

(2009) 04 DEL CK 0139

In the Delhi High Court

Case No : FAO (OS) No. 126 of 2009

Shri Pritam Prakash Dawar and Sons Huf

APPELLANT

Vs

Shri Krishan Kumar Bhasin and Others

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4
Delhi Rent Control Act, 1958 — Section 44(3)
Increase of Rent and Mortgage Interest (Restrictions) Act, 1923 — Section 2(5)
Transfer of Property Act, 1882 — Section 108

Citation : (2009) 3 CivCC 26 : (2009) 3 ILR Delhi 10 Supp : (2009) 1 RCR(Rent) 562

Hon'ble Judges : Sudershan Kumar Misra, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Sudhir Nandrajog, Vikas Sharma, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant is the owner/landlord of the suit property bearing municipal No. J-II/24-B, Lajpat Nagar, New Delhi (for short "said premises") of which the respondents are the tenants. The appellant filed a suit for permanent and mandatory injunction restraining the respondents from carrying out any alteration or modification or demolition in the said premises and not to sell, alienate, part with possession or transfer the said premises to any third party. The appellant also filed an application under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the said Code) on which interim orders were granted. The respondents moved an application for vacation of the interim order under Order 39 Rule 4 of the said Code. These two applications have been disposed of by the impugned order dated 6.2.2009 with which the appellant is aggrieved.

2. The factual matrix for determination of the appeal is within a narrow compass. The appellant claims to have let out the said premises to the respondents by a

written Rent Deed dated 1.11.1967 at a monthly rent of Rs. 60.00 for commercial purposes. The Rent Deed provided for the respondents not to injure any of the walls and portions of the building and for the appellant to carry out the necessary whitewashing and repairs every year. The appellant alleges that they came to know that the respondents had demolished the shop in or around 12.7.2008 without the knowledge and consent of the appellant and had also removed the front door of the shop. This gave rise to a complaint to the local police station and it was agreed that no changes would be made by the respondents without prior permission of the appellant.

3. It is the case of the appellant that the respondents themselves damaged the wall for making some electrical installations and the floor was dug up even though it did not require any repair. The plea of the appellant is that no repairs could be carried out without prior notice to the appellant/landlord even if the respondents/tenants were ready and willing to spend the money from their pocket.

4. The respondents, on the other hand, pleaded that the building being an old one needed repairs which the appellant failed to carry out with the result that the floor of the said premises started sinking resulting in water logging in front of the shop. The respondents claimed that they were only carrying out the necessary repairs on the walls where the plaster had fallen off and for fixing the water outlet pipe for the air-conditioner.

5. The basic plea urged by the appellant before the learned single Judge, as also before us, is that in view of the provisions of Section 44(3) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Rent Act), the requirement is for a prior notice to the appellant as landlord to carry out necessary repairs and only on failure of the appellant/landlord to do so would the respondents as tenants be entitled, to themselves carry out the repairs at the cost of the landlord. This plea has been considered in para 10 of the impugned order and the learned single Judge has come to the conclusion that since the respondents have agreed to bear the cost, the provision would have no application. The operative directions issued by the learned single Judge are set out in para 15 of the impugned order where the following works have been permitted to be carried out:

- (a) white-washing after repairing the walls where the plaster has fallen off;
- (b) fixing the water outlet pipes for air-conditioner;
- (c) flooring work inside of the shop;
- (d) leveling of pavement outside the shop as shown in the photographs filed by the defendants at their own cost within the period of seven days from the date of this order.

6. Insofar as sub-para (d) aforesaid is concerned, a reading of para 11 of the impugned order shows that the counsel for the appellant had agreed to the same. Thus, the appeal is really concerned with the first three aspects.

7. We put a specific query to learned senior counsel for the appellant as to how the appellant could object to whitewashing of the walls after repairing the plaster which had fallen off or fixing the water outlet pipe for air- conditioner or completing the flooring work inside the shop. Learned senior counsel for the appellant contends that the parties were bound by the scheme of the Rent Act and the respondents even at their own cost cannot carry out whitewashing or repairing of walls without first notice to the appellant. It is also pleaded that putting a new flooring amounts to an improvement in the shop, which is not permissible as the respondents are claiming protection of the Rent Act and any improvement has a consequence including of increase of standard rent. Learned senior counsel also opposed the installation of the air-conditioner.

8. In order to support his plea learned senior counsel for the appellant referred to the judgement of the Supreme Court in *Shadi Singh Vs. Rakha*, We find the said judgement of little assistance to the appellant as it recognizes the unilateral right of the tenant to get done small repairs but not major structural alterations or restructure. Learned senior counsel for the appellant pleaded that since a tenant is under a statutory obligation to approach the Controller and seek an order for effecting repairs provided the landlord refuses or neglects to effect the repairs, the presupposition is that nothing can be done without first approaching the Controller. We are unable to draw such a conclusion since the portion of the order referred to in para 5 of the said judgement cannot be read in isolation as in the very next sentence the consequences have been set out which are that the tenant would be entitled to recover costs thereof from the rent payable. The right of the tenant u/s 108(f) of the Transfer of Property Act, 1882 (hereinafter referred to as the TP Act) has been noticed when the landlord neglects to effect the repairs within a reasonable time. In such a case the tenant has a right to effect the repairs and recover the cost from the landlord.

9. Learned senior counsel also referred to the judgement of the learned single Judge of the Madras High Court in *Doraipandi Konar Vs. P. Sundara Pathar*, to emphasize that the expression "repairs" signifies restoration to original condition and material alterations or anything which substantially improves a thing in value from original condition cannot be said to be a merely repair of that thing. In such a case an improved thing would come into existence. The relevant portion of the aforesaid judgement is reproduced hereinunder:

21. On a reference to provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (1920 statistics) I am satisfied that this decision does not lend any support to the view taken by Mack, J, Section 2(5) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920 reads thus:

For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, "and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability".

This means that the tenant will be liable to effect only the repairs which he had undertaken to do under the express terms of the tenancy agreement and that the landlord shall be responsible for other repairs not provided for in the agreement. The observation of the Court that the obligations undertaken by the tenant or the landlord to effect repairs by virtue of the contract will be imported into the terms of the statutory tenancy is consistent with, and, indeed, is in pursuance of the provisions of the Act themselves, and the Act specifically provides that the landlord shall be responsible for the repairs, when the tenant has not undertaken to do. " There is no warrant in this judgment for the proposition that the terms of the tenancy will override the provisions of any rent control legislation, even though the latter has specifically provided for matters covered by the terms of the tenancy.

22. I am inclined to follow the decision of Subba Rao, J. (as he then was) in *Ramasubbayya v. Dt. Munsif of Kurnool* 1951 2 Mad LJ 53, wherein, he has laid down that the two statutory conditions to enable a tenant to make repairs to a building u/s 11(2) of the Act 25 of 1949 are (1) failure by the landlord to make the necessary repairs to the building after notice by the tenant and (2) permission by the House Rent Controller to the tenant to make repairs after the landlord had committed default. I do not think that this decision was intended to cover a case where the lease itself contained a covenant to repair.

23. It is not disputed that the tenancy In question between the parties in the present instance falls within the ambit of the Madras Buildings (Lease and Rent Control) Act 1960. As I have already observed this Act clearly sets out the rights and liabilities of the tenant and the landlord in respect of repairs; and I am therefore, of opinion that the rights and duties of the parties relating to repairs must be ascertained only by reference to Section 22 read with Section 2 (7) of this Act and that it is not open to the parties to fall back upon the terms of the tenancy agreement or upon the provisions of the Transfer of Property Act for that purpose.

24. It is urged by the respondent tenant that he had carried out only repairs and not improvements and that he had not reconstructed the entire house; and his contention had been accepted by the learned Subordinate Judge, but I find it difficult to uphold the same. I have already set out the definition of repairs as found u/s 2(7) of the Act 18 of 1960 and the emphasis in the definition is on the word "restoration", and the section clearly points out that repairs do not include additions, improvements or alterations except in so far as they are necessary to carry out such restoration. The term "improvements" has not been defined in the Act; and the meaning and import of the term must be gathered from the dictionaries and decisions.

25. The decision of this Court In *Muhammad Mohideen Rowther Vs. N.N.H. Mohammad Mohideen Rowther*, contains a wealth of information on the distinction between "repairs" and "improvements" as culled out from various dictionaries and judgments. Webster's New International Dictionary of the

English Language defines repairs as "an act of repairing; restoration, or state of being restored, to a sound or good state after decay, waste, injury etc." In Stroud's Judicial Dictionary the words "to repair" are shown as meaning "to make good defects, including renewal where necessary i.e., patching, where patching is reasonably practicable and, where it is not, you must put in a new piece. But "repair" does not connote a total "reconstruction."

26. The term "improvement" is defined in Webster's New International Dictionary as "a valuable addition, or betterment, as a building, clearing, drain, fence etc; on land." In Ballantine Law Dictionary, "improvements" is described "a word that includes everything that enhances the value of premises permanently for general uses, erection of a building, making substantial changes or additions in existing buildings, the laying of necessary side-walks and the digging of wells, are common illustrations? and it is further observed that it would be in violation of the proper construction of the term "repair" to hold that it included original improvements, or work of a different character from that previously, done.

27. In Ram Asray Vs. Hira Lal, it is stated that where a kuchcha building is demolished and a new pucca building is constructed, the new construction shall be regarded as an improvement.

28. After a survey of a large number of authorities Ramaswami, J. has laid down Muhammad Mohideen Rowther Vs. N.N.H. Mohammad Mohideen Rowther, cited above that all repairs are improvements though all improvements are not repairs.

29. In Hansraj Tirathram Vs. The Administrator, Municipality, the distinction is brought out thus:

The expression "repair" signifies restoration to the original condition. Anything which substantially improves or materially alters a thing from its original condition cannot be said to be merely a repair of that thing; it will be bringing into existence an unproved thing; an altered thing; a new thing for all intents and purposes. But it cannot be forgotten that "repair" involves an element of renewal yet renewal of the whole or substantially the whole or not a lesser part of the whole cannot be said to be "repair."

30. In Lurcott v. Wakely and Wheeler, 1911-1 KB 905, at p. 912, CozensHardy M. R. had observed that "in many cases repair necessarily Involves, not repair strictly so called, but renewal. If an earthenware pipe breaks, you can only repair it by renewing it. Or again, if window frames become rotten and decayed, you cannot repair them except by renewing."

It is thus seen that, in defining the word "repairs" in Section 2(7) of Act 18 of 1960, the Madras Legislature has substantially adopted the meaning attributed to it by the dictionaries and decisions referred to above. The basic idea underlying the concept of repairs is restoration of a building to its original condition. This implies that the old structure is retained and is renovated from the damaged condition to its original sound state. Repair always Involves an element of

renewal, but renewal of the whole and substantially the whole cannot be termed repair proper. Where the building is completely demolished and a new structure put instead, it would normally be reconstruction, not repairs proper. In exceptional cases however, as those enumerated by Cozens Hardy M. R. in 1911-1 KB 905, repair may imply a complete renewal and substitution. An addition material alteration or anything which substantially improves a thing in value from the original condition except so far as it is necessary to carry out such restoration cannot be said to be merely repair of that thing, it will be bringing into existence an altered thing, an improved thing, a new thing for all intents and purposes.

31. Applying these principles to the present instance, I am satisfied that what the respondent had done to the building would amount to a reconstruction and not mere repair as contemplated by Act 18 of 1960. The original building in question consisted of only the roof, walls and the floor and as a result of the respondents' action the entire roof had been replaced, all the walls had been put up afresh and the flooring had been completely done up anew. The whole building had therefore, been substantially renovated and it would therefore, be idle to contend that only a repair of the building had been done. Even if the work done is taken piece by piece, the renewal of the thatch alone may amount to repair; and it would be impossible to say that the conversion of the mud walls into brick walls and the mud floor into cement floor would be mere repair. It would clearly constitute a material alteration and an improvement in that the nature and composition of the flooring and the walls had undergone a complete change and the value had considerably enhanced,

32. It is also clear, that even if the respondent's acts can be assumed for the sake of argument only to be repairs, as the respondent had resorted to them without obtaining the previous consent of the Rent Controller on an application, he would not be entitled to any compensation, even to the extent of a month's rent, for the trouble he had undergone in renovating the building.

10. A reading of the aforesaid shows the explanation of the terms "repairs" and "improvements". However, the proposition of law laid down was that the tenant could not recover the amount from the landlord where without obtaining the previous consent of the Rent Controller the necessary work was done. As observed in the present case, the respondents do not seek to recover any amount from the appellant/landlord.

11. Learned senior counsel for the appellant seeks to lay great emphasis on the fact that once a premises is improved the landlord has a right to seek revision of the standard rent and thus the aspect of "repairs" or "improvements" to be carried out and the consequent increase of standard rent are all matters to be examined by the Rent Controller. Learned senior counsel referred to the judgement of the Supreme Court in *Raichurmatham Prabhakar and Anr. v. Rawatmal Dugar* (2004) 4 SCC 766, the relevant portion of which is reproduced herein under:

21. Having reconstructed the premises totally anew, should the rent remain static? We can understand the premises being just repaired or only essential repairs having been carried out by the landlord in discharge of his obligation to secure peaceful enjoyment and possession of the tenancy premises by the tenant for the purpose for which the tenancy was created. So long as the premises remain the same, one can understand and assume that the rent appointed for the premises either by agreement or as fair rent has already taken care of the obligation of the landlord of maintaining the premises in good and habitable condition. In such cases, it may not be necessary to revise the rate of rent. However, when the premises have been added to, improved, altered or rebuilt consequent upon the satisfaction of the Controller having been arrived at in that regard, it will be unreasonable and capricious to keep the premises tied down to the old rate of rent which was being paid for premises which were, maybe, dilapidated or not worthy of human habitation.

12. Insofar as the aforesaid aspect is concerned, we feel if the repairs of such a nature, which result in improvement of a premises, have been carried out, it entitles the appellant/landlord for enhanced rent and nothing prevents the appellant from filing an appropriate application before the Rent Controller in accordance with law, if he is so advised. The nature of repairs permitted by the learned single Judge, as per the impugned order, are minor in nature to the extent of whitewashing and repairs of the walls where the plaster had fallen off. Similarly permitting fixing of water outlet pipe to facilitate installation of air-conditioner can hardly be called any repairs. No doubt flooring work inside the shop requires some digging. However, the premises is undisputedly old and the appellant had agreed to leveling the pavement outside. This is on the basis of the allegation of the respondents that the pavements have been raised by the neighbours of the respondents resulting in water logging in front of the shop. This is also alleged to have caused sinking of the floor of the said premises. We, thus, find no infirmity with the directions passed by the learned single Judge.

13. The result is that the appeal is dismissed with liberty to the appellant to approach the Rent Controller for enhancement of standard rent in accordance with law, if he is so advised. CM No. 5058/2009 (Stay)

Dismissed.