

Hardayal Vs. Raj Kumar and Others

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Court : Delhi

Decided On : Nov-02-1998

Reported in : 1998VIIAD(Delhi)20; 76(1998)DLT647; 1998(47)DRJ821

Judge : C.M. Nayar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1 and 2) and 15(1)

Appeal No. : S.A.O.No.42 of 1989

Appellant : Hardayal

Respondent : Raj Kumar and Others

Advocate for Def. : Mr. J.C. Choudhary, Adv.

Advocate for Pet/Ap. : Mr. L.D. Adlakha, Adv

Judgement :

ORDER

1. The present appeal is directed against the judgments dated 6th October, 1988 and 16th November, 1988 spectively passed by Shri Rakesh Kapoor, Additional Rent Controller and Shri M.A.Khan, Rent Control Tribunal, Delhi.

2. The brief facts of the case are that a petition under Section 14(1)(a) of the Delhi Rent Control Act (hereinafter referred to as 'the Act') was filed by the respondents alleging that the appellant was a tenant in the tenanted remises at a monthly rent

of Rs.120/- vide rent agreement dated 1st October, 1982. It was further alleged that the appellant had neither paid nor tendered the arrears of rent w.e.f. 1st February, 1983 despite service of demand notice dated 28th January, 1984. The respondents, therefore, prayed that a decree of eviction be passed against the appellant in respect of the demised premises. The petition was contested on behalf of the appellant. In the written statement filed by him he denied the relationship of landlord and tenant between the parties though it was admitted that he was a tenant in the disputed property but claimed that his landlord was one Laxmi Narain who was father of the respondents. He also claimed that the premises were commercial and were let out in the year 1970. It was denied that he was in arrears of rent w.e.f. 1st February, 1983 or that he was liable to pay any rent to the respondents. He was a tenant in the tenanted property at a monthly rent of Rs.60/- besides Rs.3/- and Rs.2/- towards electricity and water charges and he claimed that he had been running his business under the name and style of 'M/s Azad Cycle Works' and the rent was being paid by him in the name of M/s Azad Cycle Works at a monthly rent of Rs.60/- which was subsequently increased to Rs.120/- per month. The appellant also claimed that the rent stood paid up to 31st January, 1984 but no rent receipts were issued to him and he had also deposited rent for the period 1st February, 1983 to 31st January 1985 in the Court of Shri Prem Kumar Additional Rent Controller in favor of Laxmi Narain Popli. thereforee, it was contended that he was not liable to pay rent at the rate of more than Rs.60/- per month. thereforee the excess rent which had been recovered was liable to be refunded and adjusted. The appellant claimed that the notice dated 16th January, 1985 was complied with by him by deposit of rent under Section 27 of the Act in the Court after the respondent had refused the personal tender. The matter went to trial and the statements of witnesses and documents as relied upon by both the parties were placed on record. The Additional Rent Controller examined the pleas of the appellant as well as the documents placed on record and arrived at the following conclusion:-

'The petitioner had also placed on record rent receipts Ex.A/5 to Ex.A/8. The counter-foils of the receipts are dated 1/10/1982, 2/11/1982, 12/1982 and 4/1/1983. The respondent has signed on all these rent receipts which show the petitioners as the landlords. In order to explain away the counter-foils of the

rent receipts, the respondent had alleged that he was an illiterate and had no knowledge that the rent-receipts show the name of the petitioners as landlords of the property. He alleged that he was a tenant under the father of the petitioner namely Laxmi Narain Popli and therefore, had returned the rent-receipts which were delivered to him to the said Laxmi Narain Popli for corrections which were thereafter not returned to him. The respondent had not taken any action against the petitioner's father for not returning the rent-receipts. He had neither filed a complaint nor issued a notice in this regard. The respondent has not placed on record any documentary evidence in order to show that he was a tenant under Laxmi Narain Popli, the father of the petitioners. In the absence of any documentary evidence or any other oral proof, the counter-foils of the rent-receipts placed on record by the petitioners gain much significance. As per these counterfoils, the landlords of the premises were the petitioners and not Laxmi Narain Popli. I am, therefore, of the considered opinion that the respondent was a tenant under the petitioners and was not a tenant under Laxmi Narain as alleged by him.'

3. The plea that the rent could not be raised in accordance with law from Rs.60/- to Rs.120/- per month was sought to be justified on the basis of the judgments as reported in Niranjana Singh S. Inder Singh Vs . Murti Shri Bhagwan Ram and M/s Allied Engineers v. Smt. Harbaksh Gill 1985 (1) R.C.J. 147. Reliance is specifically placed on these judgments to reiterate the proposition that in view of the prohibition contained in Section 4 of the Act, the respondent landlord is not entitled to enhance the rent under the lease deed. Paragraph 8 of the later judgment reads as follows:-

'8. Learned counsel for the respondent submits that Section 4 operates only after standard rent has been fixed and not before. He refers to M.M. Chawla v. J.S. Sethi, wherein it has been observed that the prohibition in Sections 4 and 5 of the Act operates only after the determination of the standard rent and until the Rent Controller fixed the standard rent the contract between the landlord and tenant determines the liability. It has also been held that so long as the standard rent is not determined by the Controller the tenant must pay the contractual rent and after the standard rent is determined the landlord becomes disentitled to

recover an amount in excess of the standard rent from the date on which the determination operates. There is no dispute about this proposition. The only question is whether the landlord is entitled to periodical increase by virtue of an agreement entered into after 1st January, 1939. In my view the landlord is not entitled to periodical increase even if standard rent has not been fixed. In almost all cases the standard rent is less than the agreed rent. Section 4 prohibits recovery of agreed rent if it is more than the standard rent. But if the standard rent has not been fixed the tenant is liable to pay and the landlord is entitled to recover the agreed rent. The periodical increase is further addition to the agreed rent or the standard rent. If the agreed rent is the standard rent the enhanced rent including the periodical increase as per agreement would also be more than the standard rent. Section 4 of the Act prohibits periodical increase if the lease has been entered into after 1st January, 1939. As periodical increase by virtue of an agreement entered into after 1st January, 1939 is prohibited under Section 4 of the Act, in my opinion the landlord would not be entitled to enhance rent on the basis of such agreed periodical increase even if the standard rent has not been fixed. In the present case the agreement to enhance the rent was entered into after 1st January, 1939 and Section 4 of the Act prohibits recovery of such enhanced rent. In the instant case 10 per cent is the periodical increase by virtue of an agreement entered into after 1st January, 1939 and therefore the same is not binding on the parties and the landlord is not entitled to claim the same. As there is prohibition for recovery of periodical increase under Section 4 of the Act on the basis of agreement entered after 1st January, 1939, I am of the opinion that the respondent-landlady cannot claim enhanced rent @ Rs.2887.50 in this case.'

4. The statement of the appellant was recorded. The operative portion of the same may be referred to as follows:-

'I do not maintain any account books of my business under the name and style of M/s. Azad Cycle Works. I did not enter about the payment of Rs.60/- on account of rent in any copy. I cannot tell the day, date and month when I have increased the rent from Rs.60/- to Rs.120/- per month. However, it was increased in the year 1972. Nothing was reduced in writing with the landlady. However, I was entering Rs.120/- on account of rent in my own diary. I have not brought that diary

containing the rent as Rs.120/- per month. Volunteered- I have filed that diary in the other court pending proceedings in different court. At no time, I got issued any legal notice for manding the rent-receipt with regard to the rent paid by me either at the rate of Rs.60/- or thereafter at the rate of Rs.120/- to Shri Laxmi Narain, Shri Raj kumar or to Smt.Bhagwan Devi.'

5. The reading of the above will indicate that the appellant on his own raised the rent from Rs.60/- to Rs.120/- per month. The Additional Rent Controller as a consequence held that the agreed rent was Rs.120/- per month which is supported from the reading of counter foils of the rent receipts that have been placed on record and even admitted by the appellant. In this view of the matter the law as stated in the above said judgments is of no relevance to the facts and circumstances of the present case. The finding has been affirmed by the Rent Control Tribunal and no fault can be found with the same.

6. The next argument which has been vehemently stressed by learned counsel for the appellant is that the Order of the Additional Rent Controller cannot be sustained as no jurisdiction was vested in him to pass a composite order to determine arrears of rent as well as eviction for non-payment of these arrears. Reliance is placed on the judgment as reported in B.R.Mehta v. Smt.Atam Devi 1989 (1) DL 58. The facts of this case are stated in paragraphs 2, 3 and 4 which read as follows:-

'2. Briefly stated, the facts are that the appellant is a tenant of the ground floor of House No.2/14, Kalkaji Extension, New Delhi. The said premises were taken on rent at Rs.340/- per month from the respondent who is the landlady and owner of the premises in question.

3. On 12th July, 1977 the respondent filed a petition for eviction of the appellant on the ground of bona fide requirement and also on account of non-payment of arrears of rent amounting to Rs.3100/- up to 30th June, 1977. The appellant-tenant claimed that he had spent some money on carrying out the repairs and white washing of the premises in question. By an interim order dated 19th April, 1978 passed under Section 15(3) of the Act, the Addl. Rent Controller, Delhi directed the deposit of the arrears of rent from 1.10.76 to 31.3.78 after allowing

adjustment of Rs.2961.07 being the amount spent by the appellant on account of repairs and white washing of the premises in question. The amount ordered to be paid vide order dated 19th April, 1978 after allowing adjustment of Rs.2961.07 was deposited by the appellant on 16.5.1978.

4. The eviction petition was subsequently disposed of by the Additional Rent Controller vide order dated 22nd October, 1986. The petition was dismissed on the ground of bona fide requirement but eviction of the appellant was decreed on ground of non-payment of arrears of Rs.2961.07, which was the amount for which adjustment had been allowed by the Addl. Rent Controller vide order dated 19th April, 1978 passed under section 15(3) of the Act. In the judgment dated 22nd October, 1986 the Addl. Rent Controller came to the conclusion that this amount of Rs.2961.07 was payable by the appellant to the respondent-landlady. Benefit was sought to be given by the Addl. Rent Controller to the appellant under section 14(2) of the Act and a fresh order under section 15(1) was passed on 22nd October, 1986 directing the tenant to deposit the arrears amounting to Rs.2961.07 within one month of the order. In the said order it was further observed that 'if the respondent will comply the order and has complied such order passed under section 15(1) of DRC Act dated 19.4.1978 then he shall be entitled for the benefit of section 14(2) of DRC Act, otherwise eviction shall follow in respect to the suit premises bearing No.2.14 Kalka.

The ultimate finding is recorded in paragraph 12 of the judgment which reads as follows:-

'12. The position in law, therefore, being that the Controller has the jurisdiction under section 15(7) to order the striking off the defense or not, the question which arises is whether at the time when an order under section 15(1) is passed the Controller can simultaneously direct the eviction of the tenant if no rent is paid within the stipulated period. If a composite order is passed, as in the present case it has been passed on 22nd October, 1986 directing the payment of arrears of rent within one month, and eviction of the tenant if this amount is not paid, the effect of this would be that the right of the tenant for a discretion to be exercised by the Controller under section 15(7), after a default has been committed, is taken away.

In view of the aforesaid decisions of the Supreme Court, it is not only the court which has the jurisdiction to apply its mind and pass an order under section 15(7) but, correspondingly, it the tenant who has been given a right to approach the court and try and satisfy as to why its defense should not be struck off. This right of the tenant which is provided by the statute, and can only be exercised after a default has been committed, cannot be taken away by the Controller choosing to pass a composite order under section 15(1). If a composite order was permissible like the one which has been passed in the present case, then the consequence would be that there would be no occasion for the Controller to apply its mind and to exercise its discretion under section 15(7) of the Act. The Controller cannot invoke the provisions of section 15(7) at the time when an order section 15(1) is being passed. The occasion for the Controller to exercise its jurisdiction under Section 15(7) can only arise if the tenant had failed to make the payment or deposit as required under Section 15(1) or 15(3) of the Act.'

7. In a similar situation Usha Mehra J. in *M/s Globetech Engineers v. Sh.Ajay Chadha & Anr.* : 1997IIIAD(Delhi)537 when seized of the matter reviewed the entire law on the subject and referred the question as to whether a composite order can be passed to pay the arrears of rent as well as on failure of the same an order of eviction. Paragraph 13 of this judgment makes the following reading:-

'13. In view of the conflicting decisions of this High Court rendered earlier in the cases of *Chattar Singh v. Banarsi Lal*, *Mebroose Ice Cream v. Jaswant Rai*, *Bhoj Dutta v. Brij Narain Bagai*, *M/s Dharam Pal & Sons v. Shri Parmeshwari Dass* and *Kulwant Kaur v. Jeewan Singh* and different views subsequently followed in the case of *H.R.Vaid v. S.K.R.Bhandari* and *B.R.Mehta v. Smt.Atam Devi* relying on the decision of the Supreme Court which concerned with different provisions of law. It is clear that there is conflict of judicial opinion as far as Delhi High Court is concerned. In view of the conflicting views on the point whether composite order under Section 15(1) and 14(1)(a) is valid or not, an authoritative pronouncement has to be rendered by this Court. It is also observed that in view of this conflict Rent Controllers are also finding it difficult. Hence the matter must be settled by a Division Bench. It is, therefore, ordered that this matter may be placed before the Hon'ble Chief Justice for referring this matter to a Division Bench with a request

that this may be taken up and disposed on priority basis because it has a far reaching consequence on all the rent matters pending before the Rent Controllers as well as in this Court.'

8. The contrary view has been taken by T.P.S.Chawla, J. in *M/s Mebrose Ice Cream and Frozen Food Company v. Jaswant Rai* 1979 14 R.C.R. 95 wherein it has been specifically held in paragraphs 17, 18 and 19 as follows:-

'17. For these reasons, I am not persuaded that the order made by the Additional Controller is a nullity or without jurisdiction. In any case, even had I reached the opposite conclusion the point could not have succeeded as an objection taken in the course of execution proceedings, Although the objection that a decree or order was made without jurisdiction can be taken at any stage and in any proceeding, the plea must pertain to an inherent lack of jurisdiction' rendering the court 'incompetent to try' the case; see *Hira Lal Patni v. Sri Kali Nath* (9). Even then the objection can be entertained only if it is patent on the face of the record, and the court will not investigate into question of fact: see *Vasudey Dhanjibhai Modi v. Rajabhai Abdul Rehman and others* (10), and *Addisons Paints and Chemicals Ltd. v. M/s Sant Ram Parma Nand and others* (11). The contention that a decree or order is contrary to law does not go to jurisdiction and is not entertainable in the course of execution proceedings. It may have been a good ground of appeal. Thus, if a suit is decreed though barred by time, the decree is executable notwithstanding the illegality: see *Ittyavira Mathai Vs.Varkey and another* (12).

18. Counsel for the tenant cited some cases for the proposition that a decree which does not comply with or violates a mandatory provision of law is a nullity and cannot be executed: see *Chandan Mall Bapna v. Abdul Gani Mesh*, (13); *Dukhharam Mukherji v. Tara Sundari Passi and others* (14), and *Ratilal Narbharan v. Wlji Nagji trading in the name of 'Nagji Chelabhai' and another* (15). To the extent that those cases contain any observations not in harmony with the judgments of the Supreme Court to which I have just referred, they cannot be followed.

19. In essence the argument of counsel for the tenant was that the order made by the Additional Controller violated Section 14(2) of the Act, in that, an order for

recovery of possession had been made without giving the tenant an opportunity to comply with an order under Section 15(1). In my opinion, on a common sense construction, the order for recovery of possession was not intended to have effect unless the tenant did not pay the specified arrears of rent within one month. But even supposing it has to be read in a strictly literal way, the remedy was by appeal and not an objection in execution.'

9. In view of the position of law as stated the question now arises as to whether it will be necessary to refer the matter to Division Bench along with other cases. The facts of the present case will show that no doubt a composite order was passed directing the appellant to pay or deposit rent at the rate of Rs.120/- per month w.e.f. 1st February, 1983 to date within one month from the date of the Order. The Order was subject to any payment or deposit which the appellant might have made under Section 15(1)(a) of the Act. In case the Order was complied with the appellant was to get the benefit under Section 14(2) of the Act otherwise a decree for eviction shall be deemed to have been passed in respect of the suit premises. The learned counsel for the respondent has clearly conceded that in pursuance of the Order passed by the Additional Rent Controller on 6th October, 1988 the appellant is deemed to have complied with the provisions of law and deposited the arrears of rent within the period as prescribed. The learned counsel for the appellant has expressed apprehension in the matter that certain other proceedings were also taken against the appellant to press for eviction on the ground of non-compliance of this Order. This can be set at rest as the learned counsel for the respondents has conceded that no proceedings as a consequence of alleged non-compliance of the Order made on 6th October, 1988 will be taken recourse to particularly in view of the fact that the Rent Controller Delhi vide Order dated 25th April, 1998 which has been placed on record has clearly held that no cause of action survived to the respondents after receiving the reply of the appellant and the application under Section 14(1)(a) of the Act was, accordingly, held not maintainable. It is further conceded that till today the appellant will not be considered in default as no arrears of rent are outstanding and the appellant cannot be evicted on that ground. The subsequent default, if any, will be governed by the provisions of the Act as and when the occasion arises. In this background it will not be necessary to refer this matter to Larger Bench for decision on the

question as to whether a composite order passed by the Rent Controller can be held valid. The Supreme Court in Chinnamarkathian alias Muthu Gounder and another v. Ayyavoo alias Periana Gounder and others : [1982]2SCR146 while dealing with this question clearly held that simultaneously passing conditional order for deposit of arrears of rent and for eviction on default was illegal. However, the matter was not remanded or kept in abeyance in view of the acts and circumstances of that case which will squarely apply to the facts of the present case. Paragraph 18 of the judgment may be reproduced as follows:-

'18. The question then is: What should be my approach in these appeals? Frankly speaking, on my finding that the latter part of the Revenue Divisional Officer's order that 'in the event of failure to deposit the amount within the time prescribed eviction would follow,' being without jurisdiction, I would be required to remand the matter to the Revenue Divisional Officer to proceed from that stage. However, I cannot overlook the fact that the initial proceedings before the Revenue Divisional Officer started in 1961. Two decades have rolled by. The ground of eviction was a technical ground of default repaired by the orders of the High Court when the rent found in arrears was deposited. The landlords have been paid, may be not specifically within the time prescribed by the Revenue Divisional Officer but within the time prescribed by the High Court. It is not necessary to decide in this case whether the time prescribed by the Revenue Divisional Officer, if challenged in the superior court i.e. the High Court, the High Court would have jurisdiction to prescribe its own time calling upon the tenant to deposit the amount to repair the default. That question be kept open but in the facts of this case the amount having been deposited way back in 1961-62, it would be merely adding to the agony of the parties for a very technical consideration to remit the case to the Revenue Divisional Officer. In the facts of this case it would be an idle formality to remit the case to the Revenue Divisional Officer for the additional reason that he will have to fix a fresh date for deposit of the amount and the amount has already been deposited 19 to 20 years back. Having regard to all the circumstances of the case and the inevitable consequence flowing from the passage of time, I do not consider it just and proper to remit the case to the Revenue Divisional Officer. In my opinion the tenants have qualified for the protection of the Act and they were not liable to be evicted.'

10. In view of the above discussion the findings of the Additional Rent Controller as well as of the Rent Control Tribunal are affirmed subject to the pleas and admission of learned counsel for the respondents as referred to above. The present appeal is disposed of in the above terms. There will be no order as to costs.

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