

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

% *Date of Judgment: 30.3.2012*

+ **CM(M) 421/2005**

PREM NARAIN Petitioner
Through: Mr.A.P.Aggarwal, Advocate.
versus

VISHNU AVTAR & ORS Respondents
Through: Mr.S.S.Gautam, Advocate.
AND

+ **CM(M) 424/2005**

PREM NARAIN Petitioner
Through: Mr.A.P.Aggarwal, Advocate.
versus

RAM AVTAR & ORS Respondents
Through: Mr.S.S.Gautam, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned judgment is dated 01.12.2004; it had been delivered by the Rent Control Tribunal (RCT); the findings returned by the Additional Rent Controller (ARC) had been set aside. The ARC vide its order dated 21.12.2002 had given the benefit of Section 14 (2) of the

Delhi Rent Control Act (DRCA); the ARC had returned a finding that since this is a case of first default, benefit of Section 14 (2) be granted to the tenant; this judgment was the subject matter of appeal before the RCT who had reversed this finding.

2 Record shows that an eviction petition has been filed by the landlord Prem Narain against his five tenants, all daughters of Khem Chand who was the original tenant. The demised premises is a shop bearing No. 937/11, Ward No. VII, Main Bazar, Mehrauli, New Delhi which had been tenanted out at a monthly rent of ₹13/-. The contention of the landlord was that the tenants were in arrears of rent w.e.f. 01.06.1988 which was not tendered inspite of the legal notice served upon them on 31.01.1991. This notice had been proved as Ex. PW-1/2; Ex.PW-1/R1 was a letter of the tenant prior in time to Ex.PW-1/2; this is dated 29.11.1990 informing the landlord that he was persistently refusing to recognize the aforementioned respondents as legal representatives of the original deceased tenant (Khem Chand) and inspite of their repeated efforts to pay the rent to the landlord, he was not accepting it.

3 Ex.PW-1/R1 & Ex.PW-1/2 have been perused. These are communications dated 29.11.1990 and 31.01.1991. A notice prior to the CM(M) Nos. 421 & 424/2005

filing of the eviction proceedings under Section 14 (1)(a) of the DRCA has to comply with the requirements of Section 106 of the Transfer of Property Act; it has to be addressed to the tenant and to be delivered to him. The RCT had noted that Ex.PW-1/2 was a valid notice. The contention of the tenant that he had already deposited rent on 05.02.1991 i.e. prior to the receipt of the notice and as such he was not in arrears of rent.

4 The only answer which has to be answered is as to whether the deposit of rent made by the tenant on 05.02.1991 under Section 27 of the DRCA was a 'valid tender of rent' in terms of Section 14 (i)(a) of the DRCA. Counsel for the petitioner has placed reliance upon a judgment of this Court reported in 1977 RLR (SC) 412 Dr. Brahmanana Vs. Smt. Kaushlyadevi as also a judgment of a Bench of this Court reported as 1988 RLR (NSC) State Vs. Ramesh Kumar S. Jain; contention being that a tenant is entitled to deposit the rent in Court only if the landlord does not accept or refuses to take the rent either directly or indirectly from the tenant; a straightway deposit of rent without fulfilling the aforementioned statutory condition is not a valid tender of rent. Submission of the landlord being that there was no refusal by the

landlord to accept the rent in terms of the notice dated 31.01.1991 which in fact had been received by the tenant only on 07.02.1991 and as such the tender of rent by the tenant on 05.02.1991 was not a valid tender.

5 Arguments have been countered. Learned counsel for the respondent/tenant has drawn attention of this Court to the contents of the notice dated 31.01.1991; submission being that paras 2, 3 & 5 of the said communication clearly shows that the landlord was refusing to accept the rent from the tenant and it was for this reason, that he was left with no option but to make the deposit of rent in Court under Section 27 of the DRCA.

6 This submission of the learned counsel for the respondent is devoid of any force.

7 The contents of notice dated 31.01.1991 have been perused. No such averment as has been submitted by learned counsel for the petitioner is borne out. In fact this letter which has been sent by the landlord to the tenant was an answer to the notice dated 29.11.1990 which had been sent by the tenant; the RCT had returned a finding that without going into the technicalities, this document dated 31.01.1991 (Ex. PW-1/2) will be treated as a valid notice. No cross appeal has been

filed by the tenant on this count. Treating Ex. PW-1/2 as a valid notice, the contents of the same do not in any manner decipher that the landlord up to 31.01.1991 was refusing to accept the rent from the tenant; in fact there are categorical averments made in this notice calling upon the tenant to pay the rent to him as he is in arrears w.e.f. 01.06.1988; he has been asked to pay rent with interest at the old rate and 10% per month increase thereto. This is clearly stated in para 5 of Ex. PW-1/2; there is also no dispute that this notice dated 31.01.1991 was received by the tenant only on 07.02.1991.

8 In this factual scenario, it can nowhere be said that the landlord had refused to accept the rent which was validly tendered by the tenant pursuant to which the tenant had no option but to deposit the rent in the Court of ARC under Section 27 of the DRCA. The deposit of rent by the tenant in the Court under Section 27 of the DRCA on 05.02.1991 can in no manner be said to be a valid tender of rent within the meaning of Section 14 (1)(a) of the DRCA. In this view of the matter, the impugned order holding otherwise suffers from an infirmity.

9 Rent was admittedly payable every month which is also the provision contained in Section 26 of the DRCA which states that in the

CM(M) Nos. 421 & 424/2005 Page 5 of 6

absence of any contract between the parties, the rent has to paid on or before the 15th day of each calendar month; presumption under Section 26 of the DRCA is that where the landlord does not accept rent within the period specified in Section 26; section 28 mandates that the deposit made under Section 27 will not be considered to be a valid tender if it is made within 21 days of the time period mentioned in Section 26. In the present case, the ARC had noted this contention in the correct perspective and rightly noted that there is no valid tender of rent; since this was a case of first default, the respondents were entitled to benefits under Section 14 (2)(a) of the DRCA. The order of the ARC is accordingly restored.

10 Both the petitions are disposed of.

INDERMEET KAUR, J

MARCH 30, 2012

A