

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

CM(M) No. 745/2014

DATE OF DECISION : 12th August , 2014

GURSHARAN KAUR

.....Petitioner

Through: Mr. R.K.Kashyap, Advocate.

VERSUS

TRILOK SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India is filed by the landlord impugning the concurrent judgments of the Additional Rent Controller and the Additional Rent Control Tribunal, dated 5.6.2013 and 29.4.2014 respectively, by which the eviction petition of the petitioner/landlord under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short 'DRC Act') has been dismissed. Eviction petition under Section 14(1)(a) of the DRC Act is filed when there is default in payment of rent in spite of service of a legal notice.

2. A reading of the impugned judgments shows that there were two aspects which were urged before the courts below, one aspect with respect to whether rate of rent was Rs.2500/- per month or Rs.1500/- per month and the second aspect was with respect to the period of default. On both these aspects it has been held against the petitioner/landlord because the courts below have held that the rate of rent is Rs.1500/- per month and not Rs.2500/- per month as contended by the petitioner/landlord and it has been held that there is no default from August, 2009 till September 2011.

3. On a query made to the counsel for the petitioner/landlord, it is stated that the petitioner/landlord is not disputing the aspect that the rate of rent is Rs.1500/- per month and that there is no default with respect to period from August 2009 to September 2011. If that be so, I fail to understand that what is left to be argued in this petition under Article 227 impugning the judgments of the courts below.

4. At this stage, counsel for the petitioner/landlord argues that actually what is being argued by the petitioner/landlord is that the respondent/tenant had failed to comply with the order passed under Section 15(1) of the DRC Act, and which order is an interim order to make payment of pendente lite rent and confirmed at the time of passing of the final judgment, inasmuch as, the respondent/tenant has not paid rent pursuant to this order under Section 15(1) of DRC Act for the months of May 2012, July 2012 and August 2012.

5. I note that this aspect is not mentioned either in the judgment of the Additional Rent Controller or in the judgment of Additional Rent Control Tribunal, and surely this must be because this aspect must not have been urged before any of the courts below.

6. Once an aspect is not found to have been urged before the courts below of an alleged default in non-compliance of an order under Section 15(1) (and with respect to which in any case I do not find any basis for accepting the same) it is not permissible for the first time in a petition under Article 227 of the Constitution of India to urge an aspect which has not been argued before both the courts below.

7. There was a Section 39 in the Delhi Rent Control Act, 1958 pertaining to second appeals and which second appeal could be filed to this Court only on a substantial question of law. This Section 39 has been deleted by Act 57 of 1988 with the clear object that regular second appeal should not be filed and the orders of the court below should be interfered with only in extreme circumstances under Article 227 of the Constitution of India.

8. Therefore, powers under Article 227 of the Constitution of India cannot be exercised with respect to a point of an alleged default in compliance of the order under Section 15(1) when it is not so argued before

any of the courts below and is sought to be argued only for the first time before this Court in this petition.

Dismissed.

AUGUST 12, 2014

Sd/-
VALMIKI J. MEHTA, J.