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

Date of Decision: 15.02.2021

+ **CM(M) 133/2021**

ANITA DEVI TULSIAN Petitioner
Through Mr.Hitendra Nahata, Adv.

versus

SUBH KARAN SINCE DECEASED THROUGH ITS LEGAL
REPRESENTATIVE & ORS. Respondents
Through Mr.R.P.S.Sirohi, Adv. for LR
Nos.2 and 3 of R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (Oral)

CM 5837/2021(Exemption)

Allowed, subject to all just exceptions.

CM(M) 133/2021 & CM 5836/2021

1. This petition has been filed by the petitioner being aggrieved of the judgment dated 20.10.2020 passed by the learned Rent Control Tribunal in Appeal, being RCT No.17/2019, dismissing the appeal of the petitioner challenging the order dated 12.07.2018 that was passed by the learned Additional Rent Controller in Eviction Petition No. E-196/14/09, granting benefit of Section 14(2) of the Delhi Rent Control

Act, 1958 (hereinafter referred to as “the Act”) to the respondents herein.

2. In the eviction petition filed by the petitioner, an order dated 07.12.2011 under Section 15(1) of the Act came to be passed by the learned Additional Rent Controller, directing as under:

“Without prejudice to the contention of the respondent, the respondents are directed to pay rent at admitted rate from three years immediately preceding the filing of present petition till date within one month from today. The respondent shall pay future rent at the same rate by the 15th of each succeeding month.”

3. The eviction petition was finally decided in favour of the petitioner under Section 14(1)(a) of the Act by the judgment dated 17.03.2018 and the petition was set down for an enquiry under Section 14(2) of the Act.

4. By the subsequent order dated 12.07.2018, the learned Additional Rent Controller extended the benefit of Section 14(2) of the Act to the respondents herein observing as under:

“Admittedly, vide order dt. 07.12.2012 u/s 15(1) of DRC Act, the respondents were directed to pay rent @ Rs.42.35 ps. for the period of three years immediately preceding the filing of the present petition and to continue to pay the same in future as well. The said amount was to be paid within one month from the date of the order. It is not in dispute that an amount of Rs.3049.20 ps. was deposited by the respondents on 21.12.2011

i.e. within one month from the date of the order. The respondent had further deposited Rs.551/- on 06.01.2012 i.e. also within one month of the passing of the order u/s 15(1) of the DRC Act. Thus within one month, the respondents had deposited an amount of Rs.3600/- which is equivalent to the rent for 85 months @ Rs.42.35 ps.

The present petition was filed in November, 2009 and thus the respondents were to deposit the rent w.e.f. December 2006. Thus within one month, the respondents had deposited the rent for the period w.e.f. December, 2006 till December, 2013. The respondents have also furnished the details of the rent deposited by them which has not been disputed by the petitioner. The respondents have regularly deposited the rent till April, 2018 barring a few months in between. This court finds force in the argument raised by the ld. Counsel for the respondents that there is no bar in depositing the future rent. Clearly the respondents have deposited the rent in advance and at no point of time they were in default or there were any arrears in payment of rent, after passing of the order u/s 15(1) of the DRC Act.

In the circumstances, respondents are entitled for benefit under section 14(2) DRC Act, as it is the first default on the part of respondents regarding payment of rent to the petitioner. Benefit under Section 14(2) of DRC Act is hereby extended to the respondents.”

5. The petitioner being aggrieved of the said order, challenged the same in appeal, which has come to be dismissed by the order impugned in the present petition.

6. The learned counsel for the petitioner submits that the Impugned Order is liable to be set aside inasmuch as it fails to consider the effect of the Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as “the Slum Act”). He submits that as the eviction petition could not have been filed without seeking the permission of the Competent Authority under the said Act, the order dated 07.12.2011, where it directed the respondents to make the payment of rent from three years prior to the filing of the petition, should be read as three years from prior to the filing of the petition seeking permission of the Competent Authority under the Slum Act. He submits that so considered, there was a default in compliance with the said order on part of the respondents.

7. The learned counsel for the petitioner further submits that the rent, pursuant to the order dated 07.12.2011, was deposited by M/s Shubh Karan Gauri Shankar HUF, which has been held vide order dated 17.03.2018 of the learned Additional Rent Controller, not to be a tenant of the petitioner. He submits that therefore, the rent has not been deposited by the tenant and the respondents could not have been granted the benefit of deposit of such rent.

8. The learned counsel for the petitioner submits that even otherwise there was a default made by the respondents in deposit of the future monthly rent. In this regard he has drawn the attention of this Court to a chart filed by the petitioner along with the written submissions before the Courts below. He submits that the chart clearly shows consecutive period of default on part of the respondents,

wherein the respondents not only failed to deposit the rent for a few months, but also deposited the rent of the other months beyond the 15th of the month as had been directed.

9. The learned counsel for the respondents opposes the above submissions of the petitioner placing reliance on the orders passed by the learned Additional Rent Controller and the learned Rent Control Tribunal.

10. I have considered the submissions made by the learned counsels for the parties.

11. The order dated 07.12.2011 passed by the learned Additional Rent Controller under Section 15(1) of the Act required the respondents to pay the admitted rent “from three years immediately preceding the filing of the present petition”. The said order does not require the respondents to deposit such rent from three years prior to the filing of the petition under the Slum Act. Therefore, the petitioner cannot claim that there was any default in compliance with the said order on part of the respondents by not making such deposit from three years prior to the filing of the petition under the Slum Act.

12. It is important here to note that the petitioner never challenged this order nor filed any application under Section 15(7) of the Act incase the petitioner felt that the respondents have failed to comply with the said order.

13. As far as the submission of the petitioner that the deposit of the rent has been made by the HUF, the rent having been deposited clearly

inures to the benefit of the respondents and therefore, again cannot be a ground for denying the benefit of Section 14(2) of the Act to the respondents.

14. The plea of the petitioner that there was a default in compliance with the order of the learned ARC under Section 15(1) of the Act, also deserves rejection inasmuch as the chart filed by the petitioner itself clearly shows that the respondents were in fact depositing the rent in advance, barring a few months. Even if there was a default in deposit of rent for a few months in between and/or delay in deposit of such rent for a few months, the same does not appear to be contumacious. As held by the Supreme Court in ***Dina Nath (D) by L.Rs. and Ors. versus Subhash Chand Saini and Ors., (2019) 9 SCC 477***, the issue of such default lies at the discretion of the learned Additional Rent Controller. The Supreme Court observed as under:

“24. It clearly emerges from the exposition of law that power vested Under Section 15(7) of the Act, 1958 is discretionary and not mandatory and depends on contumacious or deliberate default and must be construed harmoniously so as to balance the rights and obligations of the tenant and the landlord and the power Under Section 15(7) of Act, 1958 being an exception to be exercised with due care and circumspection.

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30. The question is whether the tenants were guilty of contumacious conduct in withholding such payment. While answering that question, the amount of rent payable for the demised premises may be a factor which cannot be brushed aside, but the facts and circumstances of the case on hand,

do not suggest any negligence, defiance or contumacious non-payment of the amount payable to the landlord to warrant the taking of that "exceptional step" which is bound to render the tenant defenceless in his contest against the Respondents-landlord."

15. The learned Additional Rent Controller in his order dated 12.07.2018 has exercised his discretion in favour of the respondents and held that on such default, the respondents cannot be denied the benefit of protection under Section 14(2) of the Act.

16. The discretion having been exercised, I do not find any ground for interference in exercise of the powers under Article 227 of the Constitution of India.

17. In view of the above, I find no merit in the present petition. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

FEBRUARY 15, 2021

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