

HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: May 1, 2009

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CM (M) No.15 /2007

HARISH AHUJA

..... Petitioner

Through : Mr. K. Venkatraman and
Mr. J.K. Srivastava, Advocates.

versus

S.P.MINOCHA

..... Respondent

Through : Mr. M.L. Mahajan and
Mr. Gaurav Mahajan, Advocates.

CORAM:

* **HON'BLE MS. JUSTICE VEENA BIRBAL**

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

* **Veena Birbal, J.**

1. Respondent/landlord had let out shop bearing no.6, ground floor F-14/20, Model Town-II, Delhi to petitioner/tenant for non-residential purpose. On 14.8.2001, respondent/landlord had filed eviction petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the DRC Act') bearing no. E-118/2001 against respondent/landlord seeking eviction on the ground of non-payment of rent. The said petition was disposed of by learned Addl. Rent Controller vide order dated 16th November, 2002 directing the petitioner/tenant to pay

the entire arrears of rent w.e.f. 1st September, 2000 upto the date after adjusting the amount which he had already paid or deposited in compliance of order under section 15(1) of the DRC Act. It was further observed that as it was a case of first default and in the event of petitioner/tenant complying with the order under section 15(1) of the DRC Act, he shall be entitled to the protective umbrella of section 14(2) of the DRC Act and shall escape eviction.

2. Petitioner/tenant has alleged that thereafter he had been regularly paying rent by way of money order to the respondent/landlord which was accepted by him till 28th February, 2004. For the month of March, 2004 to June, 2004, rent was tendered by way of money order but respondent/landlord avoided to accept the same as such petitioner deposited the rent for the period from 1st March, 2004 to 31st July, 2004 by filing a petition under section 31 of the Punjab Relief of Indebtedness Act, 1934 (hereinafter referred to as 'the Punjab Act') before Senior Civil Judge, Delhi. Respondent/landlord opposed said petition by filing objections. Learned Senior Civil Judge vide orders dated 14th December, 2004 disposed of the said petition by discharging the petitioner/tenant to the extent of amount deposited. Thereafter, petitioner/tenant kept on tendering the

rent personally as well as by money order but respondent/landlord evaded to accept the same to create a ground of eviction. Thereupon, respondent/landlord sent a notice dated 13th December, 2004 demanding rent w.e.f 1st March, 2004 to 30th November, 2004 including the rent which was already deposited by the petitioner under the Punjab Act. Immediately on receipt of notice, petitioner/tenant tendered the rent by way of money order for the period from 1st August, 2004 onwards but the same was refused. Thereafter, petitioner deposited the rent from 1st August, 2004 to 28th February, 2005 within two months of receipt of aforesaid notice. by filing a petition under section 27 of the DRC Act. Petitioner further deposited the rent for the period from March, 2005 to June, 2005 under section 27 of the DRC Act and the learned ARC granted liberty to landlord/respondent to withdraw the same without prejudice to his rights and contentions. Despite having deposited the entire rent, respondent/landlord filed another eviction petition under section 14(1)(a) of the DRC Act on 26th October, 2005 bearing no.E-203/06/05 alleging that petitioner/tenant has committed second default in paying the arrears of rent. It is alleged that petitioner has failed to make valid tender of the rent for the period from 4.3.2004 to 30.9.2005

@ Rs.1045/- per month despite service of legal notice dated 13th December, 2004.

3. Petitioner/tenant filed a written statement alleging that petition was filed with a malafide design to evict him from the premises and he has not defaulted in payment of rent and the entire rent stood paid. Learned Addl. Rent Controller vide judgment dated 22nd July, 2006 passed an eviction order against the petitioner/tenant in respect of the aforesaid premises. Learned ARC relying on the judgment of Atma Ram Vs. Shakuntala Rani AIR 2005 SC 3753 held that deposit of rent for the period from 1st March, 2004 to 31st July, 2004 under the provisions of Punjab Act before learned Senior Civil Judge was not a valid tender in the eye of law and accordingly held that petitioner/tenant has committed second default in payment of arrears of rent and passed eviction order in respect of the aforesaid premises in favour of landlord/respondent and against petitioner/tenant.

4. Aggrieved with the same, appeal was filed before Shri Satnam Singh, learned Additional Rent Control Tribunal dismissed the appeal of the petitioner/tenant relying on the judgment of Atma Ram (supra) and Smt.Kiran Sajjan & Ors vs.

Smt.Swarankanta Mahajan (CM(M) No.3000-05/2005) dated 25th August, 2006.

5. Aggrieved with the aforesaid order, present petition is filed under Article 227 of the Constitution of India.

6. Counsel for the petitioner/tenant has contended that rent for the period from 1st March, 2004 to 31st July, 2004 was deposited under Section 31 of Punjab Relief of Indebtedness Act before the Ld. Senior Civil Judge, Delhi. The respondent/landlord had filed objections in the said petition. Ld. Senior Civil Judge disposed of said petition after discharging the petitioner/tenant to the extent of amount deposited, as such, there is no default on the part of petitioner/tenant about non-payment of rent for the aforesaid period as is alleged. It is further contended that when deposit was made under Punjab Relief of Indebtedness Act, 1934, decision of Ld. Single Judge of this court reported in 1981 (20) DLT 166, Budh Prakash Sethi Vs. Sumitra Devi had held the field wherein it is held that deposit made by the tenant under Section 31 of the Punjab Relief of Indebtedness Act is a valid deposit. The said case was decided after taking into consideration judgment of Hon'ble Supreme Court in Mangat Rai and another vs Kidar Nath & another 1981(1) RCS 326(SC). It is contended that judgment of Atma

Ram is a subsequent judgment delivered on 30.8.2005 and deposits made after 30.8.2005 under the Punjab Relief of Indebtedness Act, 1934 is not a valid deposit in view of above judgment. It is contended that petitioner/tenant deposited rent w.e.f. 1.3.2004 to 31.7.2004 under Section 31 of Punjab Relief of Indebtedness Act only after landlord evaded to accept the same. It is contended that aforesaid deposit was a bona fide one except for the above period the rent for the remaining period till date stands paid. It is contended that Ld. Additional Rent Controller as well as RCT has not considered the above aspect as such eviction orders passed against petitioner are liable to be set aside.

7. On the other hand, learned counsel for the respondent has contended that present is a case of second default. It is contended that as per petitioner's own case, he has deposited the rent for the period from 1st March, 2004 to 31st July, 2004 before the Senior Civil Judge. It is contended that DRC Act is a complete code in itself. The petitioner/tenant was required to deposit the rent under the provisions of Section 27 of the said Act and if petitioner/tenant has deposited the rent elsewhere, the same can't be said to be a valid deposit and it is a case of second default and eviction order has been rightly passed in the present

case. In support of his contention, learned counsel for the respondent has relied on :-

- (i) Atma Ram Vs. Shakuntala Rani AIR 2005 SC 3753
- (ii) Smt.Kiran Sajjan & Ors vs. Smt.Swarankanta Mahajan (CM(M) No.3000-05/2005) dated 25th August, 2006.
- (iii) Narain Dass P. Godhwani vs. Nenu Mal (Now Deceased) and Anr. (CM(M) No. 1940 of 2006 dated 15.11.2006.)

8. It is admitted position that petitioner/tenant has already availed the benefit u/s 14(2) of the DRC Act in the earlier eviction proceedings u/s 14(1)(a) of the DRC Act. It is also admitted position that thereafter for the period 1.3.2004 to 31.7.2004 petitioner deposited the rent before the Senior Civil Judge, Delhi under the Punjab Relief of Indebtedness Act, 1934 and not under the provisions of DRC Act. It is also admitted position that despite service of notice dated 13.12.2004, petitioner did not deposit the rent for the aforesaid period in the court of Addl. Rent Controller despite the fact that proceedings under the Punjab Act stood concluded vide orders dated 14.12.2004.

9. The question which arises for consideration is whether the deposit of rent under the Punjab Relief of Indebtedness Act can be construed to be a valid deposit under the DRC Act.
10. In order to appreciate the controversy, the relevant provision under DRC Act is being reproduced as under:

"27. Deposit of rent by the tenant

(1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner:

Provided that in cases where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to the Controller by postal money order.

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely :-

(a) the premises for which the rent is deposited with a description sufficient for identifying the premises ;

(b) the period for which the rent is deposited ;

(c) the name and address, of the landlord or the person or persons claiming to be entitled to such rent;

(d) the reasons and circumstances for which the application for depositing the rent is made ;

(e) such other particulars as may be prescribed.

(3) On such deposit of the rent being made, the Controller shall send in the prescribed manner a copy

or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent, the Controller shall, if satisfied that the applicant is the person entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed."

11. In the present case, appellant has deposited rent for 1.3.2004 to 31.7.2004 before Civil Court where landlord had raised objections. Ld. Civil Judge vide order dated 14.12.2004 disposed of the petition and further ordered that respondent may accept the same without prejudice to his rights and claims against petitioner/tenant.

12. The Apex Court in *Atma Ram vs. Shakuntala Rani* reported in AIR 2005 SC 3753 has dealt with a case wherein tenant deposited the rent under Punjab Act instead of depositing the same under Section 27 of DRC Act. While deciding the case, Supreme Court, inter alia, took note of various judgments. Some of which are as under:

1. **Jagat Prasad vs Distt. Judge, 1995 Supp. (1) SCC 318.**
2. **E. Palanisamy vs Palanisamy by Lrs. And Ors. (2003) 1 SCC 123.**

In **Jagat Prasad vs Distt. Judge, 1995 (supra)**, the Supreme Court observed:

“Nevertheless, the defence of the appellant that he had deposited bona fide the rent in the civil proceeding that would enure to the benefit of the rent control proceedings is unacceptable to us. Law prescribes the procedure as to the deposit under U.P. Rent Act, 1972. Such a procedure if complied with alone will be a valid defence to a petition for eviction on the ground of arrears of rent. Therefore, even accepting the defence the ultimate order of eviction passed against the tenant will have to be upheld. This means the order of eviction is sustained.”

In **E. Palanisamy vs Palanisamy by Lrs. And Ors. (supra)**, it was held that:

“The provisions of T.N. Buildings (Lease and Rent Control) Act, 1960 came up for consideration. This court observed

“The rent Legislation is normally intended for the benefit of tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains expression provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e., to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant. We are fortified in this view by the decisions of this court in *Kuldeep Singh v. Ganpat*

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Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was that since the deposit of rent had been made; lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the act without following the procedure contained in the earlier sub Sections i.e., sub Section (2), (3) and (4) of the Section 8. Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground on default in payment of arrears of rent needs no interference."

In Atma Ram's case, the Supreme Court noted the aforesaid judgments as well as noted the provisions of Section 26 and 27 of DRC Act, held as follows:

"21. It will thus appear that this Court has consistently taken the views that in Rent Control Legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.

S.26 of the Delhi Rent Control Act, 1958 provides that every tenant shall pay rent within the time fixed by contract, and in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the

landlord or his authorized agent a written receipt for the amount paid to him, signed by the landlord or his authorized agent. It is also open to the tenant to remit the rent to his landlord by postal money order. (S.27 reproduced):-

22. The Act, therefore, prescribes what must be done by a tenant if the landlord does not accept rent tendered by him within the specified period. He is required to deposit the rent in the Court of the Rent Controller giving the necessary particulars as required by S.27(2). There is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of this it would not be open to a tenant to resort to any other procedure. If the rent is not deposited in the Court of the Rent Controller as required by S.27 of the Act, and is deposited somewhere else, it shall not be treated as a valid payment of rent within the meaning of the Act and consequently the tenant must be held to be in default."

13. The Apex Court has held that in view of the express provisions of Section 27 of the Act, deposit under Punjab Act was of no avail.

14. Thus there is clear enunciation by Apex Court that deposit under Punjab Act is not a valid deposit.

15. Ld. counsel for petitioner has tried to distinguish the present case from the Atma Ram's case (supra) by contending that in the said case rent was not accepted before the Civil Court by the landlord and as such order dated 12.2.1995 was passed wherein the appellant/tenant was allowed to withdraw the amount deposited by him in Civil Court whereas in the

present case, amount stood deposited in the court of Senior Civil Judge. It is contended that in view of above distinction, the decision of Atma Ram's case is not applicable in the facts and circumstances of the present case.

16. I have perused the order of Ld. Civil Judge dated 14.12.2004 under Section 31 of Punjab Relief of Indebtedness Act. The same shows that respondent/landlord had raised the objection about the deposit there and it was ordered that the respondent may accept the amount without prejudice to his rights and claims against the petitioner. In these circumstances, petitioner cannot take the advantage of amount deposited therein. The contention raised in this regard has no force.

17. The contention of appellant that when the deposit was made under Punjab Act, decision of this court in Budh Prakash Sethi (supra) was prevailing wherein it is held that deposit under Punjab Act is a valid deposit, has no force. The judgment in Atma Ram's case (supra) sets out the prevalent legal position. The decision enunciated by Supreme Court is the law from inception. Reference in this regard is made to judgment of Apex Court in M.A. Murthy vs. State of Karnataka reported in (2003) 7 SCC 517. Further, judgment of Budh Prakash Sethi (supra) of this court is based on the decision of

Supreme Court in Mangat Rai's case. In Atma Ram's case, Supreme Court has discussed the judgment of Mangat Rai's case and it is observed that rent in the said case was deposited before Sr. Sub Judge at Ludhiana who was also functioning as a Rent Controller, as such, deposit made in that court by a tenant was to be treated as a deposit before Rent Controller. The relevant portion of said judgment is as under:

"9. The judgment of this Court in *Mangat Rai* (supra) must be understood in the factual background of that case and the provisions contained in the Indebtedness Act and the Rent Act applicable to the parties. It was noticed by this Court that the Senior Sub Judge was also functioning as a Rent Controller in Ludhiana. Hence any deposit made in his Court by a tenant to the credit of the landlord to get protection of the Rent Act would have to be treated as a deposit before the Rent Controller. The amount would have to be deposited by a challan in the same treasury which was to be operated by the Senior Sub Judge who was the Rent Controller. This Court also noticed the fact that there was no provision whatsoever in the Rent Act under which a deposit could be made by a tenant before the Controller to the credit of the landlord.

10. We are of the considered view that the judgment in *Mangat Rai* (supra) is clearly distinguishable. In that case the Court dealing with applications under Section 31 of the Indebtedness Act was also the Court of the Rent Controller and, therefore, in the absence of any provision under the Act for a deposit to be made by a tenant before the Controller to the credit of the landlord, it really did not matter if the amount due by way of rent was deposited in the Court of the Senior Sub Judge empowered to deal with the

applications under the Section 31 of the Indebtedness Act. The consequence would have been different if the Rent Act itself expressly provided for deposit of arrears of rent in a manner specified and those provisions were not followed. This becomes abundantly clear when we notice several subsequent decisions of this Court.”

18. The judgment of Atma Ram has been followed by this Court in Kiran Sajjan and others Vs. Smt. Swaran Kanta Mahajan (CM(M) No.3000-05/2005) dated 25th August, 2006 wherein on the similar facts it has been observed that deposit in a Civil Court is not a valid deposit and deposit is required to be made under Section 27 of DRC Act and nowhere else. It is held that if the procedure prescribed under DRC Act is not followed, the deposit can't be said to have been made in accordance with law.

19. The plea of the petitioner/tenant that intention of tenant being genuine, and petitioner should not be made to suffer has force in view of judgment of Atma Ram's case.

20. The decision of Supreme Court in Atma Ram's case (supra) about the scope and ambit of Section 27 leaves no doubt that petitioner/tenant has committed second default. It was not open to him to resort to any other procedure.

21. In view of above discussion, the eviction order passed against petitioner stands upheld.

22. The petition is dismissed leaving the parties to bear their own costs.

VEENA BIRBAL, J.

May 1, 2009