$~6 & 7

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

Date of decision: 9th January, 2020

\+ **CM(M) 501/2017**

RAJIV KUMAR ..... Petitioner

Through: Mr. Vivek Narayan Sharma, Mr. Akash Chatterjee & Mr. Priyansh Sharma, Advocates (M-9646996865)

versus

MEENA SHARMA ..... Respondent

Through: Mr. Mukesh Anand, Advocate (M-9810001582)

AND

\+ **CM(M) 502/2017 & CM APPLs. 47488/2017, 47518/2017**

DHARAM PAL & ANR ..... Petitioners

Through: Mr. Vivek Narayan Sharma, Mr. Akash Chatterjee & Mr. Priyansh Sharma, Advocates

versus

MEENA SHARMA ..... Respondent

Through: Mr. Mukesh Anand, Advocate

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present petitions challenge the impugned orders dated 22nd July, 2016 passed by the ld. Rent Controller and the order dated 20th April, 2017 passed by the ld. Rent Control Tribunal by which the eviction petition filed by the Respondent/Landlord (*hereinafter, "Landlord*") has been allowed. The background is that an eviction petition was filed by the

Landlord – Smt. Meena Sharma against the Petitioners/Tenants (*hereinafter, "Tenants"*) under Section 14(1)(a) of the Delhi Rent Control Act. Initially, vide order dated 5th September, 2006, the Tenants were held to be in breach and a decree was passed under Section 14 (1)(a). However, benefit was given under Section 14(2). Since there were defaults by the tenant, the matter reached this Court in CM(M) 796/2014 and CM(M) 797/2014. The question that came to be considered in the said petition was whether future defaults by the Tenant could be considered for the purpose of refusing benefit under Section 14(2). The petitions were decided by this Court vide the said order dated 3rd March, 2015 and the matter was remanded back to the ld. ARC in the following terms:

> *"7. The short issue in the present petitions is that in the absence of an order under Section 15(1) DRC Act directing payment of future rent, whether the Court was not required to consider future defaults in view of provision under Section 26 of the DRC Act.*
>
> *8. Learned counsel for the petitioner contends that the order dated 5th June, 2006 condoning the delay without any application seeking condonation of delay was an illegal order and further illegality was committed by the impugned orders of the learned ARC dated 7th September, 2013 and Rent Controller dated 24th July,2014 when they did not consider the subsequent defaults made. Even if there was no direction by the Court to pay future rents the provision of Section 26 DRC Act was applicable and any delay in deposition of the money beyond 15th day of the proceeding month would have given rise to a cause of action in favour of the petitioners amounting to subsequent defaults. Reliance is placed on Shanti Prasad Jain (D) Through Lrs. Vs. Prakash Narain Mathur 158 (2009) DLT 483(SC); Sanjay Kumar Saxena Vs. Smt. Meeta Govel 114 (2004) DLT 710; Ram Prakash Tewari Vs. Suraj*

Bhan Yadav 90(2001) DLT 236 and Shri Manohar Lal (deceased) through LRs Vs. Prem Nath Gera (deceased) through LRs. CM(M) 638/2011, decided by this Court on 24th May, 2011.

....

12. Thus even if the learned ARC vide the order dated 5th September, 2006 failed to pass directions for payment of future-rent, the tenant was statutorily bound to pay the future rent in terms of Section 26 of the Act. However, both the learned ARC and the Rent Controller committed illegality in not considering Section 26 of the DRC Act and dismissed the application of the petitioner under Section 14(1)(a), 14(2) and 15(7), 25 and 26 of the DRC Act read with Section 151 CPC on the ground that there was no order for payment of future rent under Section 15(1) DRC Act. Thus, there is an illegality committed by both the Courts below. Hence the impugned order is set aside and the matter is remanded back to the Additional Rent Controller for consideration of the petitioner's applications under Sections 14(2), 15(7), 25 and 26 of the DRC Act and whether the respondent was entitled to the benefit under Section 14(2) of the DRC Act in view of subsequent defaults."

2. The ld. Single Judge of this Court had, as per the above order, set aside the impugned orders and had remanded the matter back to the ld. ARC. The first impugned order which is under challenge i.e. order dated 22nd July, 2016 was an order passed on remand. The ld. ARC, has, after analysing the various payments made by the Tenant and the question as to whether the tenant is entitled to benefit under Section 14(2), arrived at a conclusion that the Tenant was a defaulter and had committed violation of the order dated 5th September, 2006. In view thereof, the ld. Rent Controller, passed an order for eviction. The observations of the ld. Rent Controller are

as under:

> *"11. A month after the order dated 5 September, 2006, the respondent committed default in making payment of rent for three consecutive months i.e. for the months of November 2006, December, 2006 and January, 2007, as the rent for the said three months was deposited by the respondent on 21 February 2007 and that too without interest at the rate of 15% per annum. From the table of the payment of rent, as reproduced therein above, it can be seen that the respondent defaulted to pay the rent as per section 26 of Delhi Rent Control Act despite order dated 5 September 2006, even though the proceedings were pending for consideration of entitlement of the respondent to benefit under section 14(2) of Delhi Rent Control Act.*
>
> *...*
>
> *14. In the present case, the respondent despite having knowledge of the fact that he has been held to be a defaulter by the court as per order dated 5 September 2006, and despite having the knowledge that he has yet not been granted benefit under section 14(2) of Delhi Rent Control Act and the petition is pending for the consideration of his entitlement to the said benefit under section 14(2) of Delhi Rent Control Act, opted not to deposit/pay meagre rent of Rs.400/- per month, regularly as per order under s.15(1) dated 5 September 2006 read with section 26 of the Delhi Rent Control Act. Therefore, in the present case it is not the three consecutive defaults to pay rent regularly (as per under s.15(1) of Delhi Rent Control Act read alongwith section 26 of Delhi Rent Control Act) during the pendency of the eviction petition, which renders the respondent not entitled to benefit under s.14(2) of Delhi Control Act.*
>
> *15. ORDER*
>
> *In view of the defaults committed by the respondent in making payment of rent regularly during the*

> *pendency of the present eviction petition as per order dated 5 September 2006 and as per the provisions of section 26 of Delhi Rent Control Act, it is held that the respondent has failed to make payment of rent as required by section 15 of Delhi Rent Control Act and he is therefore not entitled to benefit under Section 14(2) of Delhi Rent Control Act.*
> *Accordingly eviction order is passed under s.14(1)(a) of Delhi Rent Control Act against the respondent and in favour of the petition with respect to the tenanted premises i.e. Room No.2 (measuring 10' x 20'), first floor, property No.IX/6933, Prem Gali, Gandhi Nagar, Delhi as shows in site plan Ex.PW-1/1."*

3. This order was carried in appeal by the Tenant, resulting in order dated 20th April, 2017 of the ld. RCT. The finding of the ld. RCT is as under:

> *"23. During the course of arguments, it is admitted by the Ld. Counsel for the appellant that the arrears were deposited @ Rs.300/- per month and not at the rate as directed in case of Tenant Rajeev Kumar. The same is noted in the order of the trial court also showing deposit of rent for the period of November, 2006 to January, 2007 as sum of Rs.900/- which was deposited only during 21.2.2007. No interest is deposited. The trial court records and the impugned order at page 2 and 3 is very clear. The same continued. It is clearly forthcoming from the chronological deposits made, that there has been no proper deposits within the time prescribed u/s 15(1) of the Rent Control Act. There is a mandatory obligation on the tenant to deposit and to continue to pay or deposit month by month by 15th of each succeeding month a sum equivalent to the rent at that rate.*
> *As regards the other appeal, there has been continuous delay in deposit of rents and there was no timely deposits.*

24. The Hon'ble High Court directed the Rent Controller to find out the eligibility of the tenant for the benefit of protection provided u/s 14(2) of the DRC Act in view of the subsequent defaults. It was also directed to consider the applications u/s 14 (2), 15 (7) and also section 25 and 26 of the said Act of the landlord.

25. Section 14(2) of the DRC Act creates a rider in passing the eviction order on the ground of non-payment of rents. If the tenant makes payment or deposits the same as required u/s 15 of DRC Act, then no eviction order can be passed. After careful perusal and further considering the language employed u/s 15 (1) of the DRC Act, it becomes clear that the Act aimed at the proper, diligent and timely payment of rents. It is also clear that this provision not only expects the tenant to clear the arrears but also mandates him to pay the current rents [which becomes future rents after the initial order u/s 14(1)] month to month and the same shall have to be paid or deposited before 15th of each succeeding month for the preceding month. It also clearly commands that the sum shall be equivalent to the rent at that rate.

26. In the case of this tenant, the sums deposited are not at the equivalent rate. Having noted the language employed in this provision, it is clear that there cannot be any further defaults at all. The chronological events of the deposits made by the tenant exposit that:

a) the tenant had not deposited the rents and the arrears equivalent to the rent adjudicated.

b) the same is belated.

c) the subsequent deposits are not in conformity with the provisions u/s 15 (1) as regards the date of deposits and the sum adjudged.

27. As per section 26 of the DRC Act, again there is a direction to the tenant that he shall pay the rent within the time fixed by contract or in the absence by

15th day of the succeeding month. If there is any default, the tenant is liable to pay the interest. The object of Section 26 (1) is to enforce the tenant to pay the rents regularly within the prescribed time or to pay the penalty by way of interest. It must be noted that section 26 is the first provision under Chapter 6 of the Act which deals with the deposit of rents.

...

30. The only contention of the ld. Counsel for the appellant is that the landlord cannot claim the arrears of rent in violation of the provisions of Article 52 of the Limitation Act, which hit the entire case of the appellant. He relies on the ruling of ***Kamla Bakshi vs. Khairati Lal 2000 (3) SCO 381****. It was a case where one landlord succeeded in the suit for mandatory injunction for eviction against the occupier which was upheld by the Hon'ble High Court. Thereafter, a notice was issued claiming arrears of rent and initiated proceedings for eviction invoking section 14 (1) (a) of the DRC Act for rent for the period which was spent in prosecuting the civil suit. In that case the Hon'ble Supreme Court held that the landlords cannot be allowed to claim the arrears of rents beyond the period of limitation.*

In the instant case, respondent had never objected to the claim of the landlord for the arrears at the time of inception of the proceedings u/s 14 (2) of the DRC Act. All these arrears accrued under the valid orders of the Rent Controller constituted under the Act. With utmost respect to the ruling, it is to be noted that the principle of law laid down therein cannot be made applicable to the present set of facts in the instant case which is totally of a different genre. Thus, the contentions of the tenant that there was no arrears of rent and that there were bonafides in not depositing the rents timely, cannot be accepted. Consequently, the following order."

ORDER:

Both the appeals stand dismissed. The orders dated 22.07.2016 in RC/ARC No. 684/16 in E. No. 212/05 and in RC/ARC No. 683/16 in E. No. 211/05 on the files of Ld. SCJ, Shahdara, KKD Courts, are hereby, affirmed."

4. Ld. counsel for the Tenants submits that the manner in which the benefit of Section 14(2) was not given to the Tenants, is contrary to law. He submits that future defaults could not have been considered while considering the benefit under Section 14(2) and in fact, the Tenant had not committed any default. He further submits that the manner in which the decree for eviction has also been passed based upon the wrong interpretation of law shows that the same is liable to be set aside. Ld. counsel, however, on a query from the Court fairly concedes two aspects i.e. first, that the rent for November, 2006 to January, 2007 was in fact paid only in February, 2007 and second, that pursuant to the eviction decree being passed, the execution was filed and the possession of the premises has also been given in July, 2018.

5. On the other hand, ld. counsel for the Landlord submits that possession having been handed over and the Tenants having enjoyed a stay order from this Court, which has not been complied with, no indulgence deserves to be shown to them. In fact, a stay order was initially granted on 17th November, 2017 and was therafter vacated vide order dated 24th April, 2018 due to non-compliance by Tenants. The Tenants, while enjoying interim orders have failed to pay any of the amounts directed by the Court. Further, the default has not only been for the period of 2006 and 2007 but even after enjoying interim orders passed by this Court. In the meantime,

since the stay was vacated, the property has been handed over and the Tenants, who are in default cannot be put back in possession.

6. A perusal of the initial order dated 3rd March, 2015 shows that the ld. Single Judge had ruled on the question as to whether future defaults can be taken into consideration for the purpose of granting or non-granting the benefit under Section 14(2). That order dated 3rd March, 2015 has attained finality and has not been challenged by the Tenants. Even in the present petition, initially vide order dated 3rd May, 2017, warrants of possession were directed to be not executed till the next date. On applications moved by the landlord, the matter came to be considered at the interim stage afresh vide order dated 17th November, 2017. The ld. Single Judge in the said order directed that payment of Rs.40,000/- shall be made in respect of each of the shops which are subject matter of the two petitions on or before the 10th of each successive month. The said order is extracted herein below:

> *"**CM No.19077/2017 in CM (M) No.501/2017 & CM No.19080/2017 in CM(M) No.502/2017 (both for exemption)***
>
> *1. Allowed, subject to just exceptions.*
>
> *2. The applications are disposed of.*
>
> ***CM(M) 501/2017 & CM(M) 502/2017***
>
> *3. Adjournment is sought by the counsel for the petitioners.*
>
> *4. The counsel for the respondent opposes, contending that stay of the order of eviction impugned has been granted without even imposing any conditions on the petitioners in terms of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. (2005) 1 SCC 705.*
>
> *5. The orders of eviction impugned in these petitions became executable in July, 2016. The petitioners have already enjoyed possession for nearly one and a half years without paying any compensation.*

6. The counsel for the petitioners on enquiry states that he has no idea of the prevalent letting value.

7. The counsel for the respondent states that as far back as in the year 2011, compensation at the rate of Rs.20,000/- per month was fixed for each of the shops subject matter of the two petitions. He further states that the petitioners themselves had offered rent to the respondent at the rate of Rs.80,000/- per month for both the shops.

8. The counsel for the petitioners also confirms.

9. In this view of the matter, the continuation of the stay of the order of eviction impugned in these petitions is made subject to payment of compensation by the petitioners to the respondent at the rate of Rs.40,000/- per month for each of the shops subject matter of the two petitions.

10. The petitioner/s in each of the petitions to, on or before 25th December, 2017, pay to the respondent compensation at the said rate with effect from the month of August, 2016 till the month of December, 2017 and to continue to pay compensation at the said rate with effect from the month of January, 2018, month by month, in advance for each month, by the 10th day of the month and till further orders in these petitions.

11. If there is any default in payment, the interim order shall stand vacated and the respondent shall be entitled to execute the order of eviction subject to final outcome of the petitions.

12. If there is any default in payment, the interim order shall stand vacated and the respondent shall be entitled to execute the order of eviction subject to final outcome of the petitions.

13. Needless to state that the payments aforesaid are also subject to final outcome of the petitions and repatriable by the respondent in the event of the petitions succeeding. 14. CM Nos.16964/2017, 19076/2017, 16967/2017 & 19079/2017 are disposed *of. 15. List on 24th April, 2018."*

7. It is the admitted position that the tenants did not comply with the above order. Thus, vide order dated 24th April, 2018, the stay which was granted was vacated. The landlord has since filed for execution and the possession of the premises has been handed over.

8. Considering that the Tenant has been under repeated defaults in making payments to the landlord, no indulgence deserves to be shown by this Court. The benefit of Section 14(2) is meant for *bona fide* Tenants and cannot be extended to those Tenants who are neither paying the admitted rent as per the directions, but also the occupation charges as directed by the Court to enjoy a stay order.

9. Under these circumstances, it is clear that the petition is liable to be dismissed. Further the Petitioner has enjoyed interim relief since 3rd May, 2017 till July, 2018, which is a period of approximately 13 months, further orders are required to be passed so as to ensure that parties who enjoy interim orders are not shown indulgence for non-compliance. Considering that the occupation charges which were directed was approximately Rs.40,000/- for each of the shops i.e. Rs.80,000/- per month, the Petitioner is liable to compensate the landlord for this period. The total amount that would be due as per the order dated 17th November, 2017 would be Rs.80,000/- per month from the date when the interim order was passed. In the facts and circumstances of this case, considering that there has been default by the Tenants, and the total amount due in terms of the interim order dated 17th November, 2018 would be over and above Rs.10 lakhs and the Tenant has now handed over the possession of the property to the

landlord, it is directed that a lumpsum amount of Rs.5 lakhs shall be paid to the landlord on or before 8 weeks from today. If the said amount is paid, no further amount would be liable to be paid for the period 3rd May, 2017 till July, 2018. Failure to pay this amount, would entail the Tenants to pay the entire sum of Rs.10,40,000/-. The landlord would be entitled to recover the same along with @ 6% per annum from 17th November, 2017.

10. With these observations, both the petitions and all pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 09, 2020
Rahul