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

Date of Decision: 19th February, 2016.

+ **CM(M) 767/2015 & CM APPL. 16031/2015**

HARKIRAT SINGH

..... Petitioner

Through: Mr. P.S. Bindra, Adv.

versus

AMRIK SINGH

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The petition at hand seeks to assail the judgment dated 30.06.2015 whereby the rent control tribunal dismissed the appeal of the petitioner, registered as RCT no.275/2013 resultantly upholding order dated 13.08.2013 rendered by the Additional Rent Controller (ARC) passing an eviction order in respect of tenanted premises described as one room in property bearing no.2382-83, gali no.12-13, Beadon Pura, Karol Bagh, New Delhi under Section 14 (1) (a) of Delhi Rent Control Act, 1958 (DRC Act), holding the respondent to have failed to comply with the earlier orders under Section 15(1) of DRC Act.

2. The petition for eviction had been preferred on various grounds including under Section 14(1) (1) of DRC Act on account of non-payment of

rent inspite of notice of demand. The ARC by judgment dated 26.07.2011 found the respondent herein (landlord/petitioner before the ARC) to have failed in proving his case on the other grounds but held him to have brought him his case for order of eviction under Section 14(1) (a) of DRC Act. During the pendency of the said proceedings, an order under Section 15 (1) of DRC Act had been passed on 17.04.2002 directing the petitioner herein to pay entire arrears of rent *w.e.f.* 01.09.1999 at ₹266.20 per month within one month of the said order. The said interim order was modified on 04.06.2005 directing the petitioner herein to pay increased rent ₹354/- per month *w.e.f.* 01.02.2004. When the final order was passed by judgment dated 26.07.2011, the petitioner was held liable to pay the arrears of rent *w.e.f.* 01.09.1999 till 31.12.2000 at the rate of ₹292.60, from 01.01.2001 to 31.01.2004 at ₹322/- per month and from 01.02.2004 till the date of the judgment at the rate of ₹354/- per month. He was directed to deposit the arrears of rent accordingly within one month of the said judgment so as to avail of the protection against eviction order under Section 14(2) of the DRC Act.

3. It is against the above backdrop that the ARC held inquiry into the compliance by the petitioner with said directions. The ARC having heard both sides and having secured a report from his office passed the following order on 13.08.2013:-

“.... From the report filed by Nazir, it is clear that the respondent did not deposit the complete difference of rent for the period 01.04.2004 to 31.05.2005. It is admitted case that respondent had paid difference of ₹32 per month only instead of ₹87 per month. Further more, it is also not disputed that the difference of arrears was not paid for the

month of February and March 2004. Thus, it is clear that respondent did not comply with order passed under Section 15(1) DRC Act, as modified vide order dated 04.06.2005.

Another plea of respondent is that vide judgment dated 26.07.2011, he was given one month time to clear the arrears of rent w.e.f 01.09.1999 till date of judgment and liberty to adjust the amount already deposited in the court and since, he has deposited the remaining difference of arrears of rent for aforesaid period, respondent is entitled to benefit u/s 14(2) of DRC Act. First of all, it is pertinent to mention here that respondent is entitled to aforesaid benefit only if he complies with order u/s 15(1) DRC Act dated 17.04.2002 and subsequent modified order dated 04.06.2005. Though, there is no legal provision to give time to respondent to comply with order u/s 15(1) DRC Act, passed years before the date of judgment, after passing judgment for the purpose of benefit u/s 14(2) DRC Act but considering that the petitioner did not opt to challenge the above mentioned part of judgment now it has to be seen whether respondent has complied with above mentioned directions given vide said judgment. From the record, it is clear that the difference of arrears of ₹919/- was deposited by respondent on 09.09.2011. On being asked, it is submitted by ld. Counsel for respondent that certified copy of judgment was received by him in the first week of August 2011. Thus, it become clear that the respondent has not even deposited the arrears of rent within stipulated time.

In view of above, it is held that the respondent is not entitled to benefit u/s 14(2) DRC Act. Accordingly, eviction order is passed in respect of tenanted premises i.e. one room in property bearing no.2382-83, Gali no.12-13, Beadon Pura, Karol Bagh, New Delhi-05..... ”

4. The petitioner having suffered the eviction order on the basis of finding that he had failed to comply with the direction under Section 15(1) of the DRC Act took out an appeal which was disposed of by judgment which is impugned in the present petition primarily on the basis of the following observations and findings:-

“Succinctly, the facts relevant for the disposal of appeal are that the respondent-landlord had filed an eviction petition against the appellant-tenant on the grounds contemplated U/s 14(1) (a) (b), (c) & (d) of the DRC Act. During the proceedings, on 17.04.2002, learned ARC passed an order U/s 15(1) and directed the appellant to pay or deposit the entire arrears of rent w.e.f. 01.09.1999 @ ₹266.20 p. m. within one month. It was modified on 04.06.2005 and thereby, the appellant was directed to pay the revised rent @ ₹354/- per month w.e.f. 01.02.2004 within 30 days. Vide judgment dated 26.07.2011, the learned ARC while declining the petition on the grounds under Section (b) (c) & (d), allowed it, on the ground contemplated U/s 14(1) (a) and also directed the appellant to pay the entire arrears of rent w.e.f. 01.01.1999 till 31.12.2000 @ ₹292.60; from 01.01.2001 till 31.01.2004 @ ₹322; and, from 01.02.2004 till that day @ ₹354/- per month, within one month from the date of the judgment and proceeded to consider the grant of benefit U/s 14(2) of the DRC Act. Vide impugned order, learned ARC held that the appellant was not entitled to the benefit U/s 14(2) of the DRC Act and the eviction order followed in respect of the subject premises. Aggrieved thereof, the appellant has preferred the appeal in hand.

The benefit U/s 14(2) has come to be declined on account of non-compliance of the order passed U/s 15(1) not only during the course of trial, but, when the judgment dated 26.07.2011 came to be passed and the appellant was directed to pay the entire arrears of rent within one month from that day. It transpired from the record that there were various defaults in compliance of the order passed U/s 15(1). AS per the Nazir's report, rent has remained unpaid for the months of February, 2004, November, 2005 and December 2005. Not only that, the rents were deposited belatedly. For the months of December, 2003 and January, 2004 rent was deposited on 11.05.2004; March and April, 2004 deposited on 07.07.2004; May, June and July, 2004 deposited on 05.10.2004; August, September, October and November, 2004 deposited on 16.02.2005; December 2004, January, 2005, February, March and April 2005 deposited on 06.10.2005; May 2005 deposited on 06.10.2005; June 2005 deposited on 14.10.2005; and July, August, September and October 2005 deposited on 02.01.2006. Even after the passing of the judgment, when the appellant was directed to deposit the arrears of rent within

one month, the appellant did not comply with the direction. For the various defaults in compliance of the order passed U/s 15(1) during the course of trial, there is even no explanation. Appellant seeks to explain the default in pursuance of the judgment dated 26.07.2011 on the premise that it was actually pronounced on 03.08.2011. This bald averment, which is contrary to the judicial record, is not entertainable. So may defaults, which have been of non-deposits and belated deposit by no means can be taken to be even substantial compliance of the order passed U/s 15(1).”

5. It is the contention of the petitioner before this court that the tribunal fell into an error by failing to note its submissions that there had been due compliance with order and that the findings recorded by the ARC regarding non-payment of rent for the months of February, 2004, November, 2005 and December, 2005 were incorrect.

6. The ARC had held inquiry into the deposits made by the petitioner from time to time in compliance with the three orders referred to above. He reached at certain conclusions which, upon further scrutiny, on facts on the basis of material on record and the report of the office were upheld by the tribunal for the reasons set out in the afore-extracted paragraphs of the impugned judgment. It is not permissible for the said findings on facts, affirmed by the first appellate court, to be re-agitated at this layer of the revisional jurisdiction. Even if such contentions were to be accepted with regard to the finding on default in compliance for the three specific months, the facts remains that the petitioner does not deny that there had been delay in compliance with the final order passed by the ARC modifying the earlier orders under Section 15(1) of the DRC Act. The explanation given before the ARC for the said default was that the copy of the judgment was received by the counsel belatedly. Before the tribunal, the petitioner shifted stand by

stating that the judgment dated 26.07.2011 had been passed by the ARC actually on 03.08.2011. There is no basis to this averment.

7. In absence of any material to support the above mentioned contention, the consequences of default in compliance with the final order under Section 15(1) of the DRC Act cannot be wished away or condoned.

8. Thus, the petition is devoid of merits and is accordingly dismissed.

FEBRUARY 19, 2016
SSC

R.K. GAUBA
(JUDGE)

