
(2002) 01 DEL CK 0120

In the Delhi High Court

Case No : C.R. No's. 821 of 2000 and 68 of 2001

Standard Pharmaceuticals Ltd.

APPELLANT

Vs

Gyan Chand Jain and Another

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

Citation : (2002) 97 DLT 290 : (2002) 62 DRJ 733 : (2002) RLR 317

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Pradeep Nandrajog and Sanjay Kumar, for the Appellant; J.K. Seth and Shalini Kapoor, for the Respondent

Judgement

S.N. Kapoor, J.—In these matters, the question of condensation of delay is required to be decided along with interpretation of term "rent".

2. First the facts are given in brief hereinbelow to appreciate the respective contention of the parties. On 1st April, 1968, the premises in question was let out to Standard Pharmaceutical Ltd. 24, Park Street, Calcutta. The case of the plaintiff-respondent was that after the lapse of years, rent was increased from Rs. 2,000/- to Rs. 2,500/- w.e.f. 1st April, 1983 and after five years the rent was further increased to Rs. 3,000/- w.e.f. 1st April, 1988. The plaintiff landlord by notice dated 5th January, 1991 - after the amended Rent Control Act came into force on 1st December, 1988- gave a notice and increased the rent by 10%. Consequently, the rent became Rs. 3,300/- per month up to 31st July, 1991. Thereafter, they failed to pay the rent. The plaintiff filed a petition for eviction before the Rent Controller. The proceedings before the Rent Controller continued. On 14th February, 1994, the defendant in terms of Section 6A read with Section 8 of the D.R.C. Act gave a notice increasing the rent further by 10% from Rs. 3,300/- per month to Rs. 3,630/- per month and filed the suit.

3. The petitioner/tenant disputed the jurisdiction of the Civil Court u/s 50 of the Delhi Rent Control Act and submitted that there was no cause of action. The

petitioner denied that the rent was ever increased from Rs. 2,000/- to Rs. 3,300/-. However, in para 1 of the reply of the written statement, the defendant-petitioners mentioned his plea as under:

"Rent was fixed at Rs. 2,000/- and currently service charges Rs. 1,300/- are being paid in addition to the rent of Rs. 2,000/-. Even if the rent is increased in terms of the provisions of the Delhi Rent Act then the increase will be effective on Rs. 2,000/- (rent part and not on service charges). It is further relevant to mention that in the eviction petition pending before the ARC the plaintiffs herein have not demanded any increase under the provisions of Delhi Rent Control Act which has been sought to be invoked in the present plaint. The plaintiffs herein are regularly receiving rent at the rate of Rs. 2,000/- + Rs. 1,300/- per month as service charges."

4. Learned Senior Counsel for the petitioner Mr. Pradeep Nandrajog was fair enough to state that the notice which purported to increase the rent by 10% dated 14th February, 1994 was received but his contention is that if the rent was only Rs. 2,000/- then, at the most, the rent could be deemed to have raised to Rs. 2,200/- and even then the Civil Court would have no jurisdiction for the matter would still not fall within the jurisdiction Rent Controller for the purpose of eviction, for the application of Rent Control Act would not be excluded as Section 3 provides that it excludes only those premises whose monthly rent exceeds Rs. 3,500/- in terms of Section 3(c) of Delhi Rent Control Act and consequently, the suit itself was not maintainable.

5. I have heard the parties Counsel and have gone through the record.

6. I take first question about condensation of delay. Learned Counsel for the petitioner submits that the Appellate Court should have condoned the delay of 55 days in filing the appeal for four reasons, firstly, the company was based at Calcutta; secondly, the delay was explained by the Counsel by filing his own affidavit and thirdly, there was some confusion between 60 and 90 days for filing the appeal and further the Court should have allowed the parties to contest the matter on substantive grounds instead of refusing to hear on the ground of technicality of limitation.

7. On the other hand, the learned Counsel for the respondent submits that the delay has not been properly explained and as such, the learned Appellate Court was justified in refusing to entertain this application for condensation of delay and dismissing the appeal. Learned Counsel for the respondent relies upon Banwarilal and Sons Pvt. Ltd. Vs. Union of India and Others, , in support of his contention that mistake of Counsel could not be treated to be bona-fide and delay must be explained day by day.

8. Insofar as the question of limitation is concerned, seeing the judgment of the Supreme Court in State of Haryana Vs. Chandra Mani and others, , where the Supreme Court condoned the delay of nearly 18 years and the desirability to allow the parties to contest on merits, I think it would have been appropriate for

the learned Appellate Court to allow that application for in such matters too technical a view should not be taken. Accordingly, C.R. No. 68/2001 stands allowed.

9. Since the matter depends on certain questions of law alone, this Court proceeded to hear on the merits as well, instead of remanding the matter.

10. What is Rent?

The D.R.C. Act does not define the term "rent". Consequently, one has to find dictionary meaning for the term "rent". Dictionary meaning of the rent was referred to in *Karnani Properties Ltd. v. Augustin*, 1957 Supreme Court Reports 20, and in para 28 wherein the Apex Court took the following view:

"The term "rent" has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term "rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also furnishings, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord, the conclusion is irresistible that all that is included in the term "rent" is within the purview of the Act and the Rent Controller and other authorities had the power to control the same. In view of these considerations we overrule the first contention raised on behalf of the appellant."

11. In *Radha Kishan Sao Vs. Gopal Modi and Others*, , a similar question came before the Court but in different context. In that case also in addition to rent, some amount was said to be allegedly payable as furniture rent. Para 15 of the judgment in this regard is relevant. It may further be mentioned that the tenant had admittedly deposited the rent excluding the furniture rent in terms of the direction of the Court u/s 11(1)(d) under Bihar Buildings Lease Rent and Eviction Control Act, 1917 and in that matter, the Supreme Court took the view that since Rs. 50/- was determined by Rent Controller as fair rent any subsequent agreement for payment of rent at enhanced rate would not inure to the benefit of the landlord to bring the non-payment of furniture rent within the jurisdiction of Section 11(1)(d) of the Act to entitle the landlord to a decree for eviction. The observations in this regard is material as submitted by the learned Counsel for the petitioner. In these specific circumstances, the Supreme Court observed that it was the default in payment of the rent, that rent fixed by the Rent Controller, which would furnish a ground for eviction u/s 11(1)(d) of the Act. Default of the furniture rent agreed by the defendant subsequent to the lease cannot be brought within the mischief of Section 11(1)(d) to entitle the landlord to a decree for eviction. On the findings of the First Appellate Court the furniture rent remained divorced from the rent of the building under the original demise. It was also observed by the Apex Court that even if the furniture was returned, the lease for the building in that case would not be affected.

12. Learned Senior Counsel for the petitioner Mr. Pradeep Nandrajog submits on

this basis that in the case in hand, the rate of rent in terms of lease deed is only Rs. 2,000/- p.m. and Rs. 1,300/- p.m. were payable as service charges which has been increased later on. On the basis of this judgment, he submits that Rs. 1,300/- could not be taken to form part of the rent. As has been mentioned in the judgment delivered in *Karnani Properties Ltd. v. Augustin* (supra), decided by three Judges comprising Justice Jagannadhadas, Justice B.P. Sinha and Justice Jafer Imam, the term "rent" would include service charges. The other reason not to accept the contention of the learned Senior Counsel for the petitioner is that the context was different. In case of default in payment of rent where the furniture could be withdrawn without evicting from the tenanted premises, is a different matter. It could not be said about service. Could they be separated? If not, then service charges shall form part of the term "rent" in terms of judgment in *Karnani Properties Ltd. v. Augustin* (supra).

13. The learned Counsel for the petitioner also referred to the judgment in *Haridev Misra Vs. Jamunadas Agarwal and Others*, . That case related to the provisions of Section 3(1)(ii) of U.P. Rent Act read with Section 22(2)(a) of the Act. Section 3(1) of the U.P. Act reads as under:

""building", means a residential or non-residential roofed structure and includes:

(i) any lead (including any garden), garages and outhouses, appurtenant to such building;

(ii) any furniture supplied by the landlord for use in such building;

(iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof."

14. It would include obviously the rent relating to furniture supplied by the landlord for use in such building. The question in that context which was considered was a new plea which was taken before the Supreme Court for the first time that it was a furnished house which was let out to the tenant. That belated plea was rejected and it was observed that the tenant defendant had taken a plea that appellant took a clear stand that rent of the house was only Rs. 40/- and Rs. 30/- was for furniture, which according to the appellant he returned after the commencement of the tenancy. Since the landlord denied the supply of the furniture categorically, the plea was not allowed to be raised by the landlord. This judgment did not relate to the point in issue in this case. If the term "building" is considered then instead of helping the petitioner, it goes against the contention raised by the Senior Counsel for the petitioner for it should include rent for furniture etc. also.

15. The learned Senior Counsel for the respondent referred to *Puspa Sen Gupta Vs. Susma Ghose*, . In the case judgment in *Karnani Properties Ltd. v. Augustin* (supra), was relied upon in para 3 and following observations were made:

"Although the expression "rent" has not been defined, there are indications in the present Act to suggest that the word "rent" includes not only what is strictly

understood as rent, but also payment in respect of amenities or services provided by the landlord under the terms of the tenancy. The Act deals with the fixation and revision of fair rent and Sub-section (3) of Section 8, takes into account furniture if supplied or fittings affixed in the tenement for the use of the tenant, indicating that an agreement between the landlord and the tenant in respect of the additional amenities comes within the scope of the Act. Similarly the provisions of Section 34 refer to the maintenance of any essential supply or service including supply of electricity and Section 35 deals with emergency measures to be taken in respect of matters including additional services. These provisions give a clear indication that the Act contemplates that a tenancy which carries with it certain amenities to be provided or services to be maintained by the landlord is within the purview of the Act. If the Act is not so interpreted, an assured landlord may successfully circumvent the provisions of the Act by imposing on the tenant onerous conditions with reference to supply of amenities as binding terms of the tenancy. A same view was taken by the Calcutta High Court in *Residence Ltd. v. Surendra Mohan Banerjee*, while interpreting "rent" under the earlier Rent Act of 1950. So far as this aspect is concerned, the relevant provisions of the present Act are not very different. A similar question under the 1950 Act later arose before this Court also in *Karnani Properties Ltd. v. Augustin* and the Calcutta High Court's view was affirmed. It may, however, be mentioned at this stage that the view of the Calcutta Bench on other question which does not arise in the present appeal was not approved, but that is wholly irrelevant for the purpose of case before us. So far the decision in *Radha Kishan Sao* case relied upon by Mr. Garg is concerned, it is clearly distinguishable inasmuch as the agreement therein relating to the payment for furniture was according to the finding "a quite independent contract unconnected with the original tenancy" (see para 11 of the judgment). Besides, the case was governed by the rent law as applicable in Bihar and not by the present Act. We, Therefore, confirm the decision of the High Court and dismiss the appeal with costs."

16. In that case in *Radha Kishan Sao v. Gopal Modi and Ors.* (supra), was also considered. However, it may be mentioned that this case related to West Bengal Premises Tenancy Act, 1956 and the question related to the question of interpretation of term "rent" in that context.

17. Learned Senior Counsel for the respondent Mr. Seth referred to *Sewa International Fashions Vs. Suman Kathpalia and Others*, . In that case, a learned Single Judge of this Court after referring to *State v. Babu Rajendra Prasad*; *Banwarilal Sharma v. Ram Swaroop*; *Inder Vijay Singh v. NDMC*; *Karnani Properties Ltd. v. Miss Augustie*; *Pushpa Sen Gupta v. Susma Ghose*; *P.L. Kureel Talib Mankab*, *Vidhan Parishad v. Beni Prasad*; *Pranab Ganguly v. Shambhazar Land and Estate Pvt. Ltd.*, and *Usha Ranjan Bhattacharya v. Mahalakshmi Thacker*, made the following observations in paragraphs 3 and 8 of that judgment:

"The petitioner/defendant contested the suit on various grounds including the

ground that the suit is barred under the provisions of Section 50 of the Delhi Rent Control Act contending, inter alia, that the rent paid to the respondents/plaintiffs was inclusive of all taxes rates and the charges but, exclusive of maintenance charges and, Therefore, the rent of the premises should be computed as Rs. 3,146/- per month which was payable by the petitioner to the respondents and that so computed the Civil Courts shall have no jurisdiction to entertain the said suit in view of the provisions of the Delhi Rent Control Act. In the right of the aforesaid pleadings of the parties, a preliminary issue was framed by the Additional District Judge as to whether the suit is barred by the provisions of Section 50 of the Delhi Rent Control Act. The Additional District Judge after hearing the parties by her order dated 16.1.1999 awarded the aforesaid preliminary issue No. 1 is favor of the respondents/plaintiffs and held that the suit is not barred under the provisions of Section 50 of the Delhi Rent Control Act. Being aggrieved by the aforesaid order of the Additional District Judge, the present revision petition has been preferred by the petitioner.

8. It is an established proposition of law that rent includes not only what is originally described as rent in agreement between a landlord under the agreement between him and the tenant. The payment made towards the maintenance charges of the premises rented out and also for providing amenities to the tenant would also come within the expression "rent" as rent includes all payments agreed to be paid by the tenant to his landlord for the use and occupation not only of the building but also of furnishing, electric installations and other amenities."

18. The learned Counsel for the respondent also relied on another judgment of a Division Bench of this Court in S. Kumar Vs. G.R. Kathpalia and Another, , in support of his submissions that in that case consolidated figure of 1000 was mentioned as rent of the tenanted premises and furniture. It was observed that now the law was settled that in such matters, the Court had to take into consolidated the consideration figure of rent (for consideration) of objection relating to jurisdiction u/s 50 of D.R.C. Act.).

19. Seeing the ratio of the judgment, it is not possible to accept the proposition that the service charges would not be included in term "rent". However, the learned Senior Counsel for the respondent was justified in submitting that in that case both the things were mentioned in the lease deed itself, while it is not so in the present case for in the lease deed only rent of Rs. 2,000/- was mentioned.

20. Accordingly, for considering the scope of Section 50 of the DRC Act, the charges payable by the petitioner to the respondent as maintenance charges would also fall in the ambit of the expression "rent".

21. Thus, in view of the foregoing case-law, it is clear that this Court would start with assumption that the service charges of Rs. 1,300/- p.m. also form part of the term "rent" and thus the rate of rent up to 31st March, 1994 was Rs. 3,300/- p.m.

22. Now, the question relates to the enhancement of further rent by giving notice u/s 6A read with Section 8 of the D.R.C. Act. As has already been mentioned by learned Senior Counsel appearing on behalf of the petitioner did not dispute the receipt of the notice for enhancement. I appreciate his straightforwardness in this regard.

23. Now, it would be relevant to reproduce here Section 6A as well as Section 8 of Delhi Rent Control Act:

"Section 6A. Revision of rent--

Notwithstanding anything contained in this 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 the tenant, may be increased by ten per cent every three years."

"Section 8. Notice of increase of rent--

(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and insofar as such increase is lawful under this Act, it shall be due and recovered only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under Sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882)."

24. Since the service for notice u/s 6A read with Section 8 is not being disputed, its impact is required to be seen. If the rate of rent was Rs. 3,300/- p.m. w.e.f. 1st April, 1991, three years expired on 31st March, 1994, the rent could legally be increased w.e.f. 1st April, 1994. Since there is no dispute of the receipt of notice, it has to be held that rate of rent w.e.f. 1st April, 1994 was raised to Rs. 3,630/-.

25. The learned Senior Counsel may have some justification in his submissions that this is not an admitted fact that rent stood increased by service of notice, for there was no such admission in the written statement. However, I feel that this submission cannot be accepted for even while deciding application under Order 12 Rule 6 on the basis of a legal proposition, if any irrefutable conclusion based on point of law is arrived at, the Court could and should decide rather must decide, the question and hair-splitting argument should not be accepted.

26. In view of the above, I feel that the order passed by the learned Trial Court allowing the application under Order 12 Rule 6 was justified and neither the Appellate Court could find any justification nor this Court finds any justification to interfere with the impugned order.

27. For the foregoing reasons, there does not appear any material irregularity or illegality in the impugned order. There is no scope of interference and

consequently, this revision petition is dismissed.

Both these revisions are decided accordingly.

However, seeing the questions of law involved, the parties are left to bear their own costs.