

**(2011) 05 DEL CK 0303**

**Delhi High Court**

**Case No:** Regular Second Appeal No. 285 of 2007 and CM No. 15799 of 2007

Sh. Ajab Singh

APPELLANT

Vs

Shri Mukesh Chand Gupta

RESPONDENT

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**Date of Decision:** May 2, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Delhi Rent Control Act, 1958 - Section 1(2), 50

**Citation:** (2012) 186 DLT 548

**Hon'ble Judges:** Indermeet Kaur, J

**Bench:** Single Bench

**Advocate:** Sanjeev Joshi, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 26.09.2007 which had endorsed the findings of the trial Judge dated 23.01.2007 whereby the suit filed by the Plaintiff seeking possession of the suit property i.e. property bearing No. 1/5294, Gali No. 10, Balbir Ngar, Shahdara, Delhi leased out at a rental of Rs. 2,800/- per month had been decreed.

2. The Plaintiff claimed himself to be owner of the aforementioned suit property. It had been let out to the Defendant @ Rs. 2,800/- per month. It was contended that the suit property is located in Village Sikdarpur/Babarpur; the Defendant cannot seek protection under the Delhi Rent Control Act (DRCA); the Defendant is a chronic defaulter in making the payment of license fee; inspite of legal notice dated 08.08.2001, he had not vacated the suit property.

3. The Defendant contested the suit. In the written statement, it was stated that the bar of Section 50 of DRCA is applicable. On merits, the receipt of the notice was

denied; it was denied that the Plaintiff is entitled to recovery of suit property.

4. On the pleadings of the parties, the following nine issues were framed:

1. Whether the Defendant is licensee in respect of suit shop and not a tenant? OPP.
2. If the Defendant is a tenant. If so, held on and provisions of DRC Act are not applicable to the suit shop, Whether the tenancy of the Defendant had been terminated as per law? OPP
3. Whether the provisions of DRC Act are not applicable to the suit shop? (Both the parties)
4. Whether the Plaintiff is entitled to possession of the suit shop as prayed for? OPD
5. Whether the Plaintiff is entitled to a decree for a sum of Rs. 7800/- as prayed for and also for future damages as prayed for? OPP
6. Whether the Plaintiff is entitled to interest on the decretal amount, if any, if so, at what rate and for what period? OPP
7. Whether the Plaintiff has suppressed material facts and has not approached this Court with clean hands? OPD
8. Whether the Plaintiff forcefully got the signatures of the Defendant on some blank paper and receipt dated 11.5.2001 as averred in para 3 of the reply on merits? If so, to what effect? OPD
9. Relief.

5. Issue No. 3 was treated as a preliminary issue. The trial Judge vide judgment dated 08.08.2003 held that since the suit property has been urbanized and provisions of DRCA have been extended to the revenue estate of Shahdara, the suit is barred u/s 50 of the DRCA; rent is admittedly below Rs. 3,500/-, suit of the Plaintiff is not maintainable; suit was accordingly dismissed.

6. This judgment had been appealed. The first appellate court had remanded the matter back to the trial Judge. Oral and documentary evidence was led by the respective parties which included two witnesses on behalf of the Plaintiff and one witness on behalf of the Defendant. Testimony of P.W. 1 had been examined. The Plaintiff had categorically deposed on oath that the location of the suit property has not been notified under the DRCA; suit land is located in Sikdarpur/Babarpur; Defendant is not entitled to the protection under DRCA. Khasra Girdawari Ex. P.W. 1/1 and the site plan of the suit property Ex. P.W. 1/2 had been examined. Contention of the Defendant was that the suit property is located in the revenue estate of Shahdara and the DRCA is applicable. P.W. 2 Dinesh Bansal who had appeared from the SDM office had on oath deposed that Sikdarpur and Shahdara revenue estates are two separate revenues and revenue estate Shahdara is also known as revenue estate Shahdara Chandrawali. Gazette notification dated

25.03.1979 notified u/s 1(2) of the DRCA showed that the revenue estate of Sikdarpur had not been notified and the provisions of DRCA have not been extended to the revenue estate of Sikdarpur. The trial Judge was of the view that the suit property is not covered by the DRCA. Legal notice Ex.P.W. 1/3 had also been proved. The Defendant was held to be defaulter in paying rent, suit of the Plaintiff was accordingly decreed along with mesne profits.

7. In appeal, this finding was endorsed by the impugned judgment.

8. The impugned judgment had inter-alia on the first argument noted as follows:

The Appellant/Defendant does not dispute the letting out of the suit property by the Respondent/Plaintiff. The Respondent/Plaintiff in support of his plaint filed affidavit Ex.P.W. 1 wherein the Respondent/Plaintiff reiterated the contents of the plaint. The Respondent/Plaintiff also relied upon the Khasra Girdawari of the suit property Ex.P.W. 1/1. The Appellant/Defendant during the cross examination does not put suggestion that the Khasra Girdawari pertaining to Khasra No. 199 of Village Sikdarpur is not the suit property. As per the Khasra Girdawari Ex. P.W. 1/1, the suit land is of Village Sikdarpur and shown to be residential area.

The Hon"ble Supreme Court of India in case [Mitter Sen Jain Vs. Shakuntala Devi](#), has held that-

Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. It is admitted that no notification has yet been issued under the proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act specifying Sagarpur area within the schedule of the Act. In absence of such a notification, the provisions of Delhi Rent Control Act cannot be enforced to the area, namely, Sagarpur.

In the present case, the village Sikdarpur was added in the Union Territory of Delhi. However, there is no notification filed by the Appellant/Defendant or any other document filed on record to show that the Revenue Estate of Sikdarpur is urbanized and Delhi Rent Control Act is applicable to the Revenue Estate of Sikdarpur. Unless the Revenue Estate of Sikdarpur where the suit property is notified for its urbanization, the same cannot be said to be covered under the Delhi Rent Control Act. The plea taken by the Learned Counsel of Appellant/Defendant that the suit of the Respondent/Plaintiff is barred u/s 50 of Delhi rent Control Act, 1958 is without force.

9. This finding calls for no interference. The notification of 25.03.1979 had evidenced that the revenue estate of Sikdarpur had not been notified for the applicability of provisions of DRCA. Further the judgment of Mitter Sen Jain as quoted above had

also been adverted to. The court had also recorded a fact finding on admission of the Defendant wherein he had admitted that he had paid rent only upto May, 2001; he was a defaulter; the Plaintiff was the owner of the suit property. The decree of the trial Judge was accordingly endorsed.

10. This is a second appeal. It has been admitted and on 19.11.2008, the following substantial question of law was formulated:

Whether by virtue of notification No. F.9(2) 66-Law. Corp. dated 28.05.1966 the findings recorded by the courts below that the Delhi Rent Control Act was not applicable to the suit premises is sustainable?

11. On behalf of the Appellant, it has been urged that the judgment of the trial Court is illegal as by virtue of the notification dated 28.05.1996, the suit property which is located in Balbir Nagar has been notified as urban and the provisions of DRCA are alone applicable. A copy of this notification has been shown for the perusal of this Court. Admittedly this notification has not seen the light of day either before the trial Judge or before the first appellate court. There is also no application filed before this Court for taking on record the aforementioned documents by availing of the provisions of Order XLI Rule 27 of the Code of Civil Procedure. This document is not on Court record. The value or authenticity of this document cannot be gone into by a court sitting in second appeal.

12. The findings returned in the impugned judgment after examination of the oral and documentary evidence adduced by the Plaintiff had led to court to hold that the suit property is located in an area where the provisions of DRCA are not applicable. The only remedy available for the Plaintiff was to file a suit for possession.

13. No other argument has been urged before this Court.

14. Substantial question of law is answered in favour of the Respondent and against the Appellant. There is no merit in the appeal. Appeal as also pending application are dismissed.