

* **HIGH COURT OF DELHI : NEW DELHI**

+ **C.M. (M) No.50/2005**

% **Date of decision: 31.01.2008**

Parkash Narain Mathur Petitioner
Through: Mr.Raman Duggal,
Advocate

versus

Shanti Parshad Jain & Ors. Respondent
Through: Mr. P.K. Bhardwaj, Adv.
for the Respondent No.1(d) & 2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

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

VIPIN SANGHI, J

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1. This Petition under Article 227 of the Constitution of India has been preferred to impugn the order dated 5.11.2004 passed by the learned Additional Rent Control Tribunal, Delhi, (for short the 'RCT') whereby the said RCT allowed the Respondent-tenants appeal under Section 38 of the Delhi Rent Control Act (for short the 'Act') against the order dated 18.5.2004 passed by the learned Rent Controller, Delhi in E-10/1988 whereby he allowed the application filed by the petitioner- landlord under Section 15(7) of the Act and

dismissed the Respondent's application for condonation of delay in depositing the rent, filed under Section 151 CPC and consequently struck off the defence of the Respondent tenant.

2. The facts in brief are that the petitioner landlord had preferred the aforesaid eviction Petition, inter alia, on the grounds contained in section 14(1)(a) and 14(1)(b) of the Act viz. non payment of rent and sub-letting. The Petition was filed against the original tenant Shri Shanti Prasad Jain. In those proceedings during the life time of Shri Shanti Prasad Jain an order was passed under Section 15(1) of the Act on 15.3.1989 directing the tenant to pay or deposit rent @ 105/- per month with effect from 1.1.1985 and to continue to pay or deposit rent at the said rate by 15th of each succeeding month. During the lifetime of Shri Shanti Prasad Jain, undisputedly the rent was regularly paid in terms of the said order. One of the sons of Shri Shanti Prasad Jain moved an application under Order 1 Rule 10 CPC in the year 1995 before the Rent Controller seeking impleadment on the grounds that he is a member of the HUF of Shri Shanti Prasad Jain and that he is running the business in the name and style of M/s. Vardhman Jewels (India) as the member of the HUF and that he was not a sub-tenant in the premises. This application filed by Sunil Kumar Jain was allowed by the learned Rent Controller on 1.9.1995. Against this order, the petitioner landlord preferred Civil Revision No.1043/1995. In this Revision Petition this court stayed further proceedings in the eviction petition.

3. Shri Shanti Prasad Jain, the tenant passed away on 23.5.1997. After his death, admittedly, the rent was not paid in terms of the aforesaid order passed under Section 15(1) of the Act. The admitted position with regard to the default and the belated payment of rent is as follows:

1. Rent for the period 23.5.1997 to August 1999 was deposited on 2.9.1999.
2. Rent for the period September 1999 to September 2000 was deposited on 27.3.2000.
3. Rent for the period October 2000 to March 2003 was deposited on 27.9.2002.

4. On the basis of the aforesaid defaults, the petitioner landlord filed an application under Section 15(7) of the Act for striking out the defence of the tenant. This application was filed on 3.1.2003. A reply was filed to this application by the legal representatives of the deceased tenant viz. Shri Rakesh Jain and Shri Sunil Jain on 5.2.2003. The stand taken in this reply was that the deceased tenant used to pay rent to the clerk for deposit as was informed to the said LRs. It was further stated that the proceedings before the Controller were stayed in the Civil Revision No.1043/1995 and that the up to date rent stands paid before the filing of the said application. While the said application under Section 15(7) was pending consideration, the respondent also filed an application under Section 151 CPC for condonation of delay on 13.2.2004. By this application the Respondents sought the condonation of delay in making the deposit of rent as aforesaid. The cause shown by the Respondents in this

application was that during his lifetime, Shri Shanti Prasad Jain the tenant used to send the rent through his clerk to the then counsel. Believing that the counsel would be taking steps to make the deposit of rent, no query was made from the clerk as no application was filed by the petitioner regarding any delay or non payment of rent. It was therefore presumed that the order had been complied with in strict sense. It was further stated that the eviction proceedings had been stayed by the High Court in Civil Revision No.1043/1995. Another ground stated was that upon the death of the tenant Shri Shanti Prasad Jain, the petitioner had moved an application to bring the LRs of the deceased tenant on record, which was allowed only on 21.10.2002 in the aforesaid Revision Petition. In para 5 of the application, however, a different version appeared. It was stated that after the death of the respondent, the Respondents/applicants had again contacted their counsel for deposit of rent and the counsel has advised that there would no necessity of depositing of rent till the LRs are brought on record. It was further claimed that the rent was sent by the applicants regularly to the counsel to get the same deposited so that the interest of the applicants is protected. But the counsel assured that the applicants would not suffer on account of rent not being so deposited. Even after the filing of the application under Section 15(7) of the Act, according to the respondent, they were again assured that since, prior to the said application being filed, the rent had already been deposited, and the LRs had not yet been impleaded as party to the eviction proceedings, the applicants need

not worry. The applicants stated that they trusted their counsel and acted in good faith and that the delay, if any, in depositing the rent was not intentional or deliberate and it was on account of the advise of the counsel.

5. The learned Rent Controller by his order dated 18.5.2004 disposed of both the aforesaid applications namely the one filed under Section 15(7) of the Act by the landlord and the application for seeking condonation of delay under Section 151 CPC filed by the respondent. He did not find merit in respondent's application for seeking condonation of delay and at the same time found that the Respondents had disregarded the order passed under Section 15(1) of the Act and consequently struck off the defence of the Respondents. By the impugned order the Tribunal, in appeal, has reversed the said order passed by the Controller.

6. The Tribunal in its impugned order posed a question of law, that is, whether the legal heirs of a sole tenant are bound to comply with the order passed under Section 15(1) of the Act before they are brought on record as legal representatives of the deceased tenant. The Tribunal took the view that notwithstanding the fact that succession is not held in abeyance and takes effect immediately upon the demise of a person, and the definition of expression "tenant" under the Act includes the legal heirs of the tenant, till the legal representatives are brought on record by the Court, there is no

obligation on the legal heirs to comply with the order passed under Section 15(1) of the Act. The Tribunal also took the view that the present was a case wherein there was only one tenant and upon the death of the sole tenant until the legal representatives are brought on record, they are not obliged to comply with the order passed under Section 15(1) of the Act. It was also held that the order whereby one of the sons, viz. Shri Sunil Kumar Jain was impleaded as a party-respondent in the eviction proceedings on 1.9.1995 had been stayed by this Court in CR No.1043/1995.

7. Having considered the matter, I am of the view that the order of the learned Tribunal is wrong on all counts and the order passed by the learned Rent Controller was perfectly correct and justified. The errors committed by the Tribunal has clearly led to failure of justice. Firstly, the Tribunal has completely gone wrong in failing to appreciate that the application filed by Shri Sunil Kumar Jain seeking impleadment as a party-respondent on the ground that he is a member of the HUF of late Shri Shanti Prasad Jain and that the HUF is the tenant had been allowed by the Rent Controller on 1.9.1995, and in CR No.1043/1995 this Court had merely stayed further proceedings in the eviction petition, and there was no stay of the said order dated 1.9.1995. Therefore, the Tribunal was wrong in observing that the order directing impleadment of Shri Sunil Kumar Jain itself had been stayed by this court.

8. After the death of Shri Shanti Prasad Jain, it, therefore, became the obligation of Shri Sunil Kumar Jain, who asserted his right as a member of the HUF (which was claimed to be the tenant in the suit premises) to comply with the order under Section 15(1) of the Act. Every right has the corresponding obligation, and when a person asserts his rights as a tenant and occupies the tenancy premises he cannot remain oblivious of his obligation to pay or deposit the rent. The Tribunal was also not correct in concluding that merely because the formal order bringing the legal representatives of late Shri Shanti Prasad Jain had not been passed, the obligation of his legal heirs to pay rent stood suspended till they were brought on record as legal representatives. As rightly argued by the petitioner, succession does not remain in abeyance. Immediately on the demise of the tenant the rights of tenancy, which are heritable stand vested in the legal heirs of the deceased tenant. It is by virtue of those rights that the legal heirs of the deceased tenant continue to enjoy the protection of the law and cannot be evicted from the suit premises except in accordance with the law. The legal heirs of the deceased tenant cannot claim such a right without, at the same time, discharging the obligation accompany that right. Upon the death of late Shri Shanti Prasad Jain it, therefore, became the obligation of his legal heirs, who were in use and occupation of the suit premises to pay or deposit the rent in terms of the order passed under Section 15(1) of the Act. Even if it were to be assumed that other legal heirs of late Shri Shanti Prasad Jain were ignorant of their rights and the

corresponding obligation in respect of the tenancy premises, at least Shri Sunil Prasad Jain was well aware of the same. He had, on his own, moved an application seeking impleadment as a party-respondent and had been so impleaded in the eviction petition on 1.9.1995. At least Shri Sunil Kumar Jain could not have avoided the obligation to comply with the order under Section 15(1) of the Act on any ground whatsoever. Pertinently, the respondents were well aware of their said obligation and precisely for that reason they did pay the rent for the aforesaid period from time to time on their own and at their convenience. Had the respondents been under any bona fide impression, as claimed by them, that they were not liable to pay the rent until they were formally brought on record as the legal representatives of the deceased tenant, there would have been no reason for them to have deposited the rent on three occasions, though highly belatedly, on 2.9.1999, 27.3.2000 and 27.9.2002. These deposits were admittedly made without waiting for the petitioner to move an application under Section 15(7) of the Act. It is also pertinent to note that the application for bringing the legal representatives of the deceased tenant on record had been moved soon after the demise of late Shri Shanti Prasad Jain on 23.5.1997. It is not as if there was any doubt in the minds of any of the respondents with regard to their right to come on record as the legal representatives of the deceased tenant on account of their being the legal heirs of late Shri Shanti Prasad Jain. The application filed under Order XXII Rule 4 CPC admittedly was not contested by the

respondents, and there were no competing claims between the legal heirs with regard to their respective rights to come on record as the legal representatives of the deceased tenant. Merely because the said application under Order 22 CPC, though filed in July, 1997 continued to remain pending before the Rent Controller, and was formally allowed only on 24.7.2003, in my view it did not absolve the respondents of their obligation to continue to pay the rent after the demise of the tenant in compliance of the order under Section 15(1) of the Act in the meantime.

Reliance has been placed by the petitioner on a decision of the Supreme Court in ***Smt. Pushpa Devi and Ors. vs. Milkhi Ram (Dead) by his LRs***, AIR 1990 SC 808. Though dealing with the provisions of the East Punjab Urban Rent Restriction Act, this authority is relevant and the principal laid down therein is applicable in the facts of the present case as well. The Supreme Court in this decision has held that keeping in view the spirit and purpose for which the expression 'tenant' has been defined in the Act (in this case East Punjab Urban Rent Restriction Act), the word 'tenant' should be construed liberally so as to include a "person claiming to be a tenant". The Supreme Court held that the obligation to tender rent does not depend upon the existence of admitted jural relationship of landlord and tenant. In that case, the landlord did not accept the rent from person who claimed themselves to be the legal heirs of the deceased tenant. He disputed their claim to have stepped into the

shoes of the tenant. At the same time, he sought eviction on the ground that the rent had not been paid or deposited by the tenant. The Punjab and Haryana High Court accepted this contentions of the landlord by holding that the tender of rent by a stranger was not valid and could not be construed as a valid tender by the tenant. The Supreme Court as aforesaid reversed that decision. In the present case, the position is the reverse. The landlord has no difficulty in accepting the legal heirs of the deceased defendant as tenants, but it is they, who have sought to justify their defaults in tendering the rent by denying their obligation to tender the rent after the demise of the tenant.

9. The Tribunal, in view of the aforesaid errors committed by it, failed to consider and to into the issue whether the respondent's application under Section 151 CPC seeking condonation of delay in the deposit of rent deserves to be allowed, or whether the defense of the respondents ought to have been struck off or not. The Rent Controller in his detailed order as dealt with these aspects and, in my view, the reasoning given by the Controller for rejecting the application of the respondent seeking condonation of delay and in proceeding to pas an order under Section 15(7) of the Act striking off the defense of the respondent is correct and deserves to be upheld. The Rent Controller rightly takes note of the relevant facts which emerge from the record. My reasons for agreeing with the controller are;

(i) the stands taken by the respondents are contradictory. On the one hand it is pleaded that the respondents were regularly tendering the rent to their counsel for being deposited in the Court even after the demise of late Shri Shanti Prasad Jain. On the other hand their stand was that they had been advised by their counsel that they were not obliged to pay the rent till they are brought on record as the legal representatives of the deceased tenant in the eviction petition. It is not clear why the respondents should have continued to tender the rent as allegedly done by them to their counsel if the advise was that they were not obliged to pay or tender the rent till they were formally brought on record as the legal representatives of the deceased tenant. This stand of the respondent also does not explain why they, in fact, deposited the rent highly belatedly and as lump sums on three occasions only between the the period 23.5.1997 to 27.9.2002. Admittedly they came on record as legal representatives only in the year 2003 when the petitioner's application under Order XXII to bring them on record was allowed by the Rent Controller on 24.7.2003;

(ii) The application seeking condonation of delay was not supported by the affidavit of the counsel who is alleged to have received the rent from the respondents from time to time and failed to deposit the same in the Court and is also alleged

to have tendered the advice that the rent need not be paid or deposited till the respondents are brought on record. No action appears to have been taken against the counsel before the Bar Council complaining about his aforesaid conduct. I may note that though it was stated by the respondents in their reply to the application under Section 15(7) of the Act that they had taken action against the counsel, no details thereof were furnished before the Lower Court and none have been furnished even before me. Thus, the respondents have failed to disclose what action has been taken by them against their erstwhile counsel. This belies their stand with regard to the legal advice allegedly given by their counsel and also the stand that they had tendered the rents regularly to their counsel who failed to deposit the same in court;

(iii) There was no stay of the order passed under Section 15(1) of the Act requiring the tenant to deposit the rent nor was the order passed on the application of Shri Sunil Kumar Jain directing his impleadment as a party-respondent in the eviction petition stayed. In CR No.1043/1995 merely further proceedings had been stayed in the eviction petition.

(iv) The application for seeking condonation of delay under Section 151 CPC was filed only on 13.2.2004, whereas the application under Section 15(7) of the Act had been filed by the

petitioner landlord on 3.1.2003. Even in this application seeking condonation of delay, the ground taken was that the rent used to be paid through the clerk to the counsel. Under the belief that the counsel would take steps to get the same deposited, no query was made from him as no application was filed by the petitioners regarding the delay or non-payment of rent as per the order dated 15.3.1989. Therefore, it was presumed that the order had been complied with in strict sense. However, no receipt of the amount allegedly paid to the clerk or to the counsel for being deposited towards the rent was produced by the respondents. The allegation itself is totally vague. No details/particulars of the clerk, his statement etc., have been furnished. There is no positive and definite statement that the rents were, after the demise of Late Shri Shanti Prasad Jain, tendered regularly to either the clerk or the advocate on a monthly basis.

(v) Even though the controller has the power to condone the delay in the deposit of rent in compliance of the order passed under Section 15(1) of the Act, delay would be condoned only where it is found that the conduct of the tenant in failing to deposit the rent is not contemptuous and there are good and sufficient reasons furnished for the default. In the present case the reasons given by the respondents do not inspire any confidence and certainly were not good enough which could be

accepted and the delay condoned. It is clear from the conduct of the respondents that they acted most casually and deposited the rents as per their own sweet will and in utter disregard of the order passed under Section 15(1) of the Act. Rent for a period of over two years after the demise of late Shri Shanti Prasad Jain remained unpaid and was deposited on 2.9.1999. Similarly, for the period September, 1997 to September 2000, i.e., a period of three years, the rent was deposited in lump sum on 27.3.2000. Once again from October, 2000 onwards rent was again not deposited upto 27.9.2002.

(vi) From the aforesaid it is clear that the respondents did not deserve any sympathy and discretion could not have been exercised in their favour to condone the delay in the deposit of rent. Merely because the application seeking striking off the defense of the respondent was filed after the rent for the defaulted period had been paid, would not dis-entitle the landlord from praying that the defense of the respondents be struck off. The application under Section 15(7) of the Act, could not be moved earlier by the petitioner since the stay granted by this Court in CR No.1043/1995 was in operation and continued to operate till 23.10.2002 when the aforesaid civil revision petition was disposed of by this Court.

10. For the aforesaid reasons I allow this petition and

quash the impugned order passed by the Tribunal dated 5.11.2004 and restore the order passed by the Rent Controller, Delhi in E-10/88 dated 18.5.2004 whereby the defense of the respondents had been struck off. The eviction petition is revived. The petitioner shall also be entitled to costs of Rs.15,000/-.

11. I direct the parties to appear before the Rent Controller on 22.2.2008 for further proceedings in the eviction petition.

VIPIN SANGHI, J.

January 31, 2008
P.K. BABBAR/aj