

5
\$~A-

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

%

Date of decision: July 05, 2017

+ CM(M)209/2016

SURINDER BAJAJ & ANR.

...Petitioners

Through

Mr.J.C.Mahindroo, Adv.

Versus

SANTOSH AGGARWAL

...Respondent

Through

Mr.Ravi Shankar Garg, Adv.

CORAM:

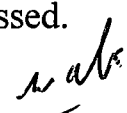
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

The facts and issues of the present case are identical to those of CM(M) 208/2016.

In view of the reasons noted in the order dated 05.07.2017 in the above said petition, the present petition also stands dismissed.

All pending applications, if any, also stand dismissed.


(JAYANT NATH)
JUDGE

JULY 05, 2017

\$~A-

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision: July 05, 2017

+

CM(M)208/2016

SATISH BANSAL

...Petitioner

Through

Mr.J.C.Mahindroo, Adv.

RENU AGGARWAL

...Respondent

Through

Mr.Ravi Shankar Garg, Adv.

CORAM:**HON'BLE MR. JUSTICE JAYANT NATH****JAYANT NATH, J. (ORAL)**

1. This petition under Article 227 of the Constitution of India is filed seeking to impugn the judgment passed by the Additional Rent Controller (hereinafter referred to as The ARC) dated 20.10.2012, the order passed by the SCJ-cum-RC dated 3.9.2013 and the order passed by The Rent Controller in the appeal dated 2.2.2016 by which an eviction order has been passed against the petitioner under section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as The DRC Act).
2. The respondent (landlord) filed an eviction petition against the petitioner under section 14(1)(a) and 14(1)(e) of the Delhi Rent Control Act. The impugned order has been passed under section 14(1)(a) of the DRC Act. It was averred in the petition that the respondent is the owner of shop bearing No.1 in the property bearing No. IX/6662, Nehru Gali, Gandhi Nagar, Delhi-110031. The respondent purchased the property on 3.9.2004 through registered sale deed. It is urged that the last payment of rent was made by the

7

petitioner on 18.9.2007 for the period 1.4.2005 till 31.3.2006 @ Rs.250/- per month. The tenant/petitioner is said to have stopped paying rent including payment of government taxes like house tax since 1.4.2006. A legal notice was sent on 26.6.2008 to the petitioner. On 14.7.2008 the petitioner sent a reply denying that the respondent is the owner of the tenanted property but admitted about the arrears. Hence, the petition was filed seeking eviction of the petitioner.

3. On 7.11.2009 the ARC noted that the relationship of landlord tenant, rate of rent and the period of arrears are admitted facts. Hence, it directed the petitioner under section 15(1) of the DRC Act to pay the rent dues @ Rs.250/- per month w.e.f. 1.4.2006 till date by depositing the calculated amount directly in the bank account of the respondent, particulars of which were to be furnished by the respondent. It was also directed that monthly rent of Rs.250/- per month shall be paid by the 15th of each succeeding month by depositing the same in the bank.

4. On 20.10.2012 the ARC recorded the examination in chief of the petitioner, Shri Satish Bansal, where he has admitted the relationship of landlord tenant between the parties, the rate of rent of Rs.250 per month and that he is in arrears of rent w.e.f. 1.4.2006. Holding that there is nothing on record to show that there is any default earlier on the part of the petitioner, the ARC granted benefit to the petitioner under section 14(2) of the Act. It held that in case the petitioner has complied with the order under section 15(1) of the DRC Act passed on 7.11.2009, there shall be no eviction of the petitioner.

5. On 3.9.2013 on an application being filed by the respondent under section 14(2) of the DRC Act the ARC noted that as per the records,

8

pursuant to the order dated 7.11.2009 the respondent had furnished particulars of the bank account on 7.1.2010. The petitioner thereafter deposited rent of Rs.11,250/- on 20.1.2010, Rs.6,000/- on 30.8.2011 and Rs.3,000/- on 24.4.2012. It was clear that the deposit of rent by the petitioner was not in compliance of the orders passed by the court on 07.11.2009. The ARC also noted that the petitioner has moved an application seeking condonation of delay in depositing the rent with the plea that the rent could not be deposited due to communication gap between the petitioner and the office of the counsel. The ARC did not accept the plea holding that the petitioner cannot take shelter behind the office of the counsel and claim that he was not apprised by the counsel to deposit the rent on a monthly basis and as such dismissed the application of the petitioner and passed an eviction order on 3.9.2013.

6. An appeal was filed by the petitioner under section 38 of the DRC Act. The Rent Controller noting the legal position held that the petitioner has failed to comply with the directions passed by the ARC under section 15(1) of the DRC Act vide order dated 7.11.2009. The Rent Controller rejected the submission of the appellant/petitioner that defaults after passing of the order under section 15(1) of the Act were not intentional or contemptuous or were due to wrong advice of the counsel for the petitioner. The order notes that there was delay in depositing of rent for several months. The appeal was thus dismissed.

7. I have heard learned counsel for the parties. Section 14(1)(a), 14(2), 15(1) and 15(7) of the DRC Act read as follows:-

9

14. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) That the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a landlord in the manner provided in section 106 of the Transfers of Property Act, 1882 (4 of 1882);

.....

14(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.

.....

15(1) When a tenant can get the benefit of protection against eviction.- (1) In every proceeding of the recovery of possession of any premises on the ground specified in clause (a) of the proviso to sub-section (1) of section 14, the Controller shall, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally

10

recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteen of each succeeding month, a sum equivalent to the rent at that rate

.....

15 (7) If a tenant fails to make payment or deposit as required by this section, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application.”

8. The petitioner has vehemently argued that relief under section 15(7) of the DRC Act has not been given to the petitioner. It is urged that it was on account of the default of the lawyer and hence the petitioner should not be penalized as he is an illiterate person. Reliance is placed on judgment of the Supreme Court in *Ram Murti vs. Bhola Nath and Another*, (1984) 3 SCC 111 to contend that the ARC has sufficient powers and discretion under section 15(7) of the Act not to strike out the defence of the tenant.

9. Learned counsel for the respondent has submitted that the petitioner filed the application for condonation of delay in compliance of the order of the court dated 07.11.2009 belatedly only at the stage of final arguments in August 2013. In fact the application for condonation of delay itself states that the said application is being filed on the oral directions of the court. He submits that such belated application for condonation of delay has been rightly rejected.

10. There is not much controversy on the facts. The relationship of landlord and tenant is admitted. The fact that there are arrears of rent @ Rs.250/- per month w.e.f. 1.4.2006 is admitted. On 7.11.2009 an order was

11

passed under section 15(1) of the Act directing the petitioner to pay the arrears of rent within one month and thereafter each month by the 15th of each succeeding month rent of Rs.250/- per month was to be deposited. Admittedly, needful has not been done. The only contention raised is that the ARC had powers under section 15(7) of the Act to condone the delay and the delay ought to have been condoned.

11. The Supreme Court in *Ram Murti vs. Bholu Nath and Another (supra)*, held as follows:-

“The narrow construction placed by the Full Bench of the Delhi High Court in *Delhi Cloth & General Milk Co. Ltd. v. Hem Chand* AIR (1972) Del. 275 on the powers of the Controller contained in Section 15(7) in the context of Section 14(2) does not appeal to reason. It is not inconceivable that the tenant might fail to comply with the requirements of Section 15(1) by the date line due to circumstances beyond his control. For instance, it might not be possible for the tenant to attend the Court to make the deposit on the last day if it is suddenly declared a holiday or on account of a serious accident to himself or his employee, or while going to the treasury he is waylaid, or is stricken with sudden illness, or held up on account of riots or civil commotion, or for that matter a clerk of his lawyer entrusted with the money, instead of punctually making the deposit commits breach of trust and disappears, or some other circumstances intervene which make it impossible for him for reasons beyond his control to physically make the deposit by the due date. There is no reason why the refusal of the Rent Controller to strike out the defence of the tenant under Section 15(7) in such circumstances should not enure to the benefit of the tenant for purposes Section 14(2)”

.....

11.....With respect, the observations in *Hem Chand's* case expressing the view that the Rent Controller has no power to extend the time prescribed in Section 15(1) cannot be

construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under Section 14(1)(a) without anything more due to the failure on his part to comply with the requirements of Section 15(1). The question would still remain as to the course to be adopted by the Rent Controller in such a situation in the context of Section 15(7) which confers on the Rent Controller a discretion not to strike out the defence of the tenant in the event of the contingency occurring, namely, failure on the part of the tenant to meet with the requirements of Section 15(1)."

12. A perusal of the application under section 15(1) of the DRC Act filed by the petitioner seeking condonation of delay in depositing the rent in terms of the order dated 7.11.2009 would show that the only ground mentioned is that delay in depositing the rent was caused due to a communication gap between the office of the counsel and the respondent. It is stated that in terms of the order of the ARC dated 03.09.2013 the respondent furnished the details of the bank account in the second week of January 2010 and the entire arrears as on that date were deposited in court. It is further urged that the delay took place thereafter due to no proper guidance and communication by the office of the counsel for the respondent.

13. In my opinion, the excuse put forth in not paying the rent regularly each month as directed by the ARC under section 15(1) of the Act inspires no confidence. The ARC and in the appeal the Rent Control Tribunal have exercised their jurisdiction and rejected the application for condonation of delay filed by the petitioner. The application was filed belatedly. In my opinion, there are no reasons to differ with the views of the two courts.

13
below. There is no merit in the present petition. Same is dismissed. All pending applications, if any, also stand dismissed.

W. A. N.

(JAYANT NATH)
JUDGE

JULY 05, 2017
N