

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

**+ CM(M) 1022/2013 & CMs. 15331/2013, 19607/2013**

**%**

Reserved on: 19<sup>th</sup> March, 2015  
Decided on: April 20 , 2015

**MOHD IDRIS**

**..... Petitioner**

Through **Mr. Javed Ahmad, Adv.**

**versus**

**SADAT ALI KHAN**

**..... Respondent**

Through **Mr. Krishan Kumar, Adv.**

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J.**

1. The respondent filed an eviction petition against the petitioner under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short the DRC Act) alleging that the petitioner was let out shop bearing No. 11/1, Ground floor, part of property No. A-10/1, Gali No.11 Agarbatti Wali, Chauhan Nagar, Jaffrabad (in short the tenanted premises) at a monthly rent of ₹300/- vide rent agreement dated 5<sup>th</sup> April, 2002 with a security deposit of ₹2 lakhs. The rent was later on increased to ₹330/- and thereafter ₹363/-. It is stated that the petitioner is a regular defaulter in payment of rent and had not paid arrears of rent with effect from 1<sup>st</sup> March, 2009.

2. After the parties led evidence vide order dated 28<sup>th</sup> January, 2013 the learned ARC passed order under Section 15(1) DRC Act directing the

petitioner to pay arrears of rent with effect from 1<sup>st</sup> March, 2009 @ ₹363/- per month and to continue to pay or deposit rent @ ₹363/- per month as directed. Matter was listed for consideration of the benefit under Section 14(2) of the DRC Act and vide order dated 30<sup>th</sup> March, 2013 the learned ARC noted that on 30<sup>th</sup> March, 2011 the petitioner was directed to pay arrears of rent @ ₹363/- per month from 1<sup>st</sup> March, 2009 and he was further directed to pay the future rent month by month by 15<sup>th</sup> day of each calendar month. As per the report of the Nazir the respondent deposited ₹9438/- as rent for the period with effect from 1<sup>st</sup> March, 2009 to 30<sup>th</sup> April, 2011 on 2<sup>nd</sup> May, 2011. The petitioner further deposited ₹363/- on 20<sup>th</sup> May, 2011 and no further amount was deposited. On perusing the defaults by the petitioner despite order dated 30<sup>th</sup> March, 2011 and that the order under Section 15(1) has already been passed against the petitioner on 28<sup>th</sup> January, 2013, the petitioner having failed to assign any reason for the defaults, benefit under Section 14(2) of DRC Act was rejected and eviction order was passed in respect of tenanted premises.

3. In appeal the learned District Judge also came to the conclusion that in the absence of any rent receipt produced the contention of the petitioner that rent stood paid till September, 2010 remained uncorroborated whereas rent was actually paid till February, 2009. The learned District Judge held that the security deposit was not liable to be adjusted at interim stages when notice of demand of arrears was issued unless there was a stipulation between the parties to the contrary and the rent having not been deposited after the first order under Section 15(1) DRC Act the eviction order was rightly passed on 30<sup>th</sup> March, 2013.

4. Learned counsel for the respondent/landlord at the outset states that the possession of premises has been taken over in execution of the decree as the present petition was filed belatedly. He further states that in view of the repeated defaults of the petitioner, the learned ARC rightly passed the eviction order which was upheld by the learned District Judge. The defaults pointed out by the respondent are as under:

| S.No. | Rent due for month | Payment Amount | Payment made on |
|-------|--------------------|----------------|-----------------|
| 1     | June, 2011         | 365/-          | 14.6.2011       |
| 2     | July, 2011         | 365/-          | 16.7.2011       |
| 3     | August, 2011       | 730/-          | 16.8.2011       |
| 4     | September, 2011    | ---            | ---             |
| 5     | October, 2011      | ---            | ---             |
| 6     | November, 2011     | ---            | ---             |
| 7     | December, 2011     | 1100/-         | 16.12.2011      |
| 8     | January, 2012      | ---            | ---             |
| 9     | February, 2012     | ---            | ---             |
| 10    | March, 2012        | ---            | ---             |
| 11    | April, 2012        | ---            | ---             |
| 12    | May, 2012          | 1100/-         | 8.5.2012        |
| 13    | June, 2012         | ---            | ---             |
| 14    | July, 2012         | ---            | ---             |
| 15    | August, 2012       | ---            | ---             |
| 16    | September, 2012    | ---            | ---             |
| 17    | October, 2012      | 1500/-         | 12.10.2012      |
| 18    | November, 2012     | ---            | ---             |
| 19    | December, 2012     | ---            | ---             |
| 20    | January, 2013      | 1050/-         | 17.1.2013       |
| 21    | February, 2013     | 730/-          |                 |
|       | Total              | 6940/-         |                 |

“Amount due w.e.f. June, 2011 to Feb.2013 for 21 months @ ₹363/- = 7623/- but the petitioner deposited only ₹6940/- which is less ₹683/- from the amount due and outstanding. For the period w.e.f. 1.3.2009 till 28.2.2013 total 48 months, out of which 27 month rent w.e.f. 1.3.2009 till 31.5.2011 deposited in

Court and thereafter rent deposited in bank. There is continuous default since the date of order.”

5. Learned counsel for the respondent further states that the delayed payments were made without any application seeking condonation of delay and without any interest as required to be paid under Section 26 of the DRC Act.

6. The only issue urged before this Court by learned counsel for the petitioner is that while passing an eviction order the learned ARC should have seen subsequent defaults i.e. defaults after the order under Section 15(1) DRC Act was passed and there being only one default thereafter there was sufficient power to condone the delay and extend the time. Reliance is placed on Ram Murti Vs. Bhola Nath & Anr. AIR 1984 SC 1392.

7. In Ram Murti (supra) the Supreme Court held that the Rent Controller has the power to condone the defaults on the part of the tenant in making payment or deposit of future rent or to extend time for such payment or deposit. Under Section 15(1) DRC Act where the failure of the tenant to make such payment or deposit was due to circumstances beyond his control, the failure of the tenant therefore to make such payment or deposit would not entitle the landlord straightway to a decree for eviction under Section 14(1)(a) of the DRC Act. It was held that even if the defence of the tenant is not struck out under Section 15(7) on a subsequent default the tenant must still be visited with the punishment of being deprived of the protection under Section 14(2). It was further held that if the defence was not struck out under Section 15(7) DRC Act it means that the tenant has still defence open

to him under the Act and he has a right to claim protection under Section 14(2), however when the tenant commits consecutive defaults with respect to future rents an eviction order is to follow.

8. This Court considering the various decisions of the Supreme Court in Ram Parkash Tewari Vs. Suraj Bhan Yadav 90 (2001) DLT 236 held:

“16. The relevant provisions of the Act indicate that if a tenant defaults in the payment of rent, the landlord is obliged to issue a notice demanding rent from him. This is as per Clause (a) of the proviso to Section 14(1) of the Act. If the notice of demand is not complied with, then the landlord may institute an eviction petition. If need be, the learned Controller may then pass an order under the provisions of Section 15 of the Act directing the tenant to deposit the arrears of rent and to deposit future rent month by month. The question is: what happens if the tenant does not comply with an order passed under Section 15 of the Act?

17. Sub-sections (1), (3) and (7) of Section 15 of the Act are relevant and they read as follows:

“15. When a tenant can get the benefit of protection against eviction—

(1) In every proceeding for 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 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 fifteenth of each succeeding month, a sum equivalent to the rent at that rate.

(2) xxxxxxxxx

(3) If, in any proceeding referred to in Sub-section (1) or Sub-section (2), there is any dispute as to the amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of the first hearing of the proceeding, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of Sub-section (1) or Subsection (2), as the case may be, until the standard rent in relation thereto is fixed having regard to the provisions of this Act, and the amount of arrears, if any, calculated on the basis of the standard rent shall be paid or deposited by the tenant within one month of the date on which the standard rent is fixed or such further time as the Controller may allow in this behalf.

(4) to (6) xxx xxx xxx

(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.”

18. To answer the question posed above, four decisions of the Supreme Court were cited before me. These decisions are:

- (i) *Hem Chand, Etc. etc. v. The Delhi Cloth & General Mills Co. Ltd., Etc. etc.*, (1977) 3 SCC 483 : AIR 1977 SC 1986;
- (ii) *Shyamcharan Sharma v. Dharamdas*, (1980) 2 SCC 151 : AIR 1980 SC 587;
- (iii) *Ram Murti v. Bhola Nath*, (1984) 3 SCC 111 : AIR 1984 SC 1392;
- (iv) *Subhash Mehta v. Dr. S.P. Choudhary (dead) by L.Rs.*, (1990) 2 SCC 38 : AIR 1990 SC 1009.

19. Insofar as *Hem Chand* is concerned, it was held in *Ram Murti* that that decision “.....although not expressly overruled, cannot stand with the subsequent decision in *Shyamcharan's case*.....”. Consequently, it may not be appropriate to rely on *Hem Chand*. It must, however, be mentioned that *Hem Chand* was cited before me only for the purposes of showing the development of the law.

20. Since *Shyamcharan* was diametrically opposed to *Hem Chand*, it may be profitable to refer to *Ram Murti* which resolves the controversy between the two conflicting decisions.

21. Insofar as *Ram Murti* is concerned, it may be worthwhile to read what the Supreme Court had to say. In paragraph 16 of the Report the Supreme Court stated “.....if the defence is not to be struck out under Section 15(7) it means that the tenant has still the defences open to him under the Act. In the premises, the conclusion is irresistible that he has the right to claim protection under Section 14(2).” Further in the same paragraph it was held that “If the Rent Controller has the discretion under Section 15(7) not to strike out the defence of the tenant, he necessarily has the power to extend the time for payment of future rent under Section 15(1) where the failure of the tenant to make such payment or deposit was due to circumstances beyond his control.”

22. It may be mentioned that the view expressed in *Ram Murti* was affirmed by the Supreme Court in *Kamla Devi v. Vasdev*, (1995) 1 SCC 356 : AIR 1995 SC 985. Paragraph 23 of the Report is relevant and this reads as under:

“We are unable to uphold the contention of the appellant that the case of *Ram Murti v. Bhola Nath*, (1984) 3 SCC 111: AIR 1984 SC 1392, was wrongly decided and reliance was wrongly placed in that case on the decision of a Bench of three Judges of this Court in the case of *Shyamcharan Sharma v. Dharamdas*, (1980) 2 SCC 151: AIR 1980 SC 587. In our view, Sub-section (7) of Section 15 of the Delhi Rent Control Act, 1958 gives a discretion to the Rent Controller and does not contain a mandatory provision for striking out the defence of the tenant against eviction. The Rent Controller may or may not pass an order striking out the defence. The exercise of this discretion will depend upon the facts and circumstances of each case. If the Rent Controller is of the view that in the facts of a particular case the time to make payment or deposit pursuant to an order passed under Sub-section (1) of Section 15 should be extended, he may do so by passing a suitable order. Similarly, if he is not satisfied about the case made out by the tenant, he may order the defence against eviction to be struck

out. But, the power to strike out the defence against eviction is discretionary and must not be mechanically exercised without any application of mind to the facts of the case.”

23. The fourth decision, that is, *Subhash Mehta* was decided on its own peculiar facts as is clear from a reading of paragraph 7 of the Report.

24. The position, as it emerges from a reading of the various provisions of the Act and the interpretation given to them by the Supreme Court is this: if a tenant complies with an order passed under Section 15(1) of the Act then, of course, he can contest the eviction petition by raising all his defences. If a tenant does not comply with an order passed under Section 15(1) of the Act, then the only option available to the landlord is to move an application under Section 15(7) of the Act to have the defence of the tenant struck off.

25. When an application under Section 15(7) of the Act is made by the landlord, the learned Controller has only two options available to him. The learned Controller may either dismiss the application or allow it. If the learned Controller dismisses the application then, as held in *Ram Murti*, the tenant can raise all defences and he has the right to claim the benefit under Section 14(2) of the Act, if he does not succeed.

26. I am really concerned with the second option, namely, when the learned Controller allows an application filed under Section 15(7) of the Act and strikes out the defence of the tenant.

27. In such a situation, it is quite obvious that the order striking out the defence of the tenant is passed because of his failure to comply with an order passed under Section 15 of the Act. There is a further consequence of not complying with an order passed under Section 15 of the Act. This is mentioned in Section 14(2) of the Act.

28. Section 14(2) of the Act provides that an order for recovery of possession cannot be passed “if the tenant makes payment or deposit as required by Section 15”. In other words, a tenant is entitled to claim the benefit of Section 14(2) of the Act if he complies with an order passed under Section 15 of the Act. This is clear from a plain reading of Section 14(2) of the

Act. Conversely, and if I may use a cricketing term, a “reverse sweep” of this would mean that if a tenant fails to pay or deposit rent as required by Section 15, an order for recovery of possession can be passed against him.

29. According to learned Counsel for the appellant, a tenant is entitled to claim the benefit of Section 14(2) of the Act (regardless of his conduct) in the case of a first default. Reliance was placed on paragraph 17 of *Ram Murti*.

30. For the purposes of easy reference, paragraph 17 of *Ram Murti* is reproduced below:

“The further contention advanced by learned Counsel for the respondents that in a case of consecutive defaults the proviso to Section 14(2) is attracted, cannot be accepted for obvious reasons. On a plain construction, it provides that no tenant shall be entitled to the benefit under Section 14(2) if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent for that premises for three consecutive months. On a plain construction, the proviso is attracted only in a case where the tenant has been saved from eviction in an earlier proceeding for eviction before the Rent Controller under Section 14(1)(e) of the Act *i.e.* the tenant must have enjoyed the benefit of Section 14(2) in a previously instituted proceeding.”

31. Learned Counsel for the appellant contended that the last sentence of this paragraph makes it clear that a tenant can be denied the benefit of the proviso to Section 14(2) of the Act only if he has already availed its benefit in an earlier proceeding.

32. I am afraid that there is a bit of a mix-up in understanding what the Supreme Court has decided. Of course, the benefit of Section 14(2) of the Act can be availed of by a tenant only once. That is what Section 14(2) of the Act says and that is what the Supreme Court says.

33. It is true that the Supreme Court has used the expressions “in an earlier proceeding for eviction” and “in a previously instituted proceeding.” However, these expressions have to be understood in the context in which they are used, namely, in the case of a tenant making consecutive defaults in paying or

depositing future rent as required (in that case) under Section 15(1) of the Act. The context was not of disobedience of an order passed under Section 15 of the Act.

34. Before me, the question is one of disobedience of an order passed under Section 15(1) of the Act. The question is whether a tenant can avail the benefit of Section 14(2) of the Act if he fails to comply with an order passed under Section 15 of the Act. In other words, the question is not of availing the benefit of Section 14(2) of the Act for a second time: the question is of availing the benefit of Section 14(2) of the Act for the first time if there is non-compliance with an order passed under Section 15 of the Act.

35. The answer to this question, as per my analysis above, is that if a tenant does not comply with an order passed under Section 15 of the Act, and if his defence is struck out under the provisions of Section 15(7) of the Act, then he is not entitled to the benefit of Section 14(2) of the Act, even in the case of a first default. The reason is the use of the words “if the tenant makes payment or deposit as required by Section 15” occurring in Section 14(2) of the Act. In other words, the benefit of Section 14(2) can be claimed by a tenant only if he meets its pre-condition, which is compliance with an order under Section 15 of the Act.”

9. A perusal of the chart as placed above would show that rent was not paid on month to month basis despite order under Section 15(1) DRC Act and there were repeated defaults in payments of rents and consolidated amounts were paid after a gap of 3-4 months that too without seeking condonation of delay and without any interest as envisaged by Section 26 of the DRC Act. Consequently, I find no error in the impugned order of the learned ARC and the learned District Judge declining to grant benefit to the petitioner under Section 14(2) of the DRC Act and passing the eviction

order. The possession of the premises has already been taken over by the respondent.

10. Petition and applications are dismissed.

**(MUKTA GUPTA)**  
**JUDGE**

**APRIL 20, 2015**  
**‘ga’**