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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.266 of 2008

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22.03.2010

SAMEER WASON & ANR.

.....Petitioners

Through: Mr. P.K. Rawal & Ajay Bahl, Advocates.

Versus

RAJINDER KUMAR LAMBA

.....Respondent

Through: Mr. Sunil Lalwani, Advocate.

Date of Reserve: 19th January, 2010

Date of Order: March 22, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. By this petition, the petitioners have assailed an order dated 15th October, 2007 passed by learned Additional Rent Control Tribunal whereby on appeal the order of eviction passed by Additional Rent Controller was reversed.

2. The brief facts relevant for the purpose of deciding this petition are that the petitioners-landlord filed an eviction petition against the respondent-tenant on the ground of non-payment of rent under Section 14 (i) (a) of Delhi Rent Control Act. This eviction petition was upheld, however, the tenant was given benefit of Section 14 (2) of Delhi Rent Control Act and the eviction order was not passed. The landlord again filed an eviction petition on the ground of second default because of not making payment of rent by tenant consequently for three months despite a notice of demand dated 6th June, 2001. It is not disputed that in response to the notice of demand sent by landlord, the tenant sent

a reply stating that he was including a draft of Rs.1,200/- towards the arrears of rent. He also gave particulars of the draft in the reply. However, landlord did not find pay order annexed with reply and vide a counter reply informed the tenant that reply was not accompanied with the alleged pay order. The tenant sent a reply to the counter reply and insisted that he had sent the pay order and he also asked the landlord to send his bank account number so that future controversy can be averted. The landlord filed the eviction petition.

3. The learned ARC recorded evidence on this issue and it was proved that a pay order of Rs.1,200/- was got prepared by the tenant in the name of landlord. However, learned ARC found that this was not sufficient to meet the requirement of Section 14 (2) and observed as under :-

“He only took the plea that he sent the pay order dated 02.08.2001 amounting to Rs.1200/- which is proved that said pay order was not encashed by any one. The factum of not receiving the pay order was already communicated to the respondent through rejoinder Exbt. PW-1/3, which clearly goes to show that the rent was neither tendered nor paid within two months of the service of legal notice and this fact is duly admitted by the respondent in his cross examination. The respondent also failed to place on record that after he came to know that the pay order was not encashed by the petitioner. He has never taken steps to deposit the rent in the court as provided under Section 26 and 27 of DRC Act. In view of the evidence adducted by both the parties and also after taking into considerations, observations made by their Lordships in the aforesaid decided cases, I am of the considered view that the petitioners succeeded in proving their case for seeking eviction on the ground of non-payment of rent and also on the ground of second default committed by the respondent.”

4. Learned ARC found that since benefit of Section 14 (2) had already been granted, this was a case of second default and the tenant was not entitled for any further protection and passed an eviction order on 12th April, 2007. The learned ARCT before whom the appeal was preferred by the tenant observed as under :-

“Once the draft was purchased in the name of the respondent he became owner of the draft and therefore, if the draft was not received or was misplaced he should have applied for duplicate draft to the concerned bank and could have encashed the same. At the most, he might have asked the appellant to pay the charges for issuance of the duplicate bank draft. This has not been done. The respondent has also not cared to inform the appellant about his bank account which would have facilitated the appellant to make the payment of the rent despite having paid the money to the bank who issued the pay order of these aspects have not been taken into consideration by the trial court.”

5. The only issue which arises for consideration by this court is whether the view taken by the learned ARCT was in consonance with established law and should this court interfere presuming that it was a case of refusal of landlord in receiving rent. The law regarding second default and refusal of landlord in receiving rent has been well settled by catena of judgments. The Supreme Court in *Sarla Goel vs. Kishan Lal*; 2009 Rajdhani Law Reporter 369 (SC) observed as under :-

9. *Relying on the aforesaid decision, which has been explained by the High Court in the impugned order namely Atmaram's Case(Supra), learned counsel Mr. Arvind Kumar Gupta contended that in view of the mandatory provisions under Section 27 of the Act, which clearly says that if the rent is refused to be accepted by the landlord and as the procedure to be adopted by the tenant for payment of rent has been specifically provided in Section 27 of the Act and that procedure was not followed by the appellants after refusal by the landlord to accept the rent for the aforesaid period, that is to say, after such refusal, the tenant had not deposited the rent in compliance with Section 27 of the Act with the Rent Controller, it must be held that the tenant had defaulted in payment of rent by not depositing the rent, therefore it was a case of second default which entails the tenant of eviction. Strong reliance once again was placed by the learned counsel for the appellants on the decision in Atmaram's case (Supra).*

10. *Mr. Gandhi, learned counsel appearing on behalf of the respondent, however, refuted the submission made by the learned counsel for the appellants. He has drawn our attention to Section 27 of the Act and submits that Section 27 cannot be said to be mandatory in nature and only an obligation has been created on the tenant either to pay the rent or tender or to deposit the same with the Rent Controller. In the present case, admittedly, tenant*

had tendered the rent to the landlord but he had refused to accept the same. After such refusal, it would be open to the tenant to deposit the same in the office of the Rent Controller but even if he does not do so, non deposit of the rent after such refusal cannot be said to be mandatory in nature which entails eviction of the tenant on the ground that he has committed second default and, therefore, he is liable to be evicted. It was further argued by the learned counsel for the respondent/tenant that in view of the word "may" used in Section 27 of the Act and the Act being a beneficial legislation for the tenant, it can never be said that the intention of the Legislature to use the word "may" was to mean that "may" must be construed as "shall".

11. We are unable to accept this submission of the learned counsel for the tenant/respondent for the following reasons :-

It is true that in Section 27 of the Act, it has been provided that the tenant may deposit rent when such rent was not accepted or refused or no receipt was granted by the landlord or there was bonafide doubt as to the person or the persons to whom the rent was payable, the tenant may deposit such rent with the Rent Controller in the prescribed manner.

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14. Accordingly, Section 14 (1) (a) is a ground for eviction of a tenant for default in payment of rent. In spite of that, protection has been given under Section 15 of the Act to the tenant to avail of the protection given by the Legislature by depositing rent in the manner indicated in Section 15 of the Act. However, proviso to Section 14(2) of the Act takes away the right of a tenant of the benefit of Sub-Section (2) of Section 14 if the tenant having obtained such benefit once in respect of any premises and makes a further default in payment of rent of those premises for three consecutive months. Therefore, it has been made clear that when the tenant makes a second default, no protection can be given to the tenant from eviction.

15. Now we come to the most important provision regarding the procedure under the Act to pay or deposit or tender rent to the landlord, if he refuses to grant any receipt in respect of the payment already made to him. As quoted herein earlier, Section 27 deals with deposit of rent by the tenant. It clearly says that 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 the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner. When the words "bona fide doubt" has been added to Section 27, the tenant may remit such rent to the

Controller by postal money order. From a conjoint reading of this provision referred to hereinabove and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the Legislature how the rent can be deposited if it was refused to have been received or to grant receipt for the same. If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. It is well settled that whether the word "may" shall be used as "shall", would depend upon the intention of the Legislature. It is not to be taken that once the word "may" is used by the Legislature in Section 27 of the Act, would not mean that the intention of the Legislature was only to show that the provisions under Section 27 of the Act was directory but not mandatory.

16. In other words, taking into consideration the object of the Act and the intention of the Legislature and in view of the discussions made herein earlier, we are of the view that the word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may" , in our view, was used by the Legislature to mean that the procedure given in those provisions must be strictly followed as the special protection has been given to the tenant from eviction. Such a cannon of construction is certainly warranted because otherwise intention of the Legislature would be defeated and the class of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them.

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18. It is not in dispute that in this case, according to the landlord, this was a case of second default whereas the case of the tenant was that since he has already tendered the rent to the landlord, who refused to receive the same, he had complied with the provisions of the Act. The tenant/respondent had already taken protection under the beneficial legislations of the Rent Control Act once and, therefore, he ought to have strictly followed the procedure given in Section 27 of the Act.

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23. Applying the principles laid down in Atmaram's case (Supra), as noted herein earlier, and the decision in E. Palanisamy (Supra) and in view of our discussions made herein earlier and considering the object of the Act and the intention of the Legislature, we are in respectful agreement with the observations made by this Court in the aforesaid two decisions. In our view, similar facts had arisen in the present case.

24. *It is not in dispute that the tenant/respondent had availed the benefit of Section 14(2) of the Act by its order dated 3rd of December, 2001 passed by the Additional Rent Controller, Delhi. Since we have already come to the conclusion that since the tenant/respondent has failed to deposit rent in compliance with Section 27 of the Act because in the present case, admittedly, landlord/appellants had not accepted any rent tendered by the tenant/respondent within the time referred to in Section 26, it was the duty of the tenant to deposit such rent before the Rent Controller as prescribed in Section 27 of the Act. Admittedly, this step was not taken by the respondent which is mandatory in nature and, therefore, we must hold that the tenant/respondent had committed a second default in payment of rent and is, therefore, liable to be evicted from the suit premises.*

25. *In view of our discussions made hereinabove and considering the scope and object of the Act and the provisions of the same, we are of the view that the word "may" in the context of the Act, shall be construed as "shall" and therefore, the tenant shall deposit the rent after refusal by the landlord and, accordingly, having not done so, he is liable to be evicted."* (emphasis added)

6. The above legal position as laid down by the Supreme Court in respect of second default and the procedure to be followed by the tenant in case of refusal by landlord is also clear from *Atmaram Vs. Shakultala Rani*; 2005 (7) SCC 211 , *E. Palanisamy vs. Palanisamy*; (2003) 1 SCC 123.

7. I, therefore, find that deposit of rent under Section 27 of Delhi Rent Control Act by tenant in the present case was mandatorily required as has been held by the Supreme Court in above judgments.

8. The learned Tribunal also laboured under a wrong notion of law when he held that getting a bank draft prepared in the name of the landlord amounted to a valid tender of the rent and once a draft is got prepared in the name of somebody, he becomes owner of the draft. A person becomes owner of the draft only when he receives the draft. If the draft, after getting prepared, is retained by the person who got it prepared, for whatsoever

reason, the person in whose name draft is prepared does not become owner of the draft. A draft can be got cancelled by the person who got it prepared and he gets the money back. In *M/s. Monarch Infrastructure (P) Ltd. Vs. Commissioner, Ulhasnagar Municipal Corporation & Ors.*; 2000 (5) SCC 287, the Supreme Court held that mere obtaining of a demand draft and sending a photocopy along with tender document could not be considered as compliance of tender conditions and Municipal Corporation was justified in rejecting the tender offer.

9. I, therefore, set aside the judgment of the learned ARCT. The judgment of learned ARC is restored and the eviction order dated 12th April, 2007 passed by learned ARC is upheld.

SHIV NARAYAN DHINGRA J.

MARCH 22, 2010
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