

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

% **Judgment reserved on: 14.07.2009**
Judgment delivered on: 10.09.2009

+ **CM(M) NO.641/2009**

PUNITA SAHNI Petitioner
Through: Ms. Aruna Mehta, Advocate

versus

KAILASH SETHI Respondent
Through: NEMO.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has preferred the present petition to impugn the order passed by Ms. Kaveri Baweja, Additional Rent Controller, Delhi, in E-590/06/98 dated 26.04.2008 thereby striking off the defence of the petitioner-tenant under Section 15(7) of the Delhi Rent Control Act, as well as the appellate order passed by Sh. Rakesh Kapoor, Additional Rent Control Tribunal (West) in R.C.A. No.02/09/08 on 23.03.2009, dismissing the petitioner's appeal from the first order.

2. The respondent-landlord had initiated eviction proceedings against the petitioner under Sections 14(1)(b) and 14(1)(h) of the Delhi Rent Control Act. An order under Section 15(2) of the said Act was passed on 25.04.1994, whereby the petitioner was directed to, inter alia, pay or deposit rent @ Rs.2,000/- per month by 15th of each succeeding English calendar month.

3. The respondent moved an application under Section 15(7) of the Act praying that the defence of the petitioner be struck off on account of the failure of the petitioner to deposit or pay rent for the months of June, July and August, 2006. After this application had been moved, the petitioner moved an application to seek permission to deposit the rent for the months of June, July and August, 2006. Both these applications were considered and disposed off by the impugned order aforesaid by the learned ARC. While the application under Section 15(7) was allowed, the petitioner's application for deposit of rent for the said period was rejected. The learned Additional RCT has upheld the order passed by the learned ARC.

4. Admittedly, the rent for the aforesaid period was not deposited as directed vide order dated 25.04.1994. The stand taken by the petitioner before the learned ARC for not depositing the rent was that the rent had been delivered to a clerk of the counsel Sh. Sanjeev Mehta, named Ravi. However, Ravi played a fraud and did not deposit the rent for the three months. It was stated that Ravi was residing in a Jhuggi cluster area in Wazirpur, Delhi. It was further

stated that the receipt provided by the clerk was illegible and the petitioner did not know that the rent for the said three months had not been deposited. Condonation of delay in depositing the rent was prayed for by the petitioner. The respondent, on the other hand, challenged the story set up by the petitioner as being false. It was contended that no action had been taken against the said clerk, nor any complaint lodged against him either by the petitioner or his counsel. The conduct of the petitioner in not depositing the rent for these three months was also consistent with several previous defaults in the deposit of rent.

5. The learned ARC while passing the order under Section 15(7) took into consideration the fact that even the so called illegible copy of the receipt, stated to have been furnished by the clerk Ravi, had not been placed on record. The application seeking permission to deposit the rent for the defaulted period had been moved only after the respondent had moved the application under Section 15(7) of the Act. The record pertaining to the earlier deposits made in Court showed that the deposits had been made by the petitioner herself and not through the clerk Ravi. The Court found it difficult to believe as to why rent only for the months of June, July and August, 2006 was given to the clerk of the Advocate for being deposited, when deposits for other periods had been made by the petitioner herself. No affidavit of counsel for the petitioner in support of the application had been filed. The Court held that there was nothing to show that a clerk, named

Ravi, was in the employment of the petitioner's counsel.

6. The Court also examined the earlier conduct of the petitioner. Rent for the months of September, 2006 to February, 2007 had been deposited only on 15.02.2007. Rent for the months of March, 2007 to July, 2007 had been deposited under Section 27 of the DRC Act on 31.05.2007. The rent for the months of August, 2007 to January, 2008 was deposited on 01.08.2007 vide DR. No. 670/06. Despite there being an order passed under Section 15(2) of the Act, the petitioner was taking recourse to Section 27 of the Act to deposit the rent. The same was not being deposited in the court which passed the order under Section 15 (2) of the Act. The learned ARC also noticed that the rent for August, 2007 had been deposited only on 01.10.2007 along with rent for the period September, 2007 to January, 2008. The Court after considering the decisions relied upon by the petitioner observed that there is no reason disclosed by the petitioner to come to the conclusion that the non-compliance of the order under Section 15(2) was unintentional. The Court held that the default committed by the petitioner was contumacious and willful, and consequently allowed the application under Section 15(7) and struck off the defence of the petitioner. The Court rejected the petitioner's application dated 03.04.2008.

7. While dismissing the petitioner's appeal, the learned tribunal observed that only with the appeal, a copy of the challan allegedly handed over to the petitioner by the clerk Ravi of the counsel,

purported to be a receipt for deposit of rent, along with the affidavit of counsel in support of the stand of the petitioner was filed. Even the DD report against the clerk Ravi (not the First Information Report), had been lodged on 16.05.2008 i.e. after the filing of the appeal. The tribunal observed that the reason for non-filing of a police complaint furnished by the petitioner, to the effect that the address of the clerk was not available, could not be accepted as it was not necessary to have the exact address of the clerk to be able to lodge a police complaint. It was observed that if there was any truth in the stand taken by the petitioner, immediately upon the fraud being discovered, action would have been taken against the clerk by the petitioner and by her counsel. This was expected of the counsel who belongs to the legal fraternity and is thus capable of lodging the FIR on his own. The tribunal also took note of the fact that even if the petitioner and her counsel were not aware of the fraud, there was no explanation why no steps were taken till 03.04.2008, when the petitioner moved the application to seek condonation of delay, even though the respondent had filed the application under Section 15(7) of the Act on 01.06.2007. This shows that for nearly 10 months, despite being put to notice of the application under Section 15(7) specifically alleging non-payment/deposit of rent for three months, the petitioner did not bother in this regard. The tribunal observed that the DD report, which was lodged only on 16.05.2008, after the filing of the appeal on 12.05.2008 appeared to be merely an attempt to fill up a lacuna in the explanation furnished by the petitioner.

8. The Tribunal also examined the reason why the petitioner had made one deposit under Section 27 of the DRC Act, and not directly in the Court dealing with the eviction petition. The Tribunal found from the record that the petitioner had moved an application on 13.03.2006 for permission to deposit the rent for February, March, April and May, 2006, as she stated that she had to go to Bombay for treatment. The said application was disposed off by the learned ARC with the remark that the rent be deposited without prejudice to the rights and contentions of the parties. However, the rent was not deposited on that date. Thereafter, the petitioner resorted to the proceeding under Section 27 of the Act as she had failed to deposit the rent for the months of February, March and April, 2006 in time as per the directions of the Court. The application for deposit of rent under Section 27 was filed on 10.04.2006 on the plea that the respondent landlord had refused to accept the rent tendered in person or through money order. By this application rent of Rs.8,000/- for the period February, 2006 to May, 2006 was deposited in the Court under Section 27 of DRC Act on 18.05.2006. Pertinently, notice of this application was not issued to the landlady despite three opportunities being granted to the petitioner. Eventually, the application was dismissed for non-prosecution on 31.08.2007. The tribunal, therefore, concluded that the deposit made under Section 27 was not legally made. The tribunal held that from the conduct of the petitioner it was evident that the delay in depositing the rent for the aforesaid period was contumacious and willful. The tribunal relied upon the following extract from

Maragathammal v. Kamalammal (2006) 8 SCC 152:

“14. We see no reason why the respondent lodged the schedule as late as on 21.11.95 i.e. just the previous day prior to 22.11.95 by which date when she was directed to deposit the entire admitted arrears in Court u/s 11. The respondent could have lodged this schedule on the very next day after the order dated 09.11.95 i.e. on 10.11.95 or within a day or two thereafter. We see no reason why she waited till the eve of 22.11.95, which was the last date of depositing the entire rent in Court. It is admitted that the respondent tenant has been deliberately avoiding the payment of the rent as and when it fell due. Thus, we respectfully disagree with the view taken by the Madras High Court and we uphold the orders of the Rent Controller dated 09.11.95 and 22.3.96. The impugned judgment of the High Court is set aside and the respondent tenant is granted two months’ time to vacate the premises in question, failing which she will be evicted by police force.”

9. Before me learned counsel for the petitioner has submitted that the default and delay in depositing of rent was neither willful nor contumacious. She has sought to place reliance on the following decisions in respect of her submissions.

10. She refers to the following decisions: -

- (i) ***J. Jermons v. Aliamal & Ors.*** 1999 (7) SCC 382;
- (ii) ***Santosh Mehta vs. Om Prakash*** 1980 (1) AIRCJ 697;
- (iii) ***Vatan Mal vs. Kailash Nath*** 1989 (2) AIRCJ 683;
- (iv) ***Ariana Afgan Airlines Company Ltd. vs. Cycle Equipment,*** 1979 (1) AIR CJ 58;
- (v) ***Swamy Ratanbabu vs. Wamanrao Shankarrao Deshmukh*** 1996(1) AIRCJ 17;

- (vi) ***Bibi Amna Khatun & Anr. vs. Zahir Husain & Anr.*** 1981 (1) AIRCJ 426;
- (vii) ***Hukum Chand vs. Madan Lal*** 1986 (1) RCR 284;
- (viii) ***Bandi Shah vs. Gangauri Shah*** 1979 (1) AIRCJ 563; and
- (ix) ***Vijender Kishan Gupta & Anr. vs. Yusuf Engineering Company Pvt. Ltd & Anr.*** 2008 (102) DRJ 758.

11. The Rent Controller has discretion whether or not to strike out the defence of the defaulting tenant due to his failure to comply with the order passed under Section 15 (2) of the Act. This judicial discretion has to be exercised by the Rent Controller by examining the facts of the case before him, which would require a consideration of the explanation furnished by the tenant for his said failure.

12. In ***Aero Traders Private Limited Vs. Ravinder Kumar Suri*** (2004) 8 SCC 307 the Supreme Court in the light of its earlier decision, has held that Section 15 (7) of the Act confers a discretionary power on the Rent Controller to strike out the defence of the defendant. The said power should not be exercised mechanically without any application of mind to the facts of the case. The Supreme Court quoted the meaning of "*judicial discretion*" from Black's Law Dictionary to mean "*the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right.*" The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the

absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate. (See 27 Corpus Juris Secundum page 289). When it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice and not according to private opinion; according to law and not humour. It only gives certain latitude or liberty accorded by statute or rules to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him.

13. The learned ARC and the learned Rent Control Tribunal have given detailed reasons for the exercise of their discretion to strike off the defence of the petitioner tenant. The question which arises for my consideration is whether in the facts of this case it can be said that the exercise of the said discretion by the learned ARC and by the learned Rent Control Tribunal is erroneous, or not according to law or that they have failed to exercise the jurisdiction vested in them.

14. In my view, looking at the facts narrated hereinabove it cannot be said that the exercise of the discretion by the courts below is erroneous, arbitrary or that they have failed to exercise the jurisdiction vested in them. Admittedly, despite the order passed by the learned ARC under Section 15 (2) of the Act dated 25.04.1994, the rents for the month of June, July and August, 2006 was not

paid/deposited by the petitioner. The stand of the petitioner that the rent had been tendered to the clerk of the counsel Sh. Sanjiv Mehta by the name of Ravi, has not been believed by the courts below. The reasons given by the courts below appear to be germane and it cannot be said that they are not founded upon relevant considerations. Pertinently, the petitioner herself used to make the deposit of rent in court and it was only in relation to the three months in question that it is claimed that the rent was tendered to the clerk named Ravi for being deposited in the court. Despite becoming aware of the factum of the rent not having been deposited in the court (when the respondent filed the application under Section 15 (7) of the Act on 01.06.2007) no steps were taken by the petitioner or her counsel to take any action against the so called clerk called Ravi till as late as 16.05.2008. Action was taken only after the application under Section 15(7) filed by the respondent/landlord had been allowed and the petitioner's application to seek deposit of rent had been dismissed by the learned ARC, and only after the appeal had been preferred before the learned Rent Control Tribunal on 12.05.2008. The conduct of the petitioner in the past had been rather casual and recalcitrant in the matter of deposit of the rent. Both the learned ARC and the learned Rent Control Tribunal have extracted various instances when rents for varying periods were deposited late and in breach of the order passed under Section 15(2) of the Act. I may note that there are some minor discrepancies in the dates contained in the order of the learned ARC, and in the order of the Rent Control Tribunal in this regard. However, it is not disputed before

me that there was delay in deposit of rents for the concerned months. Even going by the dates of deposit as recorded by the learned ARC which are more favourable to the petitioner, it is evident that rent for the months of September, 2006 to February, 2007 was deposited on 15.02.2007 and for the months of March, 2007 to July 2007 had been deposited under Section 27 of the Act on 31.05.2007. Despite being put to notice as early as in June, 2007 of the application filed by the respondent under Section 15 (7) with regard to the non-payment/deposit of rents for the months of June, July and August, 2006, for almost ten months the petitioner did not take any steps to deposit the rent and it was only on 03.04.2008 that the petitioner moved the application to seek condonation of delay in depositing rent. Moreover, the deposit of rent for the months of February, March, April and May, 2006 was also irregularly made under Section 27 of the Act and not in compliance of the order under Section 15 (2) of the Act. On account of the conduct of the petitioner the said rent did not in fact reach the respondent/landlord within time and the respondent was not even made aware of the rent being deposited in the court under Section 27 of the Act. The rent for these four months was initially directed to be deposited by the learned ARC in response to the petitioner's application that she has to go Bombay for treatment. However, that was not done. The petitioner then initiated proceedings under Section 27 of the Act on 10.04.2006 to deposit the rents for the months of February to May, 2006. The rent for these months was deposited under Section 27 of the Act only on 18.05.2006. Despite

repeated opportunities, notice was not issued to the respondent/ landlord as steps were not taken by the petitioner. The application under Section 27 of the Act was eventually dismissed for non prosecution on 31.08.2007. In these circumstances, in my view, the learned tribunal was completely justified in concluding that the petitioner had failed to pay/deposit rents in a legal manner even for these months. There was absolutely no explanation for such conduct of the petitioner and the tribunal cannot be faulted for having concluded that the conduct of the petitioner was contumacious and willful. In ***Shanti Prasad Jain (D) through LRs Vs. Prakash Narain Mathur*** 158 (2009) DLT 483 a similar argument was raised with regard to the non-payment/deposit of rent. In that case it was pleaded that on legal advice, the petitioners had not paid or deposited the rent. This court rejected the said explanation as no action had been taken against the counsel who was alleged to have advised against the payment / deposit of rent in compliance of the order under Section 15 (1) of the Act. The Supreme Court upheld the view of this Court.

15. I may also take note of the recent decision of the Supreme Court in ***Sarla Goel & Ors. Vs. Kishan Chand*** 2009 (9) SCALE 392. This was a case concerning the application of Section 14 (1) (a) read with Section 14 (2), Section 15 (1), Section 15 (7) and Section 27 of the Act. The Supreme Court interpreted the expression 'may' used in Section 27 of the Act to mean 'shall'. The court quoted from its earlier

decision in **Atma Ram Vs. Shakuntla Rani** 2005 (7) SCC (1) the following extract:

“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.”

16. In Atma Ram (supra) the Supreme Court further observed:

“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 Sub-section (2) of Section 27, There is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of the specific provisions of the Act 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 Section 27 of the Act. and is deposited somewhere else, it shall not be treated as a valid payment/tender of the arrears of rent within the meaning of the Act and consequently the tenant must be held to be in default.”

17. The Supreme Court also extracted portions from its earlier decisions in **E. Palanisamy Samy Vs. Palanisamy (D) by LRs. & Ors.** 2003 (1) SCC 123 wherein it had been observed:

“The rent legislation is normally intended for the benefit of the 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 competence of the statutory provisions. Equitable consideration have no place in such matters. The statute contains express 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 pre-condition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance of 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 Lal and Anr.** 1996 (1) SCC 243 and **M. Bhaskar v. J. Venkatarama Naidu** 1996 (6) SCC 228.....

8. Admittedly the tenant did not follow the procedure prescribed under Section 8. The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a 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 straightaway invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e. Sub-sections (2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against appellant with respect of the suit premises on the ground of default in payment of arrears of rent need no interference.”

18. Though **Sarla Goel** (supra) was not directly dealing with the case falling under Section 15 (2) read with Section 15 (7) of the Act,

but was a case falling under Section 14 (1) (a) read with Section 14 (2), 15(1) and 27 of the Act, what is of relevance to note is the fact that the Supreme Court has sought to enforce strict discipline in the matter of payment / deposit of rent by the tenant who seeks the protection of the beneficial rent control legislation.

19. Now I proceed to consider the various decisions cited by learned counsel for the petitioner. In **J. Jermon** (supra) the default in payment of rent had been occasioned on account of prohibitory order of the tax Recovery Officer, wherein it was directed not to pay the rent to the landlord who was also enjoined from receiving the rent until further orders of that authority. In the light of those prohibitory order the Supreme Court observed that if there were reasonable grounds for the tenant to believe that he was prohibited and restrained from paying rent, then due, on account of this statutory compulsion. In these circumstances the court held that it cannot be said that the tenant had committed willful default in payment of rent. The facts of this case are materially different from the facts in hand.

20. In **Miss Santosh Mehta** (supra) the Court, in light of the fact that previously all arrears of rent had been paid by the tenant by cheque or in cash to her advocate; the amount received by the advocate was not deposited in Court or to the landlord; a complaint was made to the Bar Council Of Delhi, the moment she got to know about the fraud of Advocate, took the view that the tenant could not be said to have failed to pay the rent. The Court concluded that the

tenant had done all that she could have done. The same cannot be said of the present petitioner. The facts of this case are also materially different from the facts in hand.

21. In **Vatan Mal** (supra) the Supreme Court held that merely because there had been some delay or omission here and there in payment/deposit of rent over a long period of time (eight years in that case) it could not be said that there was willful default committed by the tenant. The Supreme Court in that case was concerned with the interpretation of Section 13A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, and the Supreme Court held that the tenant would not be denied the benefit of Section 13A because the Section has been given overriding effect in so far as the suits and other proceedings which are pending on the date of the promulgation of the Ordinance whereby Section 13A was introduced. The language of Section 13A of the aforesaid Act is materially different from the provisions contained in Section 15 of the Delhi Rent Control Act. Moreover, even on facts the situation in **Vatan Mal** (supra) is materially different from that before me. I am, therefore, of the view that this decision has no relevance in the facts of the present case.

22. In **Arian Afgan Airlines** (supra), the default in payment of arrears of rent was attributable to some ambiguity in the order. The Court after considering the tenant had deposited a very large amount and the default was confined to a comparatively minor part of the order in which there was ambiguity, held that in the circumstances, the

tenant cannot be said to have been guilty of such conduct so as to attract the extreme penalty provided in Section 15(7) of the Act. However, in the present case there is no such ambiguity in the order passed under Section 15(2) of the act, which could be said to have created any confusion in the mind of the appellant. The default in payment is entirely attributable to the petitioner.

23. In **Ratanbabu** (supra) the court in the light of the facts that the landlord had been earlier receiving the rents at irregular intervals and never at any time protested against the receipt of rent paid belatedly, came to the conclusion that though the tenant is under obligation to pay monthly rent regularly but by conduct there is a contract to the contrary that the rent paid at irregular intervals would not constitute habitual default in payment of rent. The facts in **Ratanbabu** (supra) are materially different from the case in hand as there was never an intention of the landlord to condone the delayed payment of rent and the respondent had instituted the suit for eviction for default in payment of rent. Hence, this case does not advance the case of the appellant. Moreover, there does not appear to be any pleading to this effect to establish any past regular course of conduct on the part of the parties.

24. In **Hukum Chand** (supra), the tenant had paid the arrears of rent along with rents for the months of February and March. In the light of these facts, the Court was of the view that the landlord should be deemed to have waived the default in payment of rent by accepting

the delayed payment as determined by the Court 20.04.1981. The landlord on the very next day i.e. on 21.04.1981 filed an application under Section 13(s) of the Rajasthan Premises (Control of Rent Eviction) Act, 1950 for striking of the defence of the tenant after accepting the arrears. In the present case the application moved by the respondent under Section 15(7) had been moved before accepting the rent for the defaulted months. In fact, there was no tender by the petitioner of the rent for the defaulted months. Consequently, there was no question of the respondent accepting the same. This decision, therefore, has no application in the facts of this case.

25. Similarly in **Bandi Shah** (supra), the principle of waiver was applied. In this case the landlord had moved an application for striking of the defence on account of non-payment of rent on time. Subsequently the landlord made an application for withdrawal of rent deposited by the tenant. In these circumstances the Court was of the view that there had been a waiver of his rights by the landlord since he had himself made an application to withdraw the rent deposited by the tenant for the defaulted period. Facts in both **Hukum Chand** (supra) and **Bandi Shah** (supra) are materially different from the case in hand and does not support the cause of applicant.

26. **Vijendra Kishan Gupta** (supra) is also of no assistance to the petitioner, as it was not a case under the Delhi Rent Control Act. Moreover, there is no ratio discernible from this judgment to the effect that whenever the tenant is in default in payment of rent the tenant is

entitled to further time being granted by the Court for making deposit of rent.

27. Consequently, I am of the view that none of these decisions are of any aid to the petitioner. The learned Additional Rent Controller and the learned Rent Control Tribunal have exercised the judicial discretion vested in them regularly by consideration of relevant facts and application of correct principles. I find no infirmity in the impugned orders. Accordingly, I dismiss this petition.

(VIPIN SANGHI)
JUDGE

SEPTEMBER 10, 2009
as/rsk/dp