3500/- then matter must go out of the purview of Delhi Rent Control Act

and this court will cease to have been jurisdiction to decide this petition. I do not agree to this arguments of learned counsel. Jurisdiction of this court to try this petition will have to be seen on the date when this petition was filed, subsequent increase in the rent should not affect that jurisdiction."

4. The petitioner felt aggrieved by the order passed by the Additional Rent Controller and filed an appeal with the Rent Control Tribunal. The Tribunal rejected the contentions of the petitioner and held that the notice dated January 30, 1996 having been sent by the respondent/landlady to the registered office of the petitioner company at Kanpur by registered AD as well as by Speed Post and under UPC is in keeping with the provisions of Section 51 of the Indian Companies Act, 1956 which requires that any document is deemed to have been received by the company, if it is sent to the registered office by registered post. Thus presumption of service of notice stood automatically drawn against the appellant. The natural consequence, it was held, was that the rent stood unilaterally increased from Rs.3300/- to Rs.3630/- per month with effect from the expiry of 30 days of service of the notice. The appeal was dismissed with the direction that the trial court would adjudicate on the question as to whether the jurisdiction of the Rent Controller stood ousted on the rent being in excess of Rs.3,500/-.

5. The present petition raises a short question as to whether the Additional Rent Controller was justified in entertaining the application u/s 15(2) of the Act where a direction was issued to the petitioner to deposit the rent at the rate of Rs.3,630/- per month with effect from April 1, 1996, particularly, when the jurisdiction of the rent Court was ousted on the rent being held in excess of Rs.3,500/-. Secondly, it is argued that the notice issued for enhancement of rent at the rate of 10 per cent in accordance with the provisions of Section 6A of the Act was not validly proved in accordance with law. The Courts have concurrently held that the notice dated January 30, 1996 was issued by the respondent/landlady which was duly proved as having been received by the petitioner company. In this background it was not required for further evidence to be led. The petitioner company came in possession of the premises by virtue of lease-deed dated July 10, 1978 at a monthly rent of Rs.3,000/- and receipt of notice dated December 5, 1992 by the respondent/landlady expressing her intention to increase rent by 10 per cent as postulated by Section 6A read with Section 8 of the Act from February 1, 1993 was not disputed by the petitioner though it was maintained that there was a mutual oral understanding that on paying an increased rent of Rs.3300/-, the eviction petition would be withdrawn. This was not believed by the Courts below as the respondent was merely asking for statutory increase of rent and there was no need of any oral understanding between the parties. The petitioner company obviously did not take a correct stand in the matter and this approach was adopted, prima facie, only with a view to delay the proceedings which have been going on between the parties since the year 1991. The matter is also concluded by the judgment of this Court which has been relied upon by the Rent Control Tribunal in Theta Industrial Heating

Equipments (P) Ltd. Vs. Harvinder Singh 1997 1 AD (Delhi) 433. of this judgment reads as under:

"The protection against eviction, except on proof of specified grounds, provided under the Delhi Rent Control Act, 1958, which was available to the defendant, not being a vested right, in terms of the ratio of the decision in Chandrasekharrao's case (supra), it will not be permissible to uphold the contention raised on behalf of the defendant that the plaintiff could not, by his unilateral act, of serving a notice to enhance the rent, remove the protected shield available to him. On a combined reading of Sections 6A and 8 of the Delhi Rent Control Act, 1958 it cannot be disputed that the landlord will be entitled to claim increase in the rent of the premises by 10% after every three years. Section 6A of the Act says that notwithstanding anything contained in the Act the standard rent or where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and tenant may be increased by 10% every three years. Admittedly agreed rent was Rs.3,500/- which was fixed in the year 1981. Landlord u/s 6-A of the Act as of a right could claim increase by 10%. The mode and manner of exercising the option by the landlord to claim increase in the rent is contained in Section 8, which enjoins upon the landlord to serve a notice upon the tenant expressing and conveying his intention to make increase in the rent. The increase rent becomes due and recoverable on the expiry of 30 days from the date on which notice is given. It is not disputed that notice Ext.PW1/2 in writing was sent in behalf of the plaintiff in the manner as provided in Section 8 of the Delhi Rent Control Act. The enhancement in rent became effective on the expiry of 30 days from the date of receipt of the letter."

6. It will not be necessary to deal with the other contentions as they do not arise for consideration in the facts and circumstances of the present case. The impugned Orders do not suffer from any illegality nor there is an erroneous exercise of jurisdiction which will call for interference in the present petition under Article 227 of the Constitution of India. The same is, accordingly, dismissed in limine.