

(1996) 10 DEL CK 0067

In the Delhi High Court

Case No : Second Appeal No. 293 of 1979

Mehar Elahi

APPELLANT

Vs

Verha Mal

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Delhi Rent Control Act, 1958 — Section 12
Registration Act, 1908 — Section 49
Transfer of Property Act, 1882 — Section 107

Citation : (1997) 1 AD 25 : (1996) 64 DLT 641 : (1997) RLR 75

Hon'ble Judges : J.K. Mehra, J

Bench : Single Bench

Advocate : M.L. Bhargav, Sanjay Abbot and O.P. Hans, for the Appellant;

Judgement

J.K. Mehra, J.

(1) This appeal arises out of an order passed by the Rent Control Tribunal holding that the petition for fixation of standard rent of the respondent was within time and fixing of Rs. 75.00 as standard rent in place of Rs. 175.00 which was the rent being paid by the respondent right from the inception of his tenancy.

(2) The facts, in brief, of this case are that the respondent filed a petition for fixation of standard rent on 4.2.1972 on the basis of an alleged rent note dated 22nd February, 1971 accepting the attornment of lease in favor of the present petitioner w.e.f. I.I 1.70. The property in question was purchased by the present appellant on 31st March, 1968 and at the time of purchase also the present respondent was in occupation of the shop and was paying a rent of Rs. 175.00 per month though to the tenant in his capacity as sub-tenant.

(3) The matter was first heard by the Additional Rent Controller Shri Jaspal Singh (as he then was) for the purpose of fixation of standard rent and he passed the interim order and expressed a prima facie view that the petition was barred by limitation as provided u/s 12(b)(ii) of the Delhi Rent Control Act which provides

that where the application is made by the tenant, the limitation would be two years from the date the premises were let out to him. u/s 2(I) of the Delhi Rent Control Act the term "tenant" has been defined to include a sub-tenant also. The respondent on the date of presentation of the petition for fixation of standard rent had already been in possession thereof though as a sub-tenant for nearly eight years and when he was accepted as tenant by the head lessor / petitioner, there was no change in the rate of rent. The Tribunal and the Additional Rent Controller had fallen into error in coming to the conclusion that the cause of action arose for presenting the petition for fixation of standard rent to the respondent from the date of the execution of the rent note when the said sub-tenant was accepted as a direct tenant under him by the purchaser of the property. It was not the case where the respondent had come into possession on the execution of the said rent note but only a question of fact of his status being changed from that of subtenant to that of a tenant without any change in the rate of rent. In every other respect, the liability of the respondent continued to be the same and he continued to pay Rs. 175.00 as rent which act is acknowledged by him in the said rent note. The rent note is an unilateral acknowledgement of the terms of tenancy by tenant and is not executed by both the parties. In the present case, the rent note though originally signed by the tenant, but at the bottom bears the endorsement of the landlord with the remarks "he has accepted the terms". That endorsement makes this document a bilateral document and it takes the colour of lease deed and ceases to be a rent note. It is not a case where the landlord had merely acknowledged the receipt of the original on the duplicate on the rent note. It is not a unilateral document signed by the tenant only which would not attract the application of Section 107 of the Transfer of Property Act and Section 49 of the Registration Act. On account of execution of the same by both the parties it assumed the character of a lease deed and any lease deed to be created in writing even if its registration is not compulsory u/s 17 of the Registration Act would require to be registered u/s 107 of the Transfer of Property Act and under the provision of Section 49 of the Registration Act. The provisions of the said Section 107 of the Transfer of Property Act and Section 49 of the Registration Act read as under : Section 107 of the Transfer of Property Act: Leases how made.-A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the Lesser and the lessee: Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by registered instrument or by oral agreement without delivery of possession. Section 49 of the Registration Act : Effect of non-registration of documents required to be

registered.-No document required by Section 17 {or by any provision of the Transfer of Property Act,1882 (4 of 1882),] to be registered shall-

(A)affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered : [Provided that unregistered document affecting immovable property and required by this Act or the Transfer of Property Act,1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877(1 of 1877), or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 (4 of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument.].

(4) The present petition for fixation of standard rent is not a case where possession is sought has to be defended by a party with the help of any such document in terms of Section 53-A of the Transfer of Property Act nor can this document be looked into for enforcement of any of its terms except as evidence of a collateral transaction i.e., the fact that he has been in possession of the said property in his capacity as sub-tenant/tenant and paying the same rent for the past several years.

(5) In the light of the facts disclosed, the contention of the respondent that he took the premises on rent at Rs. 175.00 per month w.e.f. 1.11.70 cannot be accepted. The premises were taken by him on rent though under a different person in the year 1964 and his cause of action for seeking fixation of standard rent arose in the year 1964 and this right was available to him for being exercised against his then landlord for a period of two years which expired long ago. Mere change of the landlord does not confer on any tenant/sub-tenant a fresh right to seek fixation of standard rent in respect of the premises but that right accrues to him at the commencement of his tenancy or sub-tenancy as the case may be. Every attornment of lease on change of ownership of the property cannot give rise to a fresh cause of action for seeking fixation of standard rent. That could not be the intention of Legislature in fixing a period of limitation for moving the Rent Controller for seeking fixation of "standard rent". In the case of *Sim Sant Ram and Another v. Pancham Singh*, reported as 1973 Rcr 89, this Court had to deal with a situation where the tenant entered into a partnership and on dissolution of the partnership leaving the other partner who had been inducted as the sole person in possession. Such surviving partner of that partnership took the plea that the partnership was a sham and on dissolution of partnership he acquired the right to move for fixation of standard rent. The Court negated his stand and held that limitation started from the year 1960 and not from 1964 i.e. the time when the premises were taken on rent. In the facts of the present case, no plea of condensation of delay was ever raised to avail of the benefit of proviso to Section 12 of the Delhi Rent Control Act which could show that the respondent was prevented from moving the Court for fixation of the

standard rent earlier within the time provided under the Act.

(6) Even on the question of evidence on merits the first Appellate Court has been swayed by some of the evidence showing the rent at Rs. 12.00 , Rs. 13.00 and Rs. 15.00 per month and has fallen into error in not taking the evidence into account of the neighbouring shops where the rent was Rs. 175.00 per month because admittedly, no standard rent was fixed in terms of provisions of Section 6 and it was fixed u/s 9(4) of the Delhi Rent Control Act. There also the approach of the First Appellate Court does not appear to be a balanced one. I am informed that the shop in question is in the heart of the commercial area of the city and the present rentals wherever no premium is charged are much more than what was being agreed to be paid and was in fact being paid, but I need not go into this question of fact having found that the original application was not presented within two years of the commencement of the tenancy, the same could not be entertained as it was barred by limitation u/s 12 of the Delhi Rent Control Act. For that reason, the orders of the Tribunal as well as of the Additional Rent Controller are set aside. The result is that this appeal succeeds and orders of both the Courts below are set aside. The application for fixation of standard rent is dismissed as time-barred.

(7) The respondent shall pay all the arrears of rent up to date within three months from today. No order as to costs.