

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

% **Date of Decision: July 15, 2021**

+ CM (M) 434/2021, CM APPLs.20653/2021 (by the petitioners u/S
151 CPC for stay), 20654/2021 & 20655/2021 (Exemption)
SARITA GUPTA & ORS.Petitioners
Through: Mr. Aslam Ahmed, Advocate

Versus
HARISH KUMAR PAHWA & ORS.Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

ORDER

[VIA VIDEO CONFERENCING]

ASHA MENON, J: (Oral)

CM APPL.20655/2021 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL.20654/2021 (Exemption from filing attested affidavits)

1. The application is allowed subject to the petitioner filing duly affirmed affidavit(s) alongwith the court fees/deficit court fees, if any, within 72 hours from the date of resumption of the regular functioning of this court.
2. The application stands disposed of.

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CM (M) 434/2021, CM APPLs.20653/2021 (by the petitioners u/S 151 CPC for stay)

1. The legal representatives of the tenant have filed the present petition under Article 227 of the Constitution of India assailing the findings of the learned District & Session Judge/Rent Control Tribunal (RCT) dated 17th February, 2021 and the order of eviction dated 17th November, 2015 passed by ACJ-CUM-CJ-CUM-ARC, North District, Rohini Courts.

2. The facts as are relevant to the disposal of the present petition are that the respondents/landlord had filed an eviction petition under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (DRC Act) seeking the eviction of the original tenant Shri K.L. Gupta, (referred to as 'tenant' for convenience) predecessor-in-interest of the petitioners, from the tenanted premises which was a residential flat comprising of three rooms, kitchen and toilet (partition into latrine and bath) on the ground floor, forming part of House No. K-5/2, Model Town-III, Delhi – 110009 (Tenanted Premises). The original landlord was Mr. Moti Dass, who expired on 18th April, 2006 bequeathing the property to his four sons, who are the respondents herein.

3. The eviction petition was filed alleging that the tenants had paid the rent only up to 31st October, 2011 at the last agreed rate of rent of Rs.2,574/- per month, exclusive of electricity and water charges and arrears of rent for 23 months w.e.f. 1st January, 2011 to 30th September, 2013 at the settled rate amounting to Rs.59,202/- and interest @ 15% thereon, amounting to Rs.8,140/-, had accumulated. Legal notice of

demand including enhancement dated 16th October, 2013 was served on the tenants despite which neither was any reply sent nor the arrears paid/tendered.

4. The learned Additional Rent Controller ('ARC') vide the judgment dated 17th November, 2015 noticed that the tenant was proceeded ex parte and thus since the case of the landlord remained uncontroverted and unchallenged, the petition under Section 14(1)(a) of the DRC Act was allowed. It was also noted that though an order dated 11th February, 2015 had been passed under Section 15(1) of the DRC Act, directing the tenant to pay the arrears and future rent, the said order was not complied with. Thus, no benefit could be accorded to the tenant under Section 14(2) of the DRC Act. It thus passed an eviction order in favour of the landlord and against the tenant.

5. This order was taken in appeal by the tenant, numbered as RCT No. 16/2016. This was dismissed vide the impugned order placed at Annexure P-1 dated 17th February, 2021, the learned RCT/District Judge, finding no reason to interfere with the judgement of the learned ARC dated 17th November, 2015.

6. Mr. Aslam Ahmed, learned counsel for the petitioners submitted that the tenant was a senior citizen and was completely dependent on the aid and advice of his counsel. It is submitted that the tenant could not attend the hearings personally and remained unaware of the directions issued by the court for the deposit of the rent. The counsel on whom Shri K.L. Gupta depended, also absented himself from the hearings and as a

result he was proceeded ex parte. Once again, he remained totally unaware of this development. According to learned counsel for the petitioners, who are the legal representatives of Shri K.L. Gupta being his wife, daughter-in-law and granddaughters, on humanitarian grounds, the impugned judgments are liable to be set aside.

7. The question was put to the learned counsel for the petitioners, as to whether the rent has been paid by them and if so, till what date. Learned counsel for the petitioners had drawn the attention of this Court to the orders dated 4th January, 2016 of the then District & Session Judge, North, directing the appellant (Shri K.L. Gupta) to deposit the arrears of rent which were approximately Rs.1,50,000/- within two days and to the Annexure P-3, being the deposit slip dated 6th January, 2016, to submit that the arrears had been paid. However, in response to the query of this Court, the learned counsel orally submitted that during the pendency of the appeal, rent had been paid up to December, 2020. The learned counsel also expressed willingness to deposit further amounts, if so directed by this Court.

8. No doubt, the eviction orders have worked some hardship on the petitioners, including problems during the Covid-19 pandemic, but it is to be also noticed that the respondents being the legal heirs of the original landlord have themselves struggled to get the rents to which they are entitled to under the law. They have been denied benefits due to them from the property in question, whereas the petitioners and the tenant have been residing in the property without paying rent since 2011 except during the pendency of the appeal but before its disposal stopped doing

so.

9. The eviction petition was instituted on 1st August, 2014 as recorded in the judgment of the learned ARC. While the proceedings were pending, Shri K.L. Gupta absented himself as a result of which he was proceeded ex parte. To say that he was dependent on the sole advice of his counsel, may be acceptable but that would not exempt him from following up a case in which he had appeared and had even filed his written statement, admitting to his status as a tenant and that of the respondents as the landlords. His defence was that the respondents had collected rent from him up to December, 2013 without issuing rent receipts. In other words, he knew everything about the case as the written statement could not have been filed without his instructions.

10. On 11th February, 2015, the order under Section 15(1) of the DRC Act was passed but the tenant failed to comply with this order directing him to pay Rs.2,574/- per month being the admitted rate of rent from 1st January, 2014 till the date of order and continue even thereafter, on a monthly basis. When this order was not complied with, an application under Section 15(7) of the DRC Act was filed, which was allowed on 28th May, 2015, on which date the tenant was also proceeded ex parte.

11. Thus, it is clear that despite the knowledge that there was an order directing him to pay the arrears of rent, during the pendency of the petition, the tenant chose not to pay the rent till the Appellate Court passed the order on 4th January, 2016. It is interesting to note that while claiming lack of knowledge of the orders under Section 15(1) of the DRC

Act and the necessity to comply with the same, as also that he had been proceeded ex parte, and while heaping a lot of blame on the previous counsel, Shri K.L. Gupta seems to have filed the appeal rather promptly, challenging the judgment of the learned ARC dated 17th November, 2015, on 10th December, 2015 itself, as recorded in the judgment of the learned District & Session Judge/RCT.

12. Thus, this plea of total dependency on the counsel engaged by him is not worthy of credence. The learned RCT/District Judge, did not accept such an explanation either and this Court does not find any error in the same. The learned RCT/District Judge rightly concluded that the tenant was negligent in not complying with the directions of the learned ARC and was falsely blaming his previous lawyer without making any formal complaint against him.

13. It is also to be noted that even during the pendency of the appeal, which was disposed of only on 17th February, 2021, the petitioners have admittedly paid the rent only till December, 2020. For the past more than six months, the petitioners have been enjoying the property fully aware that in the capacity as tenants, they were required to pay rent/occupation charges, particularly in the light of the fact that they were already suffering an eviction order passed by the learned ARC and the challenge to which has also been dismissed.

14. No error or perversity is evident in the impugned judgments of the ARC as well as the District & Session Judge/RCT who have considered all the facts sequentially and in totality, to record that there was default in

the payment of rent and default in compliance of the interim directions under Section 15(1) of the DRC Act. Under law, the tenant was not entitled to any protection under Section 14(2) of the DRC Act. The eviction order passed by the learned ARC and upheld by the learned RCT are strictly in accordance with the provisions of law.

15. No merit is seen in the present petition, which is dismissed *in limine*.

16. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 15, 2021/pkb



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