

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

+ RC.S.A. 26/2000

Decided on 27.10.2010

AMOLAK RAM

..... Appellant

Through: Mr.B.B.Gupta, Adv. with Mr. Mohit
Nagar, Adv.

Versus

RAM PRASAD (Since Decd. Thr. LRs)

..... Respondent

Through: Mr. Ajay Talesara, Adv. for L.R.(a),
(b), (c), (e), (f) & (g)

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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

: **MOOL CHAND GARG, J (oral)**

1. This is an appeal arising out of an order passed by the Rent Control Tribunal (RCT), who has not agreed with the appellant/landlord to grant him interest on the arrears of rent which was not paid earlier on account of the dispute raised by the respondent regarding the rate of rent but were paid subsequent to the adjudication about the rate of rent by the RCT. In fact the grievance pertains to an order passed by the first appellant tribunal whereby an appeal filed by the appellant before the said Tribunal was decided on 15.02.2000 restricting the payment of interest on the arrears of rent deposited after the adjudication of the quantum of rent by the respondent only to be payable w.e.f. 20.10.1995 which was the date when learned Additional Rent Controller adjudicated the rate of rent as payable by the respondent/tenant to appellant as ₹370/- and not ₹70/-

2. According to the appellant after the amendment of Section 26 of Delhi Rent Control Act w.e.f. 01.12.1998, the duty to pay the interest @ 25% in addition to the amount due towards rent was upon the tenant and such payment ought to have been made without their being any demand. It will be appropriate to take note of the factual backdrop of the aforesaid case and the submissions on behalf of the appellant which

are reproduced hereunder:

2. The appellant/landlord served the notice of demand dated 01.02.1987 on the respondent/tenant inter alia demanding the arrears of rent @ ₹370/- per month since January, 1986. The amount was neither paid nor tendered within a period of two months as required under Section 14(1)(a) of the Delhi Rent Control Act, 1958. In these circumstances, the landlord filed an eviction petition on the ground of non-payment of rent under Section 14(1)(a) of the Act before the Court of the learned Rent Controller on or about 10/13.04.1987.

3. The tenant in his written statement took a plea that the rate of rent was not ₹370/- per month but ₹70/- per month and that the rent till 30.11.1986 has been paid by the tenant to the landlord.

4. As an interim measure, the learned Rent Controller by an order dated 26.07.1988 passed an order under Section 15(1) of the Act requiring the tenant to make the payment and/or deposit of the entire arrears as admitted by him at the rate of ₹70/- per month and continued to do so month by month. The said order was challenged by the tenant in appeal, which appeal finally came to be dismissed by the learned Rent Control Tribunal on 21.09.1988.

5. On the amendment of the Act w.e.f. 01.12.1988, the order dated 26.07.1988 was modified and the tenant was directed to deposit the rent with an increase of 10% i.e. at the rate of rent of ₹77/- per month.

6. After a thorough trial, the learned Rent Controller by a judgment dated 20.10.1995 came to a categorical conclusion that the plea of the tenant was incorrect and the rate of rent was ₹370/- per month and was due w.e.f. 01.01.1986. Accordingly, directions were made to the tenant to clear the entire arrears within a month, being a case of first default.

An appeal filed by the tenant against the aforesaid judgment was dismissed by the learned Rent Control Tribunal by an order dated 29.03.1996.

7. The matter in the meanwhile was pending before the learned Rent Controller for compliance of his directions dated 20.10.1995, the landlord requested the learned Rent Controller to also grant him the interest on the delayed payment as mandatorily required under Section 26 of the Act, submitting inter alia that the interest is to be treated as an integral part of the rent. The said request of the landlord was not acceded to by the learned Rent Controller and was rejected vide order dated 13.05.1996

3. Feeling aggrieved, the landlord filed an appeal before the learned First Appellate Court being the Rent Control Tribunal. The Tribunal decided the said appeal on 15.02.2000 and observed that since the conclusive finding about the rate of rent being ₹370/- per annum were arrived at by learned Rent Controller on 20.10.1995, from that date, the appellant/landlord was entitled to interest @ 15% because the arrears became due to be paid to the appellant only from the said date and not from the period prior to that.

4. It is submitted on behalf of the appellant that the observations made by the RCT in not granting the landlord payment of interest w.e.f. 01.12.1998 on the arrears of rent is contrary to the provisions brought in the statute book by way of amendment in the Delhi Rent Control Act in 1988 which was made effective from 01.12.1988. It has been submitted that the appeal raised substantial questions of law; i.e.:

- a) What is the date from which the tenant is liable to pay to the landlord interest under Section 26 of the Act, on the arrears of rent due and outstanding from him?
- b) Is the date of payment of interest variable, particularly, if and when the parties are at variance as to what is the rate of rent?
- c) Is the interest on arrears of rent under Section 26 payable from the date on which the tenant is in default or is it payable only from the date on which the Controller, after trial of the eviction petition, finally decides the matter?

5. On behalf of the respondents it has been submitted that the present appeal is not maintainable and is liable to be dismissed as Section 39 was deleted by the 1988 amendment. ***However, this point is no longer res integra because the present suit was filed prior to 01.12.1988 and, therefore, the proceedings will be governed by the old Act.***

6. It has also been pleaded on behalf of the respondent that:

- i) The amendment to Section 26 by the 1988 amendment has not been made retrospective and is prospective only and therefore, shall not affect and shall not be applicable to proceedings already initiated and pending under the unamended Act. It is well settled proposition that every

statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the legislature to affect the existing rights, it is “deemed to be prospective only”.

- ii) That order dated 20.10.1995 only modifies order dated 26.7.1988 under Section 15(1) of DRC Act and therefore, the order dated 20.10.1995 shall relate back to the order dated 26.7.1988 under Section 15(1) of the Act when the amendment of 1988 was not in operation. Therefore, in the peculiar facts and circumstances of the present case the 1988 amendment of Section 26 of the DRC Act is not attracted.
- iii) That when the eviction proceedings were instituted by appellant/landlord, there was no vested right in the landlord to demand such interest. Therefore, landlord cannot demand interest when he did not have the right at the time of commencement of the proceedings as the 1988 amendment of Section 26 is clearly prospective only.
- iv) That Section 26 of the DRC Act relates only to deposit of rent and comes under Chapter IV of the DRC Act and the said provision shall not be applicable to deposit made pursuant to order passed by Court under Section 15(1) of the DRC Act which comes under Chapter III of the DRC Act.
- v) That no default as mentioned in Section 26 of the DRC Act pursuant to amendment occurs/arises in the present case as rent in terms of order passed under Section 15(1) of the DRC Act was being regularly deposited by the tenant in Court.
- vi) That the learned ARC in its order dated 13.05.1996 has clearly held that the argument on behalf of the landlord for grant of interest cannot be considered at this belated stage as the appellant/landlord did not approach the court within the prescribed time and the order dated 20.10.1995 cannot be reviewed after gap of six months particularly when the

order of the learned ARC has merged in the order of the RCT. Thus, the order dated 20.10.1995 was not challenged within the time prescribed and has attained finality.

- vii) That without prejudice to the aforesaid submissions it is stated that for default taking place before 01.12.1988, if any, no interest can be claimed as Section 26 is prospective only as it uses the word “occurs” which refers to future defaults only. If arrears only after 01.12.1988 are taken into consideration, then the interest calculation on arrears of rent in terms of calculation sheet filed by respondent would amount to ₹24,143.50-₹13,381/- only.
- viii) In view of the above-mentioned submissions it is stated that the Second appeal is devoid of merits and is even otherwise not maintainable in law and is liable to be dismissed.

7. I have heard the submissions on behalf of the parties and have also gone through the judgment cited at the bar.

8. No judgment has been cited on behalf of the respondent while on behalf of the appellant reliance has been placed upon the following judgments:

- i) Harvans Kumar & Ors. Vs. Sharda Aggarwal & Ors. 128 (2006) DLT 299
- ii) Prof. Ram Prakash Vs. D.N. Srivastava 126 (2006) DLT 6
- iii) Raghubir Singh Vs. Sheela Wanti & Anr. 2009(109) DRJ 19.

9. At the outset I may observe that none of these judgments have been delivered in the facts as are in dispute in this case. Inasmuch as in the case of Harvans Kumar & Ors. Vs. Sharda Aggarwal & Ors. (Supra) there is no discussion on the issue. In the case of Prof. Ram Prakash Vs. D.N. Srivastava (Supra), the notice of demand was served by the appellant on the respondent on 10.09.1992 i.e. after coming into force of the amendment in Section 26 of the Act. It was in that context the following observations were made:

“6. I have heard both the parties and have carefully gone through the written submissions filed by them as also the judgment under challenge. In my opinion, the words "neither paid nor tendered the whole of the arrears of rent legally

recoverable from him within two months of the date on which the notice of demand for payment of arrears has been served" in Section 14(1)(a) of the Act would include in its ambit the interest accrued on the contractual amount as "rent" for use and occupation of the premises in question. The interest accrued on late payment under Section 26 of the Act becomes arrears of rent legally recoverable and if not paid within two months of the date of which notice of payment for arrears of rent has been served on the tenant can render the tenant liable to be evicted under Section 14(1)(a) of the Act. For this proposition of law, I need hardly go beyond a judgment of the Supreme Court in *Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and Ors.*: [2002] 3SCR 468 where the Supreme Court, though appreciating the provisions of East Punjab Urban Rent Restriction Act, 1949, has, with reference to the Delhi Rent Control Act, held that interest on arrears is part of rent required to be deposited by the tenant at the first hearing. It goes without saying that even the increase of rent by ten per cent envisaged under the Delhi Rent control Act, would be legally recoverable rent and if the increase of ten per cent, as demanded in accordance with law, has not been paid or tendered within two months of the service of notice upon the tenant, action would lie under Section 14(1)(a) of the Act. The tenant cannot claim protection of contractual rates for use and occupation of the premises contrary to the statutory mandate which makes it obligatory upon the tenant to pay interest on delayed payment of rent as also enjoins upon him to pay a ten per cent increase in rent over the period of time. Consequently, I hold that "rent" includes in its ambit "contractual rent" together with "interest on delayed payment", if any, as also "statutory increase of rent" for the purpose of eviction under Section 14(1)(a) of the Act."

10. In the third judgment delivered in the case of *Raghubir Singh Vs. Sheela Wanti & Anr. (Supra)* which is again a judgment delivered in a case where the notice of payment was served much after coming into force of the amendment of the Act and the demand was made from 01.01.1992 upto 31.09.1992 within a week of the receipt of the notice and the tenant was also called upon to pay arrears of rent along with 15% simple interest per annum as permissible under Section 26 of the DRC Act and also taking note of the fact that the case in question involved second default, the following observations were made:

"11. I also consider that the learned RCT went wrong in observing that the tenant was not liable to pay interest as demanded by the landlord on demand notice. Section 26(1) of the DRC Act reads as under:

“26. Receipt to be given for rent paid. - (1)

Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable [and where any default occurs in the payment of rent, the tenant shall be liable to pay simple interest at the rate of fifteen per cent. per annum from the date on which such payment of rent is due to the date on which it is paid.”

12. This amendment was inserted by the legislature in 1988. The amendment makes it abundantly clear that the rent is to be paid month by month and where any default occurs for payment of rent, the tenant has to pay simple interest @ 15% per annum from the date of which such payment of rent became due till the date when it is paid. Thus, the legislature made it clear that in case the rent is not tendered month by month by the tenant, the tenant incurs additional legal liability of paying interest @ 15% on the amount due for the delayed period. This additional liability has become part of the rent. A landlord can recover from the tenant only legally recoverable arrears rent and the landlord has no liberty to recover beyond what has already been agreed upon between the parties or the market rent. Where the rent is not paid by month to month, the interest over the rent, as levied by the statute, becomes part of the legally recoverable rent and it cannot be said that unless there is an amendment in Section 14(1)(a) or Section 15, the provisions of Section 26 would not apply. The rent due would mean that the rent due as per law and where the law specifically provides that if rent is not paid for the month when it is due, it has to be paid with interest of 15% per annum, then the rent due would include the rent plus the interest over it. The tenant in this case had been tendering rent with a gap of six month or nine month or so and had not been tendering rent month by month. The tenant had to tender rent along with accrued interest of 15% per annum to the landlord in view of the statutory provisions of DRC Act. In the case in hand, the landlord had specifically demanded interest of 15% over the delayed rent from the tenant vide notice of demand and once this notice is made, non tendering of rent with interest, tantamount to non fulfillment of obligation under Section 14(1)(a) of DRC Act. I consider that the tender made by the tenant was not in accordance with law and was not a valid tender.”

11. I am unable to understand as to how these judgments help the appellant for the simple reason that notice in this case demanding arrears was served upon the respondent/tenant much prior to coming into force of the amendment in Section 26 of the Act which became effective w.e.f. 01.12.1988.

12. This was a suit filed for eviction of the tenant on the ground of non-payment of rent as per the scheme of Delhi Rent Control Act. When such a suit is filed and an opportunity is granted to the tenant to pay arrears if any within one month of the passing of an order under Section 15(1) of the DRC Act it is for the Rent Controller to determine as to what was the rent legally recoverable and to pass an order accordingly. Admittedly, an order under Section 15(1) was passed by the rent controller after service of the demand notice dated 01.02.1997 demanding arrears of rent @ ₹370 per month since January, 1976. However, there was a dispute raised by the respondent about the rate of rent being ₹70/- only. An order was passed by the rent controller under Section 15(1) of the DRC Act on 26.07.1988 directing the tenant to deposit payment of the entire arrears of rent @ ₹70/- per month and continue to do so month by month.

13. It is true that the amendment was made in DRC Act 1988 which became effective from 01.12.1988 whereby an additional obligation was imposed upon the tenant to also pay interest @15% per annum on the payment of delayed rent. However, this situation brought two options in favour of the appellant/landlord i.e. to issue a fresh demand notice so as to making non-payment of interest as a fresh cause of action for filing a suit for eviction which has not been done by the appellant. The other option was to file an independent suit for recovery which again has not been done. In these circumstances when the appellant was complying with the orders passed by the rent controller under Section 15(1) and also complied with the amended order by the rent controller dated 20.10.1995 to pay arrears of rent @ ₹370 per month after adjusting the amount already paid, the question of claiming interest @ 15% per annum in these proceedings w.e.f. 01.12.1988 does not arise.

14. Admittedly, the rent controller vide order dated 15.02.2000 has already awarded interest @15% per annum on the arrears which became payable by the tenant to the appellant/landlord after the adjudication of the rate of rent vide order dated 29.10.1995. In fact, in terms of the fresh order passed under Section 15(1) of the DRC Act in view of the amendment which became effective w.e.f. 01.12.1988, the question of payment of interest for the earlier period could not have

been a subject matter of order under Section 15(1) of the DRC Act. The issue of payment of interest was required to be raised by the appellant by giving a specific notice or by filing a suit for recovery which has not been done.

15. In these circumstances, the claim which has become stale and which stands determined as far back as in 1995 and which was sought to be raised by the appellant by filing an appeal before the Rent Controller only on the question of seeking a direction for payment of interest even for the earlier period decided by ARCT on 15.02.2000, does not suffer from any infirmity which may call for any interference by this Court.

16. Two things which apparently appear from the record are that; when the initial demand was made about the arrears of rent, there was a dispute raised by the respondent about the rate of the rent, consequently, when an order under Section 15(1) of the DRC Act was passed, the tenant complied with that order. Final adjudication of the rights between the parties took place and the balance rent was also held to be payable. The adjudication was only till 20.10.1995, thus, the right to claim interest on the aforesaid amount crystallized only on that date because by that time, the Rent Act had been amended. In view of that, it cannot be said that the liability to pay additional interest in terms of the amendment under Section 26 of the DRC Act would relate back to the date of the original demand because as on the date of the original demand this liability was no more in existence. Moreover, as per the provisions contained under the DRC Act while the landlord who is entitled to claim the rent which has not been paid, which would obviously after 20.10.1995 would also include interest payable @15% if the payment of the rent is delayed and then, if a default is made, he can claim eviction in terms of provisions contained under Section 14 of the said Act. However, the Rent Act is not a proceeding for recovery of the arrears of rent or recovery of any other amount payable by the tenant to the landlord for which the landlord is always entitled to take appropriate proceedings.

17. In this case the original notice demanding arrears of rent having been given prior to the filing of the suit would not entitle the appellant

to claim interest @ 15% after the amendment in the DRC Act. The liability which arose in favour of the respondent and in case the appellant was still aggrieved of non-payment despite the order passed under Section 15(1) of the DRC Act required fresh demand to be made in case he wanted enforcement of the right under the DRC Act regarding non-payment of interest which would be subject to all the defences available to the respondent such as limitation etc.

18. In view of the discussion held above, the questions raised by the appellant as mentioned in para 4 above are decided accordingly.

19. Accordingly, the appeal is dismissed.

20. No costs.

21. LCR be sent back forthwith.

MOOL CHAND GARG,J

OCTOBER 27, 2010

'anb'