

Balbir Singh Vs. Manmohan Lal

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Court : Delhi

Decided On : Apr-24-1974

Reported in : ILR1975Delhi96

Judge : H.L. Anand, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sectionn 15(1)

Appeal No. : Second Appeal No. 162 of 1972

Appellant : Balbir Singh

Respondent : Manmohan Lal

Advocate for Pet/Ap. : I.C. Jain and; S.S. Chadha, Advs

Judgement :

H.L. Anand, J.

(1) This Second Appeal under Section 39 of the [Delhi Rent Control Act, 1958](#) (hereinafter called 'the Act') is directed against the appellate order of the Rent Control Tribunal, Delhi confirming that of the Addl. Rent Controller, Delhi under Section 15(1) of the Act.

(2) The premises in dispute were let out to the appellant by late Shrimati Tara H. K. Lal on a monthly rent of Rs. 900.00 . Subsequently on the death of the landlady

the respondent herein, one of the heirs of the landlady, filed an application for the eviction of the appellant from the premises on the ground that the appellant had failed to pay rent legally recoverable from him notwithstanding the expiry of the period of two months from the service of notice of demand in that behalf. The application was resisted by the appellant inter alia, on the ground that the application was not maintainable in the absence of other heirs of the landlady; that no notice of demand had been served on the appellant; that after the service of the notice of demand, if any, the matter had been settled between the appellant and Miss Prein Lal, one of the other heirs of the landlady, as a result of which the notice of demand stood waived and the cause of action for the application did not survive; and that the amount claimed by the respondent was, in any event, not legally recoverable partly because of the payments made by the appellant and partly because there had been an abatement of rent.

(3) After hearing the parties the learned Addl. Rent Controller made an order under Section 15(1) of the Act directing the appellant to deposit a sum of Rs. 10,402.00 besides arrears of rent for the period 1-10-1971 up to date at the agreed rate within a month of the order and to continue to deposit future rent by the 15th of each following month. In the course of the order the learned Addl. Rent Controller observed that the relationship of landlord and tenant, the agreed rate of rent and receipt of notice were admitted. The plea that the application was not maintainable in the absence of the other heirs of the deceased landlady was noticed but not considered. The contention that the notice stood waived on account of a subsequent settlement was dispelled.

(4) Feeling aggrieved by the said order, both the parties assailed it in separate appeals and the same were disposed of by a common order as a result of which the appeal of the appellant was partly accepted and the order of the Addl. Rent Controller was modified in that the appellant was directed to deposit a sum of Rs. 8,200.00 towards the rent for the period ending September 30, 1971 and arrears of rent from October 1, 1971 to April 30, 1972 within one month of the order and to deposit future rent month by month by 15th of each following month. The principal contention of the appellant that no order under Section 15(1) could or should have been passed until the various controversies raised by the appellant had been

finally settled was, however, dispelled. The appeal filed by the respondent was dismissed.

(5) In the course of the aforesaid order the learned Rent Control Tribunal held that the question as to the maintainability of the application could be decided only after recording evidence but that the application was prima facie maintainable because the appellant had been dealing with the respondent after the death of the landlady. It was further held that the question as to the factum of the service of notice terminating the tenancy and making the demand of arrears of rent could not be gone into at the preliminary stage in view of a decision of a Single Judge, of this Court in S.A.O. 285/74 decided on February 9, 1972 and that the receipt filed by the appellant, pursuant to the compromise arrived at, was issued without prejudice to the rights of the parties. The further contention of the appellant that the appellant had been deprived of a portion of the demised premises and there had been an abatement of rent and, therefore, no order under Section 15(1) of the Act could be passed, was rejected on the ground that this question related to the merits of the defense and could not be decided at the preliminary stage and that prima facie there was nothing on the record to prove that the appellant had been deprived of any portion of the demised premises. The last contention urged on behalf of the appellant that in view of the dispute between the parties with regard to the quantum of arrears of rent an order under Section 15(1) ought not to have been made was dispelled but the order of the learned Addl. Rent Controller was modified so as to substitute for the amount ordered by the Addl. Rent Controller, the amount which was otherwise admittedly due. The contention as to the appellant's entitlement to adjustment of three months' rent on account of repairs was repelled on the ground that this question could be decided only after recording evidence and could not be gone into at the preliminary stage of the proceedings'.

(6) Feeling himself aggrieved by the aforesaid order the appellant has filed the present Second Appeal.

(7) Learned counsel for the appellant assailed the impugned order solely on the ground that in the appellant's defense to the eviction action, as indeed in resisting the order under Section 15(1) of the Act, the appellant had raised weighty

objections as to the maintainability of the eviction action and as to the quantum of rent recoverable from the appellant the decision of some of which may go to the root of the eviction action and may result in the non-suiting of the respondent and that the Controller had no jurisdiction to invoke the aforesaid provision without finally determining the aforesaid questions and that in any event, assuming that the Controller had jurisdiction to make the order under Section 15(1) notwithstanding the aforesaid objection, such an order would not be proper unless the various questions raised with regard to the maintainability of the action and as to the quantification of the liability had been finally determined after recording evidence, inter alia, because in the absence of such determination grave injustice could be caused to the appellant because once an order under Section 15(1) was made, while leaving those questions undetermined even a default in complying with the order for reasons which may be wholly beyond the appellant's control, could visit the appellant with the drastic penalty of his defense against the eviction action being struck out and that, even if the defense was not struck out and the default or delay was condoned, such a condensation would not, according to the decision of the Full Bench of his Court in the case of the Delhi Cloth and General Mills Co. Ltd. v. Shri Hari Chand and another, (1972) (1) Delhi 503 ensure for the purpose of sub-section (2) of Section 14 of the Act and would thus deprive the appellant of the additional protection afforded by the said provision. It was, therefore, urged that the limited operation of the condensation, as construed by the Full Bench, had virtually converted the provision of Section 15(1), which was primarily intended to be for the benefit of the tenants, into an instrument of oppression of the tenants. It was further urged that if the defense was struck out the various questions raised by the appellant would not survive and even if the defense was not struck out the default deprived the appellant of the additional protection of sub-section (2) of Section 14 which could perhaps be not revised even if the appellant ultimately succeeded in any contention which may affect the validity or propriety of the order under Section 15(1) of the Act.

(8) On the other hand, learned counsel for the respondent argued that there was no substance in the contention regarding the maintainability of the ejectment action because the appellant, having throughout dealt with the respondent was estopped from raising the plea that the ejectment action by the respondent alone

was not maintainable; that there was no dispute with regard to quantification of the liability of the appellant and the liability of the appellant was not affected by the settlement which, being without prejudice, could not impinge either on the operation of the notice or the maintainability of the action and that none of the contentions raised on behalf of the appellant had any effect on the jurisdiction of the Controller to deal with the matter or on the maintainability of the ejectment action and that the Controller was, therefore, competent to invoke the provision of Section 15(1) without finally determining various questions; and that in any event such questions could be determined at the preliminary stage of the proceedings on prima -facie material.

(9) It thus appears that on the pleadings of the parties several questions of law and fact arise, the decision of some of which, one way, may non-suit the respondent and in any event exonerate the appellant of the whole or at least a part of the liability to pay rent. In the first instance, there is , question as to the maintainability of the ejectment action at the instance of one only of the co-owners, who succeeded to the property on the death of the landlady, from whom the appellant had taken the premises on rent. This question would also involve consideration of the further question as to whether the appellant had dealt with only the respondent and was, therefore, estopped from raising this plea and as to its effect. There is then the question as to the service of notice of termination of tenancy or of demand of arrears of rent and as to its validity. The third question is with regard to the effect of the settlement on the eviction action. Lastly, there is the question of abatement of rent which in turn would have an impact on the computation of the amount which is legally recoverable from the appellant. A decision on any of the first three questions, if favorable to the appellant, would either noneuit the respondent or otherwise put an end to the eviction action, while the decision on the last question, if favorable to the appellant, would affect the extent of the appellant's liability.

(10) The questions that, therefore, require consideration are as to the nature of the power confened on the Controller under Section 15(1) of the Act, the limitation on the power and the manner in which it may be exercised more particularly if questions with regard to the maintainability of the petition for eviction, the quantum

of rent and certain other controversies are involved and as to the validity or propriety of the impugned order on the facts and circumstances of this case in the light of the appropriate answer to the aforesaid questions.

(11) It may be useful at this stage to consider the social philosophy on which the Act, as indeed the other similar legislative enactments, are founded, the compulsion that led to their enactment, the object that was sought to be achieved thereby the broad scheme of the Act and the purpose for which the provisions of Section 15 was incorporated in it.

(12) The Act, according to its preamble, was intended to provide for the control of rents and evictions and for certain other matters and was part of the rent control legislation enacted in Delhi, as indeed in rest of the country, to deal with an extraordinary situation that arose soon after the outbreak of the Second World War because of increasing pressure on urban immovable property. The situation was further aggravated in the years that followed on account of the increasing population explosion and the influx of large number of displaced persons from the territories now forming part of Pakistan, in the wake of the partition of India and the consequent pressure on urban areas.

(13) The Rent Control Legislation throughout the country was intended to strike a reasonable balance between the requirements of the tenants for adequate protection against the aggressive designs of greedy landlords to evict the tenants or to increase the rates of rent to an exorbitant limit and the need to assure to the landlords, whose normal legal rights were sought to be restricted, the minimum right to receive the agreed rent, lawful increase of it and to evict the tenant who may be guilty of misconduct within certain circumscribed limits. These measures were continued after the promulgation of the Constitution of India with an even greater bias in favor of the tenants, who, by and large, represented the weaker segment of society as compared to the urban propertied class, as part of large scale social legislation having its genesis in the need to bring about social and economic justice through legislative action, inter alia, by the redistribution of wealth on an equitable basis, elimination of exploitation in all forms and establishment of a truly egalitarian social order.

(14) Section 14 of the Act lays down the extent of protection of tenants against eviction and bars the making of any order or decree for the recovery of possession of any premises, notwithstanding anything to the contrary, except on any of the conditions which are set out in clauses (a) to (1) of proviso to sub-section (1). Clause (a) of the proviso entitles the landlord to evict the tenant if the tenant has neither paid nor tendered 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 had been served on him by the landlord. Sub-section (2) of Section 14, however, gives an additional protection to the tenant and provides that in spite of the default referred to in clause (a) an order for the recovery of possession of any premises shall not be made on that ground 'if the tenant makes payment or deposit as required by section 15'. The proviso to this sub-section, however, provides that the benefit of the additional protection would be available to the tenant only once in respect of the same premises.

(15) SUB-SECTION (1) of Section 15 provides that in cases where the eviction action is grounded on default in payment of rent, 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 the arrears of rent which were legally recoverable from the tenant and to continue to pay or deposit month by month rent during the pendency of the proceedings. Sub-section (2) of Section 15 provides that such an order may be obtained by the landlord, on an application, in cases where eviction action was based on any ground other than that referred to in sub-section (1). Sub-section (3) deals with the order that may be made under sub-section (1) and sub-section (2) where there is a dispute about the rent that may be legally recoverable and provides a machinery for the fixation of interim rent. Sub-section (4) deals with the situation in which there may be disputes as to the person or persons to whom rent may be payable and provides that in such a case, the Controller may direct the tenant to deposit the amount payable under any of the preceding sub-sections but the amount would not be withdrawn until the said dispute had been settled by the Controller and an order for payment was made. Sub-section (5) contains a penal provision to deal with a false or frivolous plea by the tenant in respect of a person's entitlement to receive the rent and provides that the Controller may in such a case order the defense of the tenant

against eviction to be struck out. Sub-section (6) provides that if the tenant makes payment or deposits as required by sub-section (1) or sub-section (3), no order for the recovery of possession on the ground of default in payment of rent by the tenant would be made. Sub-section (7) deals with the consequences of failure on the part of the tenant to make payment or deposit as required by the various sub-sections and provides that the Controller may order the defense against eviction to be struck out and proceed with the hearing of the application.

(16) Even a cursory look at Section 15 leaves no manner of doubt that, while it is primarily intended for the benefit of the tenant, it nevertheless contains certain important safeguards for the landlord. For example, sub-sections (1) and (6) of Section 15 are intended to give effect to the provisions of sub-section (2) of Section 14 which in terms confers additional protection on a tenant against eviction even though in terms of Section 14(l)(a) he would be liable to be evicted, if he made default in payment of rent. Obviously, the additional protection, as the language of sub-section (2) of Section 14 makes it abundantly clear, is available to the tenant only on the condition that he complies with an order made under Section 15 of the Act and for the purpose of enabling the tenant to comply with the conditions laid in sub-section of Section 14, an order under Section 15 must be made and once such an order is made and is complied with, then sub-section (6) comes into play and relieves the tenant of the eviction action based on default in the payment of rent. Again if the contest between the parties is with regard to the amount of rent payable, sub-section (3) confers a right on the tenant to have an interim rent fixed so that requisition for payment of deposit under Section 15(1) would be based on such an interim rent. Sub-section (4) gives further protection to the tenant against any compulsion to pay rent, which may be admittedly due in respect of a premises, to a person who may not be entitled to receive it and, therefore, provides that, even though he may deposit the amount, it would not be paid to any one until the dispute had been decided and, thus, saves the tenant from the need to recover the amount from a person to whom it may have been paid without corresponding right in that person to receive it. On the other hand, insofar as sub-section (1) of Section 15 empowers the Controller to require the tenant to pay or deposit not only the arrears of rent but even future rent during the pendency of the proceedings, it is intended to ensure that if the proceedings take

their own course, the landlord should not be left at the mercy of a tenant and would be compelled to pay the future rent even though the tenancy has since been terminated and there is no claim under the Act for the payment of rent unlike a suit for the recovery of arrears. This is obviously intended to protect, to a limited extent, the interest of a landlord. Similarly sub-section (2) is primarily intended for the benefit of the landlord and would operate as a damper to any unnecessary prolongation of the proceedings by the tenant and would enable the landlord to make a motion for the arrears as well as the future rent being 'deposited by the tenant even though nonpayment of rent may not be the reason for the eviction action. This protection of the landlord's interest is not left at that because if it was only left there and carried no further, there would be no possible way in which an order under sub-section (2) could be enforced and a provision is made under sub-section (7) that the failure of the tenant to make payment or deposit as required by the section may visit the tenant with the penalty of his defense against eviction being struck out. Similarly, to an extent, sub-section (4) also protects the interest of the landlord so that even if a dispute be raised about the right of a person to receive rent, no serious prejudice is caused to the landlord because the tenant would then be compelled to deposit the rent although it may not be paid to the person who claimed to be entitled to it until the dispute is settled. The thrust of sub-section (5) appears to be in the same direction because it is intended to discourage reckless tenants from raising false and frivolous disputes with regard to the entitlement of a person to rent and the tenant would raise such pleas only at the risk of having his defense against eviction struck out.

(17) There has been judicial controversy on the scope, ambit and object of Section 15 of the Act and it may be useful to consider the way the provision has been judicially interpreted.

(18) In the case of *Om Prakash Gupta v. Dr. Rattan Singh and another*, 1963 P.L.R. 543 the question before their Lordships of the Supreme Court was if the authorities under the Act had no jurisdiction to entertain the proceedings or to proceed under the Act if the relationship of landlord and tenant between the parties was denied. The contention on behalf of the unsuccessful tenant was that in view of the denial of the relationship, the provisions of Section 15(7) of the Act

could not be applied in the absence of a finding that he was a tenant in respect of the premises in question. It was held that the Act postulates the relationship of landlord and tenant which must be a preexisting relationship and there was, therefore, no express provision in the Act empowering the controller or the Tribunal to determine whether or not there was a relationship of landlord and tenant and that if the tenant denied the relationship, the Controller had to decide the question as to the existence of the relationship and that if the Controller came to the conclusion that the relationship did not exist, the proceedings have to be terminated. The legal position 'with regard to the proceedings under Section 15 of the Act was stated thus :

'NOW,proceedings under Section 15 are primarily meant for the benefit of the tenant, and the section authorises .the Controller, after giving the parties an opportunity of being heard, to make an order directing the tenant to pay the amount found on calculation to be due to the landlord or to deposit it with the Controller, within one month of the date of the order. Such an order can be passed by the Controller for the benefit of the tenant, only if the Controller decides that the person against whom the proceedings for eviction had been initiated was in position of a tenant. Thus, any order passed by the Controller, either under Section 15 or other sections of the Act, assumes that the Controller has the jurisdiction to make the order, i.e., to determine the issue of relationship. In this case, when the Controller made the order for deposit of the arrears of rent due under Section 15(1), and on default of that made the order under sub-section (7) of Section 15, striking out the defense, the Controller must be deemed to have decided that the appellant was a tenant'.

(19) In the case of V. N. Vasudeva v. Kirori Mal Luhariwala, : [1964]6SCR181 , it was held that an order under sub-section (1) of Section 15 of the Act was not a final order but was preliminary to the trial of the case and 'is made only whether rent has in fact not been paid.' The contention raised on behalf of the tenant, who was a legal practitioner, that the rent due from him was to be adjusted against the fees for legal work outstanding against the landlord and that an order under Section 15(1) should not be made until the tenant has had an opportunity to establish the aforesaid arrangement and that otherwise the tenant would be

prejudiced because once the amount was deposited there would be an end of the proceedings, was dispelled, and it was held that the tenant would have the opportunity to give oral evidence with regard to the arrangement he alleges at a subsequent stage of the proceedings and that at the moment he was being asked to deposit the arrears in Court which 'admittedly' were outstanding. This plea was repelled obviously because the plea for adjustment set up in that case was not a part of the contract of tenancy but was based on a separate agreement and that is why it was observed that the order under Section 15(1) was a preliminary order and not a final order and that for the purpose of an interim order it was not necessary that there should have been a full trial on the plea set up by the tenant. The contention, therefore, that the tenant had no opportunity of being heard before the order was made was accordingly dispelled.

(20) In *M. M. Chawla v. 7. S. Sethi*, 1969 R.C.J. 913 it was held by the Supreme Court that an order under sub-section (1) of Section 15 could be made after giving the parties an opportunity of being heard and that even though the expression 'shall' has been used, it is directory and 'the tenant is entitled to show that he has paid the rent claimed from him; if he proves that he has paid the rent, the demand for deposit of arrears under sub-section (1) of Section 15 cannot be made.' The contention put forth on behalf of the landlord that the Controller was obliged to pass an order calling upon the tenant to pay to the landlord or deposit in Court the amount calculated at the rate at which it was last paid for the period for which the arrears of rent were legally recoverable from the tenant, even though the tenant raised a dispute with regard to the quantum of rent payable, was dispelled. This is how Shah J. speaking for the Court, set out the conclusion:-

'By sub-section (1) of Section 15 it is provided that the controller shall make an order directing the tenant to pay to the landlord, or deposit with the Controller within one month of the order, an amount calculated at the rate at which rent was last paid. But the clause in terms provides that this has to be done after giving the parties an opportunity of being heard. If the Controller is obliged to pass an order calling upon the tenant to pay to the landlord, or to deposit in his Court the amount of rent calculated at the rate at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant, there would be no

scope for a hearing to be given to the tenant and it would put a premium upon false claims by landlords. Even though the expression 'shall' is used, it is, in our judgment, directory. The tenant is entitled to show that he has paid the rent claimed from him; if he proves that he has paid the rent, the demand for deposit of arrears under sub-section (1) of Section 15 cannot be made.'

(21) Following the aforesaid observations of the Supreme Court, a Division Bench of this Court in the case of Ram Prakash Kapur v. Smt. Bhagwanti Devi, 1973 R.C.J. 328 to which I was a party held that if the Controller was bound under sub-section (1) of Section 15 to finally decide and determine, the plea of payment if raised in the proceedings before making an order under sub-section (1) of Section 15, as held by the Supreme Court, it was difficult to hold that the Controller could make such an order while leaving undecided the other mere fundamental question as to 'whether the person against whom the order is to be made is a tenant in the premises within the meaning of the Act.' The contention of the tenant in that case was that on the death of the original landlord, all the legal representatives of the landlord become entitled to receive the rent and the tenant was not liable to pay rent to the widow of the landlord who alone was substituted for the petitioner in the proceedings. It was, however, held that since the tenant did not dispute his liability to pay the rent but merely disputed the person who was entitled to receive it, the question whether or not tenant was liable to pay the rent to one of the legal representatives need not be decided before an order under Section 15(1) was made because the Section postulates that in such a situation the Controller could make the order under section 15(4) so that the rent may be deposited but not paid until the question had been decided. It was further pointed out that failure to make the payment or deposit as required by an order under sub-section (1) of Section 15 can have drastic consequences and may result in the defense of the tenant being struck out and that in any event, having regard to the Full Bench decision of this Court in the case of Delhi Cloth and General Mills Co. Ltd. v. Hem Chand and others, (1972) 11 Delhi 503 the controller would have no power, and also no jurisdiction in that sense, to condone the failure of the tenant in complying with the order under Section 15(1) for purposes of Section 14(2) of the Act so as to have the effect to wipe off the default and that even where the controller may not strike out the defense, the tenant would nevertheless be deprived of the additional

protection if he makes default in complying with such an order.

(22) In *Rajinder Pershad v. Suraj Mal and others*, 1973 R.C.J. 313 a Single Judge of this Court held that an order under sub-section (1) of Section 15 has to be made as soon as the eviction application came up before the Controller and that in case the tenant raised a dispute regarding the amount which was legally recoverable the Controller has to decide the same before he can make an order under the said subsection irrespective of the fact whether the dispute was with respect to the period or the rate of rent or any other matter without resolving which the Controller was unable to fix the amount that the tenant could be directed to pay or deposit. It was further held that if the tenant sought to invoke the doctrine of suspension of rent, the Controller had to decide the dispute before making an order, however, brief the enquiry may be, and that the Controller could pass the order on 'prima facie' evidence.

(23) In the case of *V. K. Varma v. Radhey Shyam* : AIR 1964 SC1317 , it was held by the Supreme Court that having regard to the provisions of Section 57 of the Act in dealing with proceedings under the earlier Act which were pending at the commencement of the Act, regard must be held to the provisions of the Act and that being so, the defense of the tenant should not have been struck out because under Section 15(7) of the Act, it was discretionary for the Controller to make such an order because of the use of the expression 'may' in the sub-section even though the corresponding provision in section 35 of the earlier Act used the expression 'shall'. This is how the provision of Section 15(7) was construed by the Supreme Court:- 'The change of the words from 'the Court shall order the defense against ejection to be struck out' to the words

'THE Controller may order the defense against eviction to be struck out' is clearly a deliberate modification in law in favor of the tenant. Under the old Act the Court had no option but to strike out the defense if the failure to pay or deposit the rent is proved; under the new Act the Controller who takes the place of the Court has a discretion in the matter so that in proper cases he may refuse to strike out the defense'.

(24) Following the aforesaid decision, a Single Judge of this Court, in the case of M/s. Bharat Pulvarising Milts Private Ltd. New Delhi v. Tara Chand Malik Charitable Trust and ors. 1973 R.C.R. 1 held that the Controller had discretion to strike out the defense and was not bound to do so in every case and that the order striking out the defense was not justified in the circumstances of that case.

(25) In the case of Smt. Nirmal Jerath and others v. Sadhu Rani Sharma and others, 1972 D.L.T. 465, a learned Single Judge of this Court held that where the contention, was that the application could have been filed only by all the owners, it would be necessary to first determine the question as to the maintainability of the application before an order under section 15(1) of the Act could be made. It was further held that 'the effect of the passing of an order under section 15(1) of the Act is to make the tenant liable to ejectment in case of failure to make a deposit' and that when the very maintainability of the application was in question, 'it is very desirable that such a question should be ascertained and determined before an order under section 15(1) is passed'.

(26) It may be useful at this stage to consider the implications of a recent Full Bench decision of this Court in the case of the Delhi Cloth and General Mills Co. Ltd. (supra) which would appear to have given an entirely new dimension to the problem of interpretation of the provision. In this case, the Full Bench was, inter alias concerned with the Questions if a default made by a tenant in complying with an order under Section 15(1) of the Act, in the case in which the eviction action was founded; inter alia, on the ground of default in payment of rent, could be condoned and, if so, the extent of its effect.

(27) The aforesaid question had been referred to the Full Bench in a slightly different form in the context of the following circumstances. Eviction of the tenant was sought on the ground of default in payment of rent and unauthorised sub-letting. The tenant had paid certain amount after receipt of notice of demand but it fell short of the demand. The Addl. Controller passed an order under Section 15(1) of the Act, on the application of the landlord, directing the tenant to deposit all the arrears of the rent due after deducting the amount already deposited pursuant to the notice and further rent pursuant to which the tenant deposited an additional

amount of Rs. 3,455.00 which represented the amount due until the date of the deposit but made default in depositing month to month rent as required by the order. This led to an application by the landlord under Section 15(7) of the Act for the defense of the tenant against eviction being struck out. The tenant meanwhile made good deficiency and deposited the rent up to date but the Controller struck out the defense and ordered eviction holding that, although the tenant was not liable to eviction on account of non-payment because he had deposited the arrears of rent demanded from him, the eviction was justified on the ground of unauthorised sub-letting on the basis of the land-lord's evidence. The tenant's evidence was not considered in view of the order striking out the defense. In appeal, the learned Rent Control Tribunal set aside the order, condoned the delay in the deposit and remanded the case for trial on merits. In the second appeal in which this order was challenged, the aforesaid questions were referred to the Full Bench.

(28) On a consideration of the scheme of the provision of Section 15 and the object for which it was intended and for certain provisions of Section 14 of the Act notably clause (a) to proviso to sub-section (1) of it and of sub-section (2) of it, the full Bench came to the conclusion that 'the sole purpose of Section 15' is to secure payment of arrears of rent and future rent from the tenant to the landlord during the pendency of the eviction proceedings by making the default of the tenant to make this payment or deposit punishable under sub-section (7) of the Section 15'; 'the only punishment that the Controller can inflict on the tenant for the default to make the payment or deposit is to strike out his defense'; the discretion of the Controller to relieve the tenant of default in complying with an order under sub section (1) of section 15 is, however, subject to the limits laid down in sub-section (7) of the Section; the condensation will leave in tact the defense in the tenant against eviction, in that, the tenant would be allowed to contest the landlord's claim for eviction which has accrued to him by Section 14 so that in a case when the landlord has fulfilled the conditions mentioned in Section 14, 'the condensation of delay under sub-section (7) of Section 15 will not have the effect to non-suit the landlord and deprive him of the rights that have accrued to him under Section 14.' Sub-section (1) of Section 14 is mandatory in nature so that if the conditions set out in the proviso are satisfied, an eviction order must follow; sub-section (2) of

Section 14 confers an additional protection on the tenant but if he fails to avail of this protection by making default in the deposit in terms of an order under Section 15(1) of the Act, 'the conditions mentioned in clause (a) are fully satisfied, and the Controller is bound under section 14 to pass an order for recovery of possession in favor of the landlord. The order of the Controller refusing to strike out the defense under sub-section (7) of section 15 in such a case will not have the effect of depriving the landlord of his right'. The Controller will thus have no power (an. in that sense no jurisdiction) 'to condone the failure of the tenant for the purpose of section 14(2)'; the intention of the legislature was to strictly enforce the deposit of payment as enjoined by Section 15 in cases where eviction was claimed under clause (a) of the proviso to sub-section (1) of Section 14 and that no relief was intended for the tenant if he failed to make the payment or deposit as required by Section 15; the default under sub-section (2) of Section 14 vests an undefeasible right in the landlord and is not merely procedural and the default of the tenant in payment of deposit in compliance with the order of Controller under Section 15(1) and 15(3) has the effect of vesting a right of eviction in the landlord if the eviction was grounded on clause (a) of proviso to sub-section (1) of Section 14.

(29) 'THE question referred to the Full Bench was therefore, answered in the following manner :----

'CONTROLLER has no power, and no jurisdiction in that sense, to condone the delay in default of the amount of rent directed to be paid or deposited under section 15, subsection (1) and sub-section (3) (in the latter case only when the order is under sub-section (1) of section 15) so as to wipe off the default that has occurred, but in all other cases where no right of eviction is vested in the landlord by reason of the default the Controller can condone the default.'

(30) On the facts of the case before the Full Bench it was held that as much as the eviction action was, inter alia, grounded on Section 14(1)(a) and the tenant made default in the deposit under Section 15(1), a right to obtain an order of recovery of possession accrued to the landlord and the Controller had no power to condone the delay in deposit and to refuse to grant this order and that even though the tenant had deposited the rent required of him in the notice of demand,

'BY reason of sub-section (2) of section 14 the tenant was bound to deposit and continue to deposit not only the arrears of rent but all future rents also as required by section', and when the tenant failed to make deposit of the future rent (in spite of his previous deposit of the arrears of rent demanded in the notice) he was liable to be evicted.'

(31) The legal position that, thus, emerges on a review of the aforesaid decisions appears to me to be rather nebulous and the new dimension given to the controversy as to the true meaning, scope and import of the provisions of Section 15 of the Act by the decision of the Full Bench in the case of the Delhi Cloth & General Mills Co. Ltd (supra) would have an important bearing on the question as to the extent of the enquiry before an order under Section 15(1) is made. In the case of Om Parkash Gupta (supra) their lordships of the Supreme Court found that the Controller had the jurisdiction to determine the issue of relationship between the parties but hastened to add that

'WHEN the Controller made the order for deposit of the arrears of rent due under section 15(1) and on default of that made the order under sub-section (7) of Section 15 striking out the defense, the' Controller must be deemed to have decided that the appellant was a tenant'.

This may be legitimately understood as laying down that an implied finding on such a question was possible and there need not be a regular enquiry with regard to the question before the Controller could assume jurisdiction under Section 15 of the Act. In the case of V. N. Vasudeva (supra) their Lordships of the Supreme Court observed that the order under Section 15(1) was not a final order but was preliminary to the trial of the case and 'is made only where the rent has in fact not been paid' implying thereby that if a plea was raised that the rent had not been paid, there was no question of making an order under Section 15(1) unless the question had been considered and finally decided. This position was reiterated by their lordships of the Supreme Court in the case of M. M. Chawla (supra) and it was in terms laid down that the tenant was entitled to show that he had paid the rent claimed and 'if he proves that he has paid the rent, the demand for deposit of arrears under sub-section (1) of Section 15 cannot be made'. Here again it is

implied that there has to be final determination with regard to the question if it is claimed that no amount was due from the tenant before the provisions of Section 15 could be invoked. However, the plea of the tenant in the case of V. N. Vasudeva (supra) that by a separate arrangement, it had been agreed that the rent would be adjusted towards the outstandings of fees and that no order under Section 15(1) should be made until this question had been decided, was dispelled and it was held that even though this question had not been gone into and an order under Section 15(1) had been made it could not be said that the tenant had no opportunity of being heard before the order was made. Following the decision of the Supreme Court in the case of M. M. Chawla (supra), a Division Bench of this Court in the case of Ram C Prakash Kapur (supra) held that the Controller was bound under sub-section (1) of Section 15 to finally decide and determine the plea of payment if raised, before making an order under sub-section (1) of Section 15. According to the Full Bench decision, once an order under Section 15(1) of the Act was made and default was committed in complying with it, any condensation of the default would be limited to the preservation of the defense that the tenant may have to the eviction action but would not have the effect of reviving the additional protection under Section 14(2) of the Act that was lost to the tenant on committing default. A default in complying with an order under Section 15(1) could, therefore, result in drastic consequences for the tenant, in that, he becomes liable to his defense being struck out and, even if the defense is not struck out, he is deprived of the additional protection provided by sub-section (2) of Section 14 of the Act and if that be the true legal position, and I say so with utmost respect, could an order under Section 15(1) be made as a preliminary order without going into various questions that may be raised by the tenant such as the maintainability of the eviction action or as to the total or partial abatement of rent or as to the quantum of liability. If it could be, grave injustice would have been done if the defense is struck out on a default or if the additional protection is lost but it is eventually found that the tenant was not liable to pay the amount the default in the payment of which led to the deprivation of the additional protection. If in such a case the defense had been struck out it would be still worse because none of the questions raised could be gone into in the absence of a legal forum for their determination. What was, therefore, intended, according to their Lordships of the

Supreme Court to be 'primarily for the benefit of the tenant' would have degenerated into a trap and an instrument of oppression for the tenants if an order under sub-section (1) of Section 15 could be made without deciding finally the questions of the type referred to above or even deciding them on what has been described in some decisions of this Court as 'prima facie' evidence. It logically follows from the Full Bench decision that, having regard to the drastic consequences of default in complying with an order under Section 15(1) of the Act, such an order should be made only after finally determining the various questions in controversy having an impact on the order, whether on the jurisdiction to make it or whether as to its propriety or the terms in which it may be made.

(32) It has been pointed out and, with respect, rightly in my view by the Full Bench, that the way it has construed sub-section (7) of Section 15 particularly in its impact on the additional protection provided by sub-section (2) of Section 14 grave hardship may be caused to the tenants in cases where default is committed for reasons beyond their control and may even be contrived by an unscrupulous landlord. Such hardship can certainly be relieved by proper legislative action but I do not see how the authorities under the Act can escape their social obligation to relieve such hardships in administering, in so far as it may be possible, the 'provisions of Section 15 and such' obligation would be inherent in the purpose for which the rent legislation was brought to the Statute Book and the object sought to be achieved by incorporation in the Act of Section 15 which has been referred to in detail above.

(33) Having regard, therefore, to the present state of the Law, I am of the view that an order under Section 15(1) and under Section 15(3) of the Act, in so far as it would be applicable to an order under sub-section (1) of Section 15; must be made at the earliest opportunity where the relationship of landlord and tenant is not in dispute and the conditions of the Section are satisfied and the maintainability of the eviction action, the liability of the tenant to pay the rent, the extent of the liability, and other questions of the like nature are not involved. If, however, the tenant raises questions as to the maintainability of the petition or disputes his liability to pay the rent or there is a dispute with regard to the quantum either because of abatement of rent or otherwise an order under Section 15(1)

should not be made, except in 80 far as provided in sub-section (3) and sub-section (4) of the Act until these questions have been finally determined.

(34) In the result, the appeal succeeds. The impugned orders are set aside and the Controller is directed to decide the various questions raised by the tenant with regard to the maintainability of the petition, the alleged abatement of rent etc. before making an order under sub-section (1) of Section 15 of the Act.

(35) In the peculiar circumstances of the case, there would be no costs.

(36) The records be transmitted to the Addl. Rent Controller. The parties are directed to appear before the Addl. Rent Controller on Oct., 16, 1974.

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