Delhi District Court Mrs.Champa Rani vs M/S Balussary Benefit And Chit on 1 March, 2007
Author: Sh.Sanjeev Aggarwal.
IN THE COURT OF SHRI SANJEEV AGGARWAL : RENT CONTROLLER : DELHI.
Petition No.: E-591/06.
Mrs.Champa Rani W/o Sh.D.C.Kapur (since deceased) Now represented by : Ms Meeta Kumar D/o Shri Virender Kumar R/o J-14, Haus Khas, New Delhi-Petitioner.
Versus.
M/s Balussary Benefit and Chit Fund (P) Ltd.1/24, Asaf Ali Road, New Delhi-110001-Respondent.
Date of institution : 3.9.91 Date of Decision : 2.3.07.
JUDGMENT.
Vide this judgment, I will dispose off the eviction petition on the ground under Section 14(1)(a) of the Delhi Rent Control Act (hereinafter to be referred as the Act).
2.Brief facts necessary for the adjudication of the aforesaid petition are; it is stated that the petitioner is the landlord of the premises bearing no.1/24, Asaf Ali Road, New Delhi-110002, in respect of the tenancy premises as shown red in the site plan and described in para 5 of the petition, and the premises is stated to have been let out for non- residential purposes to the respondent at a monthly rent of Rs.1500/- p.m vide agreement executed in January, 1960 between the previous owner/ landlord. It is averred by the petitioner that by virtue of the amendment of the DRC Act and by virtue of the provisions of Section 6A of the DRC Act, the rent can be increased/revised after every three years, and it is further stated that the respondent did not increase the rent, and in fact vide notice dated 3.12.88 after passing of the Delhi Rent Control Amendment Act, the petitioner required the respondent to revise rent by 10% of the earlier paid rent and the respondent in fact never enhanced the rent of the premise, since inception of the tenancy premises and by virtue of the notice dated 3.12.88, the respondent was required to pay the revised rent of Rs.1650/- per month, which the respondent did not comply, despite the fact that the notice dt 3.12.88 was sent by under certificate of posting. It is further stated that the petitioner issued the aforesaid notice to all the tenants of the property requiring them to revise the rent, but it is averred that only one tenant M/s Orient Longman Pvt Ltd. acknowledged the receipt of the notice and declined to increase the rent.
3.It is stated that the rent was revised after the notice to Rs.1650/- per month and which enhancement of rent the respondent has failed to pay or tender at the correct rate of rent of Rs.1650/- per month, therefore, the petitioner sent a legal demand notice dt 27.5.91 to the respondent to pay the arrears at revised rate of Rs.1650/- per month and by the aforesaid notice, the petitioner required the respondent to pay the arrears of rent which was paid less to the petitioner and further the petitioner also required the respondent to pay the interests at the rate of 15% per annum in accordance with the provisions of Section 26 of the Act, but the respondent has failed to pay or tender the arrears of rent and interest within two months of the legal demand notice, hence, it is stated that the respondent be evicted from the tenancy premises.
4.Written statement has been filed on behalf of the respondent, in which the relationship of landlord and tenant between the parties is not disputed. However, the site plan filed by the petitioner is stated to be incorrect as it is stated that the site plan supplied to the respondent

does not bear any red portion. The respondent has denied the rate of rent to be Rs.1650/- as stated by the petitioner, and it is stated that rate of rent as agreed between the parties was Rs.1500/- per month and even that the rent of Rs.1500/- per month is stated to be in excess of standard rent recoverable from the respondent, and therefore, it is stated that the respondent is not liable to pay rent at the rate of Rs.1650/- per month.

5.It is vehemently denied that any alleged notice dt 3.12.88 for enhancement of rent by 10% was ever given by the petitioner to the respondent, and therefore, it is stated that since no alleged notice dt 3.12.88 was given by the petitioner to the respondent, there was no question of paying any revised/enhanced rent. It is denied for want of knowledge that the petitioner issued the alleged notice to all the tenants and that only one of the tenants M/s Orient Longman Pvt Ltd. acknowledged and replied to the said notice declining to increase the rent. It is further averred that without prejudice to above contentions Section 6A of the Act authorises the landlord to increase the rent by 10% only after three years, accordingly, notice dt 3.12.88 was pre-mature, as the petitioner had no right to issue any notice prior to December, 1991, as the DRC Act came into force only on 1.12.88. The respondent has admitted the receipt of the notice dt 27.5.91, and it is stated that it was suitably replied. It is denied that respondent is liable to pay any interests whatsoever. Hence, it is stated that the petition deserves to be dismissed, as no cause of action is made out for filing of the present petition.

6.Replication has been filed by the petitioner in which the averments made in the written statement are vehemently denied and those made in the petition are reaffirmed as correct.

7.An order under Section 15(1) of the DRC Act was passed on 29.8.92 directing the respondent to pay the arrears of rent w.e.f July, 1991 which becomes due to him @ Rs.1650/- p.m in petition bearing no.315/06, Rs.330/- p.m in petition no.316/91 & Rs.385/- in petition no.317/91 upto date within one month and he is further directed to continue to pay or deposit future rent @ Rs.1650/- p.m., Rs.330/- p.m and Rs.385/- p.m by 15th day of each succeeding month according to English Calendar. The respondent went in appeal. The said appeal was dismissed vide order dt 26.3.93.

8.Vide order dt 1.9.97, the petitioner's evidence was closed and vide judgment dt 1.9.97 the eviction petition was dismissed and the file was consigned to record room. Thereafter the petitioner went in appeal and vide order dt 1.5.99 the said order was set aside and the petitioner was granted one opportunity to examine her attorney subject to Rs.1000/- as costs.

9.An application under Order 13 Rule 1 CPC was moved for taking on rent one document which was objected by the respondent, which was allowed to be taken on record subject to its admissibility being decided at the time of final arguments on 31.3.99. Vide order dt 3.9.95, a common evidence was recorded in the main file no.315/91 and the copy of the same was also allowed to be placed on the record in other connected case. After the conclusion of the evidence, the matter was listed for final arguments on 2.4.03. In between the matter was listed for compromise. Thereafter an application under Section 15(7) of the DRC Act was moved on behalf of the petitioner on 14.7.00. The said application under Section 15(7) of the Act was dismissed vide order dt 9.11.00. The petitioner went in appeal against the said order, which appeal preferred by the petitioner was dismissed vide order dt 14.1.01. Thereafter the petitioner expired on 22.3.05 and an application under Section 151 CPC dt 18.7.05 was moved on behalf of the petitioner. The said application was allowed vide order dt 6.9.05 and the legal heirs of the

deceased petitioner were allowed to be brought on record. Amended memo of parties was also filed on the record.

10.I have heard the counsel for the petitioner and counsel for the respondent. The counsel for the respondent has also relied upon the judgments reported as VII(2004) SLT 441, AIR 1984 Delhi 363, AIR 1976 Delhi 111, 28(1985) DLT 149, JT 1994(4) SC 162. I have perused the record and also gone through the said judgments.

11.The counsel for the respondent has taken a preliminary objection, that the power of attorney relied upon by the petitioner Ex.AW1/1 has not been executed before the Notary Public nor the petitioner had appeared before the Notary Public for its authentication, therefore, no presumption under Section 85 of the Evidence Act can be raised, and it has also been argued that the name of the attorney, AW1 has been written lateron and it does not bear any counter sign at the point where his name has been introduced. He has also argued that the attorney cannot appear on behalf of the petitioner to depose, as no plausible explanation has been given by the petitioner for non-production of the petitioner in the witness box. In this respect he has relied upon the judgment VII(2004) SLT 441, regarding the contention of the counsel for the respondent that power of attorney is not attested before the Notary Public, therefore, no presumption under Section 85 of Evidence Act can be raised. I have perused the record most specifically the testimony of AW1, in his cross examination, he has admitted that the petitioner has not come to the place of the notary public for its attestation and neither she put her signatures on the register of the notary public. However, it does not in any way waters down the authenticity of the said document Ex.AW1/1, as the presumption only shifts the onus of proof and nothing else and even otherwise, the same is only a procedural irregularity and it does not goes into the root of the matter.

12.Regarding the other contention of the counsel for the respondent that the petitioner cannot depose on the facts which are in the personal knowledge of the petitioner in view of the judgment of VII(2004) SLT 441. I have perused the said judgment. In para 12 of the said judgment it has been held that "The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can be cross examined on those facts which are to the personal knowledge of the principal." And further in para 13 of the said judgment, it has been held that "Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross examined." AW1 has stated that he is the son of the petitioner Champa Rani and it is not the case of the respondent that AW1 was not personally acquainted with the facts of the case. As no suggestion has been given in the cross examination of AW1 that he was not personally acquainted with the facts of the present case, accordingly it cannot be said that the petitioner was not aware of the facts of the present case and that he had no personal knowledge of the facts, and which were personal to the knowledge of the principal. Accordingly, the said judgment to my mind is not applicable to the facts of the present case. Accordingly, I hold that AW1 is a competent witness to depose on behalf of the petitioner.

13.The counsel for the petitioner has also argued that the evidence of RW1 cannot be read as he has not filed any document on the record showing himself to be one of the directors of the company, and it is also argued that it has been admitted by RW1 in his cross examination, that he has no authorization in his name. Accordingly, it is the contention of the counsel for the petitioner, that respondent has not filed any document showing that he was the director and was authorised to depose, therefore, his evidence is no evidence in the eyes of law. It is settled law in a case of company that any person acquainted with the facts of the case can depose and no specific authorization is required in this regard. In any case, it is the endeavor of the law that the matters should be decided on merits, rather than technicalities. Further it has been held in the judgment United Bank of India Vs.Naresh Kumar 1996(6) SCC 660 that "Procedural aspects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts under the Code of Civil Procedure, to ensure that in justice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable." Accordingly, this contention of the counsel for the petitioner is not sustainable in view of aforesaid judgment and discussion.

14.To make out a case under Section 14(1)(a) of the Act, the petitioner has to prove the following ingredients :

(i) That there is a relationship of landlord and tenant between the
parties (ii) That a valid legal demand notice was duly served upon the
respondent/tenant (iii) Rate of Rent (iv) That despite the service of the legal demand notice the respondent/tenant has neither paid nor tendered the entire arrears of legally recoverable rent.

My findings on the above ingredients are as under :

(i) That there is a relationship of landlord and tenant between the parties The relationship of landlord and tenant between the parties is not disputed. Accordingly, I hold that there is a relationship of landlord and tenant between the parties.

(ii) That a valid legal demand notice was duly served upon the respondent/tenant In this case, the entire controversy between the parties hinges upon the service of the alleged notice of enhancement of rent dt 3.12.88. As per the petitioner the said notice was duly served upon the respondent, which was sent under postal certificate, and it is also the case of the petitioner that the said notice was also sent to all the tenants combinedly and it was a omnibus notice and only one of the tenants M/s Orient Longman Pvt. Ltd. acknowledged and replied to the said notice, whereas the defence of the respondent is that the said notice was never received by the respondent or given by the petitioner. Accordingly, the defence of the respondent is that the said notice was never sent. However, the respondent admitted the service of the notice dt 27.5.91 in its reply as it is stated that the said notice dt 27.5.91 was duly replied and received.

15.The counsel for the respondent has also argued that without prejudice to the above contentions, Section 6A authorises the landlord to increase the rent by 10%, only after three years and the said notice was accordingly pre-mature and landlord had no right to issue any notice before December, 1991 i.e three years after the coming into force of the Delhi Rent Control (Amendment) Act, which was notified on 1.12.88. This contention of the counsel for the respondent is totally preposterous, as there is nothing in Section 6A or 8 of the Act that the rent could be only increased after three years of the coming into force of the Act in question which

came into force on 1.12.88. There is nothing in the said Section 6A or 8 of the Act which gives out such interpretation. From the bare reading of section 6A & 8 of the Act together, it is clear that on coming into force of the Section 6A of the Act, a legal right accrued in favour of the landlord and a landlord could increase the rent by giving notice of enhancement of rent, if the rent had not been increased for the past three years prior to notice in question and it is also settled law that language of statute has to be read in a plain manner and no word can be read into the statute which is not there.

16.The counsel for the respondent has argued that the notice in this case, which is Ex.AW1/6 has never been sent or posted and the certificate of posting which is Ex.AW1/7 shows that it has been posted from the Civil Lines post office, whereas the residence of the petitioner is at Jorbagh, and therefore, it is argued by the counsel for the respondent that postal certificate Ex.AW1/6 is a procured document, as no explanation has been given by the petitioner why the said letter was posted from the Civil Lines, whereas he was residing at Jorbagh and he has also argued that in view of the settled law relied upon by him, it is not difficult these days to procure postal certificates from the postal authority. In the alternative, he has argued that, even otherwise in any case, under Section 6A read with Section 8 of the Act, the petitioner has to prove three things. Firstly that a notice had been sent in writing, secondly it was duly signed by the landlord or somebody authorised on behalf of the landlord, and thirdly the notice has been given in manner provided in Section 106 of the TP Act and he has argued that from the combined reading of Section 106 of the Act, 1982 and Section 27 of the General Clauses Act, 1897, shows that notice had to be sent by registered post, so as to raise a presumption of due service. On the other hand, the counsel for the petitioner has assailed the said argument raised by the counsel for the respondent. I have perused the Section 8 of the DRC Act, which read as under :

"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 increase and in so far as such increase is lawful under this Act, it shall be due and recoverable 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, 1982 (4 of 1882)."

Section 106 of the T.P Act read as under :

"Every notice under sub-Section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be intended or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."

And further Section 27 of the General Clauses Act, 1897 reads as under :

"27.Meaning of service by post - Where any (Central Act)or regulation made after the commencement of this Act authorised or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre- paying and posting by registered post, a letter containing the

document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post."
From the combined reading of the aforesaid three provisions, it is clear that the Transfer of Property Act is a central act which proposition has not been disputed by the counsel for the petitioner during the arguments, and therefore, the Section 106 of T.P Act requires that notice be sent in writing and can either be sent by post, or delivered personally and under Section 27 of the General Clauses Act, 1897 the word served by post means service shall be deemed to be effected by properly addressing, pre paying and posting by registered post. Accordingly, to get a valid increase under Section 6A and 8 of the DRC Act, notice had to be sent by registered post and not by UPC. Further as per Delhi Rent Control Rules, 1959, namely, Rule 22, which reads as under :-
"22.Service of notice, etc.- Unless otherwise provided by the Act, any notice or intimation required or authorised by the Act to be served on any person shall be served-
(a) by delivering it to the person; or
(b) by forwarding it to the person by registered post or acknowledgment due."
It is clear unless it is not otherwise, provided in the provisions of the DRC Act that the notice should be sent in a ordinary way. The notice has to be sent by registered post with acknowledgment due for valid service.
17.The counsel for the petitioner has argued that same notice was also sent to various other tenants including M/s Orient Longman Pvt Ltd. and that they had also replied to the said notice vide reply Ex.PW1/8A. However, merely the fact that another tenant had replied to the said notice cannot bind the present respondent as the said admissions, if any, made by the another tenant cannot be made binding upon the present respondent, as the respondent had no opportunity to cross examine the witness, who made the said admission in the present proceedings. Accordingly, the said admission cannot bind the present respondent. In any case, the petitioner has to prove his case himself and had to stand on his own legs, and further a judgment has been relied upon by the counsel for the respondent reported as AIR 1976 DELHI 111 in which it has been held that :
"Ordinarily a statement of the addresses on oath that the postal cover, said to have been refused by him, was never tendered to him would be sufficient to dislodge the presumption and shift the onus on the other side to establish by evidence that the service had been duly effected. It is, therefore, not possible to accept the contention that the bare statement on oath of the addressee in such a case would not, as a matter of law, be sufficient to dislodge the presumption that may be raised either under Section 114 of the Evidence Act or under Section 27 of the General Clause Act. A statement on oath of a party to the proceedings is a piece of oral evidence like statement of any other witness and there is no rule of law that such a statement should not be accepted merely because it is made by a person, who is interested in the proceedings nor is there any requirement of law that the statement on oath of a party to the proceedings, must always be corroborated by any independent evidence before it could be accepted by the court of law. Once the presumption is raised, the manner of rebuttal need not be limited to the instance given in the counter illustration."
The said judgment is squarely applicable to the facts of the present case, as once the RW1 has denied in the witness box that the said notice dated 3.12.88 was never served, the onus shifts

upon the petitioner to prove by leading cogent evidence that the same was duly served. In this case no postman has been examined nor any record was summoned from the postal authorities to rebutt the said presumption. As once the respondent has denied the due service, the onus shifts upon the petitioner to prove the said notice of enhancement of rent Ex.AW1/6 dated 3.12.88 and further judgments relied upon by the counsel for the respondent namely, "28(1985) DLT 149 in which it has been held that "it is well know that it is not at all difficult these days to obtain a postal seal of a prior date on a certificate of posting." and also in the judgment JT 1994(4) SC 162 that Held that we have not felt safe to decide the controversy at hand, about the service of notice on employees, on the basis of the postal certificate produced before us."
The said judgments are squarely applicable to the facts of the present case.
18.From the aforesaid discussion, the petitioner has miserably failed to prove the notice of enhancement of rent dated 3.12.88 Ex.AW1/6, though the notice dated 27.5.91 is admitted (iii)&(iv) Rate of rent & that despite the service of the legal demand notice the respondent/tenant has neither paid nor tendered the entire arrears of legally recoverable rent.
Since the petitioner has failed to prove the service of the notice of enhancement of rent Ex.AW1/6 dated 3.12.88 as per the discussion in the aforesaid ingredients, therefore, the petitioner could have only increased the rent by following the procedure laid down in Section 6A & 8 of the Act. Since no notice of enhancement of rent, relied upon by the petitioner Ex.AW1/6 has been proved, accordingly, I hold the rate of rent at the time of issuance of the legal notice of demand Ex.AW1/9 was Rs.1500/- per month. Since the petitioner has failed to prove that any notice of enhancement of rent was served upon the respondent as discussed in the aforesaid discussion, the petitioner was not entitled to claim the arrears of rent at the said enhanced rate of rent and interest thereon as demanded in the legal demand notice Ex.AW1/9, and it is not the case of the petitioner otherwise, that the respondent has not paid the arrears of rent at the old rate of Rs.1500/- per month at the time of issuance of the legal demand notice Ex.AW1/9. Accordingly, the respondent is held to be, not in the arrears of rent at the time of issuance of the legal demand notice Ex.AW1/9.
19.The net result of the aforesaid discussion is that the petitioner has failed to make out a case under Section 14(1)(a) of the Act, consequently, the petition on the said ground stands dismissed. File be consigned to record room.
Announced in open court (SANJEEV AGGARWAL) on 2.3.07 Rent Controller : Delhi.
E-591/06.
2.3.07.
Present : None.
Vide my separate detailed judgment of even date, the eviction petition u/S 14(1)(a) of DRC Act has been dismissed. File be consigned to record room.
(SANJEEV AGGARWAL) Rent Controller : Delhi.