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

CM(M) 1006/2017

KANHIYA LAL GUPTA Petitioner
Through: Mr. H.S. Gautam, Adv.

Versus

BHAGWAT DAYAL Respondent
Through: None.

AND

+ CM(M) 1010/2017

KANHIYA LAL GUPTA Petitioner
Through: Mr. H.S. Gautam, Adv.

Versus

BHAGWAT DAYAL Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.09.2017**

**CM No.33445/2017 in CM(M) 1006/2017 & CM No.33530/2017 in
CM(M) 1010/2017 (both for exemption)**

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

**CM(M) 1006/2017 & CM No.33444/2017 (for stay) & CM(M) 1010/2017
& CM No.33529/2017 (for stay)**

3. These petitions, both under Article 227 of the Constitution of India, impugn orders, both dated 31st August, 2017 in RCT No.1170/2016 and
CM(M) 1006/2017 & CM(M) 1010/2017

RCA NO.20379/2016 of the Court of Rent Control Tribunal (South-East), Saket Court Complex, New Delhi, preferred by the petitioner.

4. The counsel for the petitioner has been heard.

5. The respondent instituted a petition for eviction of the petitioner under Section 14(1)(a) of the Delhi Rent Control Act, 1958 i.e. on the ground of non-payment of rent. Owing to the defence raised by the petitioner, the passing of the order under Section 15(1) of the Act was deferred. Ultimately, vide order dated 17th August, 2016 (in ENo.5014/2016 CNR No.DLSE03-000018-2014 of the Court of Rent Controller (South-East), Saket Courts, New Delhi), the petition for eviction was allowed and an order under Section 15(1) of the Act passed, directing the petitioner to deposit arrears of rent @ Rs.3,000/- per month for the period from February, 2013 till January, 2014 along with interest @ 15% per annum within thirty days therefrom and the matter posted on 20th September, 2016 for consideration, whether the petitioner would be entitled to the benefit under Section 14(2) of the Act.

6. The petitioner preferred RCT No.1170/2016 against the order dated 17th August, 2016. Though an application for stay of the order dated 17th August, 2016 was also filed along with the appeal but no stay was granted and only notice of the appeal and the application for stay was issued.

7. Notwithstanding the same, the petitioner did not deposit the rent as directed vide order under Section 15(1) of the Act. Resultantly, on 20th September, 2016, the Rent Controller, finding that the petitioner had not complied with the order under Section 15(1) of the Act and that there was no stay also of the order dated 17th August, 2016, held the petitioner to be not entitled to the benefit of Section 14(2) of the Act and resultantly ordered the

petitioner to be evicted.

8. The petitioner again preferred an application for stay in RCT No.1170/2016 and which application has been dismissed vide order dated 31st August, 2017 and which has been impugned in CM(M) No.1010/2017.

9. The petitioner also preferred an appeal being RCA No.20379/2016 against the order dated 20th September, 2016 along with an application for stay and which appeal and application were also taken up for consideration on 31st August, 2017 and in view of the order impugned in CM(M) No.1010/2017, no orders were passed thereon and which order dated 31st August, 2017 is impugned in CM(M) No.1006/2017.

10. Both appeals have been posted by the Tribunal for hearing now on 6th November, 2017.

11. The petitioner having admittedly not complied with the order under Section 15(1) of the Act passed on 17th August, 2016, is not entitled to any benefit under Section 14(2) of the Act and no error to that extent can be found with the order impugned.

12. The counsel for the petitioner has argued that since the petitioner had preferred an appeal against the order dated 17th August, 2016, he did not comply with the order under Section 15(1) of the Act.

13. Upon it being asked from the counsel for the petitioner that in the face of Order XLI Rule 5 of CPC, principles whereof are applicable to proceedings under the Delhi Rent Control Act, itself having provided that filing of an appeal is not a stay of the order appealed against, how could the petitioner, merely by filing appeal against order dated 17th August, 2016 and notwithstanding having not been able to obtain interim order sought therein,

not comply with the order under Section 15(1), the counsel states that the earlier counsel for the petitioner wrongly advised the petitioner because he was mixed up with the respondent and was also a counsel for the respondent.

14. I do not understand the grievance against the earlier counsel, when the present counsel also has made the same argument before this Court and which was also the advice given by the earlier counsel to the petitioner.

15. Section 14(2) of the Act is a beneficial provision, not making the tenant liable to eviction if the tenant, inspite of having been held to be in default of payment of rent on an earlier occasion, as directed by the Controller pays rent. However where a tenant is found to be, notwithstanding grant of such opportunity, misusing the same, the said beneficial provision cannot come to the rescue of such tenant.

16. The counsel for the petitioner has argued that the petitioner disputes the title of the respondent as landlord and in fact the petitioner has been residing in the premises in own right as owner and hence did not comply with the order dated 17th August, 2016 under Section 15(1) of the Act.

17. The same was the defence of the petitioner to the petition for eviction and which has not been upheld by the Additional Rent Controller who has found a relationship of landlord and tenant between the respondent and the petitioner. Though owing to the said defence of the petitioner, the passing of the order under Section 15(1) of the Act which otherwise is required to be passed before commencement of trial, was deferred till the final adjudication but the said defence of the petitioner cannot be an explanation for the petitioner to not comply with order under Section 15(1) when finally passed.

Inspite of the said order having been passed, after final adjudication, the petitioner took liberties with the same and did not comply therewith. Nearly one year has elapsed since then and the order which was to be complied with within thirty days, remains uncomplied till date. In this light of the matter, the petitioner cannot now be granted an opportunity to deposit, as the counsel for the petitioner states. Though such defaults in appropriate facts and circumstances can be condoned but the default on the part of the petitioner is not found to be *bona fide* and is found to be dilatory, intentional and contumacious. In this view of the matter, no ground for condonation of the said default is made out.

18. There is no merit in the petitions.

19. Dismissed.

20. Needless to state that the eviction of the petitioner shall be subject to the final adjudication of the appeals listed next on 6th November, 2017.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 13, 2017

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