

Sh. Mohd. Abid Vs. Smt. Kausar Parveen

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Court : Delhi

Decided On : Nov-25-2014

Judge : Valmiki J. Mehta

Appellant : Sh. Mohd. Abid

Respondent : Smt. Kausar Parveen

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CM(M) 1271/2013 & CM No.18920/13 (stay) 25th November, 2014 % SH. MOHD. ABID Through:Petitioner Mr. R.M Bagai, Mr. Yasin and Ms. Damini Khurana, Advocates. VERSUS SMT. KAUSAR PARVEEN Through: Respondent Mr. Farahim Khan, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. Yes VALMIKI J.

MEHTA, J (ORAL) 1. This petition under Article 227 of the Constitution of India is filed by the petitioner/tenant impugning the concurrent judgments of the courts below; of the Additional Rent Controller dated 22.11.2012 and the Additional Rent Control Tribunal dated 8.10.2013; by which the courts below have decreed the eviction petition filed by the respondent/landlady under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short the DRC Act) on account of non-payment of rent.

2. At the outset, I must note that the present/ subject eviction petition filed under Section 14(1)(a) of the DRC Act was a second eviction petition under this provision and an earlier petition E-63/2004 titled as Smt. Kausar Parveen vs. Mohd. Abid was decreed in favour of the landlady by the judgment of the ARC dated 27.8.2008. Eviction was however not ordered in terms of the earlier judgment dated 27.8.2008 inasmuch as, under the Delhi Rent Control Act, there is a provision of Section 14(2) of the DRC Act and which states that no eviction is ordered of the tenant if the tenant in case of first default deposits rent due in terms of an order which is passed under Section 15(1) of the DRC Act. However, the benefit of Section 14(2) of the DRC Act is only available one time and not for the second time ie if the tenant defaults again in compliance of the notice sent under Section 14(1)(a) of the DRC Act for the second time and makes default in payment of rent for three consecutive months, then, tenant cannot get the benefit of protection against eviction under Section 14(2) of the DRC Act and tenant is ordered to be evicted.

3. The present petition is based upon a demand notice dated 18.12.2008 sent under Section 14(1)(a) of the DRC Act as per which rent was demanded from 1.8.2008 to 31.12.2008 and which arrears as per the provision of Section 14(1)(a) of the DRC Act has to be paid in two months of service of the demand notice. This legal notice under Section 14(1)(a) of the DRC Act was served is not disputed by the petitioner/tenant. Petitioner/tenant however has sought dismissal of the eviction petition on the ground that he had tendered the rent to the respondent/landlady within a period of two months and consequently he cannot be evicted in view of the judgment of the Supreme Court in the case of Smt. Prakash Mehra Vs. K.L.Malhotra AIR 1989 SC1652 Petitioner/tenant states that when by the demand notice dated 18.12.2008, rent was demanded from August 2008 to December, 2008, rent for the months of September and October 2008 (rent of August 2008 admittedly having already been received) was sent to the respondent/landlady by a money order Ex.RW1/9, and which was refused by the respondent on 4.11.2008, and on account of refusal it is argued that there is effective tender or acceptance and hence there has not taken place consecutive defaults of three months as required under law. It is also argued that petitioner/tenant deposited the rents for the months of September 2008 to

February 2009 in a petition filed under Section 27 of the DRC Act on 16.4.2009, the same be taken as compliance of the demand notice and hence the petitioner is not liable to be evicted.

4. Both the courts below have relied upon the judgment of the Supreme Court in the case of Sarla Goel and Ors. Vs. Kishan Chand (2009) 7 SCC658 2009 RLR369SC) and which judgment lays down the ratio that it is not enough for the tenant only to tender the rent and once tendered rent is refused, a tenant thereafter is bound to take action under Section 27 of the DRC Act and deposit the rent under Section 27 of the DRC Act and only in which circumstance it can be held that there is no default in compliance of the demand notice. Supreme Court has held in Sarla Goels case (supra) that the responsibility/duty/liability of the tenant to comply with the demand notice under Section 14(1)(a) of the DRC Act does not end by tender or refusal and the tenant must necessarily thereafter follow the procedure under the DRC Act of deposit of rent under Section 27 of the DRC Act and only in case of which deposit the tenant cannot be evicted. The relevant paras of the judgment of the Supreme Court in Sarla Goels case (supra) read as under:

15. Chapter IV, however, deals with Deposit of Rent. Section 26 of the Act provides that if the rent is paid it is the obligation of the landlord to grant receipt for the rent paid to him. In default of payment of rent within the time specified therein, the tenant is also liable to pay simple interest at the rate of 15% per annum from the date on which such payment of rent is due to the date on which it is paid. The proviso to Section 26(2) of the Act makes it clear that it shall be open to the tenant to remit the rent to his landlord by postal money order. Sub-section (3) of Section 26 also makes the provision that if the landlord or his authorized agent refuses or neglects to deliver to the tenant a receipt referred to in Sub-section (2), the Controller may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorized agent, by order direct the landlord or his authorized agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid. From a reading of Sub-section (3) of

Section 26 of the Act, it is clear that the tenant has been given further protection to get the rent receipt from the landlord and in the event the landlord refuses to grant such receipt, the procedure has been clearly made by the Legislature for the purpose of getting the receipt under the Act and at the same time the landlord can be imposed to pay damages not exceeding double the amount paid by the tenant and the costs of the application and to obtain a certificate from the landlord in respect of the rent paid. Now we come to the most important provision regarding the procedure under the Act to pay or deposit or tender rent to the landlord, if he refuses to grant any receipt in respect of the payment already made to him. As quoted herein earlier, Section 27 deals with deposit of rent by the tenant. It clearly says that where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner. When the words " bona fide doubt" has been added to Section 27, the tenant may remit such rent to the Controller by postal money order. From a conjoint reading of this provision referred to herein above and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the Legislature how the rent can be deposited if it was refused to have been received or to grant receipt for the same. If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. It is well settled that whether the word "may" shall be used as "shall", would depend upon the intention of the Legislature. It is not to be taken that once the word "may" is used by the Legislature in Section 27 of the Act, would not mean that the intention of the Legislature was only to show that the provisions under Section 27 of the Act was directory but not mandatory.

16. In other words, taking into consideration the object of the Act and the intention of the Legislature and in view of the discussions made herein earlier, we are of the view that the word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may" , in our view, was used by the Legislature to mean that the procedure given in those provisions

must be strictly followed as the special protection has been given to the tenant from eviction. Such a cannon of construction is certainly warranted because otherwise intention of the Legislature would be defeated and the class of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them.

24. It is not in dispute that the tenant/respondent had availed the benefit of Section 14(2) of the Act by its order dated 3rd of December, 2001 passed by the Additional Rent Controller, Delhi. Since we have already come to the conclusion that since the tenant/respondent has failed to deposit rent in compliance with Section 27 of the Act because in the present case, admittedly, landlord/appellants had not accepted any rent tendered by the tenant/respondent within the time referred to in Section 26, it was the duty of the tenant to deposit such rent before the Rent Controller as prescribed in Section 27 of the Act. Admittedly, this step was not taken by the respondent which is mandatory in nature and, therefore, we must hold that the tenant/respondent had committed a second default in payment of rent and is, therefore, liable to be evicted from the suit premises.

(underlining added) 5. A reading of the underlined portions of para 15 in Sarla Goels case (supra) reproduced above shows that the Supreme Court has held that if rent is refused by the landlord or the landlord after receiving the rent does not give receipt of the same, it is necessary for the tenant to follow the procedure prescribed under Section 27 of the DRC Act and such procedure of Section 27 of the DRC Act has to be strictly followed in the event of refusal by the landlord to receive the rent. In para 16 of the judgment Supreme Court has held that the expression may as found in Section 27 of the DRC Act is not directory but mandatory and thereafter in para 24 of the judgment it is concluded that when the landlord does not accept the tendered rent within the time referred to as required by law then it is the duty of the tenant to deposit such rent before the Rent Controller under Section 27 of the DRC Act and which mandatory step if not taken, there is a second default in payment of rent whereby the tenant is liable to be evicted.

6. The issue before this Court is whether the ratio of the Supreme Court in the case of Sarla Goel (supra) will apply or will the ratio of the judgment of the Supreme Court in the case of Smt. Prakash Mehra (supra) will apply. This issue arises because it is argued on behalf of the petitioner/tenant that in terms of Smt. Prakash Mehra's case (supra) demand notice under Section 14(1)(a) of the DRC Act will stand satisfied on tender being made and that the ratio of Smt. Prakash Mehra's case (supra) was the ratio applicable in Delhi when the demand notice in this case was given on 18.12.2008 and not the ratio in the case of Sarla Goel (supra) because the judgment in the case of Sarla Goel (supra) was pronounced on 8.7.2009.

7. Before I answer the question of law raised, one factual aspect which needs to be noted is that the deposit which was made by the petitioner/tenant in this case under Section 27 of the DRC Act with respect to rent from September 2008 to February 2009 was on 16.4.2009/17.4.2009 ie after two months of receipt of the demand notice dated 18.12.2008 and which was received by the petitioner admittedly on 26.12.2008. Two months period expired on 26.2.2009 and the deposit under Section 27 of the DRC Act was admittedly made only later on 16.4.2009/17.4.2009. At this stage, I must note that there is no dispute that the rent for the month of August 2008 was paid/deposited within time and the issue in the present case is only with respect to existence of consecutive defaults of three months from September 2008 to November 2008 and in fact there is a consecutive default of four months as pleaded by the respondent/landlady because rent was not deposited within two months time for the four dues of rent of consecutive months of September 2008 to December 2008. 8(i) The first aspect to be considered is whether the judgment of the Supreme Court in Smt. Prakash Mehra's case (supra) relied upon by the petitioner applies in this case and if this judgment holds that it is enough for compliance of the legal demand notice sent under Section 14(1)(a) of the DRC Act that the rent has been tendered within two months of receipt of the notice and that there is no requirement of deposit in two months under Section 27 of the DRC Act once there is tender of arrears of rent to the landlord who refuses the same. (ii) When we refer to the judgment of the Supreme Court in the case of Smt. Prakash Mehra's case (supra), it is found that really the issue which was decided in that case and therefore the ratio which was laid down

in that case was one which pertained to the issue as to whether the tenant has to make payment only of that rent as demanded in the notice or the rent even for the period which became due subsequent to the service of the notice. This discussion is found in paras 5 and 6 of the judgment in the case of Smt. Prakash Mehra (supra) and which paras read as under:

5. The Additional Controller, Delhi, dismissed the eviction petition holding that the tenant was not in default. The Rent Control Tribunal, Delhi, noted that the rent was payable in advance in accordance with the agreement between the parties, that the respondent had earlier enjoyed the benefit of section 14(2) of the Act, that when the notice of demand was served on 7 May, 1976 the arrears of rent for the months of April and May 1976 had arisen, that the bank draft sent on 13 May 1976 related to the rent of April 1976 only, that as the rent for the month of May 1976 had also become due but had not been tendered, the landlady was justified in not accepting the tender, and that when the respondent again sent a draft on 11 June 1976 to cover the rent for the month of May 1976 the rent for the month of June 1976 had also fallen due but was not tendered. Holding that the respondent had not tendered the arrears of rent due up-to-date within two months of the notice of demand, the Tribunal held that the ground of non-payment of rent stood established. The Tribunal noted that the rent had not been paid for the months of April, May and June 1976 in advance for each month and, therefore, the respondent had committed three consecutive defaults. That being so, the Tribunal observed, the respondent was not entitled to the benefit of Section 14(2) again.

6. In second appeal, the High Court reversed the decision of the Rent Control Tribunal and dismissed the application for ejection upon the finding that the notice demanding the arrears of rent related to the months of April and May 1975, and as one draft had been sent on 13 May 1976 and another on 11 June 1976 representing a total of two months' rent, and as this rent had been paid, within two months of the service of notice of demand, it must be taken that the rent due at the time of the service of notice of demand had been tendered by the respondent to the appellant. The High Court proceeded on the view that Section 14(1)(a) of the Act made out a ground for eviction only where the tenant had neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two

months of the date on which a notice of demand for the arrears of rent was served on him by the landlord, the arrears being the rent due on the date of the notice. In this case, the High Court said, as the notice called for payment of the arrears due for the months of April and May 1976 and the bank drafts were tendered within the period indicated in the notice, the notice was satisfied and no default could be said to have been committed in terms of Section 14(1)(a) of the Act. Accordingly, the High Court allowed the appeal and dismissed the application for ejectment.

(underlining added) (iii) After the issue is crystallized in paras 5 and 6 in the case of Smt. Prakash Mehras case (supra) the same is answered in para 7 and which para reads as under:

7. It is urged before us by learned Counsel for the appellant that Section 14(1)(a) of the Act contemplates the payment or tender of the whole of the arrears of rent legally recoverable from the tenant on the date when the demand notice is sent including the rent which has accrued after service of the demand notice. When the notice was sent on 7 May 1976, rent for the months of April and May 1976 had become due, and as two months was given for payment of the arrears, it would include also the rent which had accrued during the said period of two months. We are not satisfied that there is substance in the contention. The arrears of rent envisaged by Section 14(1)(a) of the Act are the arrears demanded by the notice for payment of arrears of rent. The arrears due cannot be extended to rent which has fallen due after service of the notice of demand. In this case, the two bank drafts representing the arrears of rent covered by the notice of demand had been tendered within two months of the date of service of the notice of demand. The High Court is right in the view taken by it. We are not satisfied that the construction placed by B. C. Misra, J.

in Jag Ram Nathu Ram v. Surinder Kumar S.A.O. No.52 of 1975 decided on 28 April, 1976 (Del) and in S.L Kapur v. Dr. Mrs. P. D. Lal, 1975 Ren C.J.

322 (Del) lays down the correct law on the point.

(underlining added) 9. In my opinion, the observations of the Supreme Court made in para 7 of Smt. Prakash Mehras case (supra) has to be read in the context of

paras 5 and 6 of the judgment and which were pertaining to the issue as to whether a tenant has to pay rent for the period other than the period stated in the notice and rent which had become due after service of notice but before the tenant tenders the rent as asked for in the demand notice, and it is in that context the Supreme Court observed that tendering within two months of the bank drafts with respect to arrears of rent was held to amount that the tenant should not be held to be in arrears of rent. The observations in para 7 are in no way related to the aspect as to whether without compliance/deposit under Section 27 of the DRC Act as held in Sarla Goels case (supra) is sufficient compliance by the tenants inasmuch as the issue with respect to procedure under Section 27 of the DRC Act did not come up before the Supreme Court in Smt. Prakash Mehras case (supra). The issue with respect to whether even if the landlord refuses to accept the rent whether the tenant was thereafter bound to deposit the rent under Section 27 of the DRC Act came up directly for consideration only in the judgment in the case of Sarla Goel (supra) and was pronounced upon by the Supreme Court in the case of Sarla Goel (supra) holding that the demand notice is not satisfied on tender or refusal by the landlord and even in case of refusal by the landlord the tenant has to comply with the procedure specified in the DRC Act being deposit of rent under Section 27 of the DRC Act. I therefore do not agree with the interpretation which is sought to be given by the petitioner upon the judgment of the Supreme Court in the case of Smt. Prakash Mehras case (supra), more so because the judgment in Sarla Goels case (supra) is directly on the point.

10. Since the judgment in the case of Smt. Prakash Mehras case (supra) does not deal with the aspect of requirement of compliance under Section 27 of the DRC Act, I need not go into the aspect as to whether the judgment of Sarla Goel (supra) will not apply in the present case because parties are covered by the ratio in Smt. Prakash Mehras case (supra) inasmuch as the demand notice in this case is of December 2008 and the deposit was made under Section 27 of the DRC Act on 16.4.2009/17.4.2009 but the judgment in the case of Sarla Goel (supra) was pronounced on 8.7.2009.

11. I would however note that whenever a judgment of the Supreme Court deals with and pronounces upon a legal provision of a statute, the judgment only

declares the law qua that statutory provision and there is ordinarily no issue with respect to any prospective operation of the ratio of the judgment of the Supreme Court. However, whenever the Supreme Court has thought it fit the Supreme Court has clarified in certain judgments that the law which is laid down in the judgment should be prospectively applied and when this is otherwise not stated the judgment of the Supreme Court only declares law and there does not arise any issue of the law being only applied prospectively with respect to cases which we decided thereafter.

12. For the sake of completion of narration I would like to state that counsel for the petitioner had placed reliance upon the judgment of the Supreme court in the case of Chitranjan Burman Vs. Om Prakash Bajoria and Others (2001) 8 SCC758 and Priya Bala Ghosh (Smt) and Others Vs. Bajranglal Singhanian & Anr. 1993 Supp (1) SCC24, however, these two judgments of the Supreme Court deal with the provisions of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 and not with the Delhi Rent Control Act and once there is a direct judgment of the Supreme Court under the Delhi Rent Control Act, 1958 being the judgment of Sarla Goel (supra), the judgments relied upon by the petitioner of the Supreme Court with respect to Bihar Rent Act cases will not apply so far as Delhi is concerned.

13. In view of the above, I do not find any merit in the present petition, and the same is therefore dismissed, leaving the parties to bear their own costs.
NOVEMBER25 2014 ib CMM12712013 VALMIKI J.

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