

**(2011) 02 DEL CK 0439**

**Delhi High Court**

**Case No:** Regular First Appeal No. 226 of 2001

Smt. Jamuna Devi

APPELLANT

Vs

Shri Charanjit Gandhi

RESPONDENT

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**Date of Decision:** Feb. 8, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 96

**Hon'ble Judges:** Valmiki J Mehta, J

**Bench:** Single Bench

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

**Final Decision:** Dismissed

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### **Judgement**

Valmiki J Mehta, J.

This case is on the Regular Board of this Court since 3.1.2011. This case is effective item No. 4 on the Regular Board of this Court today. No one appears for the parties although it is 2:30 pm. I have therefore perused the record and am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 28th March, 2001 whereby the suit of the Respondent/plaintiff was decreed for recovery of Rs. 99,000/- towards arrears of rent with pendent lite and future interest at 15% per annum and costs.

3. The facts of the case are that the Respondent/plaintiff was the owner of the property bearing No. B-76, New Gupta Colony, New Delhi and ground floor of which was let out to the Appellant on monthly rent of Rs. 2,750/- with effect from 1.7.1996. It is alleged that the Appellant became defaulter in payment of rent and did not pay rent with effect from 1.6.97 instead of repeated demands. It was then stated that the Respondent/plaintiff served a notice dated 3.6.2000 on the Appellant/Defendant to make payment of arrears of rent. On failure of the Appellant/Defendant to pay

the rent, a suit was filed for arrears of rent from 1.6.97 to 12.12.2000. The Appellant/Defendant appeared and contested the suit. It was claimed by the Appellant/Defendant that it was agreed between her and Respondent/plaintiff that if she paid Rs. 25,000/- as security to the Respondent/plaintiff then the Appellant could live on rent as long as she desired. It was also additionally pleaded that the Respondent/plaintiff approached the Appellant/Defendant on 25.12.1998 and persuaded the Appellant/Defendant to give him an amount of Rs. 1,00,000/- which the Respondent/plaintiff agreed to pay back within a year along with the interest at the rate of 3% per month, and in consideration of this payment of Rs. 1,00,000/-, the rent was reduced from Rs. 2,750/- to Rs. 200/- per month and which amount of Rs. 200/- per month has been regularly paid to the Respondent/plaintiff but no receipt has been issued.

4. After completion of pleadings, the Trial Court framed the following issues which read as under:

1. Whether the plaintiff is entitled to recover any arrears of rent? If so, at what rate and what amount of arrears of rent? OPP
2. Whether the plaintiff is entitled to any interest? If so, at what rate? OPP
3. Whether the Defendant paid a sum of Rs. 1,00,000/- to the plaintiff as alleged in the written statement? If so, to what effect? OPD
4. Whether the suit is barred by time? OPD.
5. Relief.

5. The relevant issues on which the decision of the case depends are issue Nos. 1 and 4. The Trial Court has given the necessary findings in paragraphs No. 9 and 10 of the judgment which read as under:

"9. Admittedly the plaintiff let out the suit premises to the Defendant for a period of 11 months w.e.f.1.7.96 @Rs.2750/- pm. The plaintiff who appeared as PW.1 in his unchallenged and uncontroverted testimony has deposed that the Defendant paid rent for the period of 11 months and w.e.f.1.6.97 the Defendant did not pay him the agreed rent of Rs. 2,750/- and that he has demanded the rent from the Defendant many times. He also proved the rent agreement Ex.PW1/1. He also deposed that he got issued a legal notice dated 3.6.2000 for the arrears of rent through his lawyer, carbon copy whereof is Ex.PW1/1, postal receipt is Ex.PW1/3 and the registered AD card is Ex.PW1/4 and the UPC receipt is Ex.PW1/5. Though in the written statement filed the Defendant took the plea that it was mutually settled that the Defendant would pay a sum of Rs. 25,000/- as security to the plaintiff there is no pleading that the said sum of Rs. 25,000/- was ever paid nor any proof to any such extent has been led by the Defendant. Similarly though the Defendant in the written statement also took a plea that the plaintiff had approached the Defendant on 25.12.98 and said that he was in extreme need of money and persuaded the Defendant to pay

him an amount of Rs. 1,00,000/- and the Defendant in good faith and keeping in view the formal and cordial relations, lent a sum of Rs. 1,00,000/- and the plaintiff agreed to pay within a year and when the Defendant asked the plaintiff to give 3% interest on the lent amount, the plaintiff pleaded to reduce the rent amount from Rs. 2,750/- to Rs. 200/- p.m. and on the other hand he would not pay any interest till the full and final payment of the borrowed amount is made and that since then the Defendant has been paying around he plaintiff an amount of Rs. 200/- as monthly rent, the Defendant failed to prove any of the allegations so made. In fact no evidence has come to be led by the Defendant to p rove any such allegations. As such in the absence of any material on record to show that the agreed rent of Rs. 2,750/- was ever mutually agreed to be reduced to Rs. 200/- p.m. on account of any alleged sum of Rs. 1,00,000/- having been lent by the Defendant to the plaintiff, I have no hesitation in accepting the version of the plaintiff, which is unchallenged and uncorroborated that the rent due and payable by the Defendant in respect of the suit premises was at Rs. 2,750/- p.m. Then also though the Defendant denied that he has been in arrears of any rent, in the absence of any evidence having been led by the Defendant to prove any such assertions, I have to hesitation in accepting the unchallenged and uncorroborated testimony of the plaintiff that the Defendant was in arrears of rent w.e.f. 1.6.97 @ Rs. 2,750/-p.m. 10. Though the onus to prove the issue No. 4 was on the Defendant, the said issue is a legal issue. The statute of limitation provides for filing of a suit by the plaintiff for the arrears of rent within 3 years from when the arrears become due. In the instant case, the suit was filed by the plaintiff on 30.1.2001. Proceeding three year counted therefrom, the plaintiff as such is legally entitled to recover the arrears of rent due for the months of January, 1998. Suit of the plaintiff for the recovery of arrears for the period prior to January, 1998 has thus become time barred. Calculating the arrears of rent and even the damages claimed till the filing of the suit at the same rare come to Rs. 99,000/-. It is therefore held that the plaintiff is entitled to recover Rs. 99,000/- as arrears of rent/damages from the Defendant.  
(Emphasis added)

6. I wholly agree with the aforesaid findings and conclusions of the Trial Court. The Trial Court has rightly disbelieved the stand of the Appellant of having made a payment of Rs. 1,00,000/- for reducing the rent from Rs. 2,750/- to Rs. 200 per month inasmuch as no proof at all was filed to show payment of Rs. 1,00,000/- or any agreement entered into to reduce the rent from Rs. 2,750/- to Rs. 200/- per month. The Trial Court has also referred to the rent agreement Ex.PW1/1 as also the legal notice Ex.PW1/2 and the AD Card Ex.PW1/4 whereby the Respondent/plaintiff claimed the amount due. The Trial Court has also noted that there are no appropriate pleadings or proof whatsoever that Rs. 25,000/- was ever paid to the Respondent/plaintiff so as to claim a right to perpetually stay in possession of the tenanted premises.

7. I therefore do not find any merit in the appeal which is therefore dismissed leaving the parties to bear their own costs. Amount deposited in this Court by the Appellant, alongwith accrued interest, be released to the Respondent. Trial Court record be sent back.