

Dhanander Kumar Jain vs.m.c.d.

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Court : Delhi

Decided On : Oct-11-2017

Appellant : Dhanander Kumar Jain

Respondent : m.c.d.

Judgement :

§~J- * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Pronounced on:

11. 10.2017 CM(M) 569/2001 DHANANDER KUMAR JAIN

... Petitioner

Through Mr.P.K.Rawal, Mr.Tarun Aggarwal & Mr.Alok Pandey, Advocates M.C.D. versus Through Mr.B.K.Sood & Mr.Shivam Rawat, Respondent Advocate
CORAM: HON'BLE MR. JUSTICE JAYANT NATH JAYANT NATH, J.

1. This petition is filed under Article 227 of the Constitution of India seeking to impugn the order of the Rent Control Tribunal (hereinafter referred to as the RCT) dated 09.08.2001 dismissing the petition of the petitioner/landlord for eviction on the ground of default in payment of rent under Section 14(1) (a) of the Delhi Rent Control Act (hereinafter referred to as the DRC Act).

2. Some of the relevant facts are that the respondent Municipal Corporation of Delhi (MCD) is a tenant under the petitioner in the premises bearing No.1747-48 located at Gali Satyawati, Bhagirath Palace, Chandni Chowk, Delhi. The respondent was a tenant before the purchase of the property by the petitioner in

1950 at a rent of Rs.217.25/- per month. The first, second and third floors of the said property are with the respondent. It is further averred by the petitioner that in 1978, he was granted permission to CM(M) 569/2001 Page 1 of 9 institute eviction proceedings by the Competent Authority under the Slum (Improvement and Clearance) Act. The petitioner is said to have filed an eviction petition under Section 14(1)(a) of the DRC Act in 1981. Vide order dated 21.11.1986, the ARC granted benefit of Section 14(2) of the DRC Act to the respondent. As there is said to have been a default again in payment of rent, the petitioner issued a notice on 04.01.1988 and again filed another eviction petition under Section 14(1)(a) of the DRC Act. It is the case of the petitioner that as the respondent again committed default in payment of rent vide order dated 13.03.1989 passed under Section 15(1) of the DRC Act, the respondent was directed to pay rent w.e.f. December, 1987 and to continue to do so in future.

3. It is the case of the petitioner that the respondent despite the above order passed by the ARC under section 15(1) of the DRC Act dated 13.3.1989 failed to comply with the directions. The petitioner hence filed an application under section 15(7) of the DRC Act praying for appropriate orders. By order dated 17.11.1999 the ARC made the order dated 13.3.1989 passed under section 15(1) of the DRC Act as absolute.

4. On 11.05.2000, an eviction order was passed in favour of the petitioner and against the respondent. The respondent filed an appeal before the RCT. The RCT by the impugned order dated 09.08.2001 set aside the eviction order holding it to be untenable and erroneous as there has been no default in payment of rent by the respondent for the period which warranted filing of the eviction petition.

5. A perusal of the impugned order would show that the order notes that the judicial conscious is shocked by the manner in which based on fabricated documents the petitioner managed to get an eviction order passed in co- CM(M) 569/2001 Page 2 of 9 operation with the employees of the respondent. The order notes that the premises is being used by the Municipal Corporation for running a primary school meant for poor strata of the society. It also notes that as per the eviction petition, it was claimed that MCD had neither paid nor tendered rent w.e.f.

December 1987 despite notice dated 04.01.1988 sent by the petitioner to the respondent under registered cover. The RCT noted that MCD had presented cheque No.293765 for Rs. 434.50/- (Ex.AW1/5) being the rent for December 1987 and January 1988 but the same was dishonoured by the bankers being post dated. The rent for 01.02.1988 to 31.03.1988 was sent vide cheque No.304223 dated 29.01.1988. The RCT also noted that the cheque i.e. Ex.AW which was for the rent of December 1987 and January 1988 is originally dated 20.11.1987 but has been fabricated to read as dated 20.11.1989 i.e. to make it a post dated cheque. Hence, it was dishonoured by the bankers on presentation. The RCT held that for payment of rent for the period of December 1987 and January 1988, a cheque with the date 20.11.1987 would be drawn and not for date 20.11.1989. As the petitioner had kept the cheque with him, the RCT held that he cannot subsequently claim that the respondent has not tendered the same for the month of December 1987 and January 1988. Hence, when notice dated 04.01.1988 was issued no rent was due and payable by the respondent. The respondent was not in default and no cause of action arose in terms of Section 14(1)(a) of the DRC Act. The petition under Section 14(1) (a) of the DRC Act was dismissed.

6. I have heard learned counsel for the parties. CM(M) 569/2001 Page 3 of 9 7. Learned counsel for the petitioner has urged that when the notice was sent i.e. on 04.01.1988, there was a default of three months as the rent for December 1987, January 1988 and also February 1988 was not paid. Learned counsel for the respondent has reiterated that there is no overwriting in the cheque and that there was no default in payment of rent. It has also been urged that the present petition is not maintainable as a regular second appeal would lie under Section 39 of Act which was deleted w.e.f. 01.12.1988. It is urged that in the present petition, the alleged notice of default was sent prior to the said date and hence, the present petition would not lie. It has also been urged that under the Slum (Improvement and Clearance) Act, permission by the Competent Authority was not sought for the second eviction petition that was filed and hence, even otherwise, this petition does not lie.

8. Section 14(1)(a), 14(2), 15(1) and 15(7) of the DRC Act being the relevant provision read as follows:-

"14. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

"(a) That 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 CM(M) 569/2001 Page 4 of 9 notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfers of Property Act, 1882 (4 of 1882); 14(2) 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) if the tenant makes payment or deposit as required by section 15: (1) In eviction.- to sub-section (1) of section 14, Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months. .. 15(1) When a tenant can get the benefit of every protection against proceeding of the recovery of possession of any premises on the ground specified in clause (a) of the proviso 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 including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteen of each succeeding month, a sum equivalent to the rent at that rate . CM(M) 569/2001 Page 5 of 9 15 (7) If a tenant fails to make payment or deposit as required by this section, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the

application. 9. Hence as per the proviso to Section 14(2) of the DRC Act, where a tenant has taken the benefit once for default under Section 15(1) of the DRC Act and he again makes default in payment of rent for the premises for three consecutive months, he is liable to be evicted from the said tenanted property. In the present case, the respondent has taken benefit once of Section 14(2) of the Act when there was a default as per order of the ARC dated 21.11.1986. In the present petition, the basis for alleged default is notice dated 04.01.1988 which claims default of rent for the months December 1987 and January 1988.

10. A perusal of the concerned Eviction Petition dated 29.3.1988 filed by the petitioner under section 14(1)(a) of the DRC Act would show that it is averred in the petition that the respondent has neither paid nor tendered the arrears of rent w.e.f. December 1987. It mentions the demand notice dated 4.1.1988 sent by the petitioner which is said to have been served. It is further claimed that as on the date of filing of the Eviction Petition the rent for the months of December 1987 and January and February 1988 have fallen due which have neither been paid nor tendered by the respondent. Reference is also made to the cheque No.293765 for Rs.434.50 being rent on account of December 1987 and January 1988 which is said to have been dishonoured by the bankers of the respondent.

11. I may see the evidence of Shri Dhanander Kumar Jain AW-1. In his examination in chief he mentions that the cheque Ex.AW was CM(M) 569/2001 Page 6 of 9 dishonoured. However, he does not say as to what he did with the dishonoured cheque. In his testimony he does not say that he informed the respondents about return of the cheque or he sought to return the cheque for revalidation. It may be noted that the entire controversy only centres around the non-payment of this particular cheque which was returned by the bankers of the respondent as unpaid. A perusal of the original cheque which is Ex. AW

shows that it is dated 20.11.1987. The top of 7 has been converted as 9 by a loop to make the year read as 1989. From a perusal by the naked eyes, it seems as if the loop is by mistake on the top of 7 and the figure can also be read as 1987. The bankers appear to have acted improperly and the respondent cannot be penalised for the same. In view of this fact, the RCT has rightly concluded that there is no

default on the part of the respondent in tendering the rent. Hence, the notice dated 04.1.1988 which has been sent by the petitioner was an erroneous notice as on that date there was no default in payment of rent by the respondent. Further, no intimation was sent to the respondent about return of the cheque.

12. From the evidence of RW2 Shri B.C.Narula, Asst. Education Officer, MCD, it is quite clear that payment for the period February 1988 and March 1988 were duly sent. Similarly, the cheque for April and May 1988 were also duly sent. There is no cross-examination of the said witness in this regard regarding his testimony.

13. Accordingly, the RCT rightly came to the conclusion that proviso to Section 14(2) of the DRC was not triggered as there was no default in payment of rent for the premises for three consecutive months by the respondent. There was no default even based on notice dated 04.01.1988. CM(M) 569/2001 Page 7 of 9 14. In this context reference may be had to the judgment of the Supreme Court in the case of Parkash Mehra v. K.L. Malhotra AIR 1989 SC1652 That was a case in which the respondent-tenant received a notice on 07.05.1976 calling upon him to pay the arrears of rent. The rent had been received upto 31st of March 1976 and therefore when the notice of demand was served upon the respondent, rent for the months of April and May 1976 were due. The Supreme Court held as follows: that Section 14(1)(a) of 7. It is urged before us by learned Counsel for the appellant 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. CM(M) 569/2001 Page 8 of 9 15. In view of the above judgment, arrears which fall due for the period subsequent to service of the notice of demand cannot be taken into account for the purpose of computing alleged default of the tenant. In the present case, the ARC has wrongly taken into account the alleged default which as per the petitioner took place subsequent to even filing of the eviction petition.

16. Regarding the plea of the respondent about non-maintainability of the present petition, a reference may be had to the judgment of this court in the case of M/s. Rattan Lal Ram Kumar & Anr. vs. Maman Chand, MANU/DE/2856/2012 where this court has noted that the controversy is settled and the second appeals which were filed under Section 39 of the erstwhile DRC Act were directed to be converted into petitions under Article 227 of the Constitution of India. Hence, there is no merit in the plea of the respondent that the present petition would not lie.

17. As far as the absence of a permission under the Slum (Improvement and Clearance) Act for the present eviction petition is concerned, I need not go into the said issue keeping in view the fact that I have already upheld the order of the Rent Control Tribunal.

18. There is no merit in the petition and the same is dismissed. The trial Court record be sent back. JUDGE (JAYANT NATH) OCTOBER11 2017 Rb CM(M) 569/2001 Page 9 of 9

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