

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: January 25, 2009
Date of Order: February 01, 2010

+ CM(M) 94/2010

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Yashpal Dhawan & Anr.
Through: Mr. Ashok Mahajan, Advocate

01.02.2010
...Petitioners

Versus

Mohinder Singh Chana
Through: nemo

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioners have assailed the order dated 7th September 2009 whereby the learned trial court decided an application under Section 15(1) of the Delhi Rent Control (DRC) Act and asked the petitioners to deposit arrears of rent with effect from March, 2003 till date (the period permissible under law of limitation) within one month from the date of order.

2. It is not disputed that the rate of rent was Rs.1320/- per month. The respondent landlord had taken the stand that the rent stood increased to Rs.1450/- per month in view of the right of landlord to get 10% increase under DRC Act. He had also alleged that the petitioners were in arrears of rent since July, 1999. The tenant in the reply to the application had taken the stand that the rent was paid up to August, 2001. However, it was not denied that the rent was not paid after August, 2001 but rather a stand was taken that the tenants had spent an amount of Rs.20,000/- each on some construction undertaken in the premises of the landlord

(respondent herein) and the tenants(petitioners herein) had paid a sum of Rs.2,05,560/- to DVB on behalf of landlord and this amount was adjustable towards rent. It is submitted that there was an electric connection in the name of original landlord and this meter was being used by all the tenants and the tenants were making payments as per the sub-meter to the landlord. The landlord did not deposit the amount with DVB, consequently arrears of Rs.1,53,930/- accumulated and the electricity was disconnected. Thereafter, with the permission of landlord, the petitioners had taken up the matter with DVB the petitioner together paid different amounts to DVB totaling to Rs.2,05,560/-. It is submitted by the counsel for petitioners that the trial court should have allowed adjustment of the amount spent by the petitioner on re-connection of electricity and on construction made by the petitioners.

3. The trial court dealt with this issue and observed that there was no consent available on record for construction made by tenant nor there was admission on the part of landlord in respect to electricity dues, nor a notice was issued by the tenants to the landlord before payment of alleged due and, therefore, such an adjustment cannot be allowed under Section 15(1) of DRC Act.

4. I consider that if the petitioners had spent some amount with consent of landlord on account of reconnection of electricity or had made construction in the premises with alleged consent of the landlord, the amount could not have been adjusted unless the consent had been shown on record. The trial court in its order allowed only legally recoverable amount of rent and rightly did not take into consideration the alleged spending of amount by the tenants (petitioners) either on construction or on account of reconnection of electricity. The petitioners would be at liberty to recover the amount from the landlord, by separate proceedings if the same has been spent with consent of the landlord or under authority of landlord, on construction or on electricity, but the same cannot be allowed to be adjusted under

Section 15(1) of DRC Act. The ARC is not a forum for dispute of recovery of the amount allegedly advanced by the tenant to the landlord as loan or allegedly spent on the reconnection of electricity or additional alterations or construction of the premises. If the petitioners had spent such an amount with consent of landlord the petitioners should have obtained from the landlord the receipt showing the amount adjusted against rent. In absence of any such rent receipts or receipt of amount paid or adjusted, the trial court rightly allowed the application under Section 15(1) of the DRC Act.

5. In view of above facts, I find no force in this petition. The same is hereby dismissed without there being any orders to costs.

February 01, 2010
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SHIV NARAYAN DHINGRA J.