

**(2011) 06 DEL CK 0095**

**Delhi High Court**

**Case No:** Regular Second Appeal No. 99 of 2011 and CM No. 11517 of 2011

Shri Rajesh Verma and Another

APPELLANT

Vs

Shri Keshav Dutt Sharma

RESPONDENT

**Date of Decision:** June 3, 2011

**Acts Referred:**

- Delhi Municipal Corporation Act, 1957 - Section 507
- Delhi Rent Control Act, 1958 - Section 1(2), 50

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

**Bench:** Single Bench

**Advocate:** B.R. Bakshi, for the Appellant; Nemo, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 28.04.2011 which has endorsed the finding of the trial Judge dated 12.09.2008 whereby the suit filed by the Plaintiff Keshav Dutt Sharma seeking possession of the suit property i.e. property bearing No. RZ-35-F, Raj Nagar-II, Dada Chatri Wala Marg, Palam Colony, New Delhi along with damages had been decreed.

2. The Plaintiff claimed himself to be the owner of the aforesigned suit property. It comprised of a shop. It had been tenanted out to the Defendant at a monthly rent of Rs. 700/- per month w.e.f. 01.11.1989 vide written agreement dated 14.12.1989. It was agreed that the suit shop could be used for running the business of Defendant No. 1; Defendant No. 1 without any written permission parted with the possession of the suit shop in favour of Defendant No. 2; Defendant No. 1 is in arrears of rent w.e.f. 01.03.1993. Vide legal notice dated 29.05.1995 (Ex. PW-1/2) the tenancy of the Defendant was terminated w.e.f. 31.08.1995; Defendant is an unauthorized occupant; damages of Rs. 100/- per day had also been claimed.

3. In the joint written statement filed by both the Defendants objection of Section 50 of the Delhi Rent Control Act (DRCA) had been taken. It was stated that the suit is barred under the said provision; claim of subletting had also been denied; receipt of notice had also been denied.

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

1. Whether the shop in question was ever let out by the Plaintiff to Defendant No. 2 as alleged in the plaint? OPP

2. Whether the Defendants are in arrears of rent w.e.f. 01.03.1993 as claimed in the plaint, if so up to what period? OPP

3. Whether the suit of the Plaintiff is barred u/s 50 of Delhi Rent Control Act? OPD

4. Whether suit is barred under Delhi Land Reforms Act? OPD

5. Whether Plaintiff is entitled to the relief as claimed in the plaint?

6. Relief.

5. Oral and documentary evidence was led. The court was of the view that there is no bar u/s 50 of the DRCA; the notification dated 12.04.2002 u/s 507(a) of the Delhi Municipal Corporation Act (DMC) relied upon by the Defendant holding that the suit land had become urban by virtue of which the DRCA has been extended to Palam Village had been rejected as the Court had noted that in view of the judgment of the Apex Court reported in Mitten Bain Jain v. Shakuntla Devi DCLR 2000 (2) Del 271, a second notification u/s 1(2) of the DRCA had also to be promulgated before the provisions of DRCA are made applicable in terms of the said notification dated 12.04.2002; the second notification not having been followed by the first notification, this issue was decided in favour of the Plaintiff; Palam Village had been held not to be included within the purview of the DRCA; the suit of the Plaintiff was decreed along with damages @ Rs. 100/- per day.

6. This finding has been endorsed by the first appellate court.

7. This is a second appeal. It is yet at the stage of admission. Substantial questions of law have been embodied on page 22 of the body of the appeal.

8. Learned Counsel for the Appellant has conceded that he is not challenging the concurrent findings of the two courts below holding that the notification urbanizing the land u/s 507(a) of the DMC Act was not made applicable to Palam Village as the second notification as contemplated u/s 1(2) of the DRCA had not followed it. No further arguments had been addressed on this score. Learned Counsel for the Appellant has however urged that his tenancy had not been validly terminated; notice Ex. PW-1/2 (dated 29.05.1995) states that the tenancy has been terminated w.e.f. 31.07.1995 whereas the plaint and deposition make reference of a date of 31.08.1995. Argument has been rested largely on this error in the date; this error in

the date appears to be clearly a typographical error; PW-2 had come into the witness box to prove this notice which had been exhibited as Ex. PW-2/2; postal receipt is Ex. PW-2/3 and A.D. card is Ex. PW-2/4. There is not a whisper in the entire cross-examination of PW-2 that this notice had not been received by the Defendant. This argument does not carry any force. The second limb of the argument that the subtenant has not been served is also without any force. The Plaintiff had terminated the tenancy of Defendant No. 1 who was his tenant; no separate notice was required to be given to Defendant No. 2.

9. Mesne profits have also been rightly awarded. Testimony of PW-2 had been noted on this score; judicial notice of the prevailing market rates had been taken into account; damages awarded @ Rs. 70/- per day w.e.f. 01.09.1995 (date of termination of tenancy) till the date of vacant possession of the suit land also call for no interference.

10. There is no infirmity in the finding of the two courts below. No substantial question of law having arisen. Appeal as also pending application are dismissed in limine.