

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

% *Order delivered on: December 20, 2013*

+ **CM(M) 430/2012 & C.M. No.6715/2012**

BABU LAL GOEL Petitioner
Through Mr.Vipin Nandwani, Adv.

versus

SHIV KUMAR & ORS Respondents
Through Mr.Manoranjan, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Article 227 of the Constitution of India assailing the order dated 19th October, 2011 whereby the learned District Judge in RCT No.11/2011 dismissed the petitioner's appeal filed against the order by which the application of the respondents under Section 15(7) of Delhi Rent Control Act, 1958 was allowed by the ARC holding that the default is wilful and contumacious and strikes off the defence of the petitioner who has challenged both orders.

2. The facts leading to the petition are:

- a) The tenanted premises i.e. Shop No. WZ-271, Nangal Raya, Jail Road, New Delhi was let out to the petitioner on 1989.
- b) The respondent in the year 2003 filed an eviction petition under Section 14(1)(j) of the DRC Act with the allegation that the petitioner has caused damage to the suit property. The respondent filed another eviction petition under Section 14(1)(a) of the DRC Act alleging

default on the part of the petitioner in payment of rent and in tendering rent for the period 1st January, 2003 to 31st December, 2005.

- c) As the respondent has stopped accepting the rent therefore, the petitioner sends the arrears of rent for the period 1st January, 2003 to 31st May, 2005 vide money order dated 4th April, 2005 @ ₹665/- per month, which money order is received back with the report of refusal by the landlord.
- d) The respondent again tenders the arrears of rent by money order and sends the arrears of rent for the period 1st January, 2003 to 31st December, 2005 vide money order dated 6th January, 2006 which money order is also received back with the report that the respondent/landlord has refused to accept the money order.
- e) The eviction petition under Section 14(1)(j) of the DRC Act filed by the respondent is dismissed by the learned ARC, Delhi.
- f) The learned ARC passed an order under Section 15(1) to deposit the arrears of rent @ Rs. 665/- per month within 30 days. The learned counsel for the petitioner submitted the challan of Rs. 34,580/- towards due compliance of the said order with the learned ARC and later with the treasury. The petitioner later deposited Rs. 2660/- towards rent for the period w.e.f. 1st October 2007 to 31st January 2008.
- g) After having collected the above rentals, the respondent filed an application under Section 15(7) of the Act for delay in deposit of rent. The petitioner duly filed a reply to the said application stating substantial compliance in the deposit of rent. The learned ARC allowed the application of the respondent. Consequently, the petitioner filed an appeal under Section 38 of the DRC Act

challenging the above order. The learned ARCT dismissed the appeal. Hence, the present petition.

3. The issue arising before this Court is whether the learned ARCT has misinterpreted the provision of Section 15(7) of DRC Act?

4. The counsel for the petitioner submitted that the petitioner is doing a cloth business and is a contractor for supply of military dresses and for submitting his tenders, procuring orders, taking measurement and designs of logos of various regiments and for making supplies he has to travel almost all over India on regular basis and on account of non-availability in Delhi, minor delay took place in depositing rent which was neither deliberate and intentional.

5. The counsel for the petitioner alleged malafide intent of the respondent behind filing the application under Section 15(7) and argued that the petitioner sent money order dated 6th January, 2006 for the period 1st January 2003 to 31st December, 2005 was not accepted.

6. The counsel for the respondent, on the other hand, alleged delay in payment of rent and called for striking off the defence taken by the petitioner.

7. The learned ARCT on perusing the material on record and hearing the arguments laid the following findings:

- a) The petitioner deposited the amount on 7th July, 2007 though he got challan passed on 29th May, 2007 and therefore, his delayed in payment by a month and five days. The period of one month expired on 3rd June, 2006 while the summer vacations began two days later. The petitioner, therefore, cannot take excuse of courts being closed in summer vacations.

- b) The rent for subsequent months has been deposited belatedly on as many as 9 occasions- delay of 15 days for October, 2007, two months and 16 days for February, 2008, 16 days for April, 2008, 16 days for February, 2010, one month for May, 2010, 6 days for July, 2010, one day for August, 2010 and 7 days for October, 2010.
 - c) The manner in which the petitioner has deposited the rent shows that he has been doing so at his whims, fancies and leisure and the same is nothing but wilful and contumacious.
8. Let me now discuss the law on the issue involved in the matter as to whether in view of facts and circumstances in the present case, the petitioner is entitled to contest the matter or not by filing of written statement.
9. The following judgments are relevant for discussion :
- a) ***Miss Santosh Mehta vs. Om Parkash and Ors.***, 1980 (2) RCR 516
 - b) ***Mohd. Suolin and Ors. vs. Sunita Chugh***, 21 (1982) DLT 77
 - c) ***Agricultural Engineering Co. vs. Birla Cotton Spinning Weaving Mills***, 1971 RLR (Note) 36
 - d) ***Bharat Pulverising Mills P. Ltd. vs. Tarachand Malik B. Trust etc.***, 1971 RLR (Note) 35
 - e) ***Ariana Afghan Airlines vs. Cycle Equipment***, (1978) 14 DLT 19
 - f) ***Ram Swaroop Kathuria vs. Nagpal Optical Co.***, 50 (1993) DLT 387.
 - g) ***Sheru vs. Deputy Commissioner of Police (Licensing)***, 50(1993) DLT 390 (DB)
 - h) ***Banarsi Dass & Ors. vs. Bindra Ban Gupta***, 73 (1998) DLT 607
 - i) ***Kamal Kumar vs. J.P.S. Malik, Presiding Officer Labour Court & Ors.***, 73 (1998) DLT 611
 - j) ***Ganesh Prasad Sah Kesari and Anr. vs. Lakshmi Narayan Gupta***, (1985) 2 RCR 51

k) ***M. Mani vs. D. Ramalingam***, 1976 RLR (Note) 57

l) ***Kamladevi vs. Vasdev***, 1994 Legal Eagle (SC) 1175

10. i) In the case of ***Miss Santosh Mehta vs. Om Parkash and Ors.***, 1980

(2) RCR 516 it was held as under :

“7..... that is the only reasonable conclusion in the circumstances-that the tenant has not failed to pay and, in any case, the exercise of judicial discretion must persuade the court not to strike out the defence of the tenant but give her fresh opportunity to make deposit of the entire arrears due. In the present case the deposit has eventually been made in this Court when it directed such deposit to be made.”

ii) In the case of ***Mohd. Suolin and Others vs. Sunita Chugh***, 21 (1982)

DLT 77 it was held as under :

“13. Before me Mr. A.B. Saharaya, learned counsel for the appellant, has submitted that the discretion has not been exercised by the Tribunal on correct principles and the learned Tribunal while exercising discretion of reversing the order of the Additional Rent Controller has ignored the principles laid down by the Supreme Court and this Court in catena of cases formulating the principles on which powers under Section 15(7) of the Act could be exercised. He referred to me the decisions in V. K. Verma v. Radhey Shyam, A.I.R. 1964 S.C. 1317; Sh. Hem Chand v. The Delhi Cloth & Generals Mills Co. Ltd. and Another, Air 1977 (2) RCJ 438; Bimal Chand Jain v. Sri Gopal Agarwal, 1981 (3) SCC 486; M/s Bharat Pulvarising Mills Pvt. Ltd. v. Tara Chand Malik Charitable Trust and Ors. 1973 (5) R.C.R. 1 and M/s Arian Afghan Airlines Co, Ltd. v. M/s Cycle Equipments (P) Ltd., 1978 (II) Delhi 317, and submitted that it is not every default which calls for striking out of the defense under Section 15(7) of the Act because the default has to be contumacious and thus submitted that since the discretion has not been exercised by the learned Rent Control Tribunal on correct principles, it raises a substantial question of law and is liable to be set aside in second appeal.

14. In *V. K. Verma v. Radhey Shyam* referred to earlier the Supreme Court observed as under :-

“Under the old Act the Court had no option but to strike out the defense if the failure to pay or deposit the rent was proved; under the new Act the Controller who takes the place of the court has a discretion in the matter, so that in proper cases he may refuse to strike out the defense. Consequently the Court would not be bound to strike out the defense against ejectment but may or may not do so on a consideration of the circumstances.”

16. While interpreting Order 15 Rule 5(1) and (2) of the Code of Civil Procedure the Supreme Court observed, in the matter of *Bimal Chand Jain v. Sri Gopal Agarwal* (supra), as under :-

“An order under sub-rule (1) striking off the defense is in the nature of a penalty. A serious responsibility rests on the court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in the court entitling it not to strike off the defense if on the facts and circumstances already existing on the record it finds good reason for not doing so. It will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding the absence of a representation under sub-rule (2), the defense should or should not be struck off. The word "may" in sub rule (1) merely vests power in the court to strike off the defense. It does not oblige it to do so in every case of default.”

17. Kapur, J. in the aforesaid matter of *M/s Bharat Pulvarising Mills Private Ltd. New Delhi v. Tara Chand Malik Charitable Trust and Ors.* in an elaborate judgment observed as under :-

“This is not a provision for punishing the tenant. The sub-section is intended to enable the court to have an effective way of enforcing compliance with its orders under Section 15. In the case of failure to deposit the rent, the Controller has a discretion to strike out the defense but normally such a penalty will be imposed only when there is a contumacious or willful disregard of the order. If there is a merely late compliance of the order, I do not think it can be considered to be contumacious or willful disregard of the order. The provisions of Section 15(7) must be read to be not dissimilar to the provisions of Order 13, Rule 21, Civil Procedure Code where it is settled law that only a willful or contumacious default in complying with the order for discovery or inspection can lead to the striking out of the defense.”

18. Again a Division Bench of this Court in the aforementioned case of *M/s Arian Afghan Airlines Co. Ltd. v. M/s Cycle Equipments (P) Ltd.* observed as under:-

“While it is not possible to lay down exhaustively the circumstances in which an order striking out the defense may follow, for that is what the Legislature left unsaid in its wisdom. Where, however, the tenant has substantially complied with the order or there are circumstances of a motivator nature, it would not be proper to strike out the defense and deprive the tenant of the opportunity to defend an ejectment action.”

20. If one looks at the conduct of the appellants one notices that right from February 1973 till 29th August, 1975 the rent was invariably being deposited in advance and some time to the extent of more than six months in advance and even the last payment which was made before the filing of the application for striking out the defense by the landlord a deposit had been made on 29th August, 1975 which covered the payment of rent right till 29th February, 1976. This conduct

shows that the appellants never wanted to withhold the rent and in fact out of abundant caution, so that they may not commit a default, they had invariably deposited the rent in advance.

21. The Tribunal unfortunately completely ignored that while passing an order under Section 15(7) of the Act it is not the default which has to be looked into but it has also to see the circumstances and the previous conduct of the tenant. It cannot be said on the facts of the present case that the circumstances were such or the conduct was such that an order for striking out the defense must be passed. The learned trial court for good reasons looking at the past conduct of the appellants declined to strike off the defense and also noticed, as soon as the application was filed, the appellants realised their mistake and much before the application for striking out the defense came up for decision, the appellants had deposited the entire rent. The Controller had also noticed the previous conduct of the tenants in paying rent much in advance to the time when it become due even. The default could not be called contumacious or willful.

22. In these circumstances it must be held that the Tribunal committed a grave error of law in striking off the defense of the appellants under Section 1 of the Act. The Tribunal did not take into account the aforesaid principles laid down in the aforesaid authorities and jumped to the conclusion. Merely because the default remains unexplained, the Tribunal was duty bound to strike out the defense, is not the correct approach. All the facts and circumstances of the case have to be seen and unless, as observed by Kapur J, the default is contumacious the defense ought not to have been struck off.

23..... But when the discretion has been exercised without the principles for exercise of discretion being kept in mind the discretion is vitiated and like the present case raises a substantial question of law.”

iii) In the case of ***Ram Swaroop Kathuria vs. Nagpal Optical Co.***, 50 (1993) DLT 387 it was held as under :

“8. It is now well settled by the Supreme Court that the authorities under the Rent Control Act have a discretion for condoning the delay which may occur in deposit of rent and it is not mandatory to strike out the defense of the tenant in case certain delay occurred in deposit of rent. In the present case, it has to be kept in view that the entire arrears of rent and up-to-date rent were deposited in time. It is true that a tenant is bound to comply with the order made under Section 15(1) with regard to deposit of rent month by month. However, if the tenant commits default in deposit of rent, that should not lead to the conclusion that the delay made by the tenant is contumacious or willful. The Explanation which may be given by the tenant, when an application under Section 15(7) is moved, has to be examined on its own merits without being swayed by any warning being administered

9. The Rent Controller, in my view, should have examined the Explanation given by the tenant with regard to omission to deposit rent of months of July and August 1984 in time without being obsessed with the warning administered vide order dated September 12, 1984.

10. Be that as it may, it is evident from the record that the tenant had deposited the rent of July and August on 1/10/1984 and 'has been depositing the rent of subsequent months as well. That would show that the tenant had no intention of willfully disobeying the order of the Court passed under Section 15(1). The tenant could not be termed as contumacious defaulter. For the delay made in the deposit of rent the other party has not suffered any such damage which cannot be compensated with costs. I think it is a fit case where the delay ought to have been condoned on payment of some costs.

11. I allow the appeal, set aside the impugned order and condone the delay made by the tenant in deposit of rent, subject-matter of the impugned orders, on payment of Rs.500/- as costs. The parties are directed to appear before the Rent Controller for further proceedings in the case on April 19, 1993.”

iv) In the case of Banarsi Dass & Ors. vs. Bindra Ban Gupta, 73 (1998) DLT 607 it was held that :

“10. Let us notice the legal position with regard to the exercise of discretion under Section 15(7) of the Act. In Sh. Shanti Sarup Khullar Vs. Sh.O.P.Sood & Ors (C.M.(M).11/1996), I had occasion to summarize the same.

“The legal position on the question of Section 15(7) of the Act is well-settled. The Section confers upon the Rent Controller a discretion in the matter of striking out of defense. Small and marginal delays in deposit deserve to be condoned and ignored, especially when the order is substantially complied. Moreover, if there are extenuating and mitigating circumstances, coupled with plausible Explanation for default, the defense may not be struck out and delay can be condoned. However, cases of contumacious and willful default, gross negligence, reckless conduct and indifferent attitude to order of deposit, would render the defense liable to be struck out.”

Reference may also be usefully made to the decision of this Court in K.C.Sharma Vs. Sant Ram Sharma 1996 R.L.R. 13, where it was held that delay in payment of rent of a month, was not intentional or deliberate and it was neither willful nor contumacious as only stubborn refusal to submit to orders of Court amount to contumacy.....”

v) In the case of ***Ganesh Prasad Sah Kesari and Anr. vs. Lakshmi Narayan Gupta***, 1985 (2) DLT 51 it was held as under :

“15. The tenant has deposited all the arrears. There was some irregularity in making the deposit but it was not of such a nature as to visit the tenant with the consequence of striking off his defence. Therefore the Judgment of the High Court directing that the defence be deemed to be struck off is set aside and the order of the learned trial Judge is restored for the reasons herein stated.”

vi) In the case of *Kamladevi vs. Vasdev*, 1994 Legal Eagle (SC) 1175, it was held as under :

“7. In any case, the delay in depositing Rs.2,150/- could not be termed as wilful, deliberate and contumacious non-compliance of order under Section 15(1) passed on 27.1.1984. The landlord was entitled at the most to some compensation. In the premises, the Additional Rent Controller condoned the delay in depositing Rs.2,150/- by the tenant. It was held that the respondent was entitled to get the benefit of the provisions of Section 14(2) of the Act.”

11. In view of the settled law and facts of the present case, it appears to me that it was not necessary to take drastic steps to striking off the defence of the petitioner. Rather, it appears that the petitioner in every step was trying to pay the rent but it was landlord who refused to receive the rent. There was no wilful failure, or defiance on his behalf. He deposited the challan in the treasury in time within the stipulated period of 30 days. The expiry date was 3rd June, 2007. He deposited the challan and got passed on 29th May, 2007. The few days delay was occurred after the summer vacations were over. The explanation in this regard was also given. No doubt for subsequent period, many occasions there was a delay in depositing the rent. However, he had been depositing regularly.

12. Under these circumstances, all the objections raised by the respondents/landlord have to be considered on merit and as per law. But at the same time, his right to contest the matter cannot be closed by striking off defence. At least in one form, he is entitled to put his case which is to be decided on the basis of pleadings. Therefore orders passed by the court below are set aside.

13. The order of striking off defence is set aside. The petitioner is granted four weeks time to file the written statement.

14. It is made clear that the matter be decided as per its own merit and in accordance with law and without any influence of the present order.

15. The present petition is accordingly allowed. Pending application(s) are also disposed of.

16. No costs.

(MANMOHAN SINGH)
JUDGE

DECEMBER 20, 2013