
(1978) 08 DEL CK 0027

In the Delhi High Court

Case No : Second Appeal No. 77 of 1973

Raman Deo Singh

APPELLANT

Vs

Jawahar Lal Bhasin

RESPONDENT

Date of Decision : 18-08-1978

Acts Referred:

Citation : (1978) 14 DLT 81

Hon'ble Judges : Leila Seth, J

Bench : Single Bench

Advocate : Amarjit Singh and S.K. Luthra, for the Appellant;

Judgement

Leila Seth, J.

(1) This second appeal is directed against the order of the Rent Control Tribunal dated 1st December, 1972 by which the interim rent for the premises had been fixed at the rate of Rs. 350.00 per month w.e.f. 1st March, 1971 i.e. the date of the application u/s 9 of the Delhi Rent Control Act, 1958, (hereinafter referred to as the said Act.)

(2) The respondent Jawahar Lal Bhasin, made an application for fixation of standard rent u/s 9 of the said Act. The Additional Rent Controller, Delhi was required u/s 10 of the said Act to fix as expeditiously as possible the interim rent pending final decision of the said application. The respondent urged in the said application that the demised portion consisted of three bed rooms with attached bath rooms, one drawing cum-dinning room, kitchen, verandah and court yard etc. bearing No. A/88, defense Colony, New Delhi and the agreed rent of Rs. 600.00 was excessive and the standard rent thereof should not be more than Rs. 300.00 per month. The Additional Rent Controller held that as there was no proof of actual cost of construction or the cost of the land at the time of commencement of construction, nor any evidence of the standard rent of similar premises in the same locality, the agreed rent did not call for any reduction at that stage. He Therefore, fixed the interim rent at the agreed rate of Rs. 600.00

per month.

(3) The respondent being dissatisfied appealed u/s 38 of the said Act against the said order passed u/s 10 by the Additional Rent Controller on 23rd November, 1971, in suit No. 23 of 1971. The Rent Control Tribunal, however, accepted the appeal and fixed the interim rent at the rate of Rs. 350/" per month w.e.f. 1st March, 1971. In arriving at the decision, the Rent Control Tribunal relied on the sale-deed filed by Rani Padma Wati, the landlady. The sale deed which was filed by Rani Padmawati shows that she purchased this property on 29th December, 1962 for a sum of Rs. 75,000.00 The purchased property was described as one and a half storeyed building. The first floor according to the sale deed consisted of two rooms, bath room, kitchen-cum-dinning room. As such a reasonable assessment of the value of the ground floor would be two-third of the entire sale price i.e. Rs. 50000.00 . The rent calculated at 81 per cent came to Rs. 343.00 per month and the interim rent was fixed at a round figure of Rs. 350.00 per month.

(4) Rani Padma Wati being aggrieved by this order of the Rent Control Tribunal dated 1st December, 1972 passed in Rent Appeal No. 47 of 1972 tiled a second appeal u/s 39 of the said Act. She prayed that the order passed by the Rent Control Tribunal be set aside and that of the Rent Controller be restored.

(5) During the pendency of the proceedings in this Court it appears that Rani Padma Wati died and her legal representative Raja Raman Deo Singh was brought on the record.

(6) Learned counsel for the appellant has urged that sub-section (2)(b) of Section 6 read with the proviso of the said Act postulates that the standard rent be calculated on the basis of 8[^] per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of the commencement of the construction. He further urges that in fixing the interim rent u/s 10, the Controller must rely on the criteria laid down in Section 6 and Section 9 of the said Act. It is further stated that . if no material is available then the Controller, must fix the contractual rent as the interim rent. In support of his propositions, learned counsel for the appellant has cited the decision of learned Brother V.S. Deshpandey, J. in Prem Sheel Malhan v. Kumari Shanti Sharma 1972 R.C.R. 113.

(7) Learned counsel for the respondent however, has urged that in terms of sub-section (2) of section 39 of the said Act no appeal is maintainable unless the appeal involves a substantial question of law. He contends that there is no substantial question of law involved in the present appeal. He further urges that the sale deed dated 29th December, 1962 is good evidence of the cost of construction and the value of the land. This is particularly so as the completion certificate is dated 9th November, 1962 and the sale took place more or less immediately thereafter i.e. on the 29th December, 1962. He further contends that the order of the Rent Control Tribunal can, in no sense, be said to be

perverse as it is based on good evidence and the sale deed which has been filed by the appellant. It is also contended that this is only a fixation of interim rent and once standard rent is finally adjudicated upon then the balance rent for the interim period will become accordingly payable. He also relies on the above mentioned decision in Prem Sheel Malhan v. Kumari Shanti Sharma.

(8) The said decision in Prem Sheel Malhan v. Kumari Shanti Sharma on which both the appellant and the respondent rely lays down that the object of section 10, is to give immediate relief to the applicant pending the final fixation of the amount of standard rent. This is the reason that the Rent Controller has been given the power to enhance the contractual rent at the instance of the landlord or to reduce the same at the instance of the tenant u/s 10 of the said Act as an interim measure in the way as it has to be done u/s 9 of the said Act as a permanent measure. The said decision also holds that since Section 10 does not lay down any criteria about the amount at which the interim rent has to be fixed, the criteria for fixation of standard rent as laid down in Section 6 and Section 9(4) of the said Act would be applicable. But, as the interim rent has to be fixed by the Controller before those criteria are finally decided by him, the final decision as to the criteria will result in the fixation of the standard rent itself. Further if the rent finally fixed as standard rent is higher or lower than the interim rent fixed u/s 10, the landlord or the tenant as the case may be would be free to recover the difference between the interim rent and the standard rent from each other.

(9) I find merit in the contention of learned counsel for the respondent that this is not a final adjudication and is only an order specifying the amount of the rent pending the final decision of the application for fixation of standard rent. This is to be done as expeditiously as possible, and naturally all the evidence cannot be before the Controller at this stage. Reliance on the sale deed which was filed by Rani Padmawati herself and which is immediately after the construction of the premises is prima-facie indicative of the reasonable cost of construction and the market price of the land and an order based on this cannot be said to be perverse. In any case this is not a final adjudication and the actual cost of construction and the market price of the I and comprised in the premises on the date of commencement of construction, if established, will ultimately determine the standard rent. Further, if no such evidence is available then the rent may be fixed by the Controller having regard to the situation, locality, condition of the premises and the amenities provided therein and having regard to the standard rent payable in respect of such premises. This will be done when detailed evidence is led. In any event, it appears to me that the interim rent has to be fixed as expeditiously as possible and this can be so fixed on a prima facie assessment of the material available. This is not a case of there being no material on record and the decision being perverse. In the result the appeal is dismissed with costs.