

Darshan Devi Vs. Vidya Nath Misra

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Court : Delhi

Decided On : Feb-25-1969

Reported in : 5(1969)DLT405

Judge : S.K. Kapur, J.

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

Appeal No. : Second Appeal No. 158D of 1968

Appellant : Darshan Devi

Respondent : Vidya Nath Misra

Advocate for Pet/Ap. : D.K. Kapur,; J.P. Chopra and; M. Wadhwani, Advs

Judgement :

S.K. Kapur, J.

(1) This is an appeal by landlord Darshan Devi who is the owner of premises bearing Municipal No. 69-D, Kamla Nagar, Subzimandi, Delhi. Vidya Nath Misra, respondent is a tenant under the landlord in a portion of the house consisting of one room and a garage. The tenant pays Rs. 70.00 per month as rent besides Rs. 7.00 per month as House-tax. The landlord made an application against the tenant under section 14 of the [Delhi Rent Control Act, 1958](#), for eviction on the ground of nonpayment of arrears of rent in spite of service of notice of demand as provided

in clause (a) of the proviso to sub-section (1) of section 14. The tenant admitted the tenancy but alleged that the rent was Rs. 40.00 per month besides Rs. 4.00 per month as house-tax. He pleaded that he had paid rent up to December 1958 and was prepared to pay the arrears. On 29th July, 1959, the learned Rent Controller, in view of the dispute about the amount of rent payable, fixed an interim rent at the rate of Rs. 50.00 per month and directed the tenant to : (a) deposit Rs. 713.00 towards arrears of rent due up to November 1958; (b) deposit arrears with effect from 1st December, 1958 up-to-date at to the rate of Rs. 50.00 per month, within one month of the order; and (c) continue to deposit future rent month by month by the 15th day of each succeeding month.

(2) The tenant was, therefore, obliged to deposit the arrears on or before 29th August, 1959 and also the future rent for the period after July, 1959. The tenant failed to deposit the rent within time. The landlord made an application under section 15(7) of the Act to strike out the tenant's defense and by order dated 28th October, 1959, the Rent Controller granted the application and struck out the tenant's defense. On August 31, 1959, the tenant made an application for condensation of delay in the deposit of rent and prayed for the grant of extension of time by 20 or 21 days. This application was dismissed in default on 21st September, 1959, but was restored later. The tenant deposited the arrears up-to-date on October 23, 1959. On 28th October, the Controller dismissed the application for the extension of time fixed earlier for the deposit of rent. The tenant appealed to the Rent Control Tribunal against both the orders, namely the order striking out the defense and the order declining to end time. On 28th November, 1960, the Tribunal set aside the decision of the Rent Controller striking out the defense and remanded the case for re-decision in accordance with the law from the stage immediately preceding the striking out of the defense of the tenant. The appeal against the order refusing to extend time for depositing rent was, however, dismissed. After the remand order, the parties produced evidence regarding standard-rent but on 22nd March, 1961, the tenant gave up the plea of standard-rent and stated that-the agreed rent be considered as the rent payable by him and the case be decided in accordance therewith. The landlord also made a similar statement so that the parties agreed to go to trial on the basis that the rent payable was Rs. 70.00 per month. The Controller, after recording the aforesaid statements

of the parties, passed order dated 15th April, 1961, in favor of the landlord and directed eviction of the tenant. The Rent Controller took the view that the tenant was liable to eviction because he had failed to deposit the rent within the time fixed by the order made under section 15 of the Act. The tenant appealed to the Tribunal. The Tribunal decided- In the instant case, no standard-rent was fixed by the Controller, as the tenant gave up that plea and it was agreed that the case should be decided considering the agreed rent at Rs. 70.00 p.m. After the statement dated 22nd March, 1961, the Controller should have passed a fresh order in accordance with the latter portion of section 15(3) of the Act, giving the tenant an opportunity to deposit the arrears of rent according to the agreed rate of Rs. 70.00 p.m. Section 15(3) of the Act lays down that till the fixation of the standard-rent the Controller is to fix an interim rent and that when the standard-rent is fixed, then he must pass an order 'giving one month's time to the tenant to deposit the arrears due on the basis of the standard-rent. In the instant case, the interim rent was fixed at Rs. 50.00. Later on the parties agreed that the tenant was to pay the arrears at the rate of Rs. 70.00 p.m' but the Controller failed to comply with this mandatory and imperative provision of law and so his order cannot be sustained and the case must go back to him for redecision in the light of the observations made above.'

(3) In short, the view taken by the Tribunal is that in spite of failure of the tenant to deposit the rent at the rate of Rs. 50.00 per month, as ordered by the Controller earlier, the Controller should have passed a fresh order in accordance with sub-section

(3) of section 15 giving the tenant a fresh opportunity to deposit the entire arrears of rent at the rate of Rs.70.00 per month. That view of the Tribunal does not appear to be correct. Under clause (a) of the proviso to sub-section

(1) of section 14 of the said Act a tenant is liable to ejectment if he does not pay or tender the whole of the arrears of 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 manner provided in section 106 of the Transfer of Property Act, 1882. Sub-section

(2) of section 14 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), if the tenant makes payment or deposit as required by section

15. The protection of sub-section

(2) of section 14, therefore, extends to such tenants only as make payment or deposit the rent as required by section 15, which must mean the whole of section

15. Sub-section

(1) of section 15 obliges the Controller in proceedings for the recovery of possession of any premises for nonpayment of rent to make an order directing the tenant to either pay to the landlord or deposit with the Controller within one month of the date of order the arrears of rent and the future rent. Subsection

(3) of section 15 provides that in case of dispute as to the amount of rent payable by the tenant the Controller shall fix an interim rent to be paid or deposited 'in accordance with the provisions of sub-section

(1) or sub-section

(2) as the case may be, until the standard rent in relation thereto is fixed having regard to provisions of this Act, and the amount of arrears, if any, calculated on the basis of the standard-rent shall be paid or deposited by the tenant within one month of the date on which the standard rent is fixed or such further time as the Controller may allow in this behalf'. Sub-section

(3) of section 15 is, therefore, directed towards adjustment to be made in the payment or deposit of rent after standard rent has been fixed. For instance, if interim rent is fixed at the rate of Rs. 50.00 per month and order is made- to deposit that arrears the tenant must comply with that and only then he can seek the protection of sub-section

(2) of section

14. If the standard rent is then fixed at Rs. 60.00 the said sub-section

(3) requires that the balance of RS.10.00 per month shall be paid by the tenant within one month of the date of fixation of the standard rent or within such further time as the Controller may allow, That does not, however, do away with the obligation of the- tenant to deposit the interim rent fixed under sub-section

(3) of section 15 and directed to be paid within the time specified in sub-section (1). In this case the tenant had been directed to deposit arrears of rent at the rate of Rs. 50.00 per month, the rate of interim rent fixed by the Controller. The tenant defaulted in this behalf and consequently lost the protection of sub-section

(2) of section

14. The Tribunal is nto right in saying that after the parties had agreed to a rent of Rs. 70.00 per month, the Controller should have passed a fresh order directing the payment of the entire arrears at that rate. In this view the order of the Tribunal must be set aside and the appeal allowed. I, thereforee, restore the order of the Rent Controller and pass an order for eviction of the tenant from the premises in dispute. The tenant shall have two month's. time to vacate the premises. There will, however, be no order as to costs.

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