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

% *Date of decision:* 02.09.2016

+ CM(M) 818/2016

DEVENDER KUMAR Petitioner
Through Mr.Hari Kishan, Advocate

versus

SURENDER MITTAL Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

CM No. 30789/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 818/2016 and CM No.30788/2016 (stay)

1. By the present petition, the petitioner challenges the order dated 08.06.2016 passed by the appellate court and the order dated 05.07.2016 passed by the ARC. The impugned orders allowed the petition filed by the respondent under Section 14(1) (a) of the Delhi Rent Control Act which resulted in eviction of the petitioner from the property.

2. The respondent filed an eviction petition under Section 14(1) (a) of the Act for the premises being Shop No. 2, No. 194, Gali No. 14, Bhola Nath Nagar, Shahdara, Delhi-32. It was stated that the rent was Rs.250/- per month and that the petitioner had failed to pay the outstanding rent. It was urged that despite service of a legal notice dated 26.06.2012, the petitioner has failed to make the payment. Based on the said averment, an eviction

order was sought.

3. By order dated 03.10.2012 passed under Section 15(1) of the DRC Act, the ARC directed the petitioner to deposit arrears of rent @ RS. 250/- per month from 01.07.2012 till 30.09.2012 in the court latest by 15.10.2012. The petitioner was directed to pay rent @ Rs. 250/- per month w.e.f. October 2012 latest by 15th of every succeeding month.

4. It is the contention of the respondent that the petitioner failed to comply with the said order. The ARC thereafter disposed of the petition vide order dated 25.01.2016 for eviction under Section 14(1) (a) holding that by notice dated 26.06.2012, the respondent had demanded rent w.e.f. 01.09.2009 to June 2012 @ Rs. 250/- per month. The respondent has produced the money order receipts for Rs.11,450/- which the respondent failed to accept. The rate of rent being Rs.250/- per month, for the period from September 2009 to June 2012, the arrears came to Rs. 8,500/- plus interest. Hence, the ARC noted that the respondent had tendered a sum of Rs.11,450/- on 23.07.2012 within the limitation as provided in the notice dated 26.06.2012. The ARC further concluded that the ground for non-payment of arrears of rent have not been made out. The petition was dismissed.

5. The appellate court, however, noted that despite the order of the ARC under Section 15(1) of the DRC Act dated 03.10.2012, there was a failure to comply with the said order. The petitioner was directed to deposit monthly rent latest by 15th of each succeeding month after October, 2012. For the months of November and December 2012, January and February 2013, the petitioner did not deposit the rent as directed. The petitioner did not deposit the monthly rent on or before 15th of each month after October 2012. As

there was non-compliance of the order under Section 15(1) of the Act, the appellate court set aside the order dated 25.01.2016 of the ARC and allowed the petition of the respondent and noted that the legal consequences shall follow before the trial court and remitted the matter back to the trial court. On 05.07.2016, the ARC noted the order of the appellate court and consigned the file to the record room.

6. Learned counsel appearing for the petitioner has relied upon the judgments of the Supreme Court in the case of *Sh.Hem Chand vs. The Delhi Cloth & General Mills Co. Ltd. & Anr.*, AIR 1977 SC 1986 and in the case of *Smt. Kamla Devi vs. Sh. Vasdev*, AIR 1995 SC 985 to contend that after the default having taken place in compliance of the orders under Section 15(1) of the Act, the petitioner was entitled to another opportunity to pay the rental amount which has been denied to the petitioner and hence, he submits that the impugned order is erroneous.

7. The relevant provisions of the Act dealing with the present matter read as follows:-

“14. (1) 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 and 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 notice of demand for the arrears of rent has been served on him by

the landlord in the manner provided in section 106 of the Transfer 4 of 1882.

.....

(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) 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 fifteenth of each succeeding month, a sum equivalent to the rent at that rate.

(2) If, in any proceeding for the recovery of possession of any premises on any ground other than that referred to in sub-section (1), the tenant contest the claim for eviction, the landlord may, at any state of the proceeding, make an application to the Controller for an order on the tenant to pay to the landlord the amount of rent legally recoverable from the tenant and the Controller may, after giving the parties an opportunity of being heard, make an order in accordance with the provisions of the said sub-section.

(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 Supreme Court in the case of *Sh.Hem Chand vs. The Delhi Cloth & General Mills Co. Ltd. & Anr.(supra)* on the above provisions held as follows:-

“8. The result is that if the tenant deposits the rent in accordance with the notice under Section 14(1)(a) or complies with an order under Section 15(1) within one month from the date of the order, the landlord cannot recover possession of the premises on the ground specified in Section 14(1)(a). But if there is non-compliance of both Sections 14(1)(a) and Section 15(1), the cause of action of the landlord praying for possession of the premises on the ground of failure to pay arrears of rent survives and the landlord can proceed with the application and make out his case. The provisions of the Act do not warrant the view that in the event of the failure of the tenant to deposit the rent under Section 15(1) the Rent Controller is bound to pass an order for recovery of the possession for it yet remains for the landlord to prove his case that there was non-compliance of Section 14(1)(a). It is clear from Section 15(7) that an inquiry will have to be proceeded with even when the defence of the tenant has been struck out. More so this procedure is applicable when the defence is not struck out but only there is a failure to comply with an order under Section 15(1). The Full Bench of the Delhi High Court has held that if the landlord fulfils the conditions mentioned in the Clauses to the proviso to Sub-section (1) of Section 14, including Clause (a), the Controller was bound to pass an order for recovery of possession against the tenant and cannot refuse the landlord the prayer for eviction. In the concluding part of its judgment the Full Bench expressed its view that when the tenant failed to make a deposit of the future rents in compliance with the order passed under Section 15(1) against him a right to obtain an order for recovery of possession accrued to the landlord and the Controller had no power to condone the default of the tenant and to refuse to grant this order. While we agree with the view of the Full Bench that the Controller has no

power to condone the failure of the tenant to pay arrears of rent as required under Section 15(1), we are satisfied that the Full Bench fell into an error in holding that the right to obtain an order for recovery of possession accrued to the landlord. As we have set out earlier in the event of the tenant failing to comply with the order under Section 15(1) the application will have to be heard giving an opportunity to the tenant if his defence is not struck out under Section 15(7) and without hearing the tenant if his defence is struck out. The Full Bench is therefore in error in allowing the application of the landlord on the basis of the failure of the tenant to comply with an order under Section 15(1). The landlord had appealed to the High Court against the order of the Tribunal setting aside the Rent Controller's order striking out the defence. The High Court ought to have considered and decided in the appeal whether the striking out of the defence by the Rent Controller was right or not. If the striking out was right then as the Rent Controller had proceeded with the hearing of the application and passed an order directing possession to the landlord it ought to be upheld, but in the event of the High Court holding that the order striking out the defence by the Rent Controller was erroneous then the order directing recovery of possession should be set aside and the petition of the landlord heard by the Rent Controller after providing an opportunity to the tenant to raise his defence.”

9. The Supreme Court in the case of *Smt. Kamla Devi vs. Sh. Vasdev (supra)* reiterating the observations made in the case of *Sh. Hem Chand vs. The Delhi Cloth & General Mills Co. Ltd. & Anr. (supra)* held as follows:-

“23. We are unable to uphold the contention of the appellant that the case of Ram Murti v. Bhola Nath and Anr., AIR1984SC1392, 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]2SCR334 . 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.”

10. A reading of the above statutory provision and the judgments of the Supreme Court would show that the tenant gets two opportunities to make payment of arrears of rent. First opportunity comes when the notice as stipulated under Section 14(1)(a) of the Act is issued to the tenant. The tenant would have two months from the date on which the notice of demand is served on him to make the necessary payment. In case of default, on a petition being filed by the landlord under Section 14(1)(a) of the Act, the tenant would get a second opportunity to make payment under Section 15(1) of the Act. In case there is again failure to comply with the opportunity granted by the ARC under Section 15(1) of the Act, under Section 15(7) of the Act, the Controller has the discretion to strike out the defence of the tenant and proceed to hear the petition. As noted by the Supreme Court in the case of *Smt. Kamla Devi vs. Sh. Vasdev (supra)*, the power to strike out the defence against eviction is discretionary and must not be mechanically exercised without application of mind to the facts of the case.

11. The facts in the present case are not in dispute. In the present petition

filed by the petitioner, it is admitted that due to medical problems, the petitioner being the sole earning member could not deposit the rent for the period from November 2012 to February 2013 on time and deposited rent for 01.11.2012 to 31.03.2013 amounting to Rs. 1250/- on 28.02.2013.

12. The ARC while dealing with the petition under Section 14(1)(a) of the Act vide its order dated 25.01.2016 seems to have completely ignored the events that have taken place subsequent to passing of the order under Section 15(1) of the Act on 03.10.2012. The entire order is only based on the events prior to 03.10.2012.

13. The appellate court, however, noted the order dated 03.10.2012 under Section 15(1) of the Act and noted the default of the petitioner and non-compliance of the said opportunity for rent payable after October, 2012.

14. Admittedly, the petitioner has been given two opportunities as per notice dated 26.06.2012 under Section 14(1)(a) and order of the ARC dated 03.10.2012. There is non-compliance on two different occasions. While disposing of the petition under Section 14(1)(a) subsequent to the two defaults, full opportunity has been granted to the petitioner/tenant. Hence, his defence was not struck out under Section 15(7) of the Act. On merits, the appellate court has come to the conclusion that there is default of the tenant/petitioner in compliance of the order dated 03.10.2012 under Section 15(1) of the Act. Accordingly, as necessary consequences would follow.

15. Before this court the petitioner accepts the default in compliance of the order under Section 15(1) of the Act. Admittedly, no submission was made before the appellate court or any application moved to seek condonation of delay in exercise of powers under Section 15(7) of the Act in tendering the payment. Hence full opportunity as per the statutory provisions

has been granted to the petitioner. There is no infirmity in the impugned order. The present petition is accordingly dismissed. TCR be sent back to the trial court.

JAYANT NATH, J.

SEPTEMBER 02, 2016/rb