

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

+ C.M. (M) 597/2012

Date of Decision: .31.10.2012

SANJAY KAUSHIK Petitioner

Through: Mr. R.L. Sharma, Adv.

Versus

HARENDER KUMAR Respondent

Through: Mr. Peeush Kulshrestha, Adv.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

1. This is a revision petition under Article 227 of the Constitution of India challenging the order dated 15.02.2012 passed by the first appellate court of Sh. P.S. Teji, DJ & ASJ, Karkardooma courts, Delhi, whereby the appeal of the petitioner against the order dated 17.10.2011 and 21.10.2011 passed by the Ld. ARC was dismissed and an eviction order was passed by not giving benefit u/S 14(2) of the Delhi Rent Control Act (for short "the Act").

2. The petitioner is a tenant in respect of one shop on the ground floor of property bearing No. H-31, Laxmi Nagar, Delhi-110092. The respondent landlord filed an eviction petition u/S 14 (1) (a) of the Act on the ground that the petitioner tenant had not been paying rent with effect from 01.08.2001. A legal notice was sent on 12.09.2002, but despite the receipt of the same, the petitioner did not pay the rent. The Ld. ARC allowed the eviction petition and passed an order for eviction vide orders dated 17.10.2011 and 21.10.2011. The orders were challenged by the petitioner through appeal, and the same was dismissed vide order dated 15.02.2012. This order is under challenge in the present petition.

3. U/s 14 (1) (a) of the Act, a landlord can evict a tenant for default in payment of rent. In such cases, the Rent Controller has the power to give the tenant another chance as regards the deposit of rent. As per Section 15 (1), the law gives the benefit to the tenant to deposit rent within one month of passing of an order by the court. Failure to do so for a period of three consecutive months would result in the tenant losing that benefit and an eviction order being passed against him. The judgment in the case of ***“Sarla Goel v. Kishan Chand, (2009) 7 SCC***

658”, makes clear the position in law regarding non-payment of rent.

The relevant portions of the judgment are as under:-

“24. Accordingly, Section 14(1) (a) is a ground for eviction of a tenant for default in payment of rent. In spite of that, protection has been given under Section 15 of the Act to the tenant to avail of the protection given by the legislature by depositing rent in the manner indicated in Section 15 of the Act. However, the proviso to Section 14(2) of the Act takes away the right of a tenant of the benefit of sub-section (2) of Section 14 if the tenant having obtained such benefit once in respect of any premises and makes a further default in payment of rent of those premises for three consecutive months. Therefore, it has been made clear that when the tenant makes a second default, no protection can be given to the tenant from eviction.”

4. The grievance of the respondent was that the petitioner/tenant was in arrears of rent from August 2001 and had not paid the same despite a legal notice. On the other hand, the petitioner/tenant claimed that rent was paid till October 2011 to the mother of the landlord and thereafter, rent for the month of November 2011 to October 2002 was deposited in court as the landlord had refused to accept the same. In his examination, the petitioner was not able to disclose as to who paid the

rent to the mother as the facts of deposit were not in her knowledge. As regards the case of the petitioner that the rent was deposited in the court, the same could not be proved as he did not enter the witness box and also no challan or receipt of sort was submitted to prove the deposit. Thus, it was established by both the lower courts that the petitioner/tenant was in fact in arrears of rent.

5. The petitioner submitted that the failure to deposit the rent was due to financial difficulties faced by him because he was suffering from an illness and also due to the illness of his mother. In support of this, he placed on record photocopies of medical records to show that he had been admitted in hospital and that he was even operated in R.B. Gupta Medical Centre. The Id. DJ-ASJ rejected this reason stating that the respondent contradicts himself by saying he was under a financial crunch, but was able to afford treatment in a private hospital. The Ld. DJ-ASJ rightly observed that the behavior of the petitioner tenant seemed very casual and that the pleas cannot be believed as these were an afterthought.

6. Further, the report of the Naib Nazir reveals that the respondent deposited the rent with effect from 1st May 2009 to 30th April 2011 at

one go on 18/03/2011. This clearly shows that there has been a default in the payment of rent for 22 months, which is nearly two years. This was conceded by the learned Counsel for the petitioner that there was unexplained delay of twenty-two months in compliance of order under Section 15(1) of the Act. Under these circumstances, both the lower courts rightly dismissed the plea of the petitioner that he was under financial constraints. Further, the petitioner admittedly did not file any application for condonation of delay. This clearly shows the casual attitude of the petitioner to the order u/Section 15(1) of the court. In the case of ***“Shibu Chandra Dhar v. Pasupati Nath Auddya, (2002) 3 SCC 617”***, the Supreme Court pointed out the powers available with the courts to condone delay or extend time for payment of rent. The relevant paragraph has been quoted as under:-

7. *“13.....The court can condone delay and/or extend time in cases of small defaults or where default is for reasons beyond the control of the tenant if it has power to extend time. Even if the court has power to extend time, in case of willful, gross or deliberate defaults, the court may refuse to extend time.”*

8. This is evidently a case of willful and gross negligence on the part of the respondent to have not deposited the rent for 22 months in compliance of order under section 15(1) of the Act. It is settled principle of law that it protects only those who are vigilant and not the ignorant.

9. In light of the above discussion, I see no infirmity or illegality in the impugned order. The petition is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 31, 2012

rmm/awanish