

**(2011) 04 DEL CK 0154**

**In the Delhi High Court**

**Case No :** Regular Second Appeal No. 251 of 2008, CM No's. 17860 of 2008 and 11828 of 2010

United India Insurance Co. Ltd.

APPELLANT

Vs

Smt. Anup Kaur

RESPONDENT

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**Date of Decision :** 28-04-2011

**Acts Referred:**

Delhi Rent Control Act, 1958 — Section 50  
Transfer of Property Act, 1882 — Section 105

**Citation :** (2011) 04 DEL CK 0154

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** P.K. Seth, for the Appellant; Kirti Uppal, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 24.9.2008 which had endorsed the finding of the trial judge dated 20.8.2005 whereby the suit filed by Anup Kaur seeking possession and damages qua the suit property i.e. the property bearing No. 501, Skylark, 60 Nehru Place, Delhi had been decreed in her favour.

2. Plaintiff is the owner of the aforementioned suit property; she had leased out the said property for commercial purpose to the Defendant; lease deed dated 15.01.1980 was executed between the parties; it was initially for a period of three years; the rate of rent was Rs. 3.50/- per sq.foot i.e. Rs. 1596/- per month; there was a stipulation that there will be 10% increase after every three years. Maintenance charges were also being paid by the Plaintiff. Plaintiff required the premises for her own purpose. Vide legal notice dated 20.11.2011 the tenancy of the Defendant was terminated. In spite of request Defendant failed to vacate the suit property. Suit was accordingly filed.

3. Suit was contested by the Defendant. Defence of the Defendant was that the suit is barred u/s 50 of the Delhi Rent Control Act; the rate of rent was Rs.

3110/- which was less than Rs. 3500/-; suit is not maintainable. It was denied that the Defendant was liable to be evicted from the suit property on any ground. Receipt of the legal notice was also denied.

4. On the pleadings of the parties, the following five issues were framed:

- i. Whether the present suit is barred u/s 50 of the Delhi Rent Control. Act? OPD
- ii. Whether the Plaintiff is entitled for decree of possession as prayed for? OPD
- iii. Whether the Plaintiff is entitled for decree of possession as prayed for ? OPP
- iv. Whether the Plaintiff is entitled for mesne profits and damages as prayed for? OPP
- v. Whether the Plaintiff is entitled for any interest? If so, at what rate and for what period? OPP
- vi. Relief.

5. Oral and documentary evidence was led which included three witnesses on behalf of the Plaintiff and one witness on behalf of the Defendant.

6. Legal notice dated 20.11.2011 had been proved as Ex.PW-1/5, UPC receipt as Ex.PW-1/9, acknowledgment cards as Ex.PW-1/10 to Ex.PW-1/12. Reply to the legal notice had been proved as Ex.PW-1/13 which is dated 07.1.2002. On the basis of the oral and documentary evidence led the suit of the Plaintiff was decreed for possession. Mesne profits @ Rs. 10,944/- per month along with interest @ 12 % per annum had also been awarded in favour of the Plaintiff.

7. This was affirmed in first appeal.

8. This is a second appeal. It has been admitted and on 03.8.2009 the following substantial question of law was formulated:

Whether the maintenance charges payable by the Appellant do not form integral part of rent?

9. On behalf of the Appellant it has been argued that the maintenance charges payable by the Appellant do not form an integral part of the rent. It is pointed out that the maintenance charges are distinct and separate and this had been contracted between the parties in terms of the agreement dated 15.1.1980.

10. Arguments have been rebutted. It is pointed out that the courts below have rightly held that the maintenance charges are part of the rent and the bar of Section 50 of the Delhi Rent Control Act is not applicable. The rent of Rs. 3110/- coupled with the maintenance charges Rs. 684/- per month make the rent over and above Rs. 3500/- per month. The impugned judgment calls for no interference.

11. Record had been perused.

12. Only one substantial question of law has been formulated. No other argument has been urged before this Court. The impugned judgment had appreciated the law in this regard and had correctly returned its finding as under:

11. The main issue which involves in the appeal is that whether the maintenance charges are included within rent. If the maintenance charges are included in the rent, then the tenancy has become out of the purview of the Delhi Rent Control Act, 1958 and if the maintenance charges are not included in the rent in that eventuality, the Appellant is entitled for the protection under the Delhi Rent Control Act, 1958.

12. The counsel for the Appellants has argued that as per Clause 2(b) of the Agreement dated 15.01.1980 Ex.PW1/D1, the maintenance charges do not form rent and they are charges for the services rendered as per the agreement with the Promoter Ex.PW1/3; the maintenance charges were not payable to the landlord and were subject to demand made by the builder for the payment of maintenance charges;

the parties to the agreement to lease dated 15.01.1980 Ex.PW1/D1 had specifically excluded the maintenance charges from the rent as such as per the intention of the parties, the maintenance charges are not part of the rent. The counsel for the Appellants has also referred notice dated 20.11.2001 Ex.PW1/5 and the cross examination of PW1. The counsel for the Respondent has argued that as per the decision delivered by the High Court of Delhi in Sewa International Fashions Vs. Suman Kathpalia and Others, the maintenance charges form part and parcel of the rent, even though the maintenance charges are payable to the builder/promoter; the trial court has rightly held that the maintenance charges are part and parcel of the rent.

13. It is not disputed between the parties that the Appellant has lastly paid the rent @ Rs. 3,110/- which was exclusive of maintenance charges. The Appellant was required to pay the maintenance charges @ Rs. 1.5 per sq.ft. i.e. Rs. 684/- per month at the time of institution of the suit. If the maintenance charges are held to be part and parcel of the rent in that eventuality, the Appellants are not entitled for the protection under the Delhi Rent Control Act, 1958.

14. Chapter v. of the Transfer of Property Act, 1882 deals with leases of immoveable property. Section 105 defines the lease. It provides that a lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. It further defines the Lessor, Lessee, Premium and Rent. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service of other thing to be so rendered is called the rent.

15. In case of Sewa International Fashions Vs. Suman Kathpalia and Others, the

Respondents/Plaintiffs had filed a suit for ejectment and for payment of damages/ mesne profits against the Petitioner/Defendant by pleading that the rent and maintenance charges of the suit premises were increased from time to time and that finally w.e.f. October, 1997, aggregate monthly rent became Rs. 3,684/- which includes 3,146/- as rent and Rs. 538/- being paid by the Petitioner/Defendant towards maintenance charges in respect of the said premises. The suit was contested by the Petitioner/Defendant on the grounds that the suit is barred under the provisions of Section 50 of the Delhi Rent Control Act, 1958 by alleging that the rent paid to the Respondents/Plaintiffs was inclusive of all taxes, rates and charges, but, exclusive of maintenance charges as such rent should be computed as Rs. 3,146/- per month. The Additional District & Sessions Judge has framed the issue as to whether the suit is barred u/s 50 of the Delhi Rent Control Act, 1958. It was decided that the suit is not barred under the provisions of Section 50 of the Delhi Rent Control Act, 1958. Being aggrieved, the Petitioner/Defendant has filed the Revision Petition. It was argued on behalf of the Petitioner/Defendant that the lease deed entered into between the parties clearly recites that the rate of rent is exclusive of maintenance charges as such the suit was barred u/s 50 of the Delhi Rent Control Act, 1958. The various clauses of the lease deed were cited which were similar to the various clauses of the lease deed dated 15.01.1980 Ex.PW1/D1 as cited hereinabove. The Respondents/Plaintiffs argued that maintenance charges were payable by the Petitioner/Defendant to the Respondents/Plaintiffs as per stipulation in the lease deed would be included within the expression "rent". It was further argued that the term "rent" is comprehensive enough to include all payments to be paid to the landlord for use and occupation not only of the building or its appurtenances but also includes other amenities agreed upon between the parties to be provided by and at the cost of the landlord.

16. It was observed that the expression .rent. is not defined under the Delhi Rent Control Act, 1958 but what constitutes rent could be found from the provisions of Section 105 of the Transfer of Property Act, 1882. It was observed that apart from the money which is paid as rent, if any service is rendered and any payment is made in respect of the same, the same is also to be included within the definition of "rent". After referring the decision given by the Supreme Court of India in *Karnani Properties Ltd. Vs. Augustin*, , the High Court of Delhi has observed that 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 of its appurtenance and also of furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. The decision given by the Supreme Court of India in case *Puspa Sen Gupta Vs. Susma Ghose*, was also relied upon. The High Court of Delhi after analysing the aforesaid judgments held that the rent includes not only what is described as rent in agreement between a landlord and tenant but also those payments which are made for the amenities provided by the landlord under the agreement between him and the tenant. The relevant paragraphs of the judgment read as

under:

In order to appreciate the contention of the learned Counsel appearing for the parties, it is necessary to ascertain as to what constitutes rent. The expression "rent" is not defined under the Delhi Rent Control Act. However, as to what constitutes rent could be found out from the provisions of Section 105 of the Transfer of Property Act, wherein the word "rent" is defined. It states that money, share, services on other thing to be so rendered is called the "rent". Thus, apart from the money which is paid as rent, if any service is rendered and any payment is made in respect of the same, the same is also to be included within the definition of "rent". In *Karnani Properties Ltd. (supra)*, the Supreme Court held that the term .rent. is comprehensive enough to include all payments agreed by the tenant to be paid to this landlord for the use and occupation of its appurtenance but also of furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. Similar is the decision of the Supreme Court in *Pushpa Sen Gupta (supra)*. The aforesaid decisions of the Supreme Court have been referred to and relied upon in the decision in *P.L. Kureel Talib Mankab, Vidhan Parishad, Usha Ranjan Bhattacharya, Pranab Ganguly* and in *Inder Vijay Singh (supra)*, which is a Division Bench decision of this Court.

(Para 6)

The question, therefore, which arises for my consideration at this stage is whether payment agreed to be paid by the Petitioner to the Respondents towards maintenance charges would be included within the ambit of the expression "rent". Counsel for the Petitioner states that the same cannot be included as under the lease deed what would constitute rent was specified which excluded the maintenance charges. I, however, cannot agree with the learned Counsel appearing for the Petitioner for the simple reason that under Clause (1) of the said lease deed, the parties agreed to pay a particular sum towards the use and occupation of the building which is inclusive of all taxes, rates and charges, but exclusive of the maintenance charges which were also required to be paid by the Petitioner to the Respondents in accordance with the stipulations in the lease deed. As it is decided from the records, the Petitioner was paying a sum of Rs. 538/- to the Respondents towards the maintenance charges in respect of the aforesaid premises. Those maintenance charges were payable for the use and occupation of the premises and for the amenities provided by the landlord.

(Para 7)

It is an established proposition of law that rent includes not only what is originally described as rent in agreement between a landlord and tenant but also those payments which are made for the amenities provided by the 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 a furnishing, electric installations and other amenities.

(Para 8)

17. Thereafter, the Petitioner has filed a Civil Appeal bearing No. 4414/2000 before the Supreme Court of India challenging the judgment passed by the High Court of Delhi. The Supreme Court of India also observed that the maintenance charges were payable by the tenant either to the Maintenance Society or to the lessor and were in addition to the other amount specified in the agreement would form part of the rent of the premises. The order reads as under:

Special Leave granted.

We are in agreement with the High Court that keeping in view the terms of the lease deed, between the parties the maintenance charges would form part of the rent of the premises. These maintenance charges were payable by the tenant either to the Maintenance Society or to the lessor and were in addition to the other amount specified in the agreement. The decisions of the courts below call for no interference. The appeal is dismissed.

18. The counsel for the Appellant has tried to distinguish the authority cited by the counsel for the Respondent i.e. Sewa International Fashions Vs. Suman Kathpalia and Others, by arguing that in Sewa International Fashion's case, maintenance charges were to be paid to the landlord while in the instant case the maintenance charges are to be paid to the builder/promoter. He further argued that parties themselves have agreed not to include the maintenance charges in the rent as such the ratio of Sewa International Fashions is not applicable to the present case. The said argument of the counsel for the Appellant is without any force. In the Civil Appeal preferred against the order passed by the High Court of Delhi, the Supreme Court of India has clearly observed that the maintenance charges are payable to the Maintenance Society even then maintenance charges would form part of the rent of the suit premises. In the instant case also maintenance charges are to be paid to the builder/promoter and not directly to the landlord and also as per Clause 2 (b) of the agreement to lease dated 15.01.1980 Ex.PW1/D1, it is stipulated that the maintenance charges do not form the rent. What is manifested from Clause 2(b) of the agreement to lease dated 15.01.1980 Ex.PW1/D1 is that the maintenance charges are to be paid to the builder/promoter directly and not to the landlord but it was not the intention of the parties not to include the maintenance charges as the rent. This view is further forfeited by Clause 2 (b) of the agreement to lease dated 15.01.1980 Ex.PW1/D1 itself when it is specified that maintenance charges are to be rendered in view of the agreement with the promoter and an obligation was also cast upon the lessee i.e. the Appellants not to claim any service without the payment of maintenance charges. What is appearing from the different lease deeds executed between the parties is that maintenance of the floor was to be

looked after by builder/promoter as such they are entitled to receive the payment of maintenance charges but it does not mean that the maintenance charges do not form part of rent which is well considered and decided by the High Court of Delhi and the Supreme Court of India. In view of above discussion, it is held that maintenance charges form part of the rent.

13 This finding had been returned after a detailed examination of the law which is the correct proposition and does not call for interference on any count.

14. Submission of the learned Counsel for the Appellant that the parties had specifically contracted in terms of the agreement dated 15.1.1980 to treat the maintenance charges as distinct from the rent is not borne out from the document itself. That apart, this agreement was even as per the Defendant an agreement for three years only; it had expired by efflux of time in the year 1983. The Defendant had become a monthly tenant under the Plaintiff. 15. There is no merit in the appeal. Substantial question of law is answered in favour of the Respondent and against the Appellant.

The appeal as also the pending applications are dismissed.