

(2012) 08 DEL CK 0225

Delhi High Court

Case No: CM (M) 504 of 2012 and CMs 7674-7675 of 2012

Babu Lal and Others

APPELLANT

Vs

Kailash Chand

RESPONDENT

Date of Decision: Aug. 16, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Delhi Rent Control Act, 1958 - Section 14(1)(a), 14(1)(e), 14(2), 15(1)
- Evidence Act, 1872 - Section 114(e)
- General Clauses Act, 1897 - Section 27

Hon'ble Judges: M.L. Mehta, J**Bench:** Single Bench**Advocate:** Rohit Kumar, for the Appellant;**Final Decision:** Dismissed

Judgement

M.L. Mehta, J.

This petition under Article 227 of the Constitution assails order dated 22.12.2011 of District Judge-cum-Additional Rent Control Tribunal (ARCT), South, New Delhi, whereby appeal challenging the judgment dated 07.07.2005 of Additional Rent Controller (ARC) in eviction petition No. 133/1996, was dismissed. The respondent had filed eviction petition u/s 14 (1) (a) of the Delhi Rent Control Act (for short "the Act") against petitioners /tenants on the ground of non-payment of rent despite notice of demand dated 28.05.1996. The eviction was sought in respect of a DDA flat bearing No. 109-B, Sunlight Colony, Hari Nagar, Ashram, New Delhi. The learned ARC recorded findings in favour of the respondent/landlord. He also directed the petitioners to pay to the respondent or deposit in the Court arrears of rent @ Rs.300/- per month with effect from 15th October, 1993 till the date of order within one month of the order. This being the case of first default, he extended benefit of section 14(2) of the Act to the appellant. The appellants carried the matter in appeal

which came to be dismissed by the learned ARCT. He, however, remanded the matter back to the ARC to consider and examine as to whether the order u/s 15(1) of the Act had been complied with by the appellant.

2. The order of the learned ARCT is under challenge in the instant petition under Article 227 of the Constitution.

3. I have heard the Learned Counsel for the petitioners and perused the records.

4. The main challenge to the order of the ARC and the learned ARCT are on two counts. Firstly, that they have erred in recording the existence of relationship of landlord and tenant between the parties and the respondent being the owner of the tenanted premises. Secondly, both the courts below have erred in recording about due service of notice of demand upon the petitioners.

5. With regard to the first, the submission of Learned Counsel for the petitioners is that there was nothing on record to substantiate that the respondent was the owner or that the petitioners were the tenants under him. It was submitted that in this regard evidence of AW-5 Mahavir Singh is unreliable inasmuch as he did not state about the date of start of tenancy, whereas in cross he stated the tenancy to be from 1977. He also submitted that there was also inconsistency as to since when Budho Devi, the predecessor-in-interest of the petitioners, was in possession of the tenanted premises. The submission of the Learned Counsel was that Budho Devi was in possession of the suit premises in an independent right being the owner thereof and thus there was no question of the petitioners being the tenant under the respondent in the tenanted premises. With regard to the second, the submission of Learned Counsel is that there was no person by the name of Pooja who allegedly received notice of demand. He submitted that there being no sufficient evidence on record regarding service of notice of demand of rent, eviction petition was not maintainable.

6. The learned ARC has recorded his finding on three counts. Firstly; that the tenancy was created in the year 1975 and there existed relationship of landlord and tenant between the parties; secondly, there was due service of notice of demand; and thirdly, that the petitioners were in arrears of rent and there was no compliance of the notice of demand. With regard to the challenge as regard to the ownership of the tenanted premises or relationship of landlord and tenant between the parties, certain findings of facts have been recorded by the learned ARC and have been elaborately dealt with and discussed by the learned ARCT. It has been recorded that a civil suit seeking a declaration to the effect that the petitioners are the owners in possession of the tenanted premises and also for permanent injunction restraining the respondent to dispossess them, was brought by Budho Devi. The said suit was dismissed by the Civil Judge vide his order of 20.07.2005. The first appeal by the appellate Court and also the second appeal by this Court against the order of Civil Judge also came to be dismissed. It is gathered that SLP against the order of the

High Court was also dismissed by the Supreme Court.

7. The learned Civil Judge had arrived at a finding of fact that Budho Devi was the tenant in the tenanted premises and not the owner thereof. The learned ARCT has specifically noted the findings of the Civil Judge as also of the first appellate Court and the High Court. It has also taken note of the evidence of the witnesses AW-2 Yogender Singh, AW-3 Shiv Prasad who had fully established the fact of tenancy between the parties. So much so, the testimony of Naresh Kumar (RW-1) son of Budho Devi was also in favour of the respondent. Notice has also been taken of the house tax record of the year 1986 showing the tenanted premises to be in possession of Budho Devi as tenant. Further, an eviction petition was also filed by respondent u/s 14 (1) (e) of the Act against Budho Devi. Though, the said petition came to be dismissed by the ARC, but, it was observed that the tenanted premises was initially allotted to Hem Lata, wife of Mahavir Singh and subsequently transferred to the respondent Kailash Chand. Mahavir Singh also testified that he used to collect the rent from Budho Devi and pay the same to Kailash Chand. The ARC held the respondent Kailash Chand to be owner and landlord of the tenanted premises.

8. In view of the discussion noted above, I have no reason to disagree with the findings of facts recorded by the learned ARC and confirmed by learned ARCT that there existed relationship of landlord and tenant between the parties qua the tenanted premises.

9. I also do not find any substance in the plea that the demand notice Ex. PW1/2 was not served and that the AD cards purporting to be signed by Ms Pooja was not of a person known to the petitioners. It is noted by the ARC and also by the ARCT, and rightly so, that the petitioners have denied the receipt of notice of demand dated 28.05.1996, but have admitted the receipt of subsequent notice demanding enhancement of rent dated 05.06.1996 (Ex. AW1/6). The petitioners had admitted the receipt of notice demanding enhancement of rent dated 05.06.1996. Undisputedly, no reply was sent to this notice of enhancement of rent. If such a notice remained unprotested or unanswered, adverse inference has to be drawn about its receipt and contents against the petitioners. Both the Courts below have rightly observed the signatures appearing on acknowledgement receipts to be of one and the same person Pooja. It was undisputed that envelopes containing the addresses and also the AD cards bear the correct addresses of the addressee. There was a presumption of service of the notice dated 28.05.1996, u/s 27 General Clauses Act read with Section 114 (e) of the Evidence Act. The petitioners have not been able to rebut that presumption and thus such a presumption would tantamount to proof of service. this Court in the case of Vinod Bahri Vs. H.C. Batra (indlii 2006 DEL 00616) noted the decision of the Supreme Court in [Devender Pal Singh Vs. State National Capital Territory of Delhi and Another](#), and held that the observations therein regarding police officers must hold good even as regards the officials of the postal

Department. Thus, so long as there is no real basis for holding otherwise, the discharge of an official act by the officials of the postal Department must be presumed to be honest and unaffected by any extraneous considerations and notice deemed to be served upon the addressee.

10. In view of my discussion on the aspect of notice of demand as above, I do not find any infirmity in the findings of facts recorded by the ARC as also by the ARCT as regard to the service of notice of demand dated 28.05.1996 as well. In view of my above discussion, the petition has no merit and is hereby dismissed in limini.