

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

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Reserved on: 13th February, 2015
Decided on: 3rd March, 2015

+ **CM(M) 796/2014**

SMT. MEENA SHARMA Petitioner
Through: Mr. N.N.Anand, Advocate.

versus

SHRI RAJIV KUMAR Respondent
Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Rakesh Dudeja and Mr. Aman
Bhalla, Advocates.

+ **CM(M) 797/2014**

SMT. MEENA SHARMA Petitioner
Through: Mr. N.N.Anand, Advocate.

versus

SHRI DHARAM PAL & ANR Respondents
Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Rakesh Dudeja and Mr. Aman
Bhalla, Advocates.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The petitioner filed a petition against Rajiv Kumar and another petition against Dharam Pal and Bharat Bhushan for eviction under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short the DRC Act) for

eviction of the tenants for non-payment of rent along with an application under Section 15(1) DRC Act.

2. Rajiv Kumar is the son of Dharam Pal. Tenanted premises comprise of two rooms in property bearing No.IX/6933, Prem Gali, Gandhi Nagar one being let out to Rajiv Kumar at a monthly rent of ₹300/- and the other to Dharam Pal and Bharat Bhushan other son of Dharam Pal at a monthly rent of ₹400/- excluding electricity and water charges for residential purposes. Respondents were proceeded ex-parte and the petitioner led her ex-parte evidence. She exhibited the site-plan Ex.PW-1/1, legal notice dated 24th June, 2005 Ex.PW-1/2, postal receipts Ex.PW-1/3 and PW-1/4 respectively, certificate of posting Ex.PW-1/5, two letters dated 16th September, 2005 and 20th September, 2005 as Ex.PW-1/6 and PW-1/7, the reply from the postal department Ex.PW-1/8 and rent receipt Ex.PW-1/9. From the evidence on record the learned ARC came to the conclusion that the petitioner has been able to establish landlord tenant relationship and there was definitely arrears of rent on the date of service of legal notice and despite service of notice, the respondents have not made the payments of arrears of rent within two months of the receipt of notice. Vide the identical orders dated 15th September, 2006 the learned ARC in the two petitions held that the petitioner is entitled to a decree of eviction subject to the provisions of Section 14(2) DRC Act. The Court passed orders under Section 15(1) DRC Act directing the respondent to pay the petitioner or deposit in the Court the entire arrears of rent with effect from September, 2003 within a period of one month from the date of order along with interest @ 15% per annum. Since the respondents were ex-parte a copy of the judgment was directed to

be sent to them within three days through registered post as well as UPC for information.

3. The respondents received the order on 3rd October, 2006 and entered appearance before the Court on 19th October, 2006 the date fixed by the learned Trial Court for consideration of the entitlement of the respondents to the benefit under Section 14(2) DRC Act. On the said date the respondents neither deposited the rent nor moved an application for condonation of delay, however an application for deposit of rent was filed by the respondents on 28th October, 2006. In the said application the respondent stated that judgment was served on them on 3rd October, 2006 and thus they were prejudiced in not-complying with the order. It was further stated that in compliance of the order Rajiv Kumar along with Suresh Trehan went to the house of the petitioner on 9th October, 2006 with ₹40,000/- to pay rent and the interest as directed in Suits No.211/2005 and 212/2005 but it was disclosed that the petitioner was away to Bangalore to meet her daughter who was studying there and that she would come to Delhi only a day prior to Diwali. Again on 23rd October, 2006 Rajiv Kumar along with Pankaj Sukhija went to the house of Petitioner where they met her husband who stated that his wife had gone to Punjab in connection with the death and will come back later and thus they sought permission to deposit the rent with the Court. Vide order dated 30th October, 2006 the application of the respondents dated 28th October, 2006 was allowed without prejudice to the rights of the petitioner.

4. Thereafter the respondents filed an application under Order IX Rule 13 CPC for setting aside the order dated 5th September, 2006 which

application was withdrawn on 25th May, 2013 by the respondents. Thus, the order qua the first default became final. Since the matter was still pending consideration for the entitlement of the benefit of the respondents under Section 14(2) of the DRC Act the petitioner filed an application under Sections 14(1)(a), 14(2), 15(7), 25 and 26 of the DRC Act read with 151 CPC praying that the defence of the respondents be struck off. In the said application besides narrating what had transpired in the eviction petitions filed by the petitioner being Eviction Nos. 211/2015 and 212/2015 the petitioner stated that the respondents have been not complying with the provisions of Section 26 of the DRC Act. The respondents neither paid subsequent rent nor interest @ 15% on the delayed payments. Thus various defaults from November 2007 to November 2011 were enlisted in Paras 11 to 17 of the application. In Para 10 of the application it was stated that neither the respondents complied with payment of rent by 15th day of the month next following the month for which it was payable, nor paid 15% interest per annum on delayed payment and deposited the rent at their own sweet will under Section 27 of the DRC Act. A reply to this application was filed by the respondent wherein in Para 10 of the application was not at all replied. Even in relation to Paras 11 to 16 the following chart was given giving details of the payment of monthly rent:

DR. No.	Period	Rent	Deposit date
132/07	Nov/06 to Jan/07	900	21/02/07
312/07	Feb/07 to Mar/07	600	26/04/07
447/07	Apr/07 to May/07	600	05/06/07
613/07	June/07 to July/07	600	10/08/07
742/07	August/07 to Sep/07	600	01/10/07

883/07	Oct/07 to Nov/07	600	10/12/07
65/07	Dec/07 to Jan/08	600	01/02/08
215/08	Feb/08 to Mar/08	600	04/04/08
371/08	Apr/08 to May/08	600	05/06/08
520/08	June/08 to July/08	600	27/08/08
699/08	Aug/08 to Sep/08	600	22/10/08
1025/08	Oct/08 to Nov/08	600	24/12/08
34/09	Dec/08 to Jan/09	600	03/02/09
152/09	Feb/09 to Mar/09	600	27/03/09
284/09	Apr/09 to Jun/09	900	02/06/09
454/09	July/09 to Sep/09	900	17/09/09
676/09	Oct/09 to Dec/09	900	19/12/09
388/10	Jan/10 to June/10	1894	07/07/10
591/10	July/10 to Sep/10	925	09/09/10

80/10	Oct/10 to Dec/10	900	21/12/10
30/11	Jan/11 to Feb/11	600	25/01/11
58/11	March/11 to Apr/11	600	10/03/11
94/11	May/11 to July/11	900	09/6/11

113/11	Aug/11 to Sep/11	600	07/09/11
465/11	Oct/11 to Dec/11	900	20/10/11
19/12	Jan/12 to March/12	900	24/01/12
114/12	Apr/12 to June/12	900	25/04/12
186/12	July/12 to Sep/12	900	23/07/12
349/12	Oct/12 to Dec/12	900	09/11/12
43/13	Jan/13 to March/13	900	22/01/13

26/13	Apr/13 to June/13	900	16/04/13
260/13	July/13 to Sept/13	900	16/07/13

5. Though applications were filed seeking condonation of delay in deposit of future rent under Section 27 of the DRC Act at the final stage, no application seeking condonation of delay was filed for late deposit of arrears of rent under Section 15(1) DRC Act. Eviction petition and the application of the petitioner was finally decided vide order dated 7th September, 2013. The Court noted that the matter was pending consideration on the aspect of benefit to the respondent from eviction orders under Section 14(2) DRC Act in which the respondent was proceeded ex-parte and the petition was disposed of on 5th September, 2006 where an order under Section 15(1) DRC Act was passed directing the respondents to pay to the petitioner or deposit in the Court the entire arrears of rent with effect from September 2003 within a period of one month from the date of order along with interest @ 15% per annum. The Court further noted that by way of order dated 5th September, 2006 the respondent was not directed to pay the future rent but only directed to deposit the arrears of rent and when the respondents were made aware of the order on 3rd October, 2006 they approached the Court on 28th October, 2006 with a plea to deposit the arrears of rent. There being no mala-fide in the conduct of the respondent the delay in compliance of the order dated 5th September, 2006 was condoned. Thus the learned ARC did not consider the plea of the petitioner in the application about the non-payment of rent in time after the orders dated 5th September, 2006 was passed and observed that the petitioner may take legal remedies available to him in respect of default of respondent in the future rent as the same was not

relevant for the entitlement of the respondent under Section 14(2) DRC Act. By order dated 5th September, 2006 the Court only found first default of the respondent and the said arrears of rent had been deposited by the respondent and hence the respondent were entitled to the benefit of eviction orders under Section 14(2) DRC Act.

6. The appeals filed before the learned Rent Controller being RCA 57/13 and RCA 58/13 were dismissed by a common impugned order dated 24th July, 2014. The learned Tribunal again did not consider the future defaults and held that vide order dated 5th September, 2006 the learned ARC had only directed for deposit of arrears of rent and hence the learned ARC rightly condoned the delay in filing the arrears of rent and no directions there being on future rent there was no illegality in the orders passed by the learned ARC. Hence the appeals were dismissed.

7. The short issue in the present petitions is that in the absence of an order under Section 15(1) DRC Act directing payment of future rent, whether the Court was not required to consider future defaults in view of provision under Section 26 of the DRC Act.

8. Learned counsel for the petitioner contends that the order dated 5th June, 2006 condoning the delay without any application seeking condonation of delay was an illegal order and further illegality was committed by the impugned orders of the learned ARC dated 7th September, 2013 and Rent Controller dated 24th July, 2014 when they did not consider the subsequent defaults made. Even if there was no direction by the Court to pay future rents the provision of Section 26 DRC Act was applicable and any delay in deposition of the money beyond 15th day of the proceeding month would

have given rise to a cause of action in favour of the petitioners amounting to subsequent defaults. Reliance is placed on Shanti Prasad Jain (D) Through Lrs. Vs. Prakash Narain Mathur 158 (2009) DLT 483(SC); Sanjay Kumar Saxena Vs. Smt. Meeta Govel 114 (2004) DLT 710; Ram Prakash Tewari Vs. Suraj Bhan Yadav 90 (2001) DLT 236 and Shri Manohar Lal (deceased) through LRs Vs. Prem Nath Gera (deceased) through LRs. CM(M) 638/2011 decided by this Court on 24th May, 2011.

9. While dealing with a similar issue this Court in Ram Parkash Tewari Vs. Suraj Bhan Yadav 90 (2001) DLT 236 considered the provisions under Section 14(1)(a), 14(2) and 15(7) of the DRC Act and held that:

“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.”

10. In Ram Murti Vs. Bhola Nath & Anr. 26 (1984) DLT 91 (SC) the Supreme Court with respect to benefit of 14(2) of DRC Act held:

“17. The further contention advanced by learned counsel for the respondents that in a case consecutive defaults the proviso to Section 14(2) is attracted, cannot be accepted for obvious

reason. 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)(a) of the Act i.e. the tenant must have enjoyed the benefit of Section 14(2) in a previous instituted proceeding.”

11. In the present case undoubtedly while passing order under 15(1) DRC Act the learned ARC did not pass an order to pay future rents vide order dated 5th September, 2006. However, Section 26 of the DRC Act provides as under:

“26. Receipt to be given for rent paid. –

(1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable [and where any default occurs in the payment of rent, the tenant shall be liable to pay simple interest at the rate of fifteen per cent. per annum from the date on which such payment of rent is due to the date on which it is paid].

(2) Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorized agent a written receipt for the amount paid to him., signed by the landlord or his authorized agent:

[Provided that it shall be open to the tenant to remit the rent to his landlords by postal money order.]

(3) If the landlord or his authorized agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the Controller may, on an application made to him in this behalf by

the tenant within two months from the date of payment and after hearing the landlord or his authorized agent, by order direct the landlord or his authorized agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid.”

12. Thus even if the learned ARC vide the order dated 5th September, 2006 failed to pass directions for payment of future rent, the tenant was statutorily bound to pay the future rent in terms of Section 26 of the Act. However, both the learned ARC and the Rent Controller committed illegality in not considering Section 26 of the DRC Act and dismissed the application of the petitioner under Section 14(1)(a), 14(2) and 15(7), 25 and 26 of the DRC Act read with Section 151 CPC on the ground that there was no order for payment of future rent under Section 15(1) DRC Act. Thus, there is an illegality committed by both the Courts below. Hence the impugned order is set aside and the matter is remanded back to the Additional Rent Controller for consideration of the petitioner’s applications under Sections 14(2), 15(7), 25 and 26 of the DRC Act and whether the respondent was entitled to the benefit under Section 14(2) of the DRC Act in view of subsequent defaults.

13. Petitions are disposed of.

(MUKTA GUPTA)
JUDGE

MARCH 03, 2015
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