

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

Reserved on: 24.02.2014
Date of Decision: 21.08.2014

+ CM (M) No.163 of 2013

HARCHARAN SINGH SETHI Petitioner

Through: Mr. B.S. Chaudhary &
Ms. Chitra Goswami, Advs.

versus

DARBARI LAL BATLA Respondent

Through: Mr. S.C. Singhal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition impugns the judgement & order dated 9.5.2012 and 15.1.2013 passed by the Additional Rent Controller and the Rent Control Tribunal respectively. An application had been moved by the respondent-landlord against the petitioner-tenant under Section 14(1)(a) & (j) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') seeking the payment of rent with respect to shop in property No.A-37, Ground Floor, Rajouri Garden, Delhi. The Trial Court vide order dated 16.8.2011, directed the tenant to pay or deposit the legally recoverable arrears of rent w.e.f. 1.9.2003 till December, 2003, @ Rs.1,330/- per month. The arrears were paid as directed and the tenant

continued to pay further rent till February 2012. However, the Trial Court was of the view that it being the tenant's first default he would get the protection of Section 14(2) of the Act.

2. However, subsequently there was a default in payment from March, 2012 onwards. The landlord sought eviction of the tenant for the second default. Accordingly on 9.5.2012, after hearing the arguments, under Section 14(2) of the Act, the Trial Court examined the report of the Naib Nazir and recorded that the tenant had complied with the modified order dated 16.8.2011 but had not paid the rent since March, 2012. There had conclusively been a default of the order passed under Section 15(1) of the Act from March, 2012, hence the tenant would not be entitled to the protection of Section 14(2) of the Act for the subsequent default. Accordingly, the Court directed the eviction of the tenant from the tenanted premises.
3. This eviction order was challenged by the tenant in appeal before the Rent Control Tribunal which result in the impugned order dated 15.1.2013. The Rent Controller was of the view that firstly the appeal was not supported by the certified copy of the impugned order dated 9.5.2012; no exemption from filing of the certified copy was granted; the applicaton for exemption from filing certified copy of the order was never pressed nor was any order obtained on it; the certified copy was filed only on 4.1.2013 hence the Court held that the appeal could be deemed to have been filed only on the said date by which time it was severely

barred by limitation, i.e., there had been unaccounted delay of seven (7) months.

4. On the merits of the matter, the Trial Court was of the view that the tenant was under two directions: i.e. payment of arrears of rent from 1.9.2003 till December 2003, which was duly paid; secondly the rent was required to be paid by 15th day of each succeeding month. The said order was passed under Section 15(1) of the Act. The rent was required to be paid for the duration of the tenancy. The Tribunal rejected the argument of the appellant that the rigours of payment of rent by the 15th day of each month was not applicable after the disposal of the main case on 16.8.2011, because the directions were for continued payment of rent till the subsistence of the tenancy. The Tribunal further rejected the appellant's argument that the rent deposited twice-over, for the month of December 2003, should have been adjusted against any subsequent default. The Tribunal distinguished the judgement relied upon by the appellant in **Sarwan Kumar Onkar Nath Vs. Subhash Kumar Agarawalla** **AIR 1987 SC 2302** on the ground that in the said case the tenant had paid two months' advance rent at the inception of the tenancy with the understanding that it could be set off/adjusted against the rent whenever necessary or required whereas in the present case the adjustment was being sought not for advance payment of rent at the inception of such tenancy but against the rent paid twice over for the month of December, 2003 by error.

There was no such understanding of adjusting it in future. The mistake ought to have been pointed out. The Tribunal felt that the tenant ought to have rectified his mistake earlier and ought to have sought this adjustment if he so desired. The Tribunal further took into consideration the case of **M/s. Aero Traders Pvt. Ltd. Vs. Ravinder Kumar Suri** AIR 2005 SC 15 relied upon by the learned counsel for the landlord which held that discretion under Section 15(7) of the Act connotes necessarily an act of judicial character. Insofar as the tenant had set up a false plea of having sent rent through cheques to the landlord, it was held to be a relevant fact for exercising discretion. The non-payment of the rent resulted in the Court not exercising the discretion in favour of the tenant. Accordingly, the appeal was rejected.

5. The learned counsel for the petitioner reiterates the same arguments as raised before the Tribunal and seeks quashing of the two orders impugned in this petition. In support of his contention he relied upon *C. Ronald & Anr. Vs. Union Territory of Andaman & Nicobar Islands* (2011) 12 SCC 428 to contend that the tenant would still have the protection of Section 14(2) of the Act. He relies upon para 7 of the aforesaid judgement, which reads as under:

“7. As observed by this Court in *Vemareddy Kumaraswamyreddy & Anr. vs. State of A.P.* JT 2006(2) 361 (vide para 17) where the words were clear, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In

Union of India & Anr. vs. Deoki Nandan Aggarwal 1992
Supp (1) SCC 323 (vide para 14), it was observed :

“It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there”.

6. The said judgement indeed makes it clear that where the words of statute are clear there is no scope for the court to innovate upon the statutory provisions. Section 14(2) of the Act reads as under:

“14. Protection of tenant against eviction. –

XXXX XXXX XXXX XXXX XXXX

(2) No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1) if the tenant makes payment or deposit as required by section 15:

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months.

7. The order under Section 15(1) of the Act was passed on 9.5.2012 because there was a default of the earlier order dated 16.8.2011 which directed the continued payment of rent by the 15th day of

each calendar month. The direction was clearly for the period for which the tenancy would subsist. It could not be anyone's case that for a subsequent default in payment of rent as directed by the Trial Court the landlord would need to take out yet another proceeding under Section 14(1)(a) read with Section 15(1) of the Act. There was clearly a default of the direction under Section 15(1) of the Act. The tenant had benefited from Section 14(2) in the earlier proceedings under Section 14(1)(a) which held on 16.08.2011 that the tenant had defaulted in payment of rent from 01.09.2003 to 31st December 2003, but since it was his first default he would not be evicted because of the aforesaid statutory protection. But the proviso to Section 14(2) clearly stipulates that, the second default would not be protected. In the present case there was a violation of the Court order too. Therefore, the protection under Section 14(2) of the Act would not be available to the tenant and the eviction order was rightly passed.

8. This Court finds no reason to interfere with the impugned orders dated 9.5.2012 & 15.1.2013. They do not suffer from any material irregularity. The reasons for and the conclusions arrived at are based on the record and are correct. There is no merit in the petition. Accordingly, it is dismissed.

AUGUST 21, 2014
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NAJMI WAZIRI, J.