

B.R. Gupta Vs. Pawan Kumar Gupta

B.R. Gupta Vs. Pawan Kumar Gupta

SooperKanoon Citation : sooperkanoon.com/1172120

Court : Delhi

Decided On : Dec-01-2014

Judge : Najmi Waziri

Appellant : B.R. Gupta

Respondent : Pawan Kumar Gupta

Advocate for Def. : Mr. Sanjay Jain, Mr. Vikram Singh, Ms. Ruchi Jain

Advocate for Pet/Ap. : Mr. Rajat Aneja

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

18. 03.2014 Date of Decision:

01. 12.2014 + CM (M) No.415 of 2012 And CM No.6397 of 2012 B.R. GUPTA Through: Petitioner Mr. Rajat Aneja, Adv. versus PAWAN KUMAR GUPTA Through: Respondent Mr. Sanjay Jain, Sr. Adv. with Mr. Vikram Singh & Ms. Ruchi Jain, Advs. CORAM: HONBLE MR. JUSTICE NAJMI WAZIRI NAJMI WAZIRI, J.

1. This petition under Article 227 of the Constitution of India impugns an order dated 24.02.2012, whereby the Rent Control Tribunal (RCT) allowed the respondents (tenant) appeal against an order dated 24.08.2011 of the Additional

Rent Controller (ARC). Consequently, the RCT set aside the order impugned before it and afforded protection to the tenant from eviction under Section 14 (2) of the Delhi Rent Control Act, 1958 (Act). Background of the case 2. The facts giving rise to the present petition are that the petitioner (landlord) had sought eviction of the tenant from property No.47, 1st Floor, Bunglow Road, Kamla Nagar, Delhi (tenanted premises) under Sections 14 (1) (a), (b), (d) & (h) of the Act. The tenanted premises had been let out to the tenant at a monthly rent of Rs. 500 excluding other charges. In his eviction petition, the landlord had averred that the tenant was a habitual defaulter in paying rent and

was in arrears of even rent for the last more than three years; that the tenant failed to pay the arrears of rent even within two months from the service of legal notice dated 19.01.2004; that the tenant had sub-let/assigned/parted with possession of whole of the tenanted premises to one Mr. Ravinder Kumar without the landlords written consent; that neither the tenant nor his family members had been residing at the tenanted premises for a period of six months prior to filing of the eviction petition; that the tenant had acquired vacant possession of an alternative residential property bearing No.14, Ashoka Palace, A-77, East Park Road, Opposite Ajmal Khan Park, Karol Bagh, New Delhi where he had been residing along with his family members.

3. Through his Written Statement (WS), the eviction petition was contested by the tenant, wherein he denied the allegation of nonpayment of rent but did not dispute landlord-tenant relationship. It was averred that the rent was paid to the landlord on time but receipts were not issued on the pretext that he would issue them later; that a proper reply dated 22.03.2004 was sent to the landlord and had tendered Rs. 18,000 as rent for the period 01.04.2001 to 31.03.2004 by way of a demand draft as claimed in the legal notice; that in fact he had paid rent for a further period of six months i.e., till 30.09.2004 through another demand draft dated 28.07.2004 for a sum of Rs. 3,000. Furthermore, the tenant denied that he had sublet the tenanted premises to one Mr. Ravinder Kumar or that he/his family members were not residing in the tenanted premises for a period of six months prior to the filing of the eviction petition or that he had acquired vacant possession of property bearing No.14,

Ashoka Palace, A-77, East Park Road, Opposite Ajmal Khan Park, Karol Bagh, New Delhi.

4. During the pendency of the eviction petition, an order under Section 15 (1) of the Act was passed on 07.02.2005 by the learned ARC, directing the tenant to pay or deposit the arrears rent w.e.f. 01.10.2004 till that date @ Rs. 500 per month within one month of the date of the order and to further continue to pay or deposit the future rent at the aforesaid rate, month by month, by the fifteenth day of each succeeding month.

5. The landlord examined himself as PW-1 whereas the tenant examined himself as RW-1 besides examining Shri Roshan Lal, Public Relation Officer, Post Office Jungpura as RW-2 and Shri Naresh Kumar, Peon, Punjab National Bank, Janpath as RW-3. The landlord had not pressed the grounds for eviction under Sections 14 (1) (b), (d) and (h) of the Act and limited his case only to the ground under Section 14 (1) (a) of the Act. Thereafter, on the basis of evidence adduced on record, the learned ARC vide judgment dated 05.07.2011, came to the conclusion that the landlord was successful in proving his case under Section 14 (1) (a) of the Act and the Nazirs report was called for to consider granting the benefit envisaged under Section 14(2) of the Act to the tenant. After examining the Nazirs report, the learned ARC noted that the tenant had not strictly complied with the earlier order dated 07.02.2005 and there were delays in depositing the rent for several months for which the tenant could not offer any cogent explanation. Thus, the learned ARC termed this action of the tenant to be deliberate. Accordingly, the tenant was not afforded protection from eviction

under Section 14(2) of the Act and an eviction order was passed in favour of the landlord on 24.08.2011.

6. Feeling aggrieved by the aforesaid eviction order, the tenant preferred an appeal before the learned RCT where he argued that at the time of final adjudication of the dispute, the learned ARC had modified the earlier order vide final judgment dated 05.07.2011, which had already been duly complied with and

that once a final order is passed, all the interim orders had merged into it. Hence, it was argued that where there was compliance of the final order under Section 15 (1), the learned ARC ought to have granted the benefit from eviction under Section 14(2) of the Act but in not granting such benefit there was error in the judgment. In reply, it was submitted on behalf of the landlord that even though there was compliance of the final judgment dated 24.08.2011 but since the earlier order dated 07.02.2005 was not duly complied with, the tenant was not entitled to the benefit under Section 14(2) of the Act. It was further argued that the tenant had not moved any application for seeking condonation of delay in depositing the rent. Impugned Order 7. The learned RCT, relying on Prem Chand Agarwal & Anr. v. Uttar Pradesh Financial Corporation & Ors.¹ was of the view that once a final order is passed, all the earlier interim orders merge into the final order and the interim orders cease to exist. The learned RCT was further of the view that although the tenant had defaulted in the payment of rent, the question of condonation of delay did not arise since the landlord never moved an application under Section 15(7) 1 (2009) 11 SCC479

of the Act for striking out the defence of the tenant for his failure to deposit the rent as required under Section 15(1) of the Act. It was noted that the initial order dated 07.02.2005 was passed taking a prima facie view of the matter, directing the tenant to pay rent w.e.f. 01.10.2004 since he had alleged that he had paid rent upto 30.09.2004. It was further noted that the learned ARC, after trial found that the tenant was in arrears of rent from 01.04.2001 and not from 01.10.2004 and therefore, the tenant was directed to pay the arrears w.e.f. from 01.04.2001 with interest thereon within one month from the date of order. The learned RCT was of the view that the initial order dated 07.02.2005 merged with the final order dated 05.07.2011 and since admittedly, the latter order was complied with, the tenant was entitled to the benefit from eviction under Section 14(2) of the Act. The learned RCT had also relied upon a decision of this Court in Debi Ram v. Devi Chand² to hold that it is the modified order which is required to be complied with for seeking the benefit under Section 14(2) of the Act. Contentions 8. Mr. Rajat Aneja, the learned counsel for the landlord contends that compliance of the final judgment by the tenant would not ipso facto entitle him to the benefit under

Section 14(2) of the Act; that the tenant could not contend that defaults, if any committed by him in complying with the earlier order dated 07.02.2005 stood impliedly condoned at the time of passing the final judgment; that the said submission is wholly misplaced since it does not fit within the scheme and framework of the Act; that consideration for 2 (1992) 46 DLT705

entitlement under Section 14(2) of the Act arises only post adjudication of the eviction petition. Making elaborate submissions in relation to Section 15(1) of the Act, he contends that the learned ARC was bound to modify the earlier (interim) order if the said order was at variance with the final finding; that it is for this limited purpose, the order under Section 15(1) of the Act is stated to be modified so as to conform to the final adjudication under Section 14(1)(a) of the Act; that there is no concept of merger of the interim order under Section 15(1) with the final judgment under Section 14(1)(a) of the Act.

9. With respect to Section 15(7) of the Act, Mr. Aneja submits that the said provision is not to be confused with the peculiar facts and circumstances of the present case. It is submitted that the landlord had not preferred an application under Section 15(7) of the DRC Act, which he could have; that striking out the defence of the tenant would have only cut short the adjudication process under Section 14(1)(a) of the Act and has no relevance with the tenants entitlement under Section 14(2) of the Act. He further submits that the payment of arrears of rent by the tenant as per the final judgment dated 05.07.2011 would be irrelevant for the purpose of examining the entitlement of benefit under Section 14(2) of the Act. He also submits that at the time of passing the final judgment, the learned ARC did not have the occasion to examine compliance of the earlier (interim) order dated 07.02.2005 by the tenant since the Nazirs report was called for only thereafter. According to him, if it were to be held that the tenant has cleared the entire arrears of rent as per the final judgment, then there was no relevance in passing the order dated 07.02.2005 under Section 15(1) of the Act. In this

context, he submits that the provision under Section 15(1) of the Act would therefore, become meaningless and nugatory.

10. In view of the aforesaid position, the learned counsel for the petitioner has sought setting aside of the impugned order as it is erroneous in law. In support of his contentions, he has relied upon *Sanjay Kumar Saxena v. Meeta Govel*³, which held that defence of the tenant must not be necessarily struck off in all cases before he can be deprived of the protection against his eviction envisaged by Section 14(2) of the Act. It was further held that if the Controller is satisfied that there has been default in compliance of the order passed under Section 15(1) and the said default has not been condoned by the Court, the defaulting tenant is not entitled to the benefit of Section 14(2) of the Act. He also relied upon *Shobha David v. Om Prakash Gulati & anr.*⁴, wherein it was held that the dismissal of the landlords application under Section 15(7) of the Act does not imply that the tenants initial default of payment of rent stood condoned. Lastly, he relied upon *Shanti Prasad Jain v. Prakash Narain Mathur*⁵ to contend that even if the entire amount of rent defaulted by the tenant was subsequently deposited with the Rent Controller, in compliance of the order under Section 15(1) of the Act, there is no question of condonation of delay.

11. In reply, Mr. Sanjay Jain, the learned Senior Advocate submits on behalf of the tenant that there are no exceptional circumstances or circumvention of statutory provisions, which warrants interference 3 (2004) 114 DLT7104 (2009) 157 DLT6115 (2009) 11 SCC663

of this Court under Article 227 of the Constitution of India. He submits that the tenants compliance with the final judgment dated 05.07.2011 made him entitled to the benefit from eviction under Section 14(2) of the Act; that the judgment dated 05.07.2011 took care of the interim order dated 07.02.2005 in as much as the latter got merged with the final judgment. He also submits that by modifying the earlier order dated 07.02.2005, there was implied condonation of delay by the learned ARC with regard to defaults committed by the tenant in the payment of rent. In view of the aforesaid position, he submits that the tenant was entitled to the benefit from eviction under Section 14(2) of the Act. Consequently, submits counsel that the impugned order of the learned RCT does not suffer from any illegality and that the learned RCT has correctly followed the statutory provisions. He therefore, seeks dismissal of the present petition.

12. In support of his contentions, the learned Senior Advocate for the tenant has relied on Prem Chandra Agarwal & Anr. v. Uttar Pradesh Financial Corporation & Ors.⁶ which held as under:

It is a well-settled principle that once a final order is passed, all the earlier interim orders merge into the final order, and the interim orders cease to exist.

He has also relied on Ram Murti v. Bhola Nath & Anr.⁷ which held that the Rent Controller has the power to extend the time for payment of future rent under Section 15(1) of the Act where the failure of the tenant to make such payment or deposit was due to circumstances beyond his control. 6 (2009) 11 SCC4797 (1984)

3

SCC111

13. In rebuttal, Mr. Rajat Aneja submits that there is no concept of implied condonation of delay under the Act. He further submits that the dicta of the Supreme Court in Ram Murti (supra) have no application to the facts and circumstances of the present case, because it holds that the Rent Controller does possess the power to condone the delay in the deposit of rent under Section 15(1) of the Act and also possesses the discretion not to strike out the defence of the tenant under Section 15(7) of the Act; that the tenant never moved an application for condonation of delay; that Section 15(7) is not at all attracted in the present case since admittedly, the landlord never preferred an application under the said provision for striking out the defence of the tenant. He further submits that Ram Murti (supra) does not hold that in the absence of an application by the landlord under Section 15(7) of the Act, the tenant would automatically get the benefit under Section 14(2) of the Act; that in fact, after the final adjudication is over, the Controller, in terms of Section 14(2) of the Act, would proceed to consider the entitlement of the benefit from eviction to the tenant which is contingent upon compliance of the order under Section 15(1) of the Act, irrespective of whether under Section 15(7) the defence of the tenant is struck out or not. Analysis 14. The proposition advanced by the learned Senior Advocate and also the view of the learned RCT in the impugned order that once a final order is passed, all the earlier interim orders merge into the final order and the interim orders cease to exist is unexceptionable. However, the question is whether the same could be made

applicable to the facts and circumstances of the present case and whether it would fit within the framework of the Act.

15. In order to appreciate the contentions of the parties, it is desirable to set out the relevant portions of the Act. If the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner, the landlord may seek eviction of the tenant under Section 14(1)(a) of the Act. Once the landlord prefers an eviction petition under the said provision, proceedings are taken out under Section 15(1) of the Act whereby the Controller shall, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant with a direction that he should continue to pay or deposit the rent, month by month, by the fifteenth of each succeeding month. This is a second opportunity provided to the tenant to pay the arrears of rent even though he might not have complied with the landlords notice of demand. If the tenant pays the arrears of rent within one month from the date of the order of the Controller as required under Section 15(1), the landlord cannot have any further complaint about the default in payment of rent since Section 14(2) provides that no order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1) of Section 14, if the tenant makes payment or deposit as required by Section 15. Therefore, if an order

under Section 15(1) of the Act is duly complied with, the landlord cannot avail himself of the ground specified in Section 14(1)(a), that is failure of the tenant to pay arrears of rent within two months of the date of service of notice on the tenant.

16. There are two possible scenarios which may arise when proceedings under Section 15(1) of the Act are taken. First is where the tenant admits that he has not paid the whole of the arrears of the rent legally recoverable from him. In such a

scenario, the Rent Controller would not at all be required to make a fact finding in relation to the arrears of rent to be paid by the tenant since he has already admitted to the same. Second is where the tenant either disputes the quantum of arrears recoverable from him or avers that he is not in arrears of rent at all. In such a scenario, the Rent Controller may make an order keeping in view the prima facie materials on record.

17. At this juncture, it would be pertinent to advert to the factual matrix of the present case. The landlord had claimed that the tenant was in arrears of rent w.e.f. 01.04.2001 but in his WS, the tenant had claimed that he had paid rent upto 30.09.2004. In view of the admitted arrears of rent and without going into the merits of the controversy, the learned ARC passed an order on 07.02.2005 under Section 15(1) of the Act and directed the tenant to deposit the arrears of rent w.e.f. 01.10.2004 @ Rs. 500 per month within one month and to continue to deposit the rent at the aforesaid rate, month by month, by the fifteenth of each succeeding month, during the pendency of the eviction petition. Admittedly, this order was not strictly complied with by the tenant and there were defaults on several occasions. Thereafter, once the adjudication of the eviction

petition was complete, the learned ARC vide judgment dated 05.07.2011 held that the landlord was successful in proving his claim that the tenant was in fact in arrears of rent w.e.f. 01.04.2001 and not 30.09.2004 (as was claimed by the tenant in his WS). Therefore, the earlier order under dated 07.02.2005 was modified to the extent that the tenant was required to pay/deposit the arrears of rent w.e.f. 01.04.2001 and not w.e.f. 01.10.2004.

18. This Court has given due consideration to the arguments advanced by the learned counsel for the parties and is of the view that the tenants compliance of the final judgment dated 05.07.2011 would not entitle him to the benefit from eviction under Section 14(2) of the Act. In Hem Chand v. Delhi Cloth & General Mills Co. Ltd. & Anr.8, the Supreme Court observed as under:

The Rent Control Act protects the tenant from such eviction and gives him an opportunity to pay the arrears of rent within two months from the date of notice of

demand as provided in Section 14(1)(a). Even if he fails to pay, a further opportunity is given to the tenant to pay or deposit the arrears within one month under Section 15(1). Such payment or deposit in compliance with the order under Section 15(1) takes away the right of the landlord to claim recovery of possession on the ground of default in payment of rent. The legislature has given statutory protection to the tenant by affording him an opportunity to pay the arrears of rent within one month from the date of the order. This statutory provision 8 (1977) 3 SCC483

cannot be modified as rights of parties depend on the compliance with an order under Section 15(1).

19. The tenant was presented with the first opportunity to clear the arrears of rent when the landlord served him with a notice of demand in the manner provided under section 106 of the Transfer of Property Act. The tenant failed to make good of the said opportunity. Thereafter, the tenant was given a second opportunity by the learned ARC vide order dated 07.02.2005, whereby he was required to clear the arrears of rent within one month and strictly deposit the rent, month by month, by the fifteenth of each succeeding month. The tenant admittedly, failed to comply with this opportunity too on two counts. Firstly, he failed to clear the admitted arrears of rent within one month from the date of the order. Secondly, there were defaults on several occasions in the deposit of the subsequent monthly rents. The tenant could not claim the benefit from eviction under Section 14(2) of the Act on the premise that he had complied with the final judgment which modified the earlier order under Section 15(1) of the Act. The framework of the Act does not envisage a third opportunity. The modification of the earlier order was only to a limited extent since after adjudication of the eviction petition, the learned ARC found that the tenant was in arrears of rent w.e.f. 01.04.2001 and not w.e.f. 30.09.2004 (as was claimed by the tenant). A valuable right to seek eviction accrued in favour of the landlord when the tenant failed to comply with the order under Section 15(1) of the Act.

20. It would also be useful to refer to the decision of the Supreme Court in *Gurdial Singh Chaggar v. Kulbhushan Kumar*⁹ wherein the tenant failed to pay or deposit arrears as directed under Section 15(1) of the Act. The finding of the Courts below

that the tenant had not complied with the order under Section 15(1) of the Act had not been disputed. The defence of the tenant had also not been struck out under Section 15(7) of the Act. The Supreme Court dismissed the tenants appeal and upheld the eviction order. In the present case, the tenant apart from failing to deposit the arrears of rent as directed under Section 15(1) of the Act had also committed defaults on several occasions in the deposit of the subsequent monthly rents.

21. A bare perusal of Section 14(2) of the Act would make it clear that the tenant could claim protection from eviction only if he makes payment or deposits rent as required by Section 15 of the Act. The order dated 07.02.2005 under Section 15(1) of the Act was required to be complied with by the tenant in order to claim protection from eviction under Section 14(2) of the Act. Although, it is settled that the Controller has the discretion to condone the delay in the deposit of rent by the tenant due to circumstances which are beyond his control, this Court is not persuaded with the contention advanced on behalf of the tenant that there was implied condonation of delay when the earlier (interim) order under Section 15(1) of the Act was modified at the time of passing the final judgment. It is pertinent to mention that the earlier order was passed taking into consideration only a prima facie view of the matter and the merits of the case 9 (1977) 3 SCC483

were not touched upon. The idea behind passing an interim order under Section 15(1) of the Act is to ensure that the landlord continues receive the admitted rent from the tenant during the pendency of the eviction petition, which may take years to get adjudicated. The interim order dated 07.02.2005 was necessarily required to be modified since the learned ARCs finding, after adjudication was at variance with the earlier order. This modification however, would not imply that the tenant was absolved of his obligation to strictly comply with the earlier order dated 07.02.2005 passed under Section 15(1) of the Act.

22. Furthermore, the tenant had also not moved an application for condonation of delay. For condonation of delay, the tenant is required to offer cogent and just reasons which admittedly, have not been done in the present case. This Court in Sanjay Kumar Saxena (supra) held that if the Controller is satisfied that there has

been default in compliance of the order passed under Section 15(1) and the said default has not been condoned by the Court, the defaulting tenant is not entitled to the benefit of Section 14(2) of the Act. Insofar as there were defaults on several occasions by the tenant in complying with the order dated 07.02.2005 and such defaults were never condoned, the tenant was not entitled to the benefit under Section 14(2) of the Act.

23. There was admittedly, default in payment of rent despite service of legal notice. The tenant disputed the quantum of arrears of rent, so the learned ARC directed him to deposit at least the admitted amount and to continue to pay the recurring monthly rents. Thus, after the first default in the payment of rent, the tenant was accorded a chance to pay up and to continue to pay till the final

adjudication of the eviction petition. This order was passed under Section 15(1) of the Act. The tenant was expected to comply with it. In default of the same, there is no place for according another chance to the tenant to pay up. Condonation of delay can take place only when the defaulting tenant so pleads with justifiable reasons which would show that he was prevented from compliance by circumstances beyond his control. The scheme of the Act does not encourage successive defaults. When a defaulting tenant defaults after a chance was given to him to continue to pay during the pendency of the petition, he loses the protection under Section 14(2) of the Act. Protection from eviction under the said provision of the Act can be afforded only to a tenant, whose default in the deposit/payment of rent was due to bona fide reasons. It is not for a tenant who is a recalcitrant and a willful defaulter.

24. In view of the aforesaid discussion, this Court is of the view that the concept of merger of interim order with the final order would not be applicable to the present case and the learned RCT fell into error in holding so. This Court is also of the view that the learned RCT had erred in holding that the question of condonation of delay did not arise in the present matter since the landlord had not preferred an application under Section 15(7) of the Act for striking out the defence of the tenant. The domains of Sections 15(7) and 14(2) of the Act are different in as much as the determination under Section 14(2) of the Act is not contingent upon the

determination under Section 15(7). Furthermore, striking out the defence of a tenant under Section 15(7) of the Act would arise only when the eviction petition is pending. When the defence of a tenant is struck out, the

landlord would still be required to prove his case for eviction under Section 14(1)(a) of the Act.

25. For the reasons stated hereinabove, this Court is of the view that the learned RCT erred in granting protection to the tenant from eviction under Section 14(2) of the Act. The impugned order is afflicted by error in law and is liable to be set aside. It is ordered accordingly. The petition is allowed and the order dated 24.08.2011 passed by the learned ARC is therefore, revived. The tenant is not entitled to the protection under Section 14(2) of the Act and is directed to be evicted from the tenanted premises i.e. property No.47, 1st Floor, Bunglow Road, Kamla Nagar, Delhi. No order as to costs. DECEMBER01 2014 vmk/bnesh NAJMI WAZIRI, J.