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

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Date of decision: 09.12.2016

+ CM(M) 1273/2016, CAVEAT No.1048 & CM No.45768/2016 (stay)

SMT. RAJNI @ RAJNI SAXENAPetitioner.

Through: Mr.Jagdish Chandra, Advocate.

Versus

SMT. LAXMI DEVI AND ANR.Respondents

Through: Mr.D.K.Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CAVEAT No.1048/2016

Since the learned counsel for the respondents has entered appearance, the caveat stands discharged.

CM(M) 1273/2016 & CM No.45768/2016(stay)

1. The present petition is filed under Article 227 of the Constitution of India for setting aside the eviction order dated 15.10.2016 passed by the Rent Control Tribunal (*hereinafter referred to as the 'RCT'*) whereby the RCT set aside the order of the ARC dated 13.01.2016.
2. The respondent herein/landlord filed an eviction petition under Section 14(1)(a) of the DRC Act (*in short the 'DRC Act'*) against the petitioner stating that the petitioner is a tenant in respect of the one room and a kitchen in the premises No.2/39, Roop Nagar, Delhi. The rent was said to be Rs.160/- per month. It was urged that the petitioner/tenant has

defaulted and has not paid rent for the month of January to April, 2013. This was said to be the second default. Earlier also an eviction petition was filed by the respondents against the default in payment of rent by the petitioner. In said petition vide order dated 17.11.2012 as the petitioner complied with the order/directions for payment of defaulted rent, no eviction order was passed and the benefit under Section 14(2) of the DRC Act was granted. It is urged now that on account of the present second default of rent from January to April, 2013, the petitioner is liable to be evicted.

3. The ARC vide its judgment dated 13.01.2016 noted that one of the essential ingredients under Section 14(1)(a) of the DRC Act is that even after service of demand/legal notice, the tenant neither tendered nor paid the rent within two months, necessary action would follow. It held that the petitioner was regularly depositing the rent and when demand notice dated 16.05.2013 was served on the petitioner, she sent money order on 22.05.2013 along with interest @ 15% per annum but the respondents refused to accept the same. Thereafter, within a period of two months of service of the legal demand notice, the petitioner is said to have deposited the rent in court under Section 27 of the DRC Act. Hence, the ARC concluded that the petitioner has tendered the rent within two months of service of demand notice and cannot be said to have defaulted in making payment of rent for the second time and the eviction petition was dismissed.

4. The respondents thereafter filed an appeal before the Rent Controller (*in short the 'RC'*). The RC vide the impugned judgment relied upon the judgment of the Supreme Court in the case of ***Sarla Goel & Ors. v. Kishan Chand, 2009 (7) SCC 658*** and allowed the eviction petition.

5. I have heard the learned counsel for the parties.

6. The learned counsel appearing for the petitioner submits that the notice of default was received on 22.05.2013 and rent has been deposited within a period of two months and there is compliance of Sections 14 and 15 of the DRC Act. Hence, it is urged that the impugned order is liable to be set aside.

7. The stand of the respondents is that the rent had to be paid each month within the stipulated period which has not been done. In terms of the judgment of the Supreme Court in *Sarla Goel & Ors. v. Kishan Chand* (supra), the petitioner ought to have deposited the rent within the period stipulated under Section 26 of the DRC Act which was not done. Admittedly, the rent has been deposited on or around 04.06.2013 and hence the eviction order has to follow.

8. The relevant factual scenario that emerges from above is that on 30.11.2012, the ARC granted benefit of Section 14(2) of the DRC Act regarding the default in making payment of rent by the petitioner and did not make an order of eviction. Despite the said order dated 30.11.2012, the petitioner has defaulted in making payment of rent thereafter. The respondents claimed that the rent which is now Rs.160/- per month was neither paid nor tendered for the month of January to April, 2013. A notice was sent to the petitioner which was received by her on 22.05.2013. The petitioner sent a money order dated 22.05.2013 for the sum of Rs.608/- but the respondent did not accept the same as the tender was not said to be in order. The petitioner claims to have tendered rent on 01.01.2013, 15.02.2013, 10.03.2013 and 02.04.2013 @ Rs.132/- per month for the period from 01.01.2013 to 30.04.2013 but the respondent refused to accept

the same. After receipt of legal notice, the petitioner again sent a money order on 22.05.2013 which was also refused. The petitioner claims that as the respondents refused to accept the money order sent on 22.05.2013 which included 15% interest, hence, the rent was deposited in court which was allowed vide order dated 17.10.2013. It is hence urged that there is compliance of the statutory provisions and the eviction order has been wrongly passed.

9. Section 14(1)(a), Section 14(2) and Section 15 of the DRC Act read as follows:

"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 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 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. 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 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.

.....”

10. While dealing with the above provisions, it would also be useful to have a look at Sections 26 and 27 of the DRC Act which read as follows:-

“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 authorised agent a written receipt for the amount paid to him., signed by the landlord or his authorised 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 authorised 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 authorised agent, by order direct the landlord or his authorised 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.

27. Deposit of rent by the tenant. –

(1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner:

Provided that in case where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to the Controller by postal money order.

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely:-

- (a) the premises for which the rent is deposited with a description sufficient for identifying the premises;
- (b) the period for which the rent is deposited;
- (c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;
- (d) the reasons and circumstances for which the application for depositing the rent is made;
- (e) such other particulars as may be prescribed.

(3) On such deposit of the rent being made, the Controller shall send in the prescribed manner a copy or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent, the Controller shall, if satisfied that the applicant is the person entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed:

Provided that no order for payment of any deposit of rent shall be made by the Controller under this sub-section without giving all persons named by the tenant in his application under sub-section (2) as claiming to be entitled to payment of such rent being decided by a court of competent jurisdiction.

(5) If at the time of filing the application under sub-section (4), but not after the expiry of thirty days from receiving the notice of deposit, the landlord or the person or persons claiming to be entitled to the rent complains or complain to the Controller that the statements in the tenant's application of the reasons and circumstances which led him to deposit the rent are untrue, the Controller, after giving the tenant an opportunity of being heard, may levy on the tenant a fine which may extend to an amount equal to two months' rent, if the Controller is satisfied that the said statements were materially untrue and may order that a sum out of the fine realised be paid to the landlord as compensation.

(6) The Controller may, on the complaint of the tenant and after giving an opportunity to the landlord of being heard, levy on the landlord a fine which may extend to an amount equal to two months' rent, if the Controller is satisfied that the landlord, without any reasonable cause, refused to accept rent though tendered to him within the time referred to in section 26 and may further order that a sum out of the fine realised be paid to the tenant as compensation.”

11. The issue centres around as to what would construe a default as to enable an eviction order being passed under Section 14(1)(a) of the DRC

Act on the second petition. In the present case, the period of default is from January to April 2013. The respondent sent a notice for the default on 22.05.2013. The payment was sent by money order which was refused. The payment has been deposited in court under Section 27 of the DRC Act on 04.06.2013 i.e. within two months from the date of the notice dated 22.05.2013. The contention of the respondents is that having once committed the default, for the purpose of establishing a second default, the provisions of Section 26 of the DRC Act would be relevant. The said provisions provide that every tenant within the time fixed by the contract or in the absence of such contract by the 15th day of the month next following the month for which the rent is payable would pay the rent. Hence, it is urged that for the second petition, for the purpose of computing default for the second petition, the landlord is not obliged to send a notice and in case of default as per Section 26 of the DRC Act for three consecutive months, an eviction order would follow

12. In this context reference may be had to the judgment of the Supreme Court in *Sarla Goel & Ors. v. Kishan Chand* (supra), relevant portion of which reads as follows:

"24. Accordingly, Section 14(1)(a) is a ground for eviction of a tenant for default in payment of rent. In spite of that, protection has been given under Section 15 of the Act to the tenant to avail of the protection given by the legislature by depositing rent in the manner indicated in Section 15 of the Act. However, proviso to Section 14(2) of the Act takes away the right of a tenant of the benefit of Sub-section (2) of Section 14 if the tenant having obtained such benefit once in respect of any premises and makes a further default in payment of rent of those premises for three consecutive months. Therefore, it has been made clear that when

the tenant makes a second default, no protection can be given to the tenant from eviction.

.....

28. From a conjoint reading of this provision referred to herein above and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the legislature how the rent can be deposited if it was refused to have been received or to grant receipt for the same. If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. It is well settled that whether the word "may" shall be used as "shall", would depend upon the intention of the legislature. It is not to be taken that once the word "may" is used by the legislature in Section 27 of the Act, would not mean that the intention of the legislature was only to show that the provisions under Section 27 of the Act were directory but not mandatory.

29. In other words, taking into consideration the object of the Act and the intention of the legislature and in view of the discussions made herein earlier, we are of the view that the word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may" , in our view, was used by the legislature to mean that the procedure given in those provisions must be strictly followed as the special protection has been given to the tenant from eviction. Such a cannon of construction is certainly warranted because otherwise intention of the legislature would be defeated and the class of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them."

13. This court in the case of *Raghubir Singh v. Sheela Wanti & Anr., 2009 (2)RCR (Civil) 220* had dealt with the similar preposition. The submissions of the counsel for the landlord were noted as follows: -

“6. The landlord was not supposed to serve a notice on the tenant after every few months demanding arrears of rent. Once the tenant has suffered an order, Section 14(1)(a) but the eviction order is not passed and the tenant is given benefit of Section 14(2), it became obligatory upon the tenant to continue to pay the rent every month and tenant should not be allowed the liberty to accumulate the rent and pay it only after service of a notice by the landlord calling upon the tenant to pay arrears of rent.....”

14. The court, however, held as follows:-

“8. There is no doubt that even in case of second default, the eviction of tenant can be sought by the landlord only under Section 14(1)(a) and 14(1)(a) provides that eviction petition can be filed where the tenant has neither paid nor tendered 'whole of the arrears of rent' legally recoverable from him within two months of the date on which the notice of demand for the arrears of the rent has been served. Thus, even in case of second default, the notice of demand becomes necessary in view of the fact that the landlord can resort to eviction only under Section 14(1)(a). However, the approach of the Court in case of second default has to be different from the approach in case of first default. In case of first default, the tenant is given benefit of Section 14(2) as a matter of warning that he should not commit second default and if he commits second default, the landlord would be entitled for his eviction.”

15. In view of the above, for the purpose of second petition as per the view which has already been taken by this court, the default occurs when after service of notice demanding arrears of rent, the tenant remains in

default for three consecutive months. In that eventuality an eviction order is liable to be passed against the tenant.

16. As noted above, in the present case on service of notice for second default, the tenant has within the period stated in the notice, sent the rent by money order and on refusal deposited the same under Section 27 of the DRC Act in compliance of the notice sent by the landlord/respondent. Hence, as held by the Supreme Court in *Sarla Goel & Ors. vs. Kishan Chand (supra)* the deposit of rent would imply valid payment of rent.

17. The Rent Tribunal/Appellate Tribunal has by the impugned order, however, only noted the submission of the parties and has noted the judgment of the Supreme Court in the case of *Sarla Goel & Ors. v. Kishan Chand (supra)* and has without giving any reasons as to how a default has occurred, has set aside the order of ARC dismissing the eviction petition and has passed an eviction order.

18. It is manifest that the impugned order of the Rent Tribunal suffers from material irregularity and cannot be sustained in the light of the legal position already settled by a co-ordinate bench of this court. The petitioner has deposited rent within two months of receipt of the legal notice under section 14(1)(a) of DRC Act and there is hence no default warranting passing of an eviction order.

19. In view of the above, the present petition is allowed and the order of the Rent Tribunal is quashed.

20. All pending applications also stand disposed of.

JAYANT NATH, J.

DECEMBER 09, 2016/v