

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) No.147/2013 and C.M. No.2032/2013 (stay)**
% **1st September, 2014**

SMT. HARSH GROVER Petitioner
Through: Mr. Rahul Sharma, Advocate.

VERSUS

SH. H.S. BAJAJ AND ANR. Respondents
Through: Mr. Rajat Aneja, Advocate with Mr.
Vijay Kasana, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1(i) This is a petition under Article 227 of the Constitution of India impugning the orders of the Rent Control Tribunal dated 22.1.2013. There are two orders dated 22.1.2013.

(ii) First is the judgment dated 22.1.2013 by which the first appeal filed by the petitioner/tenant under Section 38 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') challenging the judgment of the trial court dated 21.4.2012 decreeing the petition under Section 14(1)(a) of the Act for non-payment of rent, was dismissed. The order of the trial court/Additional

Rent Controller dated 21.4.2012 was an order declining the benefit under Section 14(2) of the Act and consequently passing an eviction order with respect to the tenanted premises being a shop on the ground floor of the property no.4/55, Double Storey, Tilak Nagar, Delhi. Section 14(2) of the Act provides that if a tenant, in case of the first default in payment of rent resulting in filing of a Section 14(1)(a) of the Act eviction petition, deposits the rent pursuant to an order under Section 15(1), then the tenant is not evicted.

(iii) The second order dated 22.1.2013 (hereinafter referred to as the supplementary order) is an order by which the first appellate court dismissed an application moved by the petitioner/tenant and by which petitioner made an endeavour to convert the appeal which was filed only against the judgment of the Additional Rent Controller dated 21.4.2012 declining the benefit under Section 14(2) of the Act, as if that the appeal was also filed against another order dated 21.4.2012 dismissing the application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (CPC). The first appellate court in the supplementary order dated 22.1.2013 dismissed the application under Sections 151 and 153 CPC read with Order VI Rule 17 CPC by specifically noting that the first appeal actually was never filed against the order dated 21.4.2012 dismissing the application under Order IX Rule 13 CPC and the first appeal

was only filed against the order/ judgment dated 21.4.2012 declining the benefit under Section 14(2) of the Act and decreeing the eviction petition.

2. The main petition under Section 14(1)(a) of the Act on the ground of non-payment of rent was filed pursuant to the legal notice dated 5.9.2006 by which rent at Rs.300/- per month was claimed from 1.1.2004 to April, 2005. In the written statement which was filed by the petitioner/tenant, there was no dispute with respect to relationship of landlord and tenant between the parties, rate of rent and the period of arrears. The defence of the petitioner/tenant on merits was that the petitioner had deposited an amount of Rs.4,800/- from 1.1.2004 to April, 2005 in proceedings under Section 31 of the Punjab Relief of Indebtedness Act, 1934 and which proceedings were withdrawn because they were not maintainable in view of the judgment of the Supreme Court in the case of *Atma Ram Vs. Shakuntala Rani (2005) 7 SCC 35*. Thereafter the amount of rent of Rs.4,800/- from 1.1.2004 to April, 2005 was deposited in a petition under Section 27 of the Act, and which deposit it was pleaded by the petitioner/tenant should therefore be taken as compliance of the notice dated 5.9.2006 claiming arrears of rent from 1.1.2004.

3. The petitioner/tenant after filing of the written statement did not appear and was proceeded exparte. The respondent/landlord examined himself and proved his case. Since the petitioner/defendant was proceeded exparte, the

case of the deposit under Section 27 of the Act was not proved and hence the petition under Section 14(1)(a) of the Act was decreed on 2.6.2010 by directing deposit of rent from 1.1.2004 at Rs.300/- per month within one month in terms of Section 15(1) of the Act. As stated above, in case the tenant deposits the arrears of rent as per Section 15(1) of the Act within one month of passing of the final judgment under Section 14(1)(a) read with Section 15(1) of the Act, then, such a tenant would be entitled to the benefit of Section 14(2) of the Act and the tenant will not be evicted in such a case. If the arrears of rent are however not deposited pursuant to the final judgment alongwith the concomitant order under Section 15(1) of the Act, the tenant does not get the benefit of Section 14(2) of the Act and such a tenant is liable to be evicted.

4(i). The courts below note that even after the final judgment was passed on 2.6.2010 and directions were issued under Section 15(1) of the Act, the petitioner/tenant did not deposit the amount and because of which the petitioner was proceeded exparte. However, it is to be noted that a copy of the judgment dated 2.6.2010 was sent by the Additional Rent Controller to the petitioner/tenant with directions to them to deposit the amount in terms of the judgment dated 2.6.2010.

(ii) The matter was fixed on 2.8.2010 for filing of the compliance report, but the petitioner/tenant even by this date did not deposit the arrears of

rent. The petitioner/tenant instead moved an application under Order IX Rule 13 CPC on the ground that initially the case was pending in Rohini Courts and after transfer of the case to Tis Hazari Courts they were informed that they would receive a notice from the Court and so they did not appear, but, this application was dismissed by the Additional Rent Controller vide order dated 21.4.2012. That order dated 21.4.2012 became final because no appeal was filed against the order dismissing the application under Order IX Rule 13 CPC.

(iii) As already stated above, the petitioner/tenant made an endeavour to amend and treat his first appeal filed under Section 38 of the Act against the judgment of the Additional Rent Controller dated 21.4.2012 holding that the petitioner had failed to comply with the order dated 2.6.2010, and consequently petitioner will not be entitled to the benefit of Section 14(2) of the Act, but since the main appeal was only against the order dated 21.4.2012 rejecting the benefit being granted under Section 14(2) of the Act, therefore the Rent Control Tribunal by an order of the same date as of the impugned judgment dismissing the first appeal under Section 38 of the Act, has also passed another supplementary order refusing to treat the first appeal filed under Section 38 of the Act against the order declining benefit under Section 14(2) of the Act, as an appeal also against an order dated 21.4.2012 rejecting the application under Order IX Rule 13 CPC.

5. The narration of the above facts shows that in the main eviction petition no disputes were raised as to the relationship of landlord and tenant between the parties, rate of rent as also of the service of notice dated 5.9.2006 demanding arrears of rent. The dispute firstly is that whether arrears of rent have been cleared/paid within the two months as required under Section 14(1)(a) of the Act and in which case the petition under Section 14(1)(a) of the Act would not have been maintainable, and secondly whether even if within two months of service of the demand notice dated 5.9.2006 arrears were not paid, but were the arrears then paid within one month of the judgment dated 2.6.2010 decreeing the petition under Section 14(1)(a) of the Act when simultaneously as per law an order was also passed under Section 15(1) of the Act directing the deposit of the arrears in the Court.

6. Firstly, in my opinion, once the order dated 21.4.2012 dismissing the application under Order IX Rule 13 CPC became final because that order was not challenged, the petitioner/tenant was wholly unjustified after the hearing had commenced of the appeal to get the appeal treated as also against the order of the Additional Rent Controller dated 21.4.2012 dismissing the Order IX Rule 13 CPC application, inasmuch as, a reading of the first appeal filed under Section 38 of the Act shows that the same only challenged the judgment dated 21.4.2012 declining the benefit under Section 14(2) of the Act.

I therefore do not find any error in the supplementary order dated 22.1.2013 by which the Rent Control Tribunal has refused to treat the first appeal filed under Section 38 of the Act as an appeal also against the order dated 21.4.2012 dismissing the application under Order IX Rule 13 CPC. Once that is so, admittedly the order dated 2.6.2010 of the deposit of rent within one month is not complied with and also that the respondent/landlord has proved that the demand notice dated 5.9.2006 was not complied with. Consequently, the courts below were justified in decreeing the petition under Section 14(1) (a) of the Act alongwith the aspect of refusal/ denying of the benefit under Section 14(2) of the Act.

7. Let me now for the sake of equity consider the case of the petitioner/tenant on merits as to whether the petitioner/tenant has complied with the demand notice dated 5.9.2006 for payment of arrears of rent from 1.1.2004 at Rs.300/- per month on account of the deposit made under Section 27 of the Act, and secondly whether even if the notice dated 5.9.2006 was not complied with by paying/tendering/depositing the amount within two months of the service of the notice dated 5.9.2006 whether the petitioner/tenant complied with the final judgment dated 2.6.2010 alongwith the simultaneous order under Section 15(1) of the Act for deposit of the arrears of rent within two months

and in which case he would get benefit of Section 14(2) and respondent/landlord will not be entitled to the eviction order.

8. So far as the first aspect of complying with the notice dated 5.9.2006 is concerned, in view of the ratio of the judgment of the Supreme Court in the case of *Atma Ram (supra)* deposit under Section 31 of the Punjab Relief of Indebtedness Act, 1934 cannot be taken as compliance of notice under Section 14(1)(a) of the Act and therefore it is clear from the record that there was default in complying with the notice dated 5.9.2006 by not paying the requisite arrears of rent from 1.1.2004 within two months of service of the notice dated 5.9.2006 sent under Section 14(1)(a) of the Act. Therefore, the petition under Section 14(1)(a) of the Act has been rightly decreed by both the courts below.

9. Let me now take the case as to whether the petitioner should be entitled to the benefit under Section 14(2) of the Act. This benefit will be granted if the petitioner/tenant within one month from the judgment dated 2.6.2010 deposits the entire arrears of rent. Petitioner, out of the total arrears of rent, paid only a sum of Rs.5,100/- but did not pay the sum of Rs.4,800/-. The issue is whether the non-payment of sum of Rs.4,800/- is justifiable and whether deposit already made by the petitioner/tenant under Section 27 of the Act is a valid discharge of liability. In this regard, I would like to note that the

liability of payment pursuant to a notice under Section 14(1)(a) will only be a valid discharge if the deposit under Section 27 was made within two months of the receipt of the notice. In the present case, since the deposit under Section 27 has admittedly not been made within two months of the receipt of the notice dated 5.9.2006, even if we take that the amount was deposited under Section 27 of the Act, yet this amount deposited under Section 27 of the Act will not be a compliance of the legal notice dated 5.9.2006. Counsel for the petitioner was also not able to give this Court the specific date of deposit of arrears of rent under Section 27 of the Act, however, it is conceded that, that deposit has been made beyond a period of two months of receipt of the notice dated 5.9.2006.

10. The issue then arises is whether the deposit made under Section 27 of the Act can be taken as a deposit made pursuant to the final judgment dated 2.6.2010 read with Section 15(1) of the Act, and which requires deposit within a period of one month. Once again, this amount which is deposited under Section 27 of the Act is no doubt prior to passing of the judgment dated 2.6.2010, however, compliance of the judgment dated 2.6.2010 is by depositing of the arrears of Rs.4,800/- not in the prior proceedings under Section 27 of the Act but in the same Court which passed the judgment and decree under Section 14(1)(a) of the Act read with the simultaneous order under Section 15(1) of the Act or by directly making payment to the respondent/landlord. Since

admittedly the deposit which is made under Section 27 of the Act was not in the Court which passed the judgment in the eviction petition under Section 14(1)(a) of the Act, the deposit under Section 27 of the Act cannot be taken as a deposit complying with the order/judgment dated 2.6.2010. Therefore the Additional Rent Controller has rightly by the order dated 21.4.2012 refused to give benefit of Section 14(2) of the Act to the petitioner/tenant and has rightly decreed the eviction petition under Section 14(1)(a) of the Act and which order has been upheld by the Rent Control Tribunal by the impugned judgment dated 22.1.2013.

11. I would also like to note that since the first appeal which was filed before the Rent Control Tribunal was only against the judgment dated 21.4.2012 declining the benefit under Section 14(2) of the Act, the supplementary order dated 22.1.2013 dismissing the application of the petitioner/tenant to treat the appeal also as an appeal against the order dismissing the application under Order IX Rule 13 CPC was justified and therefore no interference is called for against the supplementary order dated 22.1.2013 declining to treat the main appeal filed under Section 38 of the Act also as an appeal against the order of the Additional Rent Controller dated 21.4.2012 dismissing the application under Order IX Rule 13 CPC.

12. Lastly and finally, I would like to note that the petitioner/tenant in this case has been completely negligent, and this Court cannot therefore give the benefit of Section 14(2) of the Act inasmuch as if the petitioner/tenant was to act *bonafidely*, then, at least within one month of filing of the application under Order IX Rule 13 CPC, the petitioner/tenant should have complied with the judgment dated 2.6.2010 and should have deposited the amount of arrears before the court of the Additional Rent Controller, however, the petitioner/tenant did not deposit that arrears of Rs.4,800/- even within one month of the application filed under Order IX Rule 13 CPC. In fact, the contumaciousness of the petitioner/tenant goes to the extent that even till the application under Order IX Rule 13 CPC was dismissed, the arrears of Rs.4,800/- was not deposited in the Court of the Additional Rent Controller. Therefore, I refuse to grant any indulgence to the petitioner to now deposit the amount of Rs.4,800/- pursuant to the judgments dated 2.6.2010/21.4.2012 which have decreed the petition under Section 14(1)(a) of the Act.

13. In view of the above, there is no merit in the petition, which is therefore dismissed, leaving the parties to bear their own costs.

SEPTEMBER 01, 2014
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VALMIKI J. MEHTA, J