

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

+ **CM(M) 645/2014 & CM APPL. 10883/2014 (Stay)**

% **Reserved on: 15th January, 2015**
Decided on: 30th April, 2015

ASHOK SHARMA Petitioner
Through: Mr. Vikas Gautam, Advocate.

versus

VIJAY KUMAR GUPTA Respondent
Through: Mr. G.P. Thareja, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The Petitioner filed a petition bearing No.10/2008 titled as 'Ashok Sharma vs. Vijay Kumar Gupta' on 18th November, 2008 under Section 14 (1) (a) read with Section 26 of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') for eviction of the Respondent on the ground of non-payment of rent in respect of a shop in premises bearing No.27/2, Shakti Nagar, Delhi-110007. In the eviction petition, it was stated that the Petitioner let out the tenanted premises to the Respondent on rent @Rs.363/- per month. Respondent was a continuous defaulter in payment of the rent and was in arrears of rent w.e.f. 1st October, 2005. Despite receiving the legal notice Respondent failed to pay the rent within two months of receiving the demand notice.

2. The Respondent/tenant filed written statement and admitted the relationship of landlord and tenant between the parties. He also admitted the service of notice but stated that no rent was due.

3. Upon hearing the parties, the learned ARC allowed the petition under Section 14 (1) (a) of the DRC Act vide its order dated 25th January, 2012. Since it was the first default by the Respondent, the matter was listed on 23rd February, 2012 for the purpose of considering the benefit under Section 14 (2) of the DRC Act and whether the Respondent/tenant had complied with the order dated 30th March, 2010 passed under Section 15 (1) DRC Act whereby the Respondent was directed to pay the arrears of admitted rent w.e.f. 1st November, 2005 within one month from the date of order and to keep on paying the monthly rent by the 15th of the succeeding month. As per the report of the Nazir the Respondent was late in depositing the rent for the month of May, 2010 and June, 2010. No interest as per Section 26 DRC Act was deposited. Further rent for the months of August, 2010, January, 2011, May, 2011 and August, 2011 and thereafter from 31st August, 2011 was not deposited. The learned ARC vide order dated 20th November, 2012 held that the Respondent had not complied with the order dated 30th March, 2010 passed under Section 15 (1) of the DRC Act and having committed more than three consecutive defaults in payment of rent, the Respondent was not entitled to the benefit under Section 14 (2) of the DRC Act and thus an eviction order was passed in favour of the Petitioner and against the Respondent/tenant.

4. The Respondent/tenant preferred the appeal under Section 38 of the DRC Act challenging the order dated 25th January, 2012 and 20th November, 2012. However, the Respondent/tenant restricted his appeal only to the order dated 20th November, 2012 which related to the benefit under Section 14 (2) of the DRC Act before the Rent Control Tribunal being No.113/2012 titled as '*Vijay Kumar Gupta vs. Ashok Sharma*'. The learned Rent Control

Tribunal vide impugned order dated 21st August, 2013 allowed the appeal and gave the benefit of Section 14 (2) of the DRC Act to the Respondent/tenant.

5. During the pendency of the proceedings before the ARC under Section 14 (1) (a) of the DRC Act, the Petitioner had filed another petition for eviction against the Respondent/tenant under Section 14 (1) (e) of the DRC Act claiming eviction on the ground of bona fide requirement. In the said petition leave to defend was declined to the Respondent and eviction order was passed on 23rd December, 2009, against which order the Respondent/tenant filed a revision petition before this Court. In RC Revision No. 47/2010 vide order dated 25th August, 2011 this Court on an application filed by the Petitioner/landlord directed the Respondent/tenant to pay charges for use and occupation @Rs.15,000/- per month from the date of eviction order till the pendency of the petition. The relevant portion of the order dated 25th August, 2011 reads as under: -

“Without going into a detailed enquiry as to what would be the present market rent of the premises in question and only considering the fact that the shop in question is located in Shakti Nagar which is a commercial area, the petitioner is directed, as a condition of stay of the execution of the impugned eviction order, to pay to the respondent-landlord charges for use and occupation of the shop in question @Rs.15,000/- per month from the date of impugned eviction order till the pendency of this petition. The arrears shall be cleared within a month and from September, 2011 onwards the aforesaid amount shall be paid to the respondent on or before 7th of each month. In case of default, the petitioner shall become liable to be evicted forthwith. The amount paid by the petitioner shall be subject to the final outcome of the revision petition and without prejudice to the rival contentions on the merits of

the case. Whether the payment which the petitioner-tenant would be making to the respondent pursuant to this order would be refunded or not in case of petitioner succeeding would be decided at the time of final hearing of the matter after hearing submissions from both the sides on this aspect also.”

6. On the facts as noted above the learned counsel for the Petitioner urges that even when there is a direction for payment of user charges, the tenant cannot desist from paying rent under Section 14 (1) (a) of the DRC Act and in case of default an eviction order has to follow. Relying upon M/s Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd., 2005 (1) SCC 705; Premanand Verma and another vs. Vimal Chand Jain, 59 (1995) DLT 515 and Narain Dass P. Godhwani vs. Nenu Mal (Now deceased) represented by his legal heirs, CM(M) No.722/2014 decided by this Court on 25th August, 2014 contends that security deposit or other charges to be deposited by the Respondent are different from rent to be paid and a direction by the High Court to pay the user charges does not absolve the tenant from depositing the rent before the learned ARC. The contention of the learned counsel for the Respondent/tenant that after the eviction order was passed the relationship of the landlord-tenant snaps is unwarranted as on a revision petition being filed the operation of the eviction order was stayed and hence the jural relationship of landlord-tenant continued and the Respondent was liable to pay the rent. Reliance is placed on Hasmat Rai and Anr. vs. Raghunath Prasad, AIR 1981 SC 1711. Even if the Respondent had some confusion in his mind as to whether the rent was to be deposited before the ARC or not he ought to have sought clarification by filing an application before the learned ARC.

7. It is further contended that in the appeal before the Rent Control Tribunal, the Respondent gave up the challenge to the order dated 25th January, 2012 thus the order under Section 14 (1) (a) of the DRC Act relating to the first default was final. On the second default occurring in payment of rent in May, 2010 and June, 2010, the Petitioner acquired a right for eviction of the premises on the ground of non-payment of rent. The subsequent order of the High Court dated 25th August, 2011 directing the Respondent to pay user charges will not put the clock back and hence the impugned order of the learned Rent Control Tribunal dated 21st August, 2013 be set aside and that of the learned ARC dated 20th November, 2012 be restored.

8. Learned counsel for the Respondent on the other hand contends that the issue with regard to the user charges and the landlord-tenant relationship has been set at rest by the Supreme Court in Atma Ram Properties (Supra). The Supreme Court held that a tenant having suffered a decree or order for eviction may continue its fight before the superior forum but on the termination of the proceedings and the decree or order of eviction first passed having been maintained the tenancy would stand terminated with effect from the date of the decree passed by the lower forum and hence the tenancy would be deemed to have come to an end with effect from the date of order of eviction and the tenant would become an unauthorized occupant. Further the contractual rent having not been specifically directed the user charges would include the rent and thus the Respondent/tenant was not liable to pay the same. Relying upon State of Maharashtra and another vs. M/s Super Max International Pvt. Ltd. and others, AIR 2010 SC 722 it is stated that in case the eviction order is set aside in revision then the tenant has to be

restored to the status quo ante possession and all amounts in excess of contractual rent are required to be refunded to the tenant.

9. In the light of the background as noted above, the following issues arise for consideration:

- a. Whether the Respondent/tenant was liable to pay the rent over and above the user charges as directed by this Court before the learned ARC in compliance of its order dated 30th March, 2010.
- b. Whether the petitioner is entitled to a decree of eviction.

10. In Atma Ram Properties (supra) the Supreme Court decided the following two issues:

“(i) In respect of premises enjoying the protection of rent control legislation, when does the tenancy terminate; and

(ii) Upto what point of time the tenant is liable to pay rent at the contractual rate and when does he become liable to pay to the landlord compensation for use and occupation of the tenancy premises unbound by the contractual rate of rent?

11. The Supreme Court held that once a tenant suffers a decree or order for eviction he may continue his fight before the superior forum but on the termination of the proceedings and the decree or order of eviction first passed having been maintained, the tenancy would stand terminated with effect from the date of the decree passed by the lower forum. In the case of premises governed by Rent Control Legislation, the decree of eviction on being affirmed, would be determinative of the date of termination of tenancy and the decree of affirmation passed by the superior Forum at any subsequent stage or date, would not, by reference to the doctrine of merger

have the effect of postponing the date of termination of tenancy. Reiterating the decision in Smt. Chander Kali Bai and others vs. Shri Jagdish Singh Thakur and another, 1977 (4) SCC 402 it was held that the landlord-tenant relationship having suffered an eviction order, the tenancy would be deemed to have come to an end with effect from that date and he shall become an unauthorized occupant/tenant from that date.

12. Regarding the second issue the Supreme Court held that with effect from the date of termination of the tenancy, that is, passing of decree for eviction the tenant is liable to pay mesne profit or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceeding the date of the decree. It was thus held that after the passing of the eviction order the tenant is not required to pay rent but the user charges.

13. As noted above, an eviction order was passed against the tenant/Respondent on 23rd December, 2009 and vide order dated 25th August, 2011 this Court in RC. Revision No. 47/2010 directed the Respondent/tenant to pay the charges for the use and occupation @ Rs.15,000/- per month from the date of eviction order till the pendency of the petition. The order dated 23rd December, 2009 was set aside by this Court on 23rd January, 2012 and the Respondent/Tenant in the meantime paid the user charges as directed by this Court. Thus from 23rd December, 2009 the landlord/tenant relationship having snapped the Respondent/tenant was not required to pay at the rate of admitted rent but beyond it as user charges, till it was set aside by this Court.

14. The learned Rent Control Tribunal referring to the decision in Hasmat Rai (*supra*) held that on the revision petition being filed the proceedings continued as the appeal is a continuation of the trial. This finding of learned Tribunal is contrary to the Constitution Bench decision in Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh, AIR 2014 (SC) 3708 the Supreme Court while holding that a revision is not a continuation of the suit observed as under:

“25. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the 'appellate jurisdiction' and 'revisional jurisdiction' is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice-versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is co-extensive with that of the trial court. Ordinarily, appellate jurisdiction involves re-hearing on facts and law but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of revisional court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the tribunal/appellate authority, the decision of the revisional court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.”

15. Though finding of the learned Tribunal to the extent that the revision was a continuation of trial was incorrect, however it rightly came to the conclusion that there was no default in payment as the respondent paid far more than the agreed rent. The defaults as noted by the learned ARC were of the period when the matter was pending before this Court in revision petition against the eviction order under Section 14 (1) (e) of the DRC Act. Admittedly the Respondent/tenant paid user charges which were higher than the agreed rent as per the order of this Court. The tenant was not obliged to pay the rent over and above the user charges during this period unless the order of the Court directs the user charges in addition to the rent. Hence I find no illegality in the impugned order passed by the learned Appellate Court allowing the appeal filed by the Respondent/Tenant holding that there was no default in deposit of rent.

16. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 30, 2015
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