

CS No. 56703/16

Atma Ram Builders Pvt. Ltd. Vs. M/s. Embassy Restaurant & Anr.

05.08.2019

Order on application under Order 7 Rule 11 CPC moved by Ld. Counsel for defendant.

By way of this order, I shall dispose off an application under Order 7 Rule 11 CPC filed by defendants for rejection of plaint.

Arguments already heard in detail from both the sides.

Case of Defendants-

It is the case of defendants that present is a suit filed for possession and mesne profit in respect of property No.11-D, Connaught Place, New Delhi-01. The suit has been filed on the basis of notification bringing into force NDMC Bylaws 2009 by which the impugned property situated in NDMC became assessable on the basis of unit area method.

It is further the argument of Ld. Counsel for defendant that property tax assessable and payable on the basis of Bylaws becomes part of rent according to plaintiff. Hence, according to plaintiff, rent has exceeded the limit of Rs.3,500/- and beyond the Delhi Rent Control Act.

It is further the argument of Ld. Counsel for defendant that Division Bench of Hon'ble High Court vide judgment dated 10.08.2017 titled as **New Delhi Vs. NDMC and others**, by way of said 2009 Bylaws has been struck down as ultra vires. It is further submitted that not only the Bylaws have been struck down, all the actions pursuant thereto has also been declared invalid

and unenforceable. Hence, it is submitted that the basis of filing of the present suit has been struck down, the present suit is liable to be rejected.

Case of Plaintiff-

On the other hand, it is submitted by Ld. Counsel for plaintiff that the said judgment of Hon'ble Division Bench of High Court has been upheld. However, Hon'ble Supreme Court in the judgment dated 22.01.2019 titled as NDMC Vs. Association of Concerned Citizens of New Delhi and Ors. held that those assesses who have already made payment in accordance with Bylaws their assessments shall not be applicable to the writ petitioners. Further there are other grounds also on the basis of which present suit is filed.

Heard both the sides and gone through the record.

Reasons for Decision-

It is relevant to quote here para no. 89 of the case titled as **NDMC Vs. Association of Concerned Citizens of New Delhi and Ors.** which is as follows-

89. One last but very significant aspect is still required to be dealt with. The declaration of Impugned 'Bye-laws as ultra vires has created a difficult situation. These Bye-law were framed in the year 2009. They were struck down by the High Court vide impugned judgment dated 10th August, 2017. They held the field from 2009-2017. While issuing notice in these Special Leave Petitions on 22nd September, 2017, in respect of the direction of the High Court to pass re-assessment order, this Court observed that it would be open to the NDMC not to pass such reassessment orders. That interim order has prevailed during the pendency of these appeals. Further, as already noted above, 95% of the assesseees are agreeable to pay the tax as per Byelaws 2009. In these circumstances, to upset the appcart completely may not be appropriate. In such a peculiar situation, in exercise of powers under Article 142 of the Constitution, we direct that those assesseees who have paid the tax as per Bye-Laws, 2009, their assessment shall not be reopened. Another

reason for taking this course of action is that these assesseees are satisfied with the assessments under Bye-laws, 2009. However, it will not apply to the respondents herein, namely those assesseees who were the writ petitioners in the High Court. In their cases, the direction given by the High Court in the impugned judgment shall prevail."

In view of judgment of Hon'ble Supreme Court, those assesseees who have already made payment of rent, tax is not to be refunded to them.

It is submitted by Ld. Counsel for plaintiff that he has already made payment of the rent and attention of the Court is drawn towards the various documents filed on record i.e. NDMC receipts thereby showing payment of tax since 2009 onwards. These documents are also exhibited in evidence. Further it is also the argument of counsel for plaintiff that though unit area has been set aside now NDMC has been assessing tax on the reasonable comparable market rent which the property can fetch. In view of above, though the unit area method is set aside but the tax which is paid by plaintiff to NDMC is not to be refunded to him, hence argument of defendant cannot be accepted. Further, only unit area method is set aside, but tax is now to be calculated on actual comparable market rent. Hence, the fact that tax has increased considerably cannot be denied.

Further the present suit is filed by plaintiff on the ground that tax is part of rent which is also an additional ground which is to be decided after evidence. In the circumstances, **application under Order 7 Rule 11 CPC is dismissed.**

(TWINKLE WADHWA)
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