

नरेश कुमार लाका
NARESH KUMAR LAKA
अतिरिक्त जिला न्यायाधीश-03 (दक्षिणी पूर्वी)
Additional District Judge-03 (South East)
कमरा नं० 316, साकेत मंडल
Room No. 316, 3rd Floor
जिला न्यायालय परिसर साकेत, नई दिल्ली
District Court Complex, New Delhi

**IN THE COURT OF SHRI NARESH KUMAR LAKA
ADDITIONAL DISTRICT JUDGE – 03, SOUTH EAST,
SAKET COURTS, NEW DELHI**

RCA No.47/2015 (New No. 20277/16)

In the matter of:

RAJNI & ANR.

.....Appellants

vs.

RAJIV SHARMA

.....Respondent

Date of Institution	:	02.07.2015
Arguments concluded	:	25.02.2020
Date of decision	:	20.05.2020
Result	:	Appeal dismissed Cross-Objections disposed of.

**APPEAL UNDER SECTION 96 CPC & CROSS-OBJECTIONS
AGAINST THE JUDGMENT/ DECREE DATED 30.05.2015**

JUDGMENT

The present appeal has been preferred against the Judgment/decreed dated 30.05.2015 passed by Ld. Civil Judge, South, Saket Courts in suit no.1043/14. The respondent has also filed cross-objections for challenging some of the findings of the Ld. Trial Court. I have already heard arguments from Sh. Yashveer Singh, Ld. Counsel for the appellants and Sh. Amit Gupta, Ld. Counsel for the respondent and

reserved this case for judgment/order.

2. In the meantime, owing to pandemic disease of Coronavirus (COVID-19) and countrywide lockdown w.e.f. 23.03.2020, the functioning of the courts was restricted to prevent the spread of coronavirus disease. The said lockdown period has extended from time to time and still continuing. Recently, as per the internal Circular No.8188-8348/DJ/Covid19 Lockdown/ Pronouncements/2020 dated 03.05.2020 issued by Ld. District & Sessions Judge, South East conveying directions issued by Hon'ble High Court of Delhi through letter No.R-123/RG/DHC/2020 dated 30.04.2020, judgments/orders in the reserved cases have to be pronounced by preponing/rescheduling the cases after intimation to the advocates/parties. Therefore, this file has been fixed today after sending intimation to the respective Advocates through telecommunication (SMS) and order is being pronounced as per the aforesaid Circular. The advocates/parties were informed to appear in court at 04.00 p.m. today to inquire about the order or in the alternative they were informed to see the order on the official website of the South East District, New Delhi. File perused.

Suit in brief

3. The respondent Sh. Rajiv Sharma had filed a suit by claiming that Ms. Jyotsana Dass was the previous owner of the suit property and appellant Smt. Rajni was inducted as a tenant in the year 2000 by her therein and subsequently Sh. Rajiv Sharma purchased the said property from the previous owner on 17.10.2008. Thereafter Sh. Rajiv Sharma informed the defendants about the transfer of the property

and they were also directed to pay the rent to him. However, the defendants did not pay rent w.e.f July, 2008 and two legal notices dated 28.03.2009 and 18.09.2009 were sent to them but they did not send any reply. The tenancy was terminated and initially a petition for eviction was filed before the concerned Additional Rent Controller, but it was returned with liberty to file a fresh suit. Thereafter, Sh. Rajiv Sharma filed a suit for recovery of possession, arrears of rent and damages against the defendants/appellants.

4. It is further alleged that the defendants have filed police complaints on 28.12.2008 and 20.02.2009 to the concerned SHO on false grounds and in the statement recorded under Section 161 Cr.P.C., the defendant No.2 and his son claimed the rate of rent as Rs.3,200/- which is disputed by the plaintiff/respondent and as per him, the rate of rent was Rs.3,700/- per month which was also tendered to him on many occasions.

Defence in brief

5. The defendants admitted that they were the tenants of previous owner, namely, Ms. Jyotsana Dass since the year 2000, but it is alleged that the plaintiff and his brother tried to dispossess them forcibly on 22.02.2009 and in this regard a complaint was lodged to the police. The defendant No.1 also claimed that an application was also filed before the court of Sh. Sandeep Yadav, Ld. ARC for deposit of rent which was allowed and the rent was deposited up to December, 2009. It is further claimed that the defendants were regularly depositing the rent, but the landlord was harassing them and even the electricity supply was

also disconnected.

6. On merits, it is claimed that the suit of the plaintiff is devoid of merit and is liable to be dismissed since the rate of rent was below Rs.3,500/- and the Civil Court has no jurisdiction to try and entertain the said suit. (The defendants have also levelled various allegations of harassment, abusing and beatings, but the same are not relevant to decide the present appeal and they are the subject matter of criminal proceedings, if any).

Findings of the Ld. Trial Court

7. On the basis of the pleadings on record, the Ld. Trial Court framed the following issues:

1. Whether the plaintiff is entitled to the vacant and peaceful possession of suit property No.152 (Ground Floor), Hari Nagar, Ashram, New Delhi-110014? OPP

2. Whether the plaintiff is entitled to a decree for a sum of Rs.44,400/- (as arrears) along with the interest of 18% per annum? OPP

3. Whether the plaintiff is entitled to a decree of Rs.8,000/- as damages or use and occupation charges for the month of Nov.2009? OPP

4. Whether the plaintiff is entitled to a decree of injunction restraining defendants from creating third party interest and causing any damage to the suit property? OPP

5. Whether the rent of the suit premises is Rs.1,500/-?

OPD

**6. Whether the plaintiff is entitled for any other relief?
OPP**

8. After conclusion of trial, the Ld. Trial Court decided Issue No.1 against the plaintiff mainly by holding that the plaintiff has failed to prove the rate of rent beyond Rs.3,500 and, as such, the Civil Court had no jurisdiction to entertain and try the said suit and rather the remedy lies before the Rent Controller under the Delhi Rent Control Act, 1958.

9. Issue No.2 was decided by holding that the rate of rent was proved on record as Rs.3,200/- per month and therefore, the arrears of rent, w.e.f. August, 2008 was directed to be paid along with interest @ 6% per annum.

10. Issue No.3 was decided against the plaintiff by holding that no such question arose when the tenancy of the defendants continued being a protected tenant.

11. Issue No.4 was partly allowed by restraining the defendants to create any third party interest in the suit property.

12. Issue No.5 was decided against the tenants/defendants by holding the rate of rent as Rs.3,200/- per month by relying on the statement which was made before the police authority by the defendant(s).

REASONS FOR DECISION ON THE APPEAL & CROSS-OBJECTIONS

13. The present appeal has been filed by the tenants/defendants mainly challenging the finding of the Ld. Trial Court on the point of rate of rent by claiming that it has been decided at higher side. On the other hand, the plaintiff/respondent also filed cross-objections to the appeal challenging the finding of Ld. Trial Court on the point of rate of rent by alleging that it was decided on lower side and accordingly the respondent also prayed decretal of the suit for the reliefs of possession and damages also.

14. From the finding of Ld. Trial Court, it is observed that the determination on the point of rate of rent was based mainly on the statements made by Sh. Ram Avatar and Sh. Pradeep Kumar on 23.02.2009 before one ASI Balbir Singh. The Ld. Counsel for the appellant vehemently argued that the said statements were manipulated by the police in collusion with the respondent. It is further claimed that the signatures of Sh. Ram Avatar and his son Sh. Pradeep Kumar were taken on blank papers.

15. From the perusal of the record of Ld. Trial Court, it is seen that for the alleged incident of 22.02.2009, a complaint was made by the appellant before the concerned SHO and the matter was enquired by IO ASI Balbir Singh. Immediately on the next date i.e. 23.02.2009, statements of Sh. Ram Avatar and his son Sh. Pradeep Kumar were recorded. It is a settled position of law that statement recorded by police

official under Section 161 Cr.P.C. during investigation or an inquiry upon a criminal complaint through not admissible in criminal trial yet it is admissible and has probative value in civil suit, if it is proved as per law.

16. The record reveals that the IO ASI Balbir Singh has been examined as PW-5 in the instant case by the respondent and the aforesaid two statements were duly proved as Ex.PW5/15 (Colly). From the perusal of the said statements, it is seen that the same are very comprehensive and evidenced the facts which were in the knowledge of the authors of the said statements only and could not be recorded by the police at his own. The said statements were recorded immediately on the very next day of the alleged incident and, therefore, it is of contemporary time and thus trustworthy.

17. Moreover, the allegations that the signatures of Sh. Ram Avatar and Sh. Pradeep Kumar were taken on blank paper and thereafter, the said blank paper was manipulated as statements is highly unbelievable and improbable since the signatures of Sh. Ram Avatar and Sh. Pradeep Kumar are not on the bottom but on the top of the reverse side page which clearly proves itself that the said signatures were taken after recording the statements on two pages.

18. If the IO had taken signatures on blank papers or recorded the statements by manipulating the facts, the appellants should have filed a complaint immediately to the senior police officer like DPC or Commissioner of Police, but no such complaint has been placed on record.

19. Moreover, from the rate of rent as disclosed at Rs.3,200/- per month, it is seen that had there been any prior collusion or pre-concoction with the respondent, then the rate of rent would have been planned more than Rs.3,500 to bring the tenancy outside the protection of Delhi Rent Control Act, 1958. Therefore, the said statements stand duly proved on record.

20. The said statements were the latest evidence available on record and all other previous claims of the tenants for claiming the rent @ Rs.1,500/- per month by view of deposit of rent before the Ld. ARC, pertains to previous old period. Therefore, this court holds that the aforesaid evidence in the form of statements before the police officer were most spontaneous and natural. On the contrary, Ld. Counsel for the respondent claimed that the rate of rent was Rs.3,700 p.m. and in this regard he heavily relied on the service of legal notice. It is specifically argued that in the absence of sending reply to the legal notice, a presumption is drawn as per Section 114 of the Indian Evidence Act, 1872 and therefore the rate of rent as claimed in the said legal notices stand proved. The Ld. Trial Court dealt with the said argument in detail and held that when the primary burden to prove the rate of rent was upon the landlord (respondent) then the case-laws relied by the counsel and the presumption of Section 114 of the Indian Evidence Act, 1872 do not apply. I concur with the aforesaid findings especially when no other credible evidence has been produced on record to substantiate the said rate of rent and in view of my specific observations as made in the preceding paragraphs.

21. In the light of aforesaid facts and discussion, this court holds that the claim of both the parties as regards the rate of rent @ Rs.1,500/- or Rs.3,700/- respectively are not proved on record and the finding of the Ld. Trial Court was correct for reaching at a conclusion that the rate of rent was Rs.3,200/-. Accordingly, the said finding is upheld with additional reasons.

22. Ld. Counsel for the appellant further contended that the plaintiff/respondent was not the owner of the suit property and it has not been specifically proved on record nor the factum of attornment of the defendants/appellant has been proved on record. It is also claimed that the previous owner has not been produced in the witness box and the suit is barred as per Section 14(6) of the DRC Act.

23. Admittedly, the defendants were inducted as tenant in the suit property by Ms. Jyotsana Dass. It is the case of the plaintiff that plaintiff had purchased the suit property from Ms. Jyotsana Dass and thereafter, an intimation was given to the defendants about the said transfer. In a suit between landlord and tenant, the landlord is not required to prove its absolute title but the relationship between the parties as a landlord and tenant. As per the provisions of the Transfer of Property Act, upon transfer of a leased property from a lessor, an information is required to be given to the tenant and it can be given either by the previous owner or by the transferee. The transferee is also not required to show his title documents. The record reveals that the plaintiff had informed about the purchase of the suit property orally on many

occasions and even a quarrel also took place on 22.02.2009 against which a complaint was filed by the defendants to the concerned SHO wherein it is specifically mentioned that the plaintiff was claiming himself to be the landlord/owner of the suit property.

24. From the contents of the said complaint, it is proved that the defendants came to know about the transfer of the suit property of the previous lessor. Even two times legal notices were sent to the defendants by the plaintiff which were duly proved on record and the said notices also find mentioned that the plaintiff was claiming himself to be the owner and lessor of the suit property. The defendants have also not proved on record any documents to show that they continued making payment of rent to Ms. Jyotsana Dass, the previous owner. In the light of the aforesaid evidence, the aforesaid contention is rejected being merit-less. The objection of Section 14(6) of the DRC Act is not applicable when the relief of eviction or possession has been declined.

25. It is next argued by the Ld. Counsel for the appellant/defendant that as per Section 14(1) (a) & Section 15 of the Delhi Rent Control Act only a Rent Controller can pass an order for payment of rent from a protected tenant under the said Act to the landlord and, therefore, as per Section 50 of the Delhi Rent Control Act, 1958, the jurisdiction of the Civil Court is barred for entertaining the suit for recovery of arrears of rent. There are catena of judgments to the effect that the jurisdiction of civil court is not barred for a suit seeking recovery of rent from a protected tenant inasmuch as the power upon the Rent Controller has been conferred for fixation of rate of rent and not for

recovery of rent. In my considered opinion the purpose and intent of Section 14(1)(a) & Section 15 is to provide a remedy for seeking eviction of a tenant who defaults in making payment of rent and the same cannot be considered at par with the object of recovery of rent. Therefore, the aforesaid argument is rejected having no force.

26. It is observed that the rate of interest was granted @ 6% per annum by the Ld. Trial Court on the arrears of rent which appears to be at a very lower side. As per the provisions of the Delhi Rent Control Act, a landlord is entitled to recover interest @ 15% p.a. on the defaulted rent. The appellant also defaulted in payment of rent for a considerable period of time and he is not supposed to enjoy or withheld the property at such a meager amount of rent without even making timely payment of rent. Accordingly, the aforesaid interest @ 6% p.a. is contrary to the statutory provisions of the DRC Act and unreasonable also. Therefore, this court modifies the same from 6% to 15% p.a.

27. With the aforesaid modification, the impugned judgment/decree & findings of the Ld. Trial Court are upheld with additional reasoning. Consequently the appeal is dismissed and the cross-objection/appeal is partly allowed to the extent of enhancement of interest. Rest of the reliefs shall remain the same. The FDR filed on record by the tenant at the time of grant of stay be released to the respondent with an endorsement of encashment of the said amount along with up-to-date interest in favour of respondent in his account or in cash by the concerned bank. The said amount shall be adjusted in the decretal amount and remaining amount if any shall be paid by the

appellant to the respondent within 60 days in his bank account from the date of receipt of bank account detail and the statement of due amount from the respondent, which the respondent is directed to supply at the earliest preferably 15 days.

28. No order as to costs. A fresh decree-sheet be prepared by modification of interest as held in para No.26 above. Appeal file along with cross-objections be consigned to record room. Copy of the judgment be sent to the Ld. Trial Court along with trial court record for information. The computer branch is directed to upload this Order on the official website of South East District immediately for information of the advocates/parties.

Announced in the open court
on 20.05.2020

Naresh Kumar Laka
20.05.2020

(Naresh Kumar Laka)
Additional District Judge-03
South-East District,
Saket Courts, New Delhi.

नरेश कुमार लाका
NARESH KUMAR LAKA
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