

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM (M) 297/2009

HARI SINGH

..... Petitioner

Through: Mr. Chetan Sharma, Senior Advocate
with Mr. Pardeep Sharma, Mr. Shubhashish
Kukreti, Advocates

versus

RAJINDER PRASHAD SHARMA

..... Respondent

Through: Mr. Rajeev K. Virmani, Senior Advocate
with Mr. Vivek Sharma and
Mr. Vaibhav Bhadana, Advocates

CORAM: JUSTICE S.MURALIDHAR

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| 1. Whether reporters of local paper may be allowed to see the order? | No |
| 2. To be referred to the report or not? | Yes |
| 3. Whether the order should be referred in the digest? | Yes |

ORDER

19.05.2010

1. The challenge in this petition filed by the Petitioner/landlord in respect of the premises at 4/2706, Gali No. 5, Bihari Colony, Delhi ('premises') is to an order dated 9th March 2009 passed by the learned Additional Rent Control Tribunal, ('Tribunal') whereby the appeal RCT No. 39 of 2008, filed by the Respondent/tenant was allowed and the Petitioner's eviction petition under Section 14 (1) (a) of the Delhi Rent Control Act 1958 ('DRC Act') was dismissed.

2. The plea of the Petitioner in eviction petition was that the premises was given on rent to the Respondent/tenant at a monthly rent of Rs. 715/-. The Respondent/tenant was a chronic defaulter in the payment of rent and had already been granted the benefit of making payment of the arrears of rent

under Section 14 (2) DRC Act by the Additional Rent Controller (ARC). The Respondent/tenant had challenged the said order before the Tribunal. However, the order was upheld with some partial modification with regard to the arrears of rent.

3. In the eviction petition under Section 14 (1) (a) of the DRC Act the Petitioner/landlord stated that the Respondent/tenant had defaulted in making payment of rent for the months of February, March and April 2005. According to him the rent for the said three consecutive months was neither paid nor tendered by the Respondent/tenant. On 15th June 2005 a legal notice was issued to the Respondent/tenant, to which a reply was sent on 2nd July 2005. The Petitioner/landlord in the eviction petition mentioned the fact that the Respondent/tenant had filed an application under Section 27 DRC Act for deposit of rent. The Petitioner/landlord had filed his objections in the said application. On 5th August 2005 the learned ARC passed an order allowing the petition under Section 27 DRC Act and granted the Petitioner/landlord liberty to withdraw the rent deposited by the Respondent/tenant without prejudice to the rights and objections of the Petitioner/landlord.

4. The case of the Respondent/tenant was that payment of rent for the aforementioned three months was made by cheques dated 10th March, 9th April and 6th May 2005 each for a sum of Rs. 715/-. The Respondent/tenant claimed that the cheques were sent to the landlord by courier but the landlord had deliberately not encashed them. Consequently, the tenant had to file an application under Section 27 of the DRC Act before the learned ARC

on 13th May 2005. The Respondent/tenant deposited before the learned ARC on 30th May 2005 the arrears of rent for the said three consecutive months in the sum of Rs. 2145/-. In his reply dated 2nd July 2005 to the landlord's legal notice dated 15th June 2005, the tenant informed that the rent for the said three months already stood deposited before the learned ARC.

5. The Petitioner/landlord filed his objections to the tenant's application under Section 27 DRC Act for deposit of rent and prayed that the said application should be dismissed. On 5th August 2005 the following order was passed by the learned ARC in the said application:

“DR 127/05

05.8.2005

Present: Petitioner with counsel

Respondent with counsel

5.8.05 P.O.A. On behalf of respondent filed. He has also filed objections along with certain documents. Copy supplied. Learned counsel for the Respondent has submitted that Respondent has no objection if the petition is allowed without prejudice to the rights of the Respondent and objections raised by him.

Heard. In view of the above, the Respondent is at liberty to withdraw the rent deposited by the Petitioner without prejudice to his rights and objections raised by him. The petition is disposed off accordingly. No order as to cost. File be consigned to the record room.

Sd/-
ARC, Delhi
5.8.05”

6. It is stated that thereafter on 27th September 2005 the Petitioner withdrew the said sum of Rs.2,145 that had been deposited before the learned ARC.

On 5th December 2005 the aforementioned eviction petition was filed by the

Petitioner under Section 14 (1) (a) of the DRC Act on the ground that the Respondent/tenant had failed to pay or tender rent for three consecutive months i.e. February, March and April 2005.

7. The learned ARC by the judgment dated 24th July 2007 allowed the eviction petition and directed eviction of the Respondent from the premises. The learned ARC agreed with the Petitioner/landlord that the deposit of the arrears of rent in the court by the tenant, even with the permission of the Court, did not absolve the tenant from the burden of establishing that the rent for the three months in question was tendered by him to the landlord but was refused by the landlord. It was held by the learned ARC that the Petitioner had been able to establish that the Respondent had not paid the entire arrears of rent within a period of two months of the service of the legal notice as contemplated under Section 14 (1) (a) DRC Act.

8. In the evidence led by the tenant he was unable to prove that he had sent the cheques by courier and that there was a refusal on the part of the landlord to receive the rent so tendered by the tenant. Since the tenant had actually failed to show that he had tendered the rent to the Petitioner in accordance with Section 14 (1) (a) of the DRC Act, the question of invoking Section 27 (1) DRC Act did not arise. Consequently it was concluded that the Respondent had never sent any cheque to the Petitioner by way of courier and the eviction petition was allowed.

9. Aggrieved by the above order the Respondent filed RCT No. 39 of 2008 before the Tribunal. The Tribunal held that withdrawal by the Petitioner/

landlord of the amount of rent deposited in the court of the learned ARC resulted in the payment of rent for the three months and therefore, this wiped out the default. Even otherwise under Section 28 (2) of the DRC Act, once the landlord withdrew the arrears of rent deposited in the court, he could not seek a decision on whether the claim made by the tenant about his tendering the rent and the landlord refusing it was false.

10. Mr. Chetan Sharma, learned Senior counsel appearing for the Petitioner submits that notwithstanding the fact that the Petitioner may have withdrawn the amount deposited in the court by the tenant in an application under Section 27 of the DRC Act, when an eviction petition was filed subsequently by the landlord under Section 14 (1)(a) of the DRC Act, the tenant would have to independently establish that he tendered or paid the rent which was refused by landlord. He placed reliance upon the judgments of the Supreme Court in *Maiku v. Vilayat Hussain AIR 1986 SC 1645*, *Fakir Mohd. (Dead) by LRs v. Sita Ram 2002 (1) RCR 91* as well as *Madras High Court in T. Gopalsamy v. R. Renganathan 2000 MLT 703*, *N. Janakiraman v. C.B. Radhakrishnan 2002 (1) RCR 120* and. He referred to the concurrent findings of the learned ARC as well as the Tribunal that the tenant's version that he had sent the cheques by courier was not believable. Therefore, it was not open to the tenant now to plead that deposit made by him in the court of the learned ARC pursuant to an application under Section 27 of the DRC Act should be treated as valid tender of the rent. Since the pre-condition for filing the application under Section 27 of the DRC Act was non-existent, the deposit of rent made pursuant thereto cannot be a valid tender in the eye of law. He adds that the tenant is a chronic defaulter having already availed of

the benefit of Section 14 (2) of the DRC Act earlier. Therefore, no further indulgence should be granted to him.

11. Appearing for the Respondent Mr. Rajeev K. Virmani, learned Senior counsel points out that the sequence of events in the present case is significant. The version of tenant that he tendered three cheques for the months February, March and April 2005 to the landlord by cheque is not per se unbelievable. He submits that even assuming it was, the fact remained that on 13th May 2005, even before the landlord sent the legal notice, the tenant had filed an application in the court of the learned ARC under Section 27 of the DRC Act. Pursuant thereto, on 30th May 2005 the tenant deposited a sum of Rs. 2,145/- in the court of the learned ARC. This belied the case of the landlord that the tenant had filed Section 27 application as a response to the legal notice dated 15th June 2005 sent by the landlord. In response to the said notice tenant on 2nd July 2005 sent a reply informing the landlord that he had deposited the rent for the three months in the court. Thereafter the proceedings of 5th August 2005 took place. The landlord did not contest the Section 27 application. Instead he stated before the learned ARC that he would have no objection if the petition was allowed, without prejudice to his rights and objections. It is explained by Mr. Virmani that this statement meant that the landlord was not accepting the tenant's version that the tenant had tendered the rent which was refused by the landlord. The landlord thereafter withdrew the rent from the court of the learned ARC on 27th September 2005. Mr. Virmani analysed the provisions of Sections 14 (1) (a), 14 (2), 15, 27 and 28 (2) of the DRC Act and submitted that any question of default by the tenant in making payment of rent for the months of February,

March and April 2005 stood extinguished with the landlord withdrawing on 27th September 2005 the rent deposited from the court even before filing the eviction petition. In fact the deposit of rent was made by the tenant even before the landlord issued the legal notice. Consequently there was no cause of action for the eviction petition filed under Section 14 (a) of the DRC Act more than two months thereafter on 5th December 2005.

12. This Court has considered the above submissions. While it is true that both the learned ARC as well as the Tribunal have disbelieved the tenant's version of having sent three cheques by courier, the fact remains that the landlord did withdraw the rent deposited by the tenant before the learned ARC pursuant to the petition under Section 27 of the DRC Act. The provisions of DRC Act with regard to wilful default are not in *pari materia* with the rent control legislations in other States in relation to which the decisions relied on by the learned Senior counsel for the Petitioner were rendered. Section 14 (a) of the DRC Act reads as under:

“14. Protection of tenant against eviction.—(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882);

13. There are four distinct ingredients in Section 14 (1) (a) that require to be established by the landlord before he can seek eviction. First, is the existence

of the relationship of landlord and tenant. In the instant case, there is no dispute on this count. Second, the existence of arrears of rent legally recoverable from the tenant and the third ingredient is the failure on the part of the tenant to tender or make payment of rent. On both these aspects there is a dispute since the tenant claimed that he had paid the three months' rent by cheques which the landlord denied. This led to the tenant filing an application under Section 27 of the DRC Act on 13th May 2005 and the landlord issuing a legal notice on 15th June 2005. The fourth ingredient is the receipt by the tenant of notice of demand about which again there is no dispute. Therefore two of the four ingredients have to be established by the landlord if he has to succeed.

14. Section 14 (2) DRC Act reads as under:

“14 (2) – No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1) if the tenant makes payment or deposit as required by Section 15.

Provided that no tenant shall be entitled to the benefit under this sub-section, if having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months.”

15. The above provision in turn refers to Section 15 (6) which states that if a tenant makes payment or deposit as required by sub-section (1) or sub-section (3), no order shall be made for the recovery of possession on the ground of default in the payment of rent by the tenant. Where the tenant, as in the instant case, has already been granted earlier the benefit of Section 14 (2) DRC Act, then in order to escape eviction he would have to show that in

fact there was n default committed by him in making payment of rent.

16. Even before the landlord could issue a notice to the tenant about the arrears of rent on 15th June 2005, the tenant had on 13th May 2005 filed the Section 27 application. Section 27 (5) reads as under:

“27 (5) - if at the time of filing the application under sub-section (4), but not after the expiry of thirty days from receiving the notice of deposit, the landlord or the person or persons claiming to be entitled to the rent complains or complain to the Controller that the statements in the tenant’s application of the reasons and circumstances which led him to deposit the rent are untrue, the Controller, after giving the tenant an opportunity of being heard, may levy on the tenant a fine which may extent to an amount equal to two months’ rent if the Controller is satisfied that the said statements were materially untrue and may order that a sum out of the fine realized be paid to the landlord as compensation.”

17. In the present case, the landlord did appear on 5th August 2005 pursuant to the notice issued by the learned ARC. By that time on 27th May 2005 the tenant had already deposited the three months’ rent before the learned ARC in an application under Section 27 DRC Act. When the case came up before the learned ARC on 5th August 2005 it was open to the landlord to contest the petition and seek to show that in fact no valid tender of rent was ever made by the tenant and that by depositing the rent the tenant was not absolved of showing that the ingredients of Section 27 (1) existed. Instead, the Petitioner/landlord made a statement before the learned ARC that he would have no objection to the Respondent/tenant’s petition under Section 27 DRC Act being allowed. The Petitioner/landlord was further given liberty

by the learned ARC to withdraw the rent deposited without prejudice to his rights and contentions.

18. If even at that stage it was not the intention of the landlord to treat the rent deposited in Court as a valid tender, he need not have withdrawn it. He could still have gone ahead with the petition under Section 14 (1) (a) DRC Act. However, the landlord on 27th September 2005 chose to withdraw the rent. It is only thereafter on 5th December 2005 he filed the eviction petition. The answer to the question whether this amounts to a waiver by the landlord of his right to protest the deposit of rent is in Section 28 of the DRC Act which is significant as far as the present case is concerned. The said provision reads as under:

“28. Time limit of making deposit and consequences of incorrect particulars in application for deposit - (1) No rent deposited under Section 27 shall be considered to have been validly deposited under that Section, unless the deposit is made within twenty-one days of the time referred to in Section 26 for payment of the rent.

(2) No such deposit shall be considered to have been validly made, if the tenant willfully makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of filing an application for the recovery of possession of the premises from the tenant.

(3) If the rent is deposited within the time mentioned in sub-section (1) and does not cease to be a valid deposit for the reason mentioned in sub-section (2), the deposit shall constitute payment of rent to the landlord, as if the amount deposited had been validly tendered.”

19. It becomes straightway apparent that once the landlord withdraws the amount deposited by the tenant in the court even prior to filing the eviction petition, then it will not be open to the landlord to turn round and object that tender of the rent made by the tenant was based on false premises and therefore, was not a valid tender. By his act of withdrawing the rent deposited by the tenant in court prior to filing an eviction petition, the landlord in the instant case has lost the right to question the claim of the tenant that he had validly tendered the rent which had been refused by the landlord. This Court affirms the decision of the learned Tribunal in this regard.

20. None of the decisions cited by Mr. Chetan Sharma, learned Senior counsel appearing for the Petitioner help the case of the Petitioner. Since considerable reliance was placed upon the decision of the Supreme Court in *Maiku v. Vilayat Hussain through LRs* this Court has examined the said decision at some length. There the eviction proceedings were under the U.P. (Temporary) Control of Rent and Eviction Act 1947 ('UP Act'). The question that arose in the said case was whether "deposit of arrears of rent under Section 7 C of the UP Act will save the tenant from the penalty of being evicted on account of non-payment of rent." The further question that arose was "whether the order granting permission to the tenant to deposit the arrears of rent in Court is sacrosanct and cannot be challenged in a regular suit for eviction." It was held in para 9 of the said judgment as under:

"9. Section 7C permits a tenant to deposit the arrears of rent in court only under two conditions : (1) when the landlord refuses to accept any rent lawfully paid to him by the tenant in respect of any accommodation, and (ii) where any bonafide doubt or

dispute has arisen as to the person who was entitled to receive any rent referred to in Sub-section (1) in respect of any accommodation. If the deposit of arrears of rent was a valid deposit in accordance with the requirements of Section 7C certainly it will amount to payment to the landlord and the tenant will be absolved from the liability of being evicted. But if the Munsif had only to accept the application and accord permission to the tenant to deposit the arrears in court merely on the basis that necessary allegations in the application as required by Section 7C had been made, the court trying the suit for eviction cannot be precluded from enquiring about the validity of the permission under Section 7C.

21. The facts of the present case are distinctly different since here the landlord conceded to the tenant's petition under Section 27 DRC Act being allowed and also withdrew the rent deposited. Secondly, it is not clear from the above judgment whether the U.P. Act contained a provision equivalent to Section 28 (2) of the DRC Act. While the deposit under Section 7 C of the U.P. Act may not relieve the tenant in that State of the burden of showing that he had validly tendered the rent which was refused by the landlord, the withdrawal of such deposit by a landlord in Delhi will be an estoppel against him under Section 28 (2) DRC Act. The decision in *Maiko v. Vilayat Hussain* will not apply to the present facts of the case.

22. In *Fakir Mohd. (Dead) by LRs v. Sita Ram* the Supreme Court was considering a case that arose under the Rajasthan Premises (Control of Rent and Eviction) Act 1950 ('Rajasthan Act'). It was held that the tenant's right to deposit the rent in the Court arises if such deposit was preceded by the tenant having adopted one of the two methods contemplated by clauses (a) and (b) of sub-section (3) of Section 19 A of the Rajasthan Act. Since on

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facts the tenant had failed to prove that he had adopted one of those methods, he was found liable to be evicted. Here again it is not clear if the Rajasthan Act contains a provision similar to Section 28 (2) of the DRC Act. With the landlord here conceding that the Section 27 application of the tenant could be allowed, there was no question of the tenant again having to show that the tender of rent was valid. The decisions of the Madras High Court in *N. Janakiraman v. C.B. Radhakrishnan* and *T. Gopalsamy v. R. Renganathan* are also not helpful to the Petitioner in the present context.

23. In that view of the matter, this Court finds no illegality having been committed by the Tribunal in allowing the appeal of the Respondent/tenant.

24. The petition is dismissed.

S. MURALIDHAR, J.

MAY 19, 2010
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