

\$~41

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 6th December, 2019
+ **CM(M) 1732/2019**
ASHOK KUMAR GUPTA Petitioner
Through: Ms. Radhika Goel, Advocate.
(M:9810045396)

versus
SANJEEV BANSAL & ORS Respondents
Through: Mr. Ajay Gupta and Ms. Surbhi
Gupta, Advocates for R-1.
(M:9810717486)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J(Oral)

CAV 1196/2019

1. Caveat is discharged as Caveator has entered appearance.

CM APPL. 52330/2019(exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

CM(M) 1732/2019, CM APPL. 52329/2019 & CM APPL. 52331/2019

3. The Petitioner challenges the impugned order dated 30th October, 2019 passed by the Id. Rent Control Tribunal by which the appeal against the order dated 25th February, 2019 passed by the Id. ARC has been dismissed.

4. The original order of the ARC was dated 2nd May, 2018 by which the Petitioner - tenant was directed to deposit rent at the rate of Rs.200/- per month. A review was filed challenging the said order, however, there was no compliance of the order 2nd May, 2018. Since the tenant did not deposit the rent and the review continued to just remain pending, the landlord filed an

application under Section 15(7) of DRC Act. The said applications were adjudicated by the Id. ARC who held that since there has been non-compliance of the order dated 2nd May, 2018, the defence of the tenant is liable to be struck off.

5. The eviction petition was filed by one Mr. Sanjeev Bansal against the tenant - Mr. Ashok Kumar Gupta impleading two other co-owners as respondents. The petition was filed under Section 14(1)(e) in respect of property bearing no. 2020 to 2022, Qali Arya Samaj Bazar Sita Ram, Delhi-110006. The monthly rent which was stated in petition was Rs.500/- and the petition was pending since 6th July, 2011. Vide order dated 2nd May, 2018 passed under Section 15(4) of the DRC Act, the ARC directed that the tenant would be liable to pay a rent of Rs.200/- per month with effect from 3rd August, 2011 i.e., from the date of filing of the petition. The said order dated 2nd May, 2018 reads as under:

“Arguments have already been heard.

As per the case of the petitioner the respondent is in arrears of rent @ Rs.500/- per month w.e.f October 2010. Whereas the Respondent no.1 has specifically denied the ownership of the petitioner qua the demised premises and he has also denied the relationship of landlord and tenant between the parties. Moreover, he has also denied the rate of rent @ Rs.500/-.

It is pertinent to mention here that as per the contents of the W/S filed by the respondent no.1 the factum of the respondent being a tenant has been admitted. However, rate of rent has not been disclosed by the respondent.

Section 15(3) DRC Act empowers the controller to fix an interim rent, when there is any dispute as to the amount of rent payable by the tenant. Similarly, Sec

15(4) DRC Act provides that if there is any dispute as to the person to whom the rent is payable, the controller may direct the tenant to deposit with the controller the amount payable by him u/s 15(1) or 15(2) or 15(3), as the case may be.

In view of the facts and circumstances of the present case, the respondent no.1 is hereby directed to pay the interim rent at the rate of Rs.200/- per month from the date of filing of the petition within one month from the date of this order. The respondent shall further continue to deposit the future and subsequent rent at the aforesaid rate without prejudice to the rights and contentions of the parties on or before 15th of each English Calender month during pendency of the present petition. since, the respondent has disputed the relationship as well as ownership of the petitioner, this order shall be deemed to have been passed u/s 15(4) DRC Act.

6. A perusal of the above order shows that the deposit was to be made within one month from the order, however instead of depositing the same, the tenant chose to file a review and also did not comply with the order for more than six months. Simultaneously, the landlord had also preferred an application under Section 15(7) seeking striking off of the defence. The said review application was decided on 25th February, 2019 and was dismissed. However, on 4th December, 2018 almost after the expiry of six months, the tenant deposited the rent. In view of the fact that there was clear non-compliance of the order dated 2nd May, 2018, the Id. ARC, in the application under Section 15(7) of the DRC Act, struck off the defence of the tenant. The said order was appealed against which was upheld by the Id. Tribunal by the impugned order.

7. The Id. Tribunal has, come to the conclusion that Section 15(7) can be

invoked even when the eviction petition is under Section 14(1)(e) and not under Section 14(1)(a). The Id. Tribunal has, considered the contention of the tenant and has held that the non-payment of rent and non-compliance of an order passed under Section 15(4) would entail striking off of the defence under Section (15)(7). The Tribunal's interpretation observations in the impugned order read:

"5. At the very outset, the appellant's contention that the provisions under Section 15 of the Act are applicable to the eviction proceedings only under Section 14(1)(a) of the Act is liable to be rejected even on plain reading of Section 15 of the Act. Section 15(2) of the Act specifically deals with the eviction proceedings, brought under the provisions other than Section 14(1)(a) of the Act. Section 15(4) of the Act contemplates a situation where there is a dispute as to the person to whom the rent is payable and in such situation, the Rent Controller can direct the tenant to deposit the rent with the controller. Section 15(7) of the Act lays down that if the tenant fails to deposit the rent, the Controller may strike off the defence.

6. Admittedly, in the present case the order dated 02.05.2018 was rent deposit order under Section 15(4) of the Act. The review application filed on 24.07.2018 was not just beyond prescribed period and without any delay condonation application, but it was not even maintainable on merits as well."

8. Even otherwise, the Court has enquired from the Id. counsel for the tenant as to what kind of use the tenanted premises is being put into. Id. counsel fairly submits that the tenant is an old man and the shop is not being used for any particular commercial purpose. However, one M/s M.G. Industries, a firm is using the said address. On the other hand, Id. counsel for

the landlord submits that the shop has been lying locked for more than a decade and in fact the landlord resides upstairs in the first floor of the said property and they are even unable to make any repairs or carry out any alterations and modifications. Ld. counsel has cited the judgment of the Supreme Court in **Smt. Kamla Devi v. Shri Vasdev, (1995) 1 SCC 356** to submit that the striking off of the defence is a discretionary order which can be passed by the ARC. The legal position is settled as is captured in the above judgment i.e., that in every case, non-compliance may not entail striking off of the defence. The Supreme Court's observations read:

“23. We are unable to uphold the contention of the appellant that the case of Ram Murti v. Bhola Nath [(1984) 3 SCC 111] was wrongly decided and reliance was wrongly placed in that case on the decision of a Bench of three Judges of this Court in the case of Shyamcharan Sharma v. Dharamdas [(1980) 2 SCC 151] . In our view, sub-section (7) of Section 15 of the Delhi Rent Control Act, 1958 gives a discretion to the Rent Controller and does not contain a mandatory provision for striking out the defence of the tenant against eviction. The Rent Controller may or may not pass an order striking out the defence. The exercise of this discretion will depend upon the facts and circumstances of each case. If the Rent Controller is of the view that in the facts of a particular case the time to make payment or deposit pursuant to an order passed under sub-section (1) of Section 15 should be extended, he may do so by passing a suitable order. Similarly, if he is not satisfied about the case made out by the tenant, he may order the defence against eviction to be struck out. But, the power to strike out the defence against eviction is discretionary and must not be mechanically exercised without any application of mind to the facts of the case.”

9. Considering the overall facts especially the fact that the tenant is not putting the tenanted premises to any use and that the landlord is residing above the tenanted shop, the exercise of discretion in striking off of the defence cannot be held to be unreasonable. The mere pendency of the review does not mean that the tenant would not comply with the order to deposit rent. Rent control legislations are special legislations which provide unusual protection to tenants but also require strict compliance as held by the Supreme Court in ***E. Palanisamy v. Palanisami (Dead) By LRs and Others, (2003) 1 SCC 123***. The relevant extract of the judgment reads 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.
...”

10. The above view has been affirmed by the Supreme Court in ***Sarla Goel and Others v. Kishan Chand, (2009) 7 SCC 658***. In the facts of this case, the exercise of discretion is also justifiable, in favour of the landlord, as the tenanted premises is lying locked and the landlord is being severely inconvenienced. Thus, the non-compliance by the tenant does not deserve to be condoned.

11. Accordingly, the petition and all pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 06, 2019/dj