

Mohinder Pal Vs. Ram Rali Devi

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Court : Delhi

Decided On : Feb-15-1974

Reported in : 1974RLR243

Judge : S.N. Shankar, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 15(1)(7); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 105(1)

Appeal No. : Second Appeal No. 53 of 1973

Appellant : Mohinder Pal

Respondent : Ram Rali Devi

Advocate for Pet/Ap. : O.P.Tyagi and; R.L. Kohli, Advs

Judgement :

S.N. Shankar, J.

(1) This appeal is directed against the order of the Rent Control Tribunal holding that the appellant had defaulted in making deposits in accordance with the order under Section 15(1) of the Delhi Rent Control Act (hereinafter called 'the Act') passed by the learned Additional Rent Controller. The fresh ground urged in this appeal, for the first time, is that this order under Section 15(1) was illegal and without jurisdiction.

(2) The relevant facts are that the respondent filed an application for eviction of the appellant, amongst others, on the ground that he was in arrears of rent which he had not paid in spite of a duly served notice of demand and eviction. In the reply filed by the appellant, the subsistence to relationship of landlord and tenant as well as the rate of rent for the premises was admitted. The due service of the notice of demand and eviction was also not denied. On August 28, 1971, the learned Additional Rent Controller passed an order under Section 15(1) of the Act requiring the appellant to deposit rent with effect from August 3, 1969 to August 28, 1971 at the rate of Rs. 70.00 per month. The tenant made some deposits but failed to deposit the rent month-by-month by the 15th of each month. On August 4, 1972 the respondent applied under Section 17(7) for the defense of the appellant being struck out. By order dated October 30, 1972 the learned Additional Rent Controller accepted this application and struck out the defense of the appellant. Aggrieved from this the appellant filed an appeal before the Tribunal which was dismissed. Hence this second appeal.

(3) The Tribunal, after looking into each deposit made by the appellant, agreed with the finding of the learned Additional Controller that the appellant had defaulted in making the deposits and this finding of the Tribunal is not being canvassed in this appeal.

(4) Shri Tiagi, learned counsel for the appellant, contends that the order passed by the learned Additional Rent Controller under section 15(1) was without jurisdiction as the tenant did not accept the amount of rent claimed to be due from him and it furnished no basis for an order under section 15(7) for striking out the defense of the appellant. In answer to the contention that this plea could not be raised for the first time in second appeal and the order under section 15(1) having not been appealed from was final, the learned counsel urged that the order being nonest never existed in the eye of law and, therefore, could be challenged at any time.

(5) The first question for decision is whether the order of the learned Additional Rent Controller under section 15(1) was without jurisdiction. The appellant in reply to the application under section 14 admitted the subsistence of relationship of landlord and tenant between him and the respondent. He also admitted the service

of notice of demand and eviction. These admissions amounted to a confession of jurisdictional facts which have to be determined by the Controller before making an order under section 15(1). In reply to the application under section 15(1) the appellant pleaded certain payments and also claimed an adjustment of Rs. 184.00 on account of certain repairs to the water pump carried out by him. The Controller while passing an order under section 15(1) examined both the pleas and rejected them. This he could do in exercise of the jurisdiction vested in him under section 15(1). The mere fact that the appellant disputed the quantum of rent claimed by the landlord did not take away the jurisdiction of the Controller to make the order. Reference in this connection can be made to L.T. Thadani v. Yogeshwer Dayal: 1971 D L T 275 where it was held that in a case where the grievance was in regard to the merits of the decision under section 15(1), the objection was not as to jurisdiction of the Controller but in regard to the merits of the conclusion arrived at by him. The Court said :

'ONCE an order had been passed under section 15(1) of (he Act by the Rent Controller who admittedly had Jurisdiction to pass it, his decision right or wrong could only be set aside in appeal and cannot be challenged by collateral means.'

(6) Shri Tiagi referred to Prabhati Vs Budho Devi etc, 1973 R L R 672 where it was held that where an order under section 15(1) though not appealed from within time could still be questioned in appeal from the final order under section 15(7). The facts of this case were different. The application for eviction during the pendency of which the order under section 15(1) was made in this case did not claim eviction of the tenant on the ground of non-payment of rent. The Court, therefore, took the view that provisions of section 15(1) of the Act (which prescribe that order under this provision can be made only in proceedings for recovery of possession on the ground specified in section 14(1)(a) were not attracted. Proceeding on this assumption. it was observed :

'THE foundation for an order under section 15(1) of the Act is the claim for recovery of possession on the ground specified in clause (a) of the proviso to sub-section (1) of section 14 of the Act and where the application does not disclose a cause of action for ejectment on the ground set out in clause (a), the Controller would have

no jurisdiction to make such an order and any order made by the Controller in the absence of averment which may attract clause (a) would be in excess of jurisdiction.'

(7) On this basis, in paragraph 10 of the report, it was held that no effect could be given to the order made under section 15(1) and the same, therefore, could be challenged at the stage of the final order. This case does not help the appellant.

(8) The next case cited by Shri Tiagi is *Ram Parkash Kapur v. Smt. Bhagwanti*: (1973) 1 Delhi 255. Rajdhani L. R. 137 where it was held that an order under section 15(1) could not be passed by the Controller on the basis of prima facie evidence. This proposition has no relevancy to the point in issue. The learned Additional Controller in this case passed the order, not on the basis of prima facie evidence as to existence of relationship of landlord and tenant etc., but on the basis of admission by the appellant of the subsistence of this relationship as also of the service of notice of demand and eviction.

(9) Great stress was laid by Shri Tiagi on certain observations made by the Court in *Kulwant Kaur v. Jiwan Singh* where it was observed that the Controller had no 'jurisdiction' to pass an order under section 15(1) unless he first definitely finds that the relationship of landlord and tenant exists. The word 'jurisdiction' was emphasised by the learned counsel. In this case the plea taken by the tenant was that no relationship of landlord and tenant subsisted between him and the landlord and that the relationship in fact was that of mortgagee and mortgagor. It was in the context of this plea that the word 'jurisdiction' was used. This case is no authority for the proposition that the Controller will not have jurisdiction to pass the order under section 15(1) if the subsistence of relationship is admitted and the service of a valid notice of demand and eviction is also not disputed.

(10) Shri Tiagi next urged that section 105 of the Code of Civil Procedure entitles the appellant to challenge the order under section 15(1) even if it was an order within jurisdiction. The contention is squarely met by the provisions of section 43 of the Act which specifically provides that except as otherwise expressly provided in the Act every order made by the Controller or an order passed on appeal under the Act shall be 'final'. An order passed under the Act, therefore, can be assailed

only in the manner provided in the Act and if this is not done its validity is not open to question.

(11) Assistance was sought by the learned counsel from the decision in *Chamber of Colours and Chemicals (P) Ltd. V. Tirlok Chand Jain* 1973. I.L.R (1973) 11 Delhi 540 (Rajdhani L. R. (N). 77) to contained that order under section 15(7) had been passed. In this case the tenant came up in appeal to the High Court against the order of the Tribunal accepting the appeal of the landlord against the order of the Controller condoning the tenant's default in depositing rent in compliance with order under section 15(1). In the meantime the Controller passed an order for eviction of the tenant and an appeal for this order was dismissed by the Tribunal as barred by time. The preliminary objection taken before the High Court was that the tenant's appeal had become infructuous. In this context it was observed that sub-section (1) of section 38 provides for an appeal from every order of the Controller under the Act and subject to section 39(1) a second appeal to the High Court and as the appeal in question when filed in the High Court was competent, it could not be rendered incompetent merely because a final order had been passed. The question whether an appeal from an order under section 15(7) would be competent if the order under section 15(1) had become final was not examined in this case. Sub-section (1) of section 15, it would be seen, requires the Controller, after giving the parties an opportunity of being heard, to make an order directing the tenant to pay to the landlord or deposit the rent etc. in terms of this provision. Sub-section (7) of the section then simply provides that if the tenant fails to make the payment or deposit required of him by order under section 15(1) the Controller may order his defense against eviction to be struck out. The scope of the two sub-sections is different. If the tenant does not question the order passed under sub-section (1) it is not open to him to assail its correctness at a later stage.