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

+ **CM(M) 442/2019 & CM APPL. 12280-12281/2019**

RAJ RANI & ANR Petitioner

Through Mr. Rajat Aneja, Adv. with Ms. Nidhi
Samanotra, Adv.

versus

DEEN DAYAL DHINGRA Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **15.03.2019**

CM APPL. 12281/2019

Exemption allowed, subject to just exceptions.

The application is disposed of.

CM(M) 442/2019 & CM APPL. 12280/2019

The petitioner assails the impugned order dated 25.02.2019 of the learned Rent Control Tribunal, Central i.e. of the Court of the learned District and Sessions Judge (HQ) in RCT No. 36/18 vide which RCT No. 119/18 in relation to the order dated 10.08.2018 of the learned ARC concerned, whereby the benefit under Section 14(2) of the Delhi Rent Control Act, 1958 as amended having been declined by the learned ARC, was also declined.

A bare perusal of the impugned order of the learned Rent Control Tribunal and also of the order dated 10.08.2018 of the learned ARC-02,

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Central in M-13/18 (New No. 52/18) brings forth that there has been a huge delay in deposit of the rent for the period from January, 2016 to June, 2017 i.e. almost for a period of the 18 months and that there was no deposit of the rent by the petitioner herein despite the order under Section 15(1) of the Delhi Rent Control Act, 1958 as amended passed on 06.03.2014 and also despite the order dated 07.03.2018 in Eviction Petition No. E-688/14/12 (New No. 80321/16) vide which the petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 as amended filed by the landlord / respondent, had been allowed with it having been observed vide the said order dated 07.03.2018 that the Eviction Petition under Section 14 (1) (a) of the Delhi Rent Control Act, 1958 as amended would be subject to inquiry under Section 14(2) of the Delhi Rent Control Act, 1958 as amended.

It has been submitted on behalf of the petitioner that in terms of the order dated 06.03.2014 under Section 15(1) of the Delhi Rent Control Act, 1958 as amended whereby the respondent to the eviction petition i.e. the petitioner herein having been directed to deposit the rent @ Rs.120/- per month w.e.f. 01.09.2012 till the date of the order within one month had been deposited as per the report of the Nazir, the said order had not been complied with by the respondent i.e. the petitioner herein as an amount of Rs.3360/- towards the rent for the period from 01.09.2012 to 31.12.2014 had been deposited on 19.03.2014 and thereafter, an amount of Rs.1440/- towards the rent for the period from 01.01.2015 to 31.12.2015 had been deposited on 04.02.2015, whereafter an amount of Rs.3340/- towards the rent for the period 01.01.2016 to 31.03.2018 had been deposited on

20.07.2017 and thereafter, an amount of Rs.1440/- towards the rent for the period 01.04.2018 to 31.03.2019 had been deposited on 16.03.2018. It has thus been submitted on behalf of the petitioner that there has been substantial compliance of the directions under Section 15(1) of the Delhi Rent Control Act, 1958 in as much as after the order dated 06.03.2014 under Section 15(1) of the Delhi Rent Control Act, 1958, the rent for the period 01.09.2012 to 31.12.2014 had been deposited on 19.03.2014 within the ambit of the period prescribed in terms of Section 15(1) of the Delhi Rent Control Act, 1958 and that the amount of Rs.1440/- for the period 01.01.2015 to 31.12.2015 was also deposited on 04.02.2015 i.e. much of the rent had been deposited in advance in each of these deposits. It has also been submitted on behalf of the petitioner that the rent for the period from 01.04.2018 to 31.03.2019 was also deposited on 16.03.2018 and much of the said rent was also deposited in advance and that there has been a default only for the period from 01.01.2016 to 31.03.2018 in as much as the rent was deposited on 20.07.2017 and that even in the said deposit, there had been an advance deposit of rent for the period from August, 2017 to 31.03.2018.

The learned ARC-2, Central vide order dated 10.08.2018 observed to the effect that considering all the facts & circumstances and also the conduct of the respondent, he was not found entitled to the benefit u/s 14(2) of the Delhi Rent Control Act, 1958 since he had not complied with the order u/s 15(1) of the Delhi Rent Control Act, 1958 and that the respondent was liable to be evicted from the tenanted premises.

The learned Rent Control Tribunal vide the order dated 25.02.2019 has observed to the effect that the rent had never been deposited on month to month basis by the tenant and that the rent for the period from 01.01.2016 to 31.03.2018 having been deposited on 20.07.2017 with a huge delay in deposit of the rent, the same was apparently a wilful default, which could not be cured.

On behalf of the petitioner, it has been submitted by learned counsel for the petitioner that there was no application that had been filed by the respondent to the present petition i.e. by the landlord under Section 15(1) of the Delhi Rent Control Act, 1958 to seek the striking of the defence of the petitioner herein on the non-deposit of the rent by the petitioner for the period from 01.01.2016 to 01.06.2017 and that thus there was no opportunity available to the petitioner herein to explain the default for deposit of the said rent and to seek any redressal in relation thereto. Reliance is thus sought to be placed on behalf of the petitioner on the verdict of the Hon'ble Apex Court in ***Ram Murti Vs. Bhola Nath and Another (1984) 3 SCC 111*** with specific observations referred to and relied upon as made thereby in para-16 of the said verdict, which reads to the effect : -

“16. It would be incongruous to hold that even if the defence of the tenant is not to be struck out under Section 15(7), the tenant must still be visited with the punishment of being deprived of the protection under Section 14(2). In Hem Chand case the Court went to the extent of laying down that even if the defence of the tenant is struck out under Section 15(7), the Rent Controller could not straightaway make an order for eviction in favour of the landlord under Section 14(1)(a). The Court held that the High Court was wrong in its assumption

that failure to comply with the requirements of Section 15(1) vests in the landlord an 'indefeasible right' to secure an order for the eviction of the tenant under Section 14(1)(a). The Court set aside the judgment of the High Court taking that view and remanded the matters to the Rent Controller observing that there was still an issue to be tried. If that be so, the question at once arises "What is the issue to be tried ?". If the landlord has still to make out a case before the Rent Controller that he was entitled to an order for eviction of the tenant under Section 14(1)(a), surely the tenant has the right to participate in the proceedings and cross-examine the landlord. It must logically follow as a necessary corollary that 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). What is of essence of Section 14(2) and of Section 15(6) is whether there has been a substantial compliance with the order passed under Section 15(1). The words "as required by Section 15(1)" in these provisions must be construed in a reasonable manner. 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. The previous decision in Hem Chand case interpreting Section 15(7) and Section 14(2) in the context of Section 15(1) of the Delhi Rent Control Act, 1958, although not expressly overruled, cannot stand with the subsequent decision in Shyamcharan case interpreting the analogous provisions of the Madhya Pradesh Accommodation Control Act, 1961 as it is of a larger Bench."

Reliance is also placed on behalf of the petitioner on the verdict of this Court in **Ramesh Kumar Vs. Yasmeen Fatima** 2012 SCC OnLine Del CM(M) 442/2019

5115 with reference to the paragraph-11 of the said verdict to contend to the similar effect.

A bare perusal of both the verdicts relied upon on behalf of the petitioner makes it apparent that it was essential for the petitioner to bring forth that there were circumstances beyond the control of the petitioner to make such deposit. The only submission that has been brought forth is that the petitioner presumed that he had been making the previous lumpsum deposit and that he could make the lumpsum deposit of the rent for the period from 01.01.2016 to June, 2017. These are apparently no circumstances and contentions which suffice to explain any default in the deposit of the rent.

In view thereof, there is no infirmity in the impugned orders declining the grant of the benefit under Section 14(2) of the Delhi Rent Control Act, 1958 as amended. The petition and the accompanying application are declined.

ANU MALHOTRA, J

MARCH 15, 2019/MK