

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

% Judgment reserved on: 13.09.2011
Judgment delivered on: 19.09.2011

+ **CM(M) No. 79/2003 & CM No. 8171/2010**

MR. HARSHA GUPTA Petitioner
Through: Mr. Vivek Sood, Advocate.

Versus

M/S. INSULATION & ELECTRICAL PRODUCTS (P) LTD.
.....Respondent
Through: Mr.A.S. Chandihok,
Sr. Advocate with Mr. S.C.
Sharma, Mr. Bhagat Singh and
Mr. Vidit Gupta, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. Eviction petition under Section 14 (1) (a) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been filed by the petitioner i.e. Harsh Gupta. The suit property comprises of a portion of property bearing No. 30, Shivaji Marg, Najafgarh

Road Industrial Area, New Delhi as depicted in the site plan filed
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along with the petition. Respondent was stated to be a tenant residing there at a monthly rent of Rs.300/-. The initial landlord was Smt. Vidyawati, she had been paid rent up to 30.11.1999. On 26.11.1999, she had executed a registered gift deed qua the suit property in favour of her grandson i.e. the petitioner; this had been intimated to the tenant vide letter dated 10.01.2000 dispatched on 31.01.2000 (page no. 19) and received by the tenant on 02.02.2000. Vide this letter the erstwhile landlord had informed the tenant that the rent after 01.12.1999 should be paid to her grandson i.e. Harsh Gupta.

2. Further admitted fact is that the tenant on 13.02.2000 had sent a rent cheque for the month of December 1999 to Smt. Vidyawati but that cheque was not encashed by the petitioner as the change of the status of the landlord had already been intimated to the tenant.

3. On 19.02.2000, a legal notice was sent by the landlord to the tenant which was received on 29.02.2000. Thereafter, the present eviction petition had been filed by the landlord on 30.01.2003 under Section 14(1) (a) of the DRCA claiming that the tenant had defaulted for three consecutive months i.e. from December 1999 up to February 2000 and thereafter further from

March 2000 to May 2000 and was thus liable to be evicted under CM(M)No.79/2003

Section 14(1) (a) of the DRCA. It is also undisputed that vide letter dated 05.06.2000 the tenant had paid a sum of ₹900/- as rent from December 1999 to February 2000; for the months of March to May 2000 rent was sent by another cheque amounting to ₹ 990/-; for the months of June and July rent was sent vide letter dated 06.07.2000.

4. Learned counsel for the petitioner has drawn attention of this court to the written statement wherein the tenant has admitted that on 19.02.200 rent was due for December and January; vehement contention being this is a clear and unequivocal admission made by the tenant that up to 19th February, 2000 rent was due for the months of December and January meaning thereby that admittedly up to 19.02.2000 no rent had been paid for December and January; rent had also become due for the month of February as rent was always being paid in advance and as such three consecutive defaults had arisen making the tenant liable to be evicted forthwith.

5. Contention of the petitioner is three fold. It is submitted that the order of the RCT holding that the petitioner had never averred that the rent is payable in advance is dislodged by the averments made by the landlord in his eviction petition wherein in sub clause

(VI) of para 18 (a) it has specifically been averred that the rent for each month was payable by the respondent to the petitioner in advance; submission being that this finding of the ARC is clearly perverse and is liable to be set aside. Attention has been drawn to the legal notice dated 19.02.2000 where the arrears of rent had been demanded from the respondent for the period from 01.12.1999 to 29.02.2000 and a specific contention had been raised that the rent was payable in advance. Submission is that no reply has been filed to this notice; this is a deemed admission; attention has also been drawn to the letter dated 05.06.2000 sent by the respondent to the petitioner where the "subject" makes a reference to the legal notice dated 19.02.2000; contention being that vide this communication dated 05.06.2000 (Ex.AW-1/R8) the respondent has admitted the receipt of the contents of the legal notice dated 19.02.2000; his tendering the cheque dated 27.05.2000 vide this letter dated 05.06.2000 for the period of December, 1999 to February, 2000 was clearly beyond the period prescribed; this was also admittedly after the period of 15.05.2000. Learned counsel for the petitioner has also placed reliance upon a Judgment of the Delhi High Court reported in AIRCJ 1977 (2) 552 Ram Sarup Vs. Sultan Singh to support his submission that even if the rent was sought at an enhanced

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amount in the legal notice, it would not affect its validity; contention being that even if the rent had been asked at the enhanced rent of ₹330/- per month, it would not affect the validity of the notice. Reliance has been placed upon (1988) 2 SCC 165 Rakesh Kumar & Anr. Vs. Hindustan Everest Tool Ltd. to support his submission that the notice has to be read in the common sense point of view bearing in mind as to how such a notice is understood by an ordinary people. For the same proposition reliance has also been placed upon a decision of the Privy Council reported in AIR 1918 Privy Council Harihar Banerji & Ors. Vs. Ramshashi Roy & Ors. The judgment of a Bench of J&K High Court report in AIR CJ IX 1991(2) Jai Manmohan Kapoor Vs. Kedar Nath Sekhri has also been cited to support this same submission. It is submitted that on all counts, the tenant has defaulted in making timely payment of rent; there being three consecutive defaults for the months of December, 1999 to February, 2000, the ARC had rightly ordered the eviction of the tenant; the impugned order holding otherwise suffers from an illegality; it is liable to be set aside. It is further pointed out that the tenant has to strictly comply with the provisions of Section 27 of the DRCA and if he is confused about the actual person to

whom the rent has to be paid provisions of Section 27 of the DRCA mandate that the rent should be deposited by the tenant in the court of the ARC; the word “may” as occurring in Section 27 has been construed to be read as “shall”; this is mandatory provision. For this proposition reliance has been placed upon (2009) 7SCC 658 Sarla Goel & Ors. Vs. Kishan Chand. It is pointed out that in the judgment of Apex Court reported in (2005) 7 SCC 211 Atma Ram Vs. Shakuntala Rani where the tenant had paid rent under the provisions of Punjab Relief of Indebtedness Act, 1934 , the benefit had not been granted to the tenant; it has been held by the Supreme Court that this amounted to a willful default on his part; provisions of Section 27 of the DRCA had to be adhered to in the absence of which he could not claim any benefit. It is submitted that the provisions of Section 26 of the DRCA had also been interpreted by the Apex Court which merely provides a facility to the tenant to pay rent up to the 15th day of the next following month for which it is payable; it does not however mean that the rent does not become due and payable by the end of the calendar month. For the same proposition reliance has also been placed upon RLR 2(2000) 424 M/s Bhagwan Dass Yashpal Vs. Wasu Ram & Ors. It is pointed out that in this case the tenant has

admittedly not availed of the provision of Section 27 of the DRCA;

he is in default for three executive months

6. This contention of the learned counsel for the landlord that the rent was being paid in advance had found favour with the Additional Rent Controller. Placing reliance upon the provisions of Section 26 of DRAC Rent Controller had noted that the rent for January 2000 was payable till 15.02.2000; rent from February 2000 had become due by the beginning of the month and by all means after 15.02.2000; legal notice was dated 19.02.2000; tenant was found to be in default for three consecutive months. The eviction order was passed in favour of the petitioner and against the respondent.

7. The Tribunal in appeal set aside the order of the ARC; the Tribunal noted that the contentions of the petitioner did not advance the submission that the rent was being paid by the tenant in advance. The Tribunal was of the view that there were no three consecutive defaults; rent was due only for the months of December 2000 and January 2001. The Tribunal had also noted that even as per the case of the landlord the tenant had sent rent on 13.02.2000 for the month of December and although that cheque had not been encashed by the landlord on the premise that gift of the property had already been effected by the erstwhile owner in favour of the present petitioner yet the

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landlord having retained that cheque, the tenant was held not to be a defaulter; the order of the ARC was set aside; eviction petition was dismissed.

8. This order of the Tribunal is the subject matter of the present petition. Vehement arguments have been addressed by the respective parties.

9. At the outset learned counsel for the respondent has pointed out that this Court is exercising its jurisdiction under Article 227 of the Constitution; the writ court is not an appellate court and unless and until a jurisdictional error has been committed by the ARCT, the High Court exercising its supervisory power under Article 227 of the Constitution should not interfere with the order of the Court below. There is no dispute to this proposition. In the judgment of the Apex Court reported in (2010) 2 SCC 432 *Adbul Razak Vs. Mangesh Rajram Wagle*, the Apex court had reiterated the principles which have to be kept in mind by a court exercising its jurisdiction under Article 226 or 227 of the Constitution. The purpose of the supervisory jurisdiction under Article 227 of the Constitution is for keeping the subordinate Courts within the bounds of their jurisdiction; if the subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available

is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has been occasioned thereby the High court may step in to exercise its supervisory jurisdiction; thus unless and until there is a patent error which is self evident on the face of the record the court should be slow in interfering with the order of the court below.

10. On merits, it has been submitted that no default has been committed by the tenant; submission being that the rent was not payable in advance; to substantiate this submission attention has been drawn to the testimony of the petitioner wherein it is pointed out that no such averment has been made. In the alternate, it is argued that even presuming that the rent was payable in advance, rent had admittedly been paid to the landlady –Vidyawati for the month of December; this was under the bona fide impression that she continued to be the landlady; this cheque was also retained by the petitioner and this has been admitted by the petitioner in his cross-examination; even presuming that the payment had been made to a wrong person, in these circumstances, it would have been incumbent upon the petitioner to have returned the cheque to the tenant but he did not do so. In the legal notice sent on 19.02.2000 since only the legally recoverable rent could have demanded; at best demand could have been for the rent for the

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months of January and February and that too, if the rent was payable in advance; rent for the month of December already stood paid; there were no three consecutive defaults. To support this submission qua the notice of demand reliance has been placed upon the judgment reported in 85 (2000) DLT 41 titled as Sant Ram vs. Janki Parshad which had followed the ratio of the judgment of Smt. Prakash Mehra vs. K.L. Malhotra reported in AIR 1989 SC 1652. It is submitted that the legal notice has even otherwise made a demand for the enhanced rent; in terms of the provisions of 6(A) read with Section 8 of the DRCA, this enhanced rent could have been recovered only after 30 days from the date on which this notice was served i.e. 30 days after 29.2.2000. It is pointed out that the petitioner has even otherwise not submitted that the so called gift deed which was purported to have been executed by his grand-mother in his favour; in fact, the petitioner is not clear as to whether it was a gift deed or an assignment deed; attention has been drawn to the parts of the eviction petition where reference has been made in the petition at one point to a gift deed and at another stance, to an assignment deed; petitioner himself being confused, in these circumstances, the payment of rent to the landlady for the month of December was purely a bonafide payment; it was a bonafide 'tender' of rent

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within the meaning of Section 14(1)(a) of the DRCA; impugned order in no manner suffers from any infirmity.

11. In this back ground the contentions advanced by the respective Senior Counsels appearing on behalf of the respective parties shall be considered.

12. Record has been perused.

13. Certain facts are undisputed. The respondent was a tenant of the landlord Vidyawati; rate of rent was ₹300/- per month; it was an oral tenancy; this tenancy had been created by Vidyawati in favour of the respondent. The present petition is a petition under Section 14(1)(a) of the DRCA. Contention of the petitioner is that three consecutive defaults in payment of rent had been made by the respondent/tenant. It is not in dispute that the benefit of Section 14(2) of the DRCA has already been afforded to the respondent in terms of the earlier order of this Court dated 18.2.1982. On 10.1.2000 Vidyawati had written a letter (Ex.AW-1/1) to the respondent/tenant informing him that vide a registered gift deed dated 26.11.1999 the suit premises which were under the tenancy of the respondent have since been gifted to her grandson Harsh Gupta son of Lalit Kumar; in the letter it was stated by Vidyawati that she desired that arrears of rent from

01.12.1999 should be paid to Harsh Gupta only and the respondent should attorn to Harsh Gupta as the landlord and to pay all arrears of rent as also future rents to him alone. This letter was dispatched on 31.1.2000 which is evident from the acknowledgement card (Ex.AW-1/4); it is also not in dispute that this letter was received by the respondent/tenant on 02.2.2000(Ex.AW-1/6). Legal notice dated 19.2.2000 (Ex.AW-1/21) was sent by petitioner to the respondent/tenant demanding arrears of rent from 01.12.1999 to 29.2.2000. This letter was sent by the advocate on behalf of Harsh Gupta. In this letter it was categorically stated that Vidyawati has created a registered gift deed in his favour by virtue of which the rent has to be received by the petitioner; the rent was being paid in advance for each month by the seventh day of each month; a sum of ₹ 900/- is due from the respondent for the months intervening December 1999 to 29.2.2000 at the rate of ₹300/- per month. This notice further stipulated that the petitioner under the provisions of Section 6(A) of the DRCA is seeking to enhance the rent by 10% and within 30 days from the date of this notice the enhanced rate of rent ₹330/- per month shall have to be tendered by the respondent. This notice was dispatched on 28.2.2000 (Ex.AW-1/10); it was received

by the tenant on 29.2.2000 (Ex.AW-1/20). This notice was however not replied to.

14. The question which has to be answered is whether three consecutive defaults have been committed by the respondents for the months of December 1999, January 2000 and February 2000 and if so whether the order of ARC decreeing the petition of the petitioner was the correct approach or whether the order of the ARCT upsetting the order of the ARC had construed it correctly.

15. This Court has also to address the argument as to whether the rent was payable by the tenant in advance or whether the rent fell due after the end of the tenancy month and the provisions of Section 26 of the DRCA protect the tenant.

16. In the eviction petition filed by the petitioner, para 18(a) clearly states that the rent for each months is payable by the respondent to the petitioner in advance. The RCT returning a finding that this has not been averred by the petitioner in his eviction petition is an illegal perception of the facts; in fact, the RCT had premised his findings largely on this basis holding that there was no specific averment by the petitioner that the rent of each month is payable by the respondent in advance. This finding returned on this premise is against the record and is liable to be set aside. Legal notice dated 19.2.2000 had also specifically

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averred that the rent was being paid by the tenant to Vidyawati in advance i.e. by the seventh day of the each month. Legal notice had admittedly been received by the defendant on 29.2.2000 but he had chosen not to file any reply.

17. Record further shows that on 13.2.2000 the respondent had remitted a sum of ₹ 300/- as rent for the month of December 1999 to Vidyawati; this cheque had been sent in the name of Vidyawati although it was well within the knowledge of the respondent/tenant that vide registered gift deed the property already stood transferred by Vidyawati to her grandson Harsh Gupta and this had been intimated to the tenant vide communication dated 10.1.2000 which had been received by the tenant on 02.2.2000; yet in spite thereof on 13.2.2000 the tenant still chose to send the rent to Vidyawati. This cheque was admittedly not encashed. This had been informed to the tenant on 19.2.2000 in the legal notice wherein it was reiterated that the rent has to be paid not to Vidyawati but to Harsh Gupta w.e.f. 01.12.1999 in view of the fact that Vidyawati had executed a gift deed of this property in favour of Harsh Gupta and this is not a legal tender of rent. In spite of this intimation which had been received on 29.2.2000 rent still remained unremitted.

18. Section 27 of the DRCA prescribes the manner and the mode in which the rent has to be paid by the tenant in case the landlord refuses to accept the rent tendered by him within the specified period; in such a case the tenant is required to deposit rent in the court of Rent Controller by giving the necessary particulars as required under Section 27(2). Courts have time and again held that the rent which has been deposited somewhere else and not as per the procedure prescribed under Section 27 is no 'tender' of rent within the meaning of Section 14(1)(a) and would amount to a non-payment of rent. This has been reiterated by the Apex Court in Atma Ram Vs. Shakuntala Rani (2005) 7 SCC 211. In this case the tenant had deposited the rent under the provisions of the Punjab Relief of Indebtedness Act, 1934; it was held by Apex Court that this would not be a valid deposit by the tenant and would be construed as a default as it was not a tendering of the rent in the manner as required by law. In this context, the Apex Court had inter alia as under:

17. 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.

.....

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.

19. In the judgment of Sarla Goel and others Vs. Kishan Chand (2009) 7 SCC 658 the Apex Court had construed the word “may” as appearing in Section 27 of the DRCA as “shall”; it has been construed to be mandatory; i.e. the procedure as prescribed under Section 27 of the DRCA has to be strictly followed in all those cases where either landlord refuses to accept the rent or the tenant is not sure as to whom the rent is payable i.e. either to A or B. The ratio being that if the tenant wishes to avail of the beneficial legislation of the DRCA in order to seek a protection under its cover he ought to strictly follow the procedure contained therein.

20. In the instant case it is on record that the rent for the month of December 1999 had been tendered to a wrong person i.e. to Vidyawati when the tenant had specific knowledge about the fact that Vidyawati has since gifted this property to Harsh Gupta; the rent was now payable to Harsh Gupta; this was the communication addressed by Vidyawati herself to her tenant which was received by the tenant on 02.2.2000; yet on 13.2.2000 he still chose to pay the rent for December 1999 to Vidyawati. This fact was brought to his notice even in the legal notice dated 19.2.2002 which was received by him on 29.2.2000 but he did not pay any heed. He in fact even did not reply to the said notice. The RCT has made a wrong assumption that this was a bonafide and a genuine mistake committed by the tenant; if the tenant was not sure about his landlord i.e. whether it was Vidyawati or Harsh Gupta; if this was the confusion, provisions of Section 27 of the DRCA should have been resorted to by him and the tenant was mandated to have deposited the rent in the court of Rent Controller; he chose not to do so.

21. Record also shows that the rent was payable in advance. This is clearly averred in the eviction petition as also in the legal notice; no reply having been furnished to the legal notice in spite of the specific averment having been made in this notice; it is an

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implied admission. That apart the RCT had also noted that the letters Ex.AW-1/R-1 to Ex.AW-1/R-6 show that the rent was being tendered in advance; Ex.AW-1/R-4 is the rent for the month of October which has been sent on 04.10.2000; Ex.AW-1/R-3 is the rent for November which has been sent in advance on the 7th day of the month and Ex.AW-1/R-2 is the rent for December which has been sent on 13.12.2000; rent for January 2001 had also been sent on 05.1.2001. There is no doubt that these documents are after the date of the filing of the present petition; yet this does not deflect from the conduct of the tenant which conduct was that he was paying the rent before the 7th day of each calendar month i.e that the rent was being paid in advance. This is amply borne out.

22. If the rent was payable in advance, admittedly rent for the month of December 1999, January 2000 and February 2000 became due on or before 15.2.2000; this rent had not been paid till 05.6.2000 {when the tenant tendered his rent vide his letter dated 05.6.2000 (Ex.AW-1/R-8)} the tenant was guilty of having committed three consecutive defaults. It is also not in dispute that the benefit of Section 14(2) has already been availed for by the tenant. The tenant is thus liable to be evicted under Section 14(1)(a) of the DRCA.

23. For the sake of arguments, even if it is assumed that the rent was not payable in advance and it was payable by the end of the month, even then the tenant has to suffer a decree. Legal notice had admittedly been received by the tenant on 29.2.2000; this legal notice was dated 19.2.2000 and had been dispatched on 28.02.2000 (Ex. AW-1/?). In this legal notice it had been informed to the tenant that rent for the month of December 1999, January 2000 and February 2000 is due and payable. This letter having been received on the last date of the calendar month of February, even assuming that the rent fell due on the last date of the month, on the date of the receipt of this notice rent for three consecutive months i.e. December 1999 to February 2000 was due, payable and legally recoverable from the tenant.

24. The contention of the tenant that this legal notice is not valid as the legal notice has to make a demand for the rent which is legally recoverable and the notice dated 19.2.2000 does not include legally recoverable rent for the month of February is an argument which is noted to be rejected.

25. In Rakesh Kumar (surpa) in an eviction petition under Section 14(1)(a) of the DRCA a similar question had cropped up for decision. In this case the petition had been filed under Section

14(1)(a) of the DRCA; in spite of direction of the Rent Controller
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to deposit the monthly rent by the 15th day of each month, the tenant failed to pay; eviction order was passed; this was affirmed by the RCT. The High Court has set aside the order holding that there was no proper notice of demand to pay arrears of rent in terms of the proviso to section 14(1)(a) of the DRCA; this order was assailed before the Apex Court. The legality and the validity of the legal notice was the subject matter of challenge. The Apex Court had inter alia noted as under:

“9. In view of the statutory provision which has been set out before it appears that for obtaining recovery of possession under the Act there must be relationship of landlord and tenant between the parties, and that the tenant must have been in arrears of legally recoverable rent on the date of the notice of demand, and that a notice of demand had been served upon the tenant in the manner provided under Section 106 of the Transfer of Property Act, but the tenant neither pays nor tenders the rent within two months from the service of demand.

10. On reading the notice along with the letter dated 1st June, 1982 it appears that the respondent was in arrears of rent for the months mentioned hereinbefore and was intimated that in default of payment of rent the eviction would follow in accordance with law. This is the proper way of reading the notice and in our view the appropriate logical way in which notices of such type should be read. These notices must be read in common sense point of view bearing in mind how such notices are understood by ordinary people. That is how the appellant, it appears from the reply and the background of the previous letter to be mentioned hereinafter understood the notice.

11. More or less, a similar notice was considered by the Delhi High Court in Shri Ram Samp v. Shri Sultan Singh etc. AIR (1977) CJ 552

where Mr. Justice V.S. Deshpande, as the learned Chief Justice then was, held that the notice of the landlord stating therein about the arrears of rent and threatening to file a petition for eviction against the tenant was sufficient and the learned Judge held that the notice of demand could be expressed or implied and the conduct of the landlord showed that the demand was implied. We are in respectful agreement with the approach to such type of notices taken by the High Court in that case.”

This was with regard to the notice dated 19.4.1982. Apex Court had also noted that prior to the notice dated 19.4.1982 there was another notice dated 08.3.1982, contention being that in this notice of 08.3.1982 demand for the rent for the month of February could not have been issued on 08.3.1982. In this context the Apex court had answered as follows:

“....It may be so. We are not concerned with the facts of this case whether the notice was legal but how the parties have understood. There is clear notice of demand as it appears from the terms set out hereinabove. We have been shown the chart at Page No. 77 of the present records which indicate how belated attempts were made to pay certain arrears.”

26. It is thus clear that the notice has to be construed in the manner in which it is understood by the tenant.

27. In this case notice dated 19.2.2000 was received by the tenant on 29.2.2000; this notice clearly informed him that the rent is payable in advance i.e. by the 7th day of each calendar month

and as such by the 7th day of the February rent is due and payable for the month of December 1999, January 2000 and February 2000. This was specifically stated in the said notice. Even assuming for the sake of argument that the rent was not payable in advance even then rent for the month of December 1999 and January 2000 had definitely become due on the date when the notice dated 19.2.2000 was sent;; rent for the month of February 2000 had also become due as the tenant received this notice on 29.2.2000 and he fully understood its implication. It was a notice of demand for all the three consecutive months i.e. December 1999 to February 2000. Tenant, however, did not pay this rent even after a period of two months. Rent from December 1999 to February 2000 was remitted only by a communication dated 5.6.2000 which was after a period of two months as envisaged under Section 15(1) of the DRCA. It is also not in dispute that the benefit of Section 14(2) of the DRCA has already been availed of by the tenant once vide the benefit accorded to him by the order of the ARC dated 18.12.1982.

28. The judgments relied upon by learned counsel for the respondent reported as Prakash Mehra and Sant Ram (supra) are clearly distinguishable. The judgment of Prakash Mehra (Supra)

was cited with approval in the subsequent judgment of Sant Ram.

In the case of Prakash Mehra, the rent was admittedly payable in advance; the landlord had sent a legal notice dated 07.05.1976 to the tenant; on the date of receipt of the notice, rent for the months of April and May, 1976 had fallen due; on 13.05.1976, the respondent sent a bank draft which the landlord refused which was presented twice-over; the High Court had noted that a valid legal tender of rent had been made by the tenant by the draft sent on 13.05.1976 and the second draft sent on 11.06.1976 which was in answer to the legal notice making a demand for arrears of rent for the aforementioned two months; notice was satisfied. In para 7, the Apex Court had noted inter-alia as follows:-

“The arrears due cannot be extended to rent which has fallen due after service of notice of demand.”

This ratio has been followed in the case of Sant Ram. In both the judgments what is decipherable is that arrears due means only those arrears which have been fallen due up to the date of the receipt of the notice; it cannot be extended to rent which has fallen due after service of notice of demand; in the instant case, notice of demand had admittedly been served upon the tenant on 29.02.2000; on 29.02.2000 rent for the month of February, 2000 had become due; this is in the context of both situations; i.e. if the rent was payable in advance or in the alternate even if rent had

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become due on the last day of calendar month; these judgments thus do not come to the aid of the respondent.

29. The tenant having committed three consecutive defaults was thus liable to be evicted. Order of the RCT has mis-interpreted both the factual and legal position. The factual and legal position as is evidence from the record have been mis-construed which has caused a grave injustice to the landlord; the illegality is patent and self-evident. This finding calls for interference; order of the RCT is set aside. Order of the ARC decreeing the eviction petition is restored.

INDERMEET KAUR, J.

SEPTEMBER 19, 2011

a/nandan/rb