

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

% **Reserved on: 15th July, 2021**
Pronounced on: 17th August, 2021

+ CM (M) 537/2020, CM APPL.27495/2020 (by the petitioner u/S
151 CPC for stay)

SUBHASH GANDHI (DECEASED) THROUGH LRS

..... Petitioners

Through: Mr. Mohit Gupta with Mr. Vishal
Saxena & Ms. Aayushi Jain,
Advocates

versus

SHANTI DEVI

..... Respondent

Through: Ms. Sonali Malhotra with Ms.
Tanvi Sharma, Advocates

+ CM (M) 541/2020, CM APPL.27811/2020 (by the petitioner u/S
151 CPC for stay)

SUBHASH GANDHI (DECEASED) AND ORS Petitioners

Through: Mr. Mohit Gupta with Mr. Vishal
Saxena & Ms. Aayushi Jain,
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versus

SHANTI DEVI

..... Respondent

Through: Ms. Sonali Malhotra with Ms.
Tanvi Sharma, Advocates

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

[VIA VIDEO CONFERENCING]

1. These two petitions have been filed by the legal representatives
(L.Rs.) of the original tenant against whom the respondent herein, Smt.

CM (M) 537/2020 & CM (M) 541/2020

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Shanti Devi had filed an eviction petition under Section 14 (1)(a) of the Delhi Control Act, 1958 (DRC Act). Since the parties are the same and since the impugned orders arise out of the same proceedings, both petitions are being disposed of vide this common order.

2. CM (M) 537/2020 has been filed against the order dated 17th October, 2020 passed by the learned Principal District & Sessions Judge/Rent Control Tribunal (RCT), Shahdara Karkardooma Courts, Delhi, dismissing the appeal preferred by the present petitioners against the orders of the learned SCJ-cum- RC dated 23rd January, 2017. CM (M) 541/2020 has been filed by the petitioners against the order of the RCT dated 17th October, 2020, upholding the judgment of the learned SCJ-cum-RC dated 21st July, 2018 (also mentioned as 16th July, 2018).

3. As already noticed, an eviction petition had been filed by the respondent/landlady under Section 14 (1)(a) of the DRC Act in respect of one shop situated on the ground floor ad-measuring 6ft x 8ft in property bearing No.9/6829, Janta Gali, Gandhi Nagar, New Delhi-110031, on the ground that the petitioners had defaulted in paying the rent, despite service of demand notice dated 11th April, 2016. The learned Rent Controller (RC) vide the judgment dated 23rd January, 2017 concluded that the tenant (now deceased) was in default in the payment of rent and that the respondent/landlady had established her entitlement to seek eviction of the petitioners under Section 14(1)(a) of the DRC Act. But another chance was granted under Section 15(1) of the DRC Act to the tenant, directing him to, within one month from the date of the order, pay the arrears of rent @ Rs.180/- per month with effect from 1st April, 2016 till 30th April, 2016 and @ 198/- per month with effect from 1st May,

2016 till date, along with interest @15% per annum, as per Section 26 of DRC Act, adjusting whatever rent that had already been deposited.

4. The learned Rent Controller fixed the case for verifying compliance and called for Nazir's report and on the basis of the Nazir's report concluded vide the impugned judgment dated 21st July, 2018 that the petitioners had not complied with the orders under Section 15(1) and thus were not entitled to the protection under Section 14(2) of the DRC Act and accordingly directed eviction of the petitioners from the suit property.

5. Both the judgments i.e., dated 23rd January, 2017 and 21st July, 2018 were challenged by way of appeals under Section 38 of the DRC Act before the learned RCT (being RCT No.25/18 & RCT No. 30/18), which were dismissed vide the order dated 17th October, 2020. Hence the present petitions.

6. The foremost arguments submitted by the learned counsel for the petitioners, Mr. Mohit Gupta, is that the eviction petition itself was not maintainable inasmuch as the notice of demand was dated 11th April, 2016 and the petition was filed on 24th May, 2016, even prior to the two months' time allowed to the petitioners to make compliance, had elapsed. Reliance has been placed on the judgment of *Anand Prakash v. Gain Chand Swara*, 1992 SCC OnLine Del 396.

7. It has also been argued that the learned RC had wrongly concluded that there was default, holding that the tenant had failed to deposit the arrears of rent under Section 27 of the DRC Act. Learned counsel argued that two cheques had been sent along with the tenant's reply 26th April, 2016 to the demand notice sent by the landlady, which was overlooked by

the learned RC. Thus, since tender of rent through cheques was valid tender and further since the cheques were valid for a period of three months, it was not possible for the tenant to deposit the rent under Section 27 of the DRC Act. Therefore, the learned RC wrongly applied the judgment of *Sarla Goel vs. Kishan Chand* (2009) 7 SCC 658 as in that case money orders were refused and the knowledge of refusal was immediate. The learned counsel stressed on the fact that the respondent/landlady had only vaguely denied having received the cheques and it was she who had *malafidely* not encashed the cheques on time.

8. Furthermore, it was submitted that the Nazir's report actually confirmed the claim of the petitioners that the orders under Section 15(1) had been duly complied with and there was a factual error in the orders of eviction passed by the learned RC. The learned counsel referred to the certified copy of the Nazir's report placed at PDF Page 175 of the electronic file of CM (M) 537/2020 to submit that the Nazir had not correctly reported about the deposit of the rent, as he had gone merely on the entries in the Deposit Register, whereas in compliance of the directions of the learned RC, the tenant had deposited rent into the bank account of the respondent/landlady.

9. According to learned counsel for the petitioners, the subsequent entries in the Deposit Register also include deposit in advance. The learned counsel has, therefore, argued that the arrears had been fully paid and the order under Section 15(1) DRC Act fully complied with. There was nothing in the Nazir's report which disclosed a delay in making the deposits, rather it affirmed that rent had been paid in advance which was

valid tender of rent. Reliance has been placed on judgments of *Dina Nath (D) by Lrs. & Anr. Vs. Subhash Chand Saini & Ors.* (2019) 9 SCC 477 and *Jinender Kumar v. Inder Preet Singh*, 2008 SCC OnLine Del 1089.

10. Ms. Sonali Malhotra, learned counsel for the respondent/landlady on the other hand, submitted that the learned RC had rightly directed eviction as the order under Section 15(1) of the DRC Act had directed the petitioners to deposit the arrears of rent with interest but no interest had been deposited. It was further argued that the Nazir's report clearly showed that the sum of Rs.1188/- was not for rent/arrears with effect from January but was for the arrears from May, 2016 to January, 2017. Therefore, though the petitioners had made deposits of arrears of rent, it was not in accordance with law. The order under Section 15(1) had directed payment of rent by the fifteenth day of each succeeding month. This schedule had to be strictly adhered to. Non-adherence would render the deposit invalid for the purpose of grant of protection under Section 14(2). The learned RC, according to learned counsel, had only followed the law.

11. Learned counsel for the respondent/landlady further submitted that the petitioners could not claim lack of knowledge, as in the evidence, they admitted that they were aware that the cheques had not been encashed. The law required the tenant to deposit the rent under Section 27 of the DRC Act. Therefore, the judgment of *Sarla Goel(supra)* fully applied to the facts of the present case that there was non-deposit of rent under Section 27 of DRC Act and the law and facts were rightly appreciated by the learned RC to hold that there was a default in payment of rent entitling the respondent/landlady to seek eviction of the petitioners under

Section 14(1)(a) of the DRC Act. Learned counsel also submitted that the Nazir's report was correct as there were gaps in compliance and therefore the eviction order was just.

12. In rejoinder, learned counsel for the petitioners submitted that the Court had directed deposit of money in the account of the respondent/landlady which was why the Deposit Register did not have any entry in that regard. That did not mean that there was a lapse in paying rent. Learned counsel referred to the statement of the account placed at PDF page 130 of the e-file of CM(M) 537/2020 to point out to the entries dated 04th November, 2016 for a sum of Rs 198/- towards rent for November, 2016; 03rd December, 2016 of Rs. 198/- which was towards the rent of December; and 05th January, 2017 for sum of Rs. 198/- which was towards rent of January, 2017. Thereafter, since the judgment 23rd January, 2017 was passed, a further deposit was made on 27th January, 2017 for a sum of Rs. 6,602/- as payment of arrears and Rs.1,188/- which was rent for the months from February 2017 to July, 2017 which was recorded in the Nazir's report. Thus, the arrears for the entire period had been deposited. In these circumstances, the eviction order was liable to be set aside.

13. The learned counsel for the respondent/landlady however, submitted that factual aspects could not been considered by this Court in the exercise of its powers under Section 227 of the Constitution of India. That the petitioners were in arrears of rent since April 2014, which they had failed to pay despite demand notice dated 11th April, 2016 has been fully established and there was no requirement under Section 14(1)(a)

that two months period had to be granted to the tenant to make the payment.

DISCUSSION

14. It is no doubt true that the eviction petition was filed by the respondent/landlady on 24th May, 2016 i.e., before the period of two months had expired from the date of issuance of notice of demand dated 11th April, 2016. This Court in *Anand Prakash(supra)* had held that two months' clear time has to be given to the tenant to pay the arrears and if the tenant fails to pay the arrears within the said two months, only then the landlord gets a ground to seek eviction of the tenant for non-payment of rent. But in the present case, admittedly, the petitioners had sent a reply to the notice of demand on 26th April, 2016. According to them, they had enclosed two cheques bearing Nos. 011148 and 011150 dated 26th April, 2016 amounting to Rs. 4500/- as rent w.e.f. 01st April, 2014 to 30th April, 2016 and Rs. 1188/- as advance rent for the period from 01st May, 2016 to 31st October, 2016 respectively.

15. In other words, if this claim is accepted on its face, the petitioners had exercised their option to pay the arrears of rent within two months. The two months would have expired on 11th June, 2016. The filing of the eviction petition without waiting for the expiration of the balance period of the two months available to the tenant to make payments would not be fatal in these circumstances. It has caused no prejudice to the tenant, nor has it resulted in grave miscarriage of justice. It was not as if the tenant was foreclosed from complying with the notice of demand because the eviction petition was filed a few days prior to the expiry of two months. Rather, their case is that they had duly tendered the rent and therefore, the

learned RC could not have come to the conclusion that a default had occurred. The filing of the petition may be premature but has not resulted in any injustice to the petitioners.

16. The next aspect is whether the petitioners were justified in not depositing the rent under Section 27 of DRC Act and whether on that ground, the learned RC could have returned a finding of default.

17. The argument of the petitioners is specious that they remained unaware of the non-encashment of the cheques for a period of three months, as the cheques were valid for three months. According to them, they had enclosed the cheques with the reply dated 26th April, 2016. The petition was filed on 24th May, 2016. Summons were issued to the tenant, who was served on 19th July, 2016 and appeared in court on 5th August, 2016. This should have been sufficient indication to the tenant that the cheques had not been accepted by the respondent/landlady as tender of rent.

18. The case of *Sarla Goel (supra)* was one of refusal of money order but that would not mean that the principle enunciated in that case was not applicable to this case. Reliance has been placed on the judgment of this Court in *Arun Kumar Gupta v. Rakesh Sood*, 2012 SCC OnLine Del 197, to contend on behalf of the petitioners that payment of rent by way of a cheque on receipt of demand notice was a valid tender of rent. If that be so, when the cheques were not encashed, and instead the eviction petition claiming arrears was filed, there was clear refusal. In ordinary course, the tenant may not be faulted for waiting for three months, hoping that the landlord would encash the cheques, before attempting to deposit the same under Section 27 of the DRC Act. However, that is not the case

here. Once the petitioners became aware of the filing of this eviction petition, they ought to have deposited the rent under Section 27 as held in *Sarla Goel(supra)*. Failure to do so, was rightly considered by the learned RC, as a default in the payment of rent, entitling the respondent/landlady, to seek eviction under Section 14 (1)(a) of the DRC Act. Finally the arrears of rent from 1st April, 2014 to April 2016 was deposited after the order under Section 15 (1) DRC Act was passed on 23rd January, 2017.

19. Thus, there is no reason to interfere with the order of the learned RC dated 23rd January, 2017 or the judgment of the learned RCT dated 17th October, 2020 upholding this judgment of the RC that the tenant was in default of rent and the respondent/landlady was entitled to seek his eviction on this ground.

20. Now, coming to the next aspect as to whether there was or there was not due compliance of the orders under Section 15(1) of the DRC Act to entitle the petitioners to protection under Section 14(2) of the DRC Act, for which, no doubt, the crucial report is that of the Nazir.

21. It appears that there is some miscalculation made by the Nazir. The Nazir has calculated a sum of Rs.4500 as rent @ Rs.180 per month w.e.f. 1st April, 2014 to 30th April, 2016. For these 25 months, along with interest, the amount payable in terms of the orders would actually be Rs.5150.25. For the period from 1st May, 2016 to January, 2017 (9months), the petitioners had deposited rent for three months and only six months' rent of Rs.1188/- had to be paid to comply with the orders. Along with interest this would amount to Rs.1277.10. Thus the total amount required to be paid to comply with the order dated 23rd January, 2017 was Rs.6427.35. The petitioners/tenant had deposited in the account

of the respondent/landlady Rs.6602/- on 27th January, 2017 which amount has been mentioned by the Nazir in his report and also states that there was an excess payment of Rs.61/-, whereas the excess amount deposited by the petitioners was Rs.174.65. In respect of the other payments made in the course of the trial of the case, the Nazir's report confirms payments. Despite all of this, the Nazir still reported that "*according to report of deposit register respondent not compliance of the order dt 23/1/17. arrears of rent not deposit in the Courts.*"(sic). This was an incorrect report, particularly after referring to amounts deposited in the bank account of the respondent/ landlady.

22. Thus, it clearly appears that the arrears as stipulated in the order dated 23rd January, 2017 under Section 15(1) of the DRC Act have been paid or deposited, and the order duly complied with. The grievance of the respondent/landlady appears to be that it was not in strict compliance of the said order, as the payment of rent has not been month by month, by the 15th day of each succeeding calendar month.

23. However, as has been held by this court in ***Jinender Kumar(supra)***, there is no bar for depositing future rent even under Section 27 of the DRC Act. The deposit of future rent by the petitioners in compliance of the order dated 23rd January, 2017 cannot be rejected only because the rent has been paid in advance and not month by month. Both the Courts below have faltered in their judgments only because of the incorrect reports submitted by the Nazir. This underlines the need for the RCs to cross-check the calculations submitted by the Nazir. It may require some time and patience, but it must always be borne in mind that an untrue and incorrect report of the Nazir may affect valuable rights of

either the tenant or the landlord in such matters. It also needs to be underlined that it would be in the interest of the tenant to deposit rent month by month, identifying each deposit or payment made, as any lapse on the part of the tenant could result in his eviction.

24. In the light of the foregoing discussion, therefore, these petitions have necessarily to be and are allowed. The pending applications are also disposed of. The judgment dated 17th October, 2020 of the RCT and the judgment dated 21st July, 2018 are set aside while the conclusion by both the courts that there has been a default in the payment of rent is upheld. However, the default is to be taken as a first default and benefit under Section 14(2) DRC Act is granted to the petitioners.

25. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 17, 2021
ak/ck/dss

नित्यमेव जयते