

\$~30

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

Date of Decision : 30th October, 2019

+ **CM (M) 1557/2019 & CM APPL. 47110-11/2019**

MANJIT SINGH & ANR.

..... Petitioners

Through: Mr. Satyendra Kumar, Smt. Sunita
Bhardwaj and Mr. Nitesh Saini,
Advocates. (M:9810097131)

versus

VIRENDRA SINGH

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petition has been filed challenging the impugned order dated 3rd July, 2019 by which the Ld. ADJ dismissed the appeal against the order of the trial Court dated 27th April 2017, directing eviction of the Petitioners on the ground of non-payment of arrears of rent. The operative portion of the order reads as under:

“39. In view of the discussion hereinabove, I do not find any justification to interfere with the order of the Ld. Trial Court. I hold that there is no error apparent on the face of record and there is no infirmity, illegality and impropriety in the impugned judgment and order. Accordingly, the appeal fails and is dismissed. However, the appellants are granted two months time from today to vacate and deliver vacant possession of the tenanted premises in question to the respondent subject to filing of an undertaking before this Court to vacate the premises on or before two months from today and to make payment of up-to date rent. The undertaking shall be filed within two weeks from today.”

2. The brief background is that the present petition relates to three shops bearing Nos.1, 3 & 5 situated in A1, Kewal Park Extension, Opposite Delhi Cold Storage, G. T. Road, Azad Pur, Delhi (*hereinafter 'suit premises'*). A petition for eviction was filed by the Respondent/Landlord (*hereinafter 'Landlord'*) against the Petitioners/Tenants (*hereinafter 'Tenants'*) under Sections 14(1)(a) and 14(1)(b) of the Delhi Rent Control Act, 1958. The petition was contested by the Tenants and vide order dated 27th April 2017, the Id. ACJ-cum-CJ, ARC (North) held that the Tenants were guilty of non-payment of rent. The finding of the Id. ACJ is as under:

“29. In view of the aforesaid discussion, the petitioner has been able to prove that there exist a relationship of landlord and tenant; that the petitioner was in arrears of rent. The service of demand notice has also been duly proved and it has been proved that the respondent has not paid the rent within two months of service of demand notice, accordingly, the petition under Section 14(1) (a) of Delhi Rent Control Act is allowed.”

30. However, in terms of Section 14(2) of DRC Act, no order for eviction is being passed, at this stage. The respondent needs to be afforded an opportunity to deposit the rent as it is a case of first default. During the trial, no order under Sec.15(1) of DRC Act was passed, as the relationship of landlord and tenant was in dispute. The present petition was filed on 25.09.2010 and the last notice Ex.PW-I/H is dated 16.07.09. Accordingly, the legally recoverable rent is three years preceding to the issuance of the demand notice i.e, from August, 2007 onwards. Thus, by virtue of Sec. 15(1) of DRC Act, the respondent is directed to make the payment of the entire outstanding arrear of rent @ Rs.300/- p.m. per shop from August, 2007 till the date of this order, within period of one month.”

3. In view of the fact that the issue was in respect of non-payment of arrears in rent, the ld. Additional Rent Controller directed that the arrears in rent would be liable to be deposited within a period of one month.

4. An appeal was filed by the Tenants against the said order dated 27th April, 2017. On 6th June, 2017 while entertaining the appeal the following order was passed.

“Heard.

Issue notices of the application to the respondent as well as his counsel who is representing respondent in ld. trial court through the court of ld. Addl. Rent Controller Sh. Amit Arora on filing of PF and RC. Sh. Bhagat Singh has been heard. He has submitted that respondent herein sought a date and before ld. Trial court be requested for passing an order for grant of benefit u/s. 14 (2) of DRC Act. He has also argued that appellant is ready to deposit the rent in this court without prejudice. I have considered the submissions. TCR has been perused.

Till next date, further proceedings before ld. Trial Court shall remain stayed. A copy of this order be sent to ld. Trial Court.

Case to come up on 09.06.2017.

Ld. Counsel for appellant submits that he will not be available on 09.06.2017 and he may be given exemption today itself for the same. Request shall be considered sympathetically on the next date.”

5. The Appellate Court had directed the stay of further proceedings before the Trial Court and did not stay the directions in respect of deposit of rent. Even at this stage, the Tenants did not choose to deposit the rent before the Trial Court.

6. On 7th September, 2017 again the Appellate Court records that the

rent would now be deposited within a period of three weeks. The order reads:

“Part submissions heard.

During the course of submissions, ld. counsel for respondent has drawn the attention of the court to the order dated 06.06.2017 vide which the appellant had submitted that he is ready to deposit the rent without prejudice. Appellant and his counsel submit that within three weeks this undertaking shall be complied with by depositing the rent without prejudice to the rights of the appellant.

Let it be so done. In case the rent will not be deposited without prejudice as per order dated 06.06.2017, the interim orders in favour of the appellant shall stand vacated. The period of deposit of rent of three weeks shall count from today.

Since, appellant is not ready to deposit the rent in the ld. trial court, let the same be deposited before this court.

Respondent is given liberty to file the reply with advance copy to the opposite side.

Be put up filing of reply and arguments on 11.10.2017”

The said direction was also not complied with. However, on 11th October, 2017, the Tenants sought to place on record a banker's cheque for the sum of Rs.1,09,000/- along with some medical reports seeking condonation of delay in making the deposit. The same was rejected by the Appellate Court which then passed the impugned order directing the eviction of the Tenants. The observations of the Appellate Court are as under:

“21. On 27.04.2017, the ld. Trial court while allowing the petition u/s 14(1)(a) of the DRC Act directed the appellants to pay the arrear of rent within a period of one month but appellants did not deposit the same and filed the present appeal on 24.05.2017. They did not

deposit the rent even after filing of the appeal and the period of one month granted by the ld. ARC expired. The perusal of record reveals that on 06.06.2017, when the preponement application of the appellants was taken up and further proceedings of the ld. Trial court was stayed by the ld. Predecessor, it was submitted by the counsel for the appellants that appellants are ready to deposit the rent in the court without prejudice. Despite that rent was not deposited. On 07.09.2017, the ld. Predecessor of the court on pointing out by the ld. Counsel for the respondent had observed that in case the rent is not deposited by the appellants in compliance of the undertaking dated 06.06.2017 within three weeks, the interim order in favour of the appellants shall stand vacated. Even then the undertaking was not complied with by the appellants within the time frame allowed to them. On 11.10.2017, application u/s 151 CPC was filed for taking on record the banker's cheque of Rs. 1,09,000/-. The application was kept pending for reply and arguments by ld. Predecessor.

22. Keeping in view the whole series of the facts, it is evident that the appellants were directed to deposit the arrears of rent by 27.05.2017 and from 27.05.2017 onwards, the appellants were in continuous default of not paying/depositing arrears of rent till 11.10.2017 either to the respondent or in trial court or in the appellate court. The appellants have only explained the delay between 07.09.2017 to 11.10.2017 but they have not offered any explanation for condonation of delay between 27.05.2017 to 07.09.2017 as to why and for what reasons, they have not deposited the arrears of rent as per the directions of the ld. Trial court vide order dated 27.04.2017. The appellants have been apparently taking it for granted from the courts that whenever they would deposit the arrears of rent, the court will accept the same without any hindrance. It is settled law that the delay can be condoned only when

the defaulting tenant pleads with justifiable reasons which would show that he has been prevented from compliance by the circumstances beyond his control. [Reliance placed on judgment of Hon'ble Supreme Court of India in Civil Appeal No. 6461 of 2017 (arising out of SLP (Civil) No. 36427 of 2014), titled Pawan Kumar Gupta vs B.R. Gupta decided on 09.05.2017]. No party can claim extension of time in routine manner as it has to be given in exceptional circumstances. The purport of the order dated 07.09.2017 of ld. Predecessor of the court in giving three weeks time to deposit the rent in compliance of the undertaking of the appellant was only to continue with the interim order passed by him on 06.06.2017 staying the further proceedings before the ld. ARC. The appellants have failed to show any justifiable grounds and circumstances for the period from 27.04.2017 to 11.10.2017 which would show that they have been prevented from compliance of the directions of the ld. Trial court as well as this court by the circumstances beyond their control. I do not find any merits in the application as well as submissions of the appellants for condoning the delay in depositing the arrears of rent. Hence, the application is dismissed."

7. Ld. counsel for the Tenants submits that the only period of delay, that needs to be counted, is from 7th September, 2017 from when three weeks' time was given to the Tenants and not before. It is his submission that the Appellate Court, therefore, erred in looking at the delay prior to 7th September, 2017 and dismissing the appeal of the Tenants. He has placed reliance upon the judgment of **Balwanti Devi v. Mahesh Kumar Chopra, 191 (2012) DLT 36.**

8. This Court has considered the matter holistically. The Tenants are running a tyre business in the three shops, which are situated in a premium

commercial area in Delhi. They are in possession since 1986 and have been in default of paying the rent of Rs. 300/- per shop per month, to the Landlord since 2005. The rent being so minimal, there can be no justification for not paying the same. The Additional Rent Controller's order, clearly, holds in favour of the landlord under Section 14(1)(a) but permits the tenants to pay the arrears of rent from 2007. The said order was passed on 27th April, 2017 by which one month's time was granted for deposit of rent - however the same was not deposited until October, 2017.

9. In fact, the judgment in ***Balwanti Devi (supra)*** records that since the Tenants are actually seeking benefit of a special legislation, there has to be strict compliance of the directions, which have been passed in such matters. In ***Balwanti Devi (supra)*** the delay was only five days and the same was, accordingly, condoned by the Court. However, the observations therein are as under:

“9. There is no dispute to the proposition that a benefit which is available to a party under a special legislation, must be given to him only if he makes a strict compliance of the said legislation. In the instant case in view of the aforementioned factual scenario it cannot be said that this tenant had committed any willful or deliberate default.”

10. The Supreme Court has in ***E. Palanisamy v. Palanisami (Dead) By LRs and Others, (2003) 1 SCC 123*** has held as under: -

“5. ... The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. ...”

The above view has been affirmed by the Supreme Court in *Sarla Goel and Others v. Kishan Chand*, (2009) 7 SCC 658.

11. In the present case, the Tenants have been conscious of the deposit of rent to be made since 27th April, 2017. Though a period of one month was granted, the same was not complied with. Thereafter, even the Appellate Court granted time to deposit the arrears in rent, which was not complied with. There has been clear default by the Tenants. Considering the totality of circumstances, this is not a case which calls for interference under Art. 227 of the Constitution of India. This Court does not find any perversity in the order of the Trial Court as well as the Appellate Court.

12. The petition and all pending applications are, accordingly, dismissed. Costs of Rs. 10,000/- shall be payable by the Petitioner to the Respondent within four weeks.

OCTOBER 30, 2019/dk

**PRATHIBA M. SINGH
JUDGE**