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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 600/2019**

HEM MANOHAR & ANR.

.....Plaintiffs

Represented by: Mr.Arjun Singh Bawa and
Ms.Vishakha Gupta, Advocates.

versus

RACHNA GUPTA & ORS.

..... Defendants

Represented by: Mr.Rajiv Duggal, Advocate for
defendant Nos.1 to 3.
Mr.Aaditya Vijay Kumar and
Ms.Sumendha Dang, Advocates for
defendant Nos.4 and 5.
Mr.M.K. Shah, Advocate for
defendant No.6.
Mr.Pawan Kumar Mishra, Advocate
for defendant No.7.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

17.02.2020

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CAV 1149-1150/2019

1. Learned counsel for the defendant Nos.1 and 2 have already entered appearance.
2. Consequently, the caveats are discharged.

I.A. 402/2020 (under Order VII Rule 11 CPC-by defendant Nos.4 and 5)

1. Defendant Nos.4 and 5 seek rejection of the plaint on the ground that the plaintiffs in the suit itself have admitted that the plaintiffs had entered into a lease deed with the defendant Nos.1, 2 and 3 on 22nd April, 1999 with

CS(OS) 600/2019

Page 1 of 6



renewal for a further period of five years on a monthly rent of ₹3,000/- under the Lease Deed dated 22nd April, 1999 however, the said lease deed came to an end on 21st April, 2009 owing to efflux of time. Thus defendant Nos.4 and 5 who were the sub-tenants of defendant Nos.1, 2 and 3 claim that the monthly rent payable by the tenants of the plaintiffs i.e. defendant Nos.1, 2 and 3 being less than ₹3,500/-, the present suit was not maintainable and was barred under Section 50 of the Delhi Rent Control Act.

2. Learned counsel for the plaintiffs has relied upon the decision of the Division Bench of this Court in P.S. Jain Co. Ltd. vs. Atma Ram Properties (P) Ltd. 65 (1997) DLT 308 wherein the Division bench of this Court held as under:

11. In our view, the intention behind Section 3(c) is that a premises which fetches a rent of Rs. 3500 p.m. should be exempt and that protection should be restricted to buildings fetching a rent less than Rs. 3500 p.m. In case a tenant paying less than Rs. 3500 p.m. to his landlord has subject the very same premises may be lawfully— for a rent above Rs. 3500 p.m., then the question naturally arises whether such a tenant can be said to belong to weaker sections of society requiring protection. By sub-letting for a rent above Rs. 3500 p.m., the tenant has parted, with his physical possession. He is receiving from his tenant (i.e., the sub-tenant) more than Rs. 3500 p.m. though he is paying less than Rs. 3500 p.m. to his landlord. The above contrast is well illustrated by the facts of the case before us. The appellant tenant is paying only Rs. 900 p.m. to the plaintiff, while he has sublet the premises in two units, one for Rs. 40,000 p.m. and another for Rs. 4500 p.m. In regard to each of these units, the sub-tenants have no protection of the Rent Act. In our view, the purpose of Section 3(c) is not to give any protection to such a tenant.



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12. Indeed there will be a serious anomaly if such a tenant is to be allowed the benefit of the rent control legislation. If he should get protection, the strange situation will be that when he cannot be evicted except, on limited grounds specified in the Act and that too only before the Rent Controller, he could, in his turn, evict his tenants i.e. the sub tenants, by giving a simple notice under Section 106 of Transfer of Property Act, and then move the civil court. Further, he could after such eviction of his tenants (i.e. sub-tenants) induct fresh sub-tenants at still higher rents. In our view, an interpretation which, places him in such an advantageous position is to be avoided.

13. A question may be asked as to how a premises to which the Act would apply so long as the tenant was paying rent less than Rs. 3500 p.m. would suddenly lose the protection when the tenant sublets the whole premises may be lawfully, for more than Rs. 3500 p.m. or sublets different units of the premises each for a rent of more than Rs. 3500 p.m.?

14. We do not find any difficulty in answering this question. For example, a building whose rental is fixed (say) at Rs. 2000 p.m. with a clause for annual increase of rent by 20 per cent could lose the protection as soon as the rent exceeds Rs. 3500 p.m. On the same analogy, a building where the tenant is paying less than Rs. 3500 p.m. could lose the benefit of protection as soon as there is sub-letting may be lawfully by the tenant of the entire unit for a rent in excess of Rs. 300 p.m. or by sub-letting of more than one unit of the premises where each unit fetches more than Rs. 3500 p.m.

15. As pointed out in Bhatia's case (supra) by the Supreme Court, the amendment to the Delhi Rent Control Act, 1950 has tried to balance the rights of landlords and tenants, when premises fetching rent above Rs. 3500 p.m. are exempted from



the purview of the Act. In K.S. Sundarraju Chettiar v. M.R. Ramachandra Naidu ((1994) 5 SCC 14) it was observed that the contention that the Rent Act was a legislation for protecting the tenants alone would be an over-simplification of the legislative import of the Rent Act. In Shri Lakshmi Venkateswara Enterprises (P) Ltd. v. Syeda Vajhiunnissa Begum, (1994) 2 SCC 671 (3); it was observed that the Rent Control Act was a beneficial enactment not for tenants alone but for landlords as well. The same aspect was emphasised in Harish Tandon v. A.D.M. ((1995) 1 SCC 537) where it was stated “it was open to the framers of the Rent Act to look to the interest of the tenant as well as the landlord.”

3. In the present suit the plaintiffs have clearly stated that the defendant No.1 and 3 have further sub-let the said premises to British Council for a period of two years, w.e.f. 15th May, 2013 to 14th May, 2015 and the rent being paid for the said property was in excess of the reserved rate of rent of ₹3,500/-.

4. Considering the averment in the plaint and the fact that the possession of the suit property has now been handed over to defendant Nos.4 and 5 and defendant Nos.1 and 3 are not in possession of the suit property and the rent of the premises is more than ₹3,500/- the plea of defendant Nos.4 and 5 that the present suit is not maintainable and only a petition under Delhi Rent Control Act would be maintainable is liable to be rejected.

5. Learned counsel for the defendants has relied upon the decision of this Court reported as Atma Ram Properties (P) Ltd. vs. M/s Escorts Ltd. dated 16th March, 2012 passed in CS (OS) No.1422/2006. However, the said decision has been rendered by a single judge of this Court wherein the learned Single Judge did not take note of the decision of the Division Bench

CS(OS) 600/2019

Page 4 of 6



of this Court in P.S. Jain Co. Ltd. (supra).

6. Application is dismissed.

CS(OS) 600/2019

1. Written statement has been filed by defendant Nos.4, 5 and 6 however, though vakalatnama has been filed on behalf of the defendant No.7 no written statement has been filed by defendant No.7 as also on behalf of defendant Nos.1 to 3.

2. Learned counsel for the defendant Nos.1 to 3 and defendant No.7 states that though the statutory period of 30 days for filing the written statement is over however, they will file the written statements within the period of 120 days along with necessary application seeking enlargement of time for filing the written statement giving reasons.

3. List before the learned Joint Registrar for completion of pleadings and admission/denial of documents on 30th March, 2020.

4. List before Court on 6th May, 2020.

I.A. 16252/2019 (under Order XXXIX Rule 1 and 2 CPC)

1. List on 6th May, 2020.

2. Interim order to continue.

I.A. 16253/2019 (under Order XXXIX Rule 10 CPC)

1. Learned counsel for defendant Nos.1, 2 and 3 states that the defendant Nos.1, 2 and 3 have been receiving the rent from defendant Nos.4, 5 and 6 for the last 40 years which fact is refuted by learned counsel for defendant Nos.4, 5 and 6. In any case the defendant Nos.1, 2 and 3 are liable to pay a rent of ₹3,000/- per month to the plaintiffs which have not been paid since the year 1999.

CS(OS) 600/2019

Page 5 of 6



2. In the meantime, defendant Nos.1, 2 and 3 will deposit a sum of ₹1 lakh with the Registrar General of this Court within 15 days as claimed in the present suit as the approximate rent of the last three years.

3. List on 6th May, 2020.

I.A. 17629/2019 (under Order VII Rule 14 (3) CPC-by plaintiffs)

1. By this application, the plaintiffs seek leave to place on record the corrigendum to the letter of the Delhi Development Authority issued to the plaintiffs.

2. Learned counsel for the defendants have no objection to the placing the copy of the corrigendum on record.

3. Application is disposed of taking on record the corrigendum as issued by Delhi Development Authority to the plaintiffs.

MUKTA GUPTA, J.

FEBRUARY 17, 2020

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CS(OS) 600/2019

Page 6 of 6