

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

+ **CM (M) No.1397/2009**

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Date of decision: 18th March, 2010

SHRI HARJINDER SINGH BEDI

..... Petitioner

Through: Mr. Varun Goswami, Advocate.

Versus

SHRI R.P. MALHOTRA

..... Respondent

Through: Mr. Jagdish Sethi, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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 the judgment should be reported in the Digest? | YES |

RAJIV SAHAI ENDLAW, J.

1. The petitioner tenant has approached this Court in the exercise of its jurisdiction under Article 227 of the Constitution of India with respect to the order dated 11th August, 2009 of the Addl. Rent Controller striking off the defence of the petitioner tenant and the order dated 4th November, 2009 of the Rent Control Tribunal dismissing the appeal preferred by the petitioner/tenant thereagainst.

2. The respondent landlord in or about September, 2003 instituted a petition for eviction of the petitioner tenant from shop No.2, GL-16, Jail Road, Hari Nagar, New Delhi under Section 14 (1)(a) of the Delhi Rent Control Act, 1958 i.e. on the ground of non-payment of rent. It is the admitted position that the petitioner tenant is in occupation of the said commercial premises since the year 1974, at a rent of Rs.1,500/- p.m. It was the case the respondent landlord that though a notice dated 23rd November, 2002 under Section 6A of the Act for a 10% increase in rent w.e.f. January, 2003 had been given but the petitioner tenant had not so increased the rent. The case of the respondent landlord

was that the petitioner tenant was in default of payment of rent w.e.f. the month of January, 2003 and had failed to pay the rent inspite of demand notice dated 10th June, 2003.

3. The petitioner tenant contested the petition for eviction by contending that the rent for the months of January, 2003 to March, 2003 had been personally tendered to the landlord respondent but the landlord respondent had refused to accept the same and consequently was deposited in the Civil Court under Section 31 of the Punjab Relief of Indebtness Act, 1937; thereafter the rent from April, 2003 onwards had also been tendered to the respondent landlord but he had refused to accept the same. It was further the plea of the petitioner tenant that the respondent landlord was not accepting the rent to pressurize the petitioner tenant to agree to the 10% enhancement aforesaid.

4. The Addl. Rent Controller vide order dated 23rd March, 2005 under Section 15 (1) of the Act directed the petitioner tenant to pay/deposit rent w.e.f. 1st April, 2003 onwards at the rate of Rs.1,500/- p.m. and to continue to pay/deposit future rent also at the said rate. In accordance with the said order, the arrears of rent were required to be paid/deposited within 30 days therefrom.

5. The petitioner tenant on or about 29th March, 2005 filed an application before the Addl. Rent Controller for modification of the aforesaid order dated 23rd March, 2005 under Section 15 (1) of the Act. It was the case of the petitioner tenant that the rent w.e.f. 1st April, 2003 to 31st August, 2004 at the rate of Rs.1,500/- p.m., total Rs.25,500/- had also been deposited in the civil court under the Punjab Relief of Indebtedness Act. The petitioner tenant thus sought modification of the direction for payment/deposit, instead of from 1st April, 2003 to w.e.f. 1st September, 2004. Notice of the said application was issued.

6. The respondent landlord also filed an application under Section 15(7) of the Act for striking off the defence of the petitioner tenant to the petition for eviction, for the reason of non compliance of the order under Section 15(1) of the Act. It was contended that in terms of the order dated 23rd March, 2005, a sum of Rs.37,500/- towards arrears was required to be paid / deposited within 30 days but the petitioner tenant paid a sum of Rs.10,500/- only.

7. The Addl. Rent Controller vide order dated 3rd August, 2007 allowed the application of the petitioner tenant for modification of the order under Section 15(1) of the Act and consequently dismissed the application of the respondent landlord under Section 15(7) of the Act. However by that time the Supreme court in *Atma Ram Vs. Shakuntala Rani* decided on 30th August, 2005 and reported as 123 (2005) DLT 127 had held that deposit of rent under the Punjab Act supra is not a valid tender/deposit of rent and is of no avail in view of the express provisions of Section 27 of the Delhi Rent Act. It appears that it was the plea of the counsel for the respondent landlord before the Addl. Rent Controller that the deposit of rent under the Punjab Act for the period from 1st April, 2003 to 31st August, 2004 claimed by the petitioner tenant and on the basis whereof modification of the order under Section 15(1) was sought was not a valid deposit. The Addl. Rent Controller however in the order dated 3rd August, 2007 kept the said plea open for adjudication at the time of final decision of the petition for eviction.

8. The respondent landlord preferred an appeal to the Rent Control Tribunal against the aforesaid order. The Tribunal vide order dated 21st February, 2008 held that the Addl. Rent Controller ought not to have left the question of validity of deposit under the Punjab Act open for adjudication at the final stage and should have decided the said question at the time of disposing the applications aforesaid for modification of the order under Section 15(1) of the Act and of the respondent landlord under Section 15(7) of the Act

itself. The order dated 3rd August, 2007 of the Addl. Rent Controller was thus set aside and the matter remanded for decision afresh.

9. The Addl. Rent Controller in this second round has vide order dated 11th August, 2009 impugned in this petition, dismissed the application of the petitioner tenant for modification of the order under Section 15(1) of the Act and allowed the application of the respondent landlord under Section 15 (7) of the Act and struck off of the defence of the petitioner tenant to the petition for eviction. While the application of the petitioner tenant for modification of the order has been dismissed for the reason –

- (i) that the deposit on the basis whereof modification was sought, being in the civil court under the provisions of the Punjab Act is not a valid deposit as held by the Supreme Court in *Atma Ram* (supra). It was further held that though the judgment in *Atma Ram* had changed the law as existing prior thereto holding deposit under the Punjab Act to be a valid deposit but this court in *Harish Ahuja Vs. S.P. Minocha* 2009 (1) Rent C.R. 668 has held that the decision of the Supreme Court is deemed to be the law since inception. It was thus held that the deposit owing whereunto the modification of the order under Section 15(1) was sought did not exist;
- (ii) that the petitioner tenant after filing the application under the Punjab Act for deposit had failed to pursue the same and which was dismissed for non-prosecution. Thus there was no order of the Civil Court also accepting the said deposit;
- (iii) that the petitioner tenant in fact had after the dismissal of the application for deposit under the Punjab Act, in or about June, 2005 also withdrawn the amount deposited thereunder.

The application of the respondent landlord under Section 15(7) of the Act for striking off the defence of the petitioner tenant was allowed for the reasons-

- a. That the petitioner tenant was in terms of the order dated 23rd March, 2005 under Section 15(1) of the Act required to deposit a total sum of Rs.37,500/-

within 30 days of the order. The petitioner tenant had sought modification to take benefit of Rs.25,500/- deposited towards rent from 1st April, 2003 to 31st October, 2004 under the Punjab Act. After excluding the said amount also, a sum of Rs.12,000/- was due. However the petitioner within 30 days had paid a sum of Rs.10,500/- only. The petitioner tenant was thus in default of payment of Rs.1,500/- as per his own case also.

- b. That the petitioner tenant on 29th March, 2005 applied for modification of the order on the basis of the deposit under the Punjab Act but which application for deposit had been dismissed for non-prosecution prior thereto on 17th January, 2005.
- c. That the petitioner tenant had been committing defaults in complying with the order, in the subsequent period also; the rent for the month of January, 2006 was delayed by 53 days, for the month of February, 2006 by 29 days and for March, 2006 by 6 days and no rent had been paid for the month of August, 2006.

10. The petitioner tenant aggrieved from the aforesaid order preferred an appeal to the Tribunal and which has been dismissed vide order dated 4th November, 2009, also impugned in this petition. The counsel for the petitioner tenant relying on (i) **Ram Murti Vs. Bhola Nath** AIR 1984 SC 1392; (ii) **Ram Swaroop Kathuria Vs. Nagpal Optical Co.** 50 (1993) DLT 387; (iii) **Kanwar Kumar Seth Vs. Mulkh Raj Malhotra** 46 (1992) DLT 122; (iv) **Banarsi Dass Vs. Bindra Ban Gupta** 73(1998) DLT 607; (v) **Mohan Laxman Hede Vs. Noormohamed Adam Shaikh** AIR 1988 SC 1111; (vi) **Maharani Creations (India) Pvt. Ltd. Vs. Commerz Bank A.G.** 81 (1999) DLT 478; (vii) **Purchasing Management International Vs. Rajat Pandhi** 157 (2009) DLT 267; (viii) **Roadmaster Cycle Ltd. Vs. Smt. Sushma Nangia** 73(1998) DLT 304 has contended that in the aforesaid circumstances the default of the petitioner tenant cannot be said to be contumacious so as to invite the harsh penalty of striking off of the defence. Though it is admitted that there was shortfall of Rs.1,500/- towards payment of arrears in the first instance and for the subsequent period also as aforesaid but it is contended that the same

are on account of bonafide mistake. It is urged that the Addl. Rent Controller is vested with the discretion to condone the said default/delay and/or to extend the time for the deposit and the Addl. Rent Controller has erred in not exercising discretion in favour of the petitioner tenant and the Tribunal also has failed to correct the error. It is also argued that the petitioner tenant on 29th March, 2005, while filing the application for modification of the order under Section 15(1) of the Act for the reason of deposit under the Punjab Act was not aware of the dismissal on 17th January, 2005 of the said application for non-prosecution; that immediately on learning of such dismissal for non-prosecution, the sum of Rs.25,500/- earlier deposited under the Punjab Act and the shortfall of Rs.1,500/- were deposited on 15th May, 2005 itself and the sum of Rs.25,500/- deposited under the Punjab Act was withdrawn from the Civil Court only thereafter in June, 2005. It is further urged that the petitioner is an old tenant carrying on his business from the tenancy premises and would be rendered without any source of income if evicted.

11. Per contra, the counsel for the respondent landlord who appeared on caveat has contended that the conduct of the petitioner tenant is malafide. The petitioner tenant instead of increasing the rent by 10% to Rs.1,650/- p.m. under Section 6 A of the Act started depositing the rent at the rate of Rs1,500/- p.m. under the provisions of the Punjab Act and deposit whereunder has been held in the judgment of the Supreme Court in ***Atma Ram*** (supra) to be of no avail. It is further contended that even in replies sent to the notice of demand or in any of the pleadings/applications the particulars of the civil court in which the deposit under the Punjab Act had been made were not disclosed with an intent to deprive the respondent landlord of the benefit of that amount.

12. The Amendment to the Rent Act of the year 1988 deleted the provision of second appeal on a question of law to this Court and while making the Rent Controller a final court of facts, provided for one appeal only to the Tribunal, that too on a question of law.

Of course, this Court under Article 227 of the Constitution of India would be empowered to interfere but within the parameters thereof only and any exercise of said jurisdiction cannot undo what was sought to be achieved by deleting the provision of second appeal in rent matters to this Court. The Rent Act has vested the discretion, whether to strike off the defence or not in the event of default by the tenant in complying with the order under Section 15(1) of the Act, in the Rent Controller. Such exercise of discretion by the court/authority in which it is vested would not be interfered with in exercise of jurisdiction under Article 227 unless the exercise of such discretion by the Addl. Rent Controller is found to be perverse and /or contrary to material on record and not merely because this court may have exercised the discretion otherwise.

13. Having examined the matter in the aforesaid light, I do not find a case for interference to have been made out by the petitioner tenant in the present case for the following reasons:-

- A. The entire conduct of the petitioner tenant in the present case is found to be malafide and contumacious. A default in compliance of the order under Section 15(1) can be condoned only when the tenant is found to have acted bona fide and the default is found to be inadvertent and in spite of best efforts. However, where a tenant is found to be misusing the protection from eviction under the Act and is found to be indulging in harassment of the landlord, such tenant cannot seek exercise of discretion in his favour. The Supreme Court in *M/s Jain Motor Car co. Delhi Vs. Swayam Prabha Jain* AIR 1996 SC 2951 upheld the decision of the High Court (reversing the decision of the court below) of striking off of the defence. The default in payment of even one month's rent was held to be negligent and careless and the explanation offered by the tenant held to be an afterthought. Since prior to the year 1988 there had been a demand for repeal or re-enactment of the Rent Act. It was felt that it had outlived its utility and instead of being a protector of the weak had become a tool in the hands of the tenants to harass the landlords. However, the legislature in its wisdom, instead of repealing and/or re-enacting in *toto* of the Act only brought certain changes therein. While under the Act as it existed earlier,

the rent could not be increased, w.e.f. the amendment of the year 1988, Section 6A was introduced entitling the landlord to increase the rent by 10% ever three years. The respondent landlord had sought such increase w.e.f. January 2003 by the notice of 23rd November, 2002. I find merit in the contention of the counsel for the respondent landlord that the deposit of rent first from 1st January, 2003 to 31st March, 2003 and thereafter from 1st April, 2003 to 31st August, 2004 under the Punjab Act at the rate of Rs.1,500/- p.m. were intended to deprive the landlord of right to such 10% increase in rent conferred by the statute. The petitioner tenant has not produced a single letter or document to show tender of rent before deposit thereof in the civil court. It is unbelievable that a landlord who has got issued a notice seeking to increase the rent and to which he is entitled in law, would not accept the said increased rent if tendered. It is significant that the petitioner tenant while depositing the rent under the provisions of the Punjab Act also did not deposit the same at the rate of Rs.1,650/- p.m. but deposited the sum of Rs.1,500/- p.m. only. The facts speak for themselves.

B. The application dated 29th March, 2005 for modification of the order under Section 15(1) of the Act is itself not found to be maintainable. A perusal of the written statement dated 15th October, 2003 filed by the petitioner tenant to the petition for eviction shows no mention whatsoever therein of the deposit if any of the rent from 1st April, 2003 onwards in any court. The only plea is of deposit of rent for the period 1st January, 2003 to 31st March, 2003 and of which benefit had been given in the order dated 23rd March, 2005 under Section 15(1) of the Act. In the absence of any plea in the written statement of deposit of rent from April, 2003 onwards the occasion for seeking modification of the order under Section 15(1) did not arise. The Addl. Rent Controller is to make an order under Section 15(1) on the basis of the pleadings before him and in the absence of any pleading to the said effect in the written statement, the petitioner tenant was not entitled to seek modification.

C. I find that the application for deposit of rent from 1st April, 2003 to 31st August, 2004 under the Punjab Act was instituted by the petitioner tenant on 18th September, 2004 only. Prior thereto as aforesaid the petition for

eviction had been filed in September, 2003 and written statement thereto filed in October, 2003. The action of the petitioner tenant of depositing the rent under the Punjab Act on 18th September, 2004 is clearly intended to harass the landlord. An order under Section 15(1) of the Act has to be necessarily made, without even any application, in a petition for eviction under Section 14(1)(a) of the Act. It is incomprehensible as to why the petitioner tenant during the pendency of the petition for eviction under Section 14(1)(a) of the Act would want to deposit the rent under the Punjab Act. If there had been any intent to pay the rent, the same would have been offered before the Addl. Rent Controller where the petition for eviction under the Rent Act was pending. A perusal of the application for deposit filed under the Punjab Act also shows that the petitioner concealed therefrom the pendency of the petition for eviction on the ground of non-payment of rent. The same leads me to conclude that this was yet another harassment tactics practiced by the tenant. There can be no bonafide in the tenant depositing the rent after petition under Section 14(1)(a) has been filed and the order under Section 15(1) is anticipated.

- D. The subsequent defaults in payment of rent as noticed herein above go unexplained. The petitioner tenant seems to have taken the law for granted. The legislature provided for the consequence of striking off of the defence for default in compliance of order under Section 15(1) of the Act. The courts however to provide for cases of extreme hardship and inadvertent errors however interpreted the said provision as vesting a discretion in the court whether to strike off the defence or not. As aforesaid the legislature while taking away the right of a landlord of evicting the tenant on expiry of the term for which the tenant was inducted sought to ensure at least payment of rent. It is for this reason only that the non-compliance of a direction for payment was provided with the harsh consequence of striking off of the defence. However a tenant cannot take advantage of such interpretation of the provision of law and which interpretation was for certain other exigencies. Here the petitioner tenant at least by May/June, 2005 had realized his folly. The defaults thereafter are unpardonable. No application is also informed to have been filed for seeking the condonation of delay in compliance.

E. It is unfortunate that inspite of the institution of the petition for eviction in September, 2003, the stage for passing of an order under Section 15(1) of the Act reached only in March, 2005. Section 15(1) of the Act is intended to ensure immediate payment of rent to the landlord and continuance of such payment during the pendency of the eviction petition. Delays as in this case in making the order under Section 15(1) of the Act defeat the very purpose of the said provision.

14. It will thus be seen that no perversity can be found with the discretion exercised by the Additional Rent Controller in whom the discretion whether to strike off the defence or not is vested. This Court cannot interfere with such a valid exercise of discretion by the Authority in which the legislature has vested the same. As far as the pleas of the petitioner tenant of the premises being only source of income are concerned, no one sided view on the basis thereof can be taken. It cannot be lost sight of that the landlord respondent has been deprived benefit of his commercial property for the last over 35 years. Now when a right to seek eviction of the tenant within the window provided by the legislature has accrued to the landlord, he cannot be deprived of the same for such considerations.

The petition therefore fails and is dismissed. The conduct of the petitioner tenant having been found to be malafide, he is also burdened with costs of Rs.25,000/- payable before the Addl. Rent Controller before the next date of hearing.

**RAJIV SAHAI ENDLAW
(JUDGE)**

18th March, 2010

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