

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

+ **C.M.(M) No.1305/2012**

% **01st September, 2014**

MAHA RANI Petitioner

Through: Mr.N.K.Jha, Advocate.

VERSUS

KAYUM KHAN ALIAS AYUB KHAN Respondent

Through: Mr.Siddharth Pandit with
Mr.Narender Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. Challenge by means of this petition under Article 227 of the Constitution of India is to the impugned order of the First Appellate Court dated 28.8.2012 by which the First Appellate Court hearing the appeal under Section 38 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') has condoned the delay in depositing the rent pursuant to the final judgment of the Additional Rent Controller dated 31.3.2009. The amount was to be deposited in terms of the final judgment dated 31.3.2009 within one month as per the law, but, the amount was paid to the landlord only on

12.1.2012 i.e after about two years and ten months. Thus the First Appellate Court has condoned the delay of about two years and ten months in complying with the directions for deposit made in the judgment dated 31.3.2009.

2. The facts of the case are that the petitioner/landlord filed a petition for eviction against the respondent/tenant under Section 14(1)(a) of the Delhi Rent Control Act, 1958 which pertains to eviction for non-payment of rent. In this petition, interim order dated 1.9.1999 under Section 15(1) of the Act for payment of admitted rent was passed @ Rs.600 per month as the respondent/tenant claimed that the rent was Rs.600 per month and not Rs.1815/- per month as was the case of the petitioner/landlord. The petitioner/landlord however succeeded at the final stage in proving the rate of rent @ Rs.1815/- per month and the rate of rent was held not to be Rs.600 per month as was contended by the respondent/tenant, and consequently when the final judgment was passed on 31.3.2009, the respondent/tenant was directed to deposit the difference of rent i.e the difference between Rs.600 and Rs.1815 per month. The interim order for payment of admitted rent @ Rs.600 per month under Section 15(1) of the Act was passed on 01.9.1999. The respondent/tenant therefore in terms of the final judgment dated

31.3.2009 had to pay the amount of approximately Rs.2,12,685/- within one month from 31.3.2009, but, this payment was made only on 12.1.2012.

3. The First Appellate Court has condoned the delay by observing that the delay was caused on account of respondent/tenant pursuing his legal remedies of first appeal and then a petition under Article 227 of the Constitution of India which was filed before this Court, and therefore the delay should be condoned. The First Appellate Court however simultaneously notes that there was no interim stay which was granted in favour of the respondent/tenant for not complying with the judgment of the Additional Rent Controller dated 31.3.2009, and which judgment directed deposit of the difference of the rent within one month from 31.3.2009.

4. The issue before the present Court is that whether the delay is entitled to be condoned, and that too a long delay of two years and ten months, merely because appeals are filed challenging the judgment of the Additional Rent Controller dated 31.3.2009.

5. It is now settled law that, no doubt, there can be condonation of delay beyond the period of one month of making of the deposit, however, the Supreme Court has simultaneously observed that condonation of delay is not automatic and justifiable reasons have to be given to condone the delay and

the Courts do not unnecessarily and liberally condone the delay in payment of rent, inasmuch as receipt of rent on time is the right of the landlord.

6. Learned counsel for the petitioner argues that mere filing of legal challenges to the judgment of the Additional Rent Controller dated 31.3.2009 by the respondent/tenant does not give a legal right to the respondent/tenant not to comply with the order dated 31.3.2013 once there are no interim orders passed by the higher Courts for staying operation of the judgment dated 31.3.2009. It is argued that filing of challenges to the judgment dated 31.3.2009 cannot give a justifiable reason for condonation of delay once the respondent/tenant had sought interim protection but was not granted interim stay of the judgment of the Additional Rent Controller dated 31.3.2009.

7. Learned counsel for the respondent/tenant on the contrary argued that the filing of legal challenges to the higher Courts give justifiable grounds for condonation of delay. It is also argued that this Court in exercise of powers under Article 227 of the Constitution of India will not interfere with the order of the First Appellate Court ordering condonation of delay. I may note that the First Appellate Court for condoning of the delay has relied upon an order passed by a learned Single Judge of this Court dated 20.12.2011 in

CM(M) No.1473/2011 titled as ***Kuldeep Singh Vs. Jagdish Chander Malhotra***. This order dated 20.12.2011 is referred to in para 5 of the impugned judgment, and which reads as under:-

“ Impugned order is the order dated 05.12.2011 which has endorsed the finding of the Additional Rent Controller (ARC) dated 01.10.2011 wherein the application filed by the tenant seeking enlargement of time to pay arrears of rent had not been granted to him. Record shows that on 29.01.2011 the ARC had directed the petitioner/tenant to pay the rent @ Rs.200/- per month from February 2004; further to pay the rent/arrears of rent from 03.6.2001 @ Rs.800/- per month within one month and had further observed that since this is a case of first default the petitioner/tenant is entitled to protection under Section 14(2) of the Delhi Rent Control Act only in case of compliance of the said order. Record further shows that on 18.02.2011 the petitioner had moved an application before the ARC along with a pay order of Rs.60,000/- as part arrears of rent for the period 03.6.2011 to 03.4.2011 @ Rs.800/- per month after adjusting the amount of the rent already stood deposited at Rs.200/- per month from February 2004 till February 2011; further prayer was to enlarge the time for a period of two months to pay the balance amount of Rs.17,600/-. However, this application was kept pending and was finally disposed of only on 01.10.2011; ARC had noted that no circumstance had been made out by the tenant for enlargement of time in depositing of the rent. In appeal the impugned judgment dated 05.12.2011 has endorsed this finding. Record shows that the balance amount of Rs.17,600/- was also prepared by way of a demand draft and the date of this draft is 25.4.2011. The vehement contention of the petitioner is that all the arrears of rent of Rs.77,600/- which was payable by her were prepared by way of two drafts i.e. of Rs.60,000/- dated 18.02.2011 and the balance amount of

Rs.17,600/- by way of draft dated 13.5.2011. This reflects upon the bonafide intent of the petitioner to pay the amount and impugned order rejecting his prayer for enlargement of time thus suffers from an illegality. The submissions made by the learned counsel for the petitioner are borne out from the record. Admittedly the two drafts i.e. one in the sum of Rs.60,000/- dated 18.02.2011 in the name of the landlord Jagdish Chander Malhotra and the second draft in the sum of Rs.17,600/- in name of the landlord Jagdishh Chander Malhotra are on record prima facie substantiating the intent of the tenant to clear all arrears; in these circumstances in view of the averments made in the application seeking enlargement of time wherein the petitioner/tenant had made a specific prayer that the landlord be directed to give him his account number in order that the amount may be deposited in his account which again reveals the intent of the petitioner to pay the said arrears; the impugned judgment holding otherwise suffers from an infirmity. This finding is accordingly set aside. Counsel for the petitioner states that all amount of rent up to date @ Rs.800/- have been cleared and to substantiate this submission photocopies of the demand drafts are on record. In view of the aforementioned submission the petitioner is now granted four days time i.e. up to 24.12.2011 to clear all arrears by tendering the same to the landlord; in case of non- acceptance the said amounts be deposited in the court of the concerned ARC.

Petitioner is disposed of.

Copy of this order be given dasti under signature of the court Master.”

8. In my opinion, the impugned judgment of the First Appellate Court is clearly perverse and illegal and is bound to be set aside for the reason that the same takes away the vested right which has accrued in favour of the

petitioner/landlord for eviction of the respondent/tenant on account of failure of the respondent/tenant in complying with the judgment of the Additional Rent Controller dated 31.3.2009 for depositing the difference in the amount of rent, and which was essentially an order to deposit the difference of amount of rent between Rs.600 per month and Rs.1815/- per month, within one month from 31.3.2009.

9. As already stated above, condonation of delay is not a matter of right and courts in cases of delay in depositing the rent under the Act are mandated to see that adequate reasons exist ie courts neither take a very strict nor a very liberal approach.

10. The First Appellate Court has in my opinion misdirected itself and committed a gross illegality in relying upon the order of the learned Single Judge of this Court dated 20.12.2011 passed in CM(M) No.1473/2011 because the facts in the case of ***Kuldeep Singh (supra)*** are clearly different from the facts of the present case. In CM(M) No.1473/2011, the amount was to be deposited within one month from 29.1.2011 and the tenant in that case had prepared the bank drafts with respect to the amount to be deposited on 18.2.2011 itself i.e within one month from 29.1.2011. Not only that, the tenant had moved an application in that case for the landlord to give his bank

account so that the bank drafts could be deposited, but, that application remained pending for some time and hence there was delay in deposit of about three months. Accordingly, in the facts of that case the delay caused was found to be not intentional, and therefore the learned Single Judge of this Court had rightly condoned the delay. However, in the present case, the delay is not only of just three months as was in the case in CM(M) No.1473/2011, but the delay in the present case is of a very large period of about two years and ten months. Mere filing of challenges to higher courts will not amount to automatic stay of operation of the judgment of the courts below so that the directions for deposit of rent should not be complied with. If I allow such a proposition to be accepted then the object of interim orders for staying operation of the impugned judgment by filing of an application would be defeated and mere filing of an appeal will amount to stay of the judgments of the courts below, but that is not the legal position. Once the judgment of the trial court remains operative and there is no stay of operation of that judgment, a tenant cannot claim automatic right of non-compliance to the directions contained in the judgment of the Additional Rent Controller dated 31.3.2009 merely on the ground of challenges having been laid in the higher Courts. A right to file a challenge in the higher courts

no doubt is statutory, however, stay of the operation of the trial court is not automatic and statutory, and the same depends upon the discretion of the higher Courts, and which admittedly were not exercised in favour of the respondent/tenant in the facts of the present case.

11. In view of the above, since filing of challenges to the higher Courts does not amount to automatic stay of the judgment of the Additional Rent Controller directing deposit of rent within one month, the First Appellate Court has committed a gross illegality and perversity in accepting the appeal and setting aside the judgment of the Additional Rent Controller decreeing the eviction petition by condoning the huge delay of about two years and ten months.

12. The present petition is therefore allowed and the order of the Additional Rent Controller dated 12.4.2012 will stand revived whereby the benefit of Section 14(2) of the Delhi Rent Control Act will not be granted to the respondent/tenant and eviction is ordered of the respondent/tenant from the tenanted premises being shop bearing no.5, Ground Floor, RZ-48, Village Nangloi Sayyed, New Delhi. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

SEPTEMBER 01, 2014/KA