

**Bhonri Devi Vs. Gopi Ram**

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**Court :** Delhi

**Decided On :** Jan-14-1971

**Reported in :** AIR1971Delhi222

**Judge :** P.N. Khanna, J.

**Acts :** [Delhi Rent Control Act, 1958](#) - Sections 12, 15 and 15(1)

**Appeal No. :** S.A.O. No. 152-D of 1965

**Appellant :** Bhonri Devi

**Respondent :** Gopi Ram

**Advocate for Def. :** H.R. Dhawan, Adv.

**Advocate for Pet/Ap. :** V.P. Joshi, Adv

**Judgement :**

1. The respondent is a tenant under the appellant-landlady in respect of a shop and a kitchen in a building situated on Old Rohtak Road, Delhi. An application for his eviction was filed under clause (a) of the proviso to Section 14(1) of the Delhi Rent Control Act, on the ground that he had not paid the arrears of rent with effect from October 1, 1962 in spite of service of notice of demand. The respondent - tenant disputed the rate of rent payable and stated that previously the appellant-landlady had demanded rent at the rate of Rs. 20/- per month. He, however,

asserted that the standard rent of the premises would be Rs. 7/- per month. He, therefore, asked for the fixation of standard rent at that rate. The Additional Controller fixed Rs. 25/- per month as the interim rent under Section 15(3) of the Act and directed the respondent to pay the arrears of rent with effect from October 1, 1962 within a month and also future rent at the same rate, by the 15th of each subsequent month. The Rent Control Tribunal took into consideration the notice dated July 19, 1962 served on the respondent by the appellant landlady demanding rent at the rate of RS. 20/- per month and also the accommodation and the situation of the premises. It fixed the rent of Rs.20/- per month without prejudice to the pleadings of the parties. The landlady has, under these circumstances come up to this court in second appeal.

2. The learned counsel for the appellant referred to a receipt dated October 1, 1962 for Rs. 35.25 as rent for the month of September, 1962 duly signed and thumb marked by the respondent. The Additional Controller in his order remarked that the respondent-tenant had admitted his signatures and thumb-impression on the said receipt. The notice said to have been sent on behalf of the appellant demanding rent at the rate of Rs.20/- per month is dated July 19, 1962. According to the learned counsel, the said notice referred to another shop and room in the same building, which is settlement of some dispute was said to have been exchanged with the premises in question. The respondent-tenant paid the first rent of the premises in suit with effect from September 1, 1962 and the receipt dated October 1, 1962 was the first receipt. The agreed rate of rent of the premises in suit, therefore, was, it was contended, Rs.35.25 per month with effect from September 1, 1962, which was the rate at which the rent was last paid. The interim rent could not be fixed at any lesser rate urged the appellant's learned counsel.

3. Under Section 15(1), the Controller has to make an order directing the tenants to pay to the landlord or deposit with the Controller an amount calculated at the rate of rent at which it was last paid, only after giving the parties an opportunity of being heard. This appears to contemplate a sort of a trial if there is a dispute about the rent. The Controller has to give a decision after hearing the parties. There is no question of fixing interim rent in such an event. If, however, there is a dispute about the contractual rent payable, the Controller under Section 15(3) has to fix

within fifteen days of the date of first hearing, interim rent in accordance with the provisions of sub-sec, (1) until the standard rent in relation thereto is fixed having regard to the provisions of the Act. In *M.M. Chawla v. J.S. Sethi*, 1969 Ren Cr 861, the Supreme Court observed (para 13);

'Sub-section (3) provides that 'interim rent' is to be paid at the rate at which it was last paid till standard rent is determined, but thereby it is not implied that standard rent is to be determined as an issue arising in the action for ejectment; the clause only means that when there is a dispute relating to the rate of contractual rent payable the Controller shall within fifteen days of the date of the first hearing of the proceeding fix the interim rent, and the amount so fixed shall be paid by the tenant until standard rent in relation to the premises is fixed in an appropriate proceedings under the Act. The expression 'having regard to the provisions of this Act' has in our judgment reference to Section 8 and 13.'

The Controller, therefore, has to determine the rate at which the rent was last paid, whether he acts under Sub-section (1) or sub-section (3) of S. 15 . In the later case the rent so fixed is the interim rent.

4. In the order under appeal, the Tribunal does not appear to have considered the question whether the application for fixing the standard rent can be made, in view of Section 12 of the Act. He has fixed Rs.20/- per month as the interim rent not in accordance with the provisions of sub-section (1) of S. 15, i.e. the rate at which the rent was last paid; but by taking into consideration the accommodation and the situation of the premises. The order of the Rent Control Tribunal, as also that of the Additional Controller, therefore, cannot be sustained and is set aside. The case is remanded to the Additional Controller for deciding what was the rate at which the rent was last paid and fixing that the rate of rent as the interim rent, if Section 12 does not act as a bar to the fixation of standard rent. If, however, the standard rent cannot be fixed by virtue of Section 12 of the Act, then the rate of rent last paid will be ordered to be paid under Section 15(1) of the Act. In view of the above, there shall be no order as to costs.

5. The parties are directed to appear before the Additional Controller on February 15, 1971.

6. Order accordingly.

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