

(2014) 01 DEL CK 0143

In the Delhi High Court

Case No : Regular First Appeal No. 350 of 2013

Lalit Madhan

APPELLANT

Vs

Pramod Kalra

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2014) 3 AD 323 : (2014) 207 DLT 92 : (2014) 2 RCR(Civil) 121 : (2014) 1 RCR(Rent) 237

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Raman Kapur and Mr. Aviral Tiwari, for the Appellant; Purnima Maheshwari, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The appeal impugns the judgment and decree (dated 6th April, 2013 of the Court of the Additional District Judge (ADJ) (Central-07), Tis Hazari Courts, Delhi in Civil Suit No. 116/2010 filed by the respondent/plaintiff/landlord against the appellant/defendant/tenant) (i) of ejectment of the appellant/defendant/tenant from Flat No. 908, 9th Floor, Hemkunt Tower, Rajendra Place, New Delhi; (ii) for recovery from the appellant/defendant/tenant of interest @ 12% per annum on the rent of Rs. 2,645/- per month from 8th July, 2007 to 26th June, 2010 calculated for the period from 24th May, 2010 to 27th July, 2011; and, (iii) for recovery from the appellant/defendant/tenant of mesne profits/damages for use and occupation of Rs. 5,725/- per month (less the amount paid during the pendency of the suit to the respondent/plaintiff/landlord and towards maintenance charges) from 27th June, 2010, till the date of delivery of possession. The respondent/plaintiff/landlord had instituted the suit from which this appeal, arises inter alia pleading, that the appellant/defendant/tenant was a tenant under the respondent/plaintiff/landlord in the flat aforesaid; that the rent of the flat was in excess of Rs. 3,500/- per month and the provisions of the Delhi Rent Control Act, 1958 thus did not apply thereto; that

the appellant/defendant/tenant after the determination of the tenancy was in unauthorized use and occupation thereof.

2. The law with respect to such disputes, on each and every aspect, is by and large well settled in the plethora of such cases which have come up before the Courts.

3. The appeal came up before this Court first on 30th July, 2013. The only argument urged by the senior counsel for the appellant/defendant/tenant was that though the appellant/defendant/tenant had before the Trial Court controverted that the rent of the premises was in excess of Rs. 3,500/- per month but the learned ADJ had wrongly held the rent to be in excess of Rs. 3,500/- per month. It was the contention of the senior counsel for the appellant/defendant/tenant, i) that the admitted position was that the appellant/defendant/tenant for the said flat was paying a rent of Rs. 2,645/- per month to the respondent/plaintiff/landlord and a sum of Rs. 1,224/- towards maintenance charges to the Welfare Association of the Owners & Occupants of the multistoried building in which the said flat is situated, on account of maintenance charges; ii) that the learned ADJ however has erroneously held the said maintenance charges of Rs. 1,224/- per month to be part of rent and by adding the same to the monthly rent of Rs. 2,645/-, held the rent to be Rs. 3,869/- per month, taking the premises outside the purview of the Rent Act; iii) that though the learned ADJ in the impugned judgment, to hold the maintenance charges to be part of rent had relied upon the judgment of the Supreme Court in Abdul Kader Vs. G.D. Govindaraj (D) by Lrs., but there was a dichotomy of views in this respect in the orders/judgments of this Court in RFA No. 40/2012 and in RSA No. 251/2008. On the said contention of the senior counsel for the appellant/defendant/tenant, notice of the appeal was issued and the Trial Court record as well as the files of RFA No. 40/2012 and RSA No. 251/2008 requisitioned and subject to the appellant/defendant/tenant depositing the entire arrears of mesne profits/damages together with interest thereon in this Court, execution was stayed.

4. In compliance with the aforesaid, a sum of Rs. 1,02,000/- has been deposited in this Court.

5. After notice of the appeal was served on the respondent/plaintiff/landlord, the appeal was admitted for hearing and considering the short question involved in the appeal, with the consent of the counsels, the appeal was finally heard and judgment reserved, giving liberty to the counsels to file synopsis of submissions with additional judgments, if any relied upon. Both counsels have filed such synopsis with copies of the judgments and which have also been considered.

6. The limited question as aforesaid is, whether the charges payable by a tenant for provision of various common amenities/services in a multistoried building in which the tenancy premises are situated is to be part of rent or not. No other challenge has been urged by the senior counsel for the appellant/defendant/

tenant at the time of final hearing also.

7. Before dealing with the respective contentions, I may record that on receipt of files of RFA No. 40/2012 and RSA No. 251/2008, it is found that the judgments in both, take the same view i.e. against the appellant/defendant/tenant and there is no dichotomy of views of this Court as was earlier contended on behalf of the appellant/defendant/tenant. The senior counsel for the appellant/defendant/tenant has explained that he had urged so on hearsay and without examining the said judgments which are unreported.

8. Before taking up the contentions of the senior counsel for the appellant/defendant/tenant, it is deemed appropriate to refer to the judgments relied upon by the counsel for the respondent/plaintiff/landlord to contend that the said question is no longer *res integra*; she has referred to:

(i) *West Coast Paper Mills Ltd. Vs. Smt. Asha Kapoor*, where a Division Bench of this Court held, that the word "rent" included not only what is originally described as rent in the Agreement but also those payments which are made for amenities provided by the landlord under the 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 for furnishing, electrical installations and other amenities; the payment towards maintenance charges of the premises rented out and also for providing amenities to the tenant, is rent; accordingly, the charges payable in that case by the tenant to the landlord for furniture and fixtures were held to be part of rent and the premises were thus held to be outside the purview of the Rent Act;

(ii) *Inder Vijay Singh Vs. N.D.M.C.*, , where a Division Bench of this Court included the payment of hire charges of air conditioners in rent for the purposes of determining the rateable value and house tax of the premises;

(iii) *Sewa International Fashions Vs. Suman Kathpalia and Others*, where the charges payable by the tenant to the landlord as maintenance charges were held to come within the ambit of the expression "rent" and so computed, the premises were held to be outside the ambit of the Rent Act;

(iv) judgment dated 18th January, 2012 in RFA No. 40/2012 *supra* titled *M/s. Sewa International Fashions Vs. Meenakshi Anand* where also by computing maintenance charges to be rent, the premises were held to be outside the ambit of the Rent Act;

(v) judgment dated 28th April, 2011 in RSA No. 251/2008 *supra* titled *United India Insurance Co. Ltd. Vs. Smt. Anup Kaur* where also the maintenance charges were held to be part of rent and the tenancy premises were thus held outside the ambit of the Rent Act;

(vi) *Standard Pharmaceuticals Ltd. Vs. Gyan Chand Jain and Another*, where service charges payable by the tenant to the landlord were held to be part of the rent and accordingly the premises were held outside the ambit of the Rent Act;

(vii) Annick Chaymotty @ Devayani Vs. Prem Mohini Mehra, where the amount besides rent being paid by the tenant to the landlord towards additional facilities provided in the premises, was held to be included in the rent and the premises were accordingly held outside the Rent Act.

9. The senior counsel for the appellant/defendant/tenant has argued:

(a) that in Sewa International Fashions Vs. Smt. Suman Kathpalia, the maintenance charges were being paid by the tenant to the landlord only; that in the present case, the maintenance charges have always been paid by the appellant/defendant/tenant directly to the maintenance agency of the building and have never been paid by the appellant/defendant/tenant to the respondent/plaintiff/landlord;

(b) that such maintenance charges are at par with the electricity and water charges with respect to the premises and which can vary from month to month and it will be incongruous to hold that if the tenant uses more water/electricity and the charges levied therefor make the rent of the premises in excess of Rs. 3,500/- per month, the premises in that month would be outside the purview of the Rent Act and if the tenant uses less electricity/water so that the charges therefor together with rent payable to the landlord are less than Rs. 3,500/-, the premises would be within the purview of the Rent Act;

(c) that in the lease agreement between the parties in the present case proved before the Trial Court as Ex. PW1/C (also Ex. PW2/9) also the maintenance charges at the time of letting on 9th February, 1981 were of 25p per sq. ft. per month and the appellant/defendant/tenant was liable to also pay increase therein on the basis of actual increase in the maintenance charges of the building;

(d) under the aforesaid Lease Agreement, the appellant/defendant/tenant besides the lease rent payable to the respondent/plaintiff/landlord had agreed to pay charges for consumption of electricity and water to the municipal authorities and maintenance charges to the maintenance agency of the building;

(e) that the said maintenance services were/are not being provided by the respondent/plaintiff/landlord but by the maintenance agency and thus the payment of maintenance charges to the maintenance agency cannot be said to be on behalf of the respondent/plaintiff/landlord;

(f) that the respondent/plaintiff/landlord, in the petition for eviction under the Rent Act filed against the appellant/defendant/tenant prior to the institution of the suit from which this appeal arises had mentioned the rent as Rs. 2,645/- only;

(g) that at best rent can be inclusive of amounts for whatsoever additional services provided by the landlord and cannot include the amount paid by the tenant for services provided by others and not by the landlord;

(h) that in the judgment of this Court in Sewa International Fashions Vs. Smt.

Suman Kathpalia the maintenance charges were held to be part of the rent because it was so accepted by the tenant before the Trial Court and the said judgment cannot thus be held to be a precedent on the said aspect;

(i) similarly in United India Insurance Co. Ltd. supra also, the maintenance charges were held to be part of rent owing to the admission of the tenant;

(j) on the contrary the appellant/defendant/tenant in the present case in his written statement had expressly controverted that the maintenance charges were part of the rent;

(k) that the acceptance in the impugned judgment of the contention of the respondent/plaintiff/landlord that the appellant/defendant/tenant was directed to pay the maintenance charges directly to the maintenance agency on behalf of the respondent/plaintiff/landlord for the reason of the respondent/plaintiff/landlord staying in USA is contrary to the pleading including in the earlier proceedings between the parties;

(l) that the rate of maintenance charges, just like the electricity and water charges is variable, being based on actuals;

(m) attention is invited to the affidavit dated 26th April, 2004 by way of examination-in-chief of the respondent/plaintiff/landlord in the proceedings under the Rent Act before the Rent Controller (instituted prior to the institution of the suit from which this appeal arises) deposing the then rent of the premises to be Rs. 2,091/- excluding electricity, water and maintenance charges;

(n) that even if the flat is lying locked or is in occupation of the landlord, the maintenance charges are still payable to the maintenance agency of the building;

(o) increase or decrease in maintenance charges is by the maintenance agency and not at the will of the landlord;

(p) attention is invited to the judgment of the Division Bench of this Court in CIT Vs. DLF Office Developers holding the maintenance charges payable to the maintenance agency to be not rent and not assessable to tax as income in the hands of the landlord; and,

(q) attention is invited to Mohammad Ahmad and Another Vs. Atma Ram Chauhan and Others, to contend that landlords should get actual rent out of which nothing would be deductible and, property tax, water tax, maintenance charges and electricity charges shall be payable only by the tenant.

10. The counsel for the respondent/plaintiff/landlord has also invited attention to the receipts issued by the maintenance agency of receipt of maintenance charges in the name of the respondent/plaintiff/landlord "through tenant". Attention is also invited to the written statement dated 30th October, 2003 of the appellant/defendant/tenant to the petition for eviction under the Rent Act earlier filed by the respondent/plaintiff/landlord, where appellant/defendant/tenant admitted payment of maintenance charges "for and on behalf of" the respondent/plaintiff/

landlord. Attention in this regard is also invited to the Lease Agreement to contend that the payment of maintenance charges by the appellant/defendant/tenant, though directly to the maintenance agency, is for and on behalf of the respondent/plaintiff/landlord.

11. I have considered the rival contentions.

12. Though the senior counsel for the appellant/defendant/tenant has in support of the plea of the maintenance charges being not part of rent raised certain arguments which appear to have been not raised in the judgments supra holding maintenance charges to be "rent" and which arguments have not been adjudicated in the said judgments but considering the consistent view which this Court has taken, holding the maintenance charges to be part of rent and also for the reason,

(a) that the subject premises are commercial in nature and the appellant/defendant/tenant is occupying them for commercial purposes;

(b) the appellant/defendant/tenant is carrying on business in the name and style of M/s. Saraswati Construction Company and had taken the said premises on rent from the respondent/plaintiff/landlord as proprietor of the said M/s. Saraswati Construction Company;

(c) that though the appellant/defendant/tenant had taken the premises as far back as in February, 1981 at the then rent of Rs. 2,091/- per month for a period of three years with right of renewal of lease for a further period of three years on enhancement of rent by 15% over the last paid rent but has continued in occupation of the premises of the respondent/plaintiff/landlord instead of for three/six years, for 32 years, without any substantial increase in rent and without even increasing the rent by 15% every three years to which he had agreed, to his own commercial benefit and to the grave prejudice of the respondent/plaintiff/landlord;

(d) that if the appellant/defendant/tenant in accordance with what he had agreed, increased the rent by 15% every three years, the rent in any case would have been more than Rs. 3,500/- per month and the premises would have been outside the purview of the Rent Act;

(e) that the ground situation prevalent when the Rent Laws were legislated have over the years drastically changed, with the tenant particularly in this case being no longer an underdog or under privileged in need of protection;

I do not consider this to be a fit case for referring the matter to a larger Bench for reconsideration of the consistent view of this Court holding the maintenance charges to be part of rent.

13. Else, following the consistent view of this Court (and which cannot be on admission, being on a jurisdictional fact), there is no merit in the only argument urged and the judgment of the Trial Court is found to be in consonance with the

law laid down by this Court.

14. The appeal is therefore dismissed. No costs.

15. Decree sheet be prepared. The amounts aforesaid deposited by the appellant/defendant/tenant in this Court together with interest if any accrued thereon be forthwith released to the respondent/plaintiff/landlord and the files of RFA No. 40/2012 and RSA No. 251/2008 requisitioned, be returned.