

Chander Kanta Vs. Khem Chand

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Court : Delhi

Decided On : Oct-20-1972

Reported in : ILR1973Delhi418

Judge : S.N. Shankar and; P.N. Khanna, JJ.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 40; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 152

Appeal No. : Second Appeal No. 189 of 1971

Appellant : Chander Kanta

Respondent : Khem Chand

Advocate for Pet/Ap. : Madan Bhatia and; S.L. Bhatia, Advs

Judgement :

P.N. Khanna, J.

(1) Smt. Chandra Kanta, the landlady, is the owner of the premises in dispute consisting of two portions; (a) one hall, store, part of a courtyard with a right to use the lobby in common and latrine, and (b) hall with a bath and W/C. The respondent Khem Chand Malik, is the tenant, to whom portion (a) was let out with effect from July 12, 1965, on a monthly rent of Rs. 555/, and portion (b) with effect from August 5, 1967 on a monthly rent of Rs. 500.

(2) Sometimes later the parties mutually agreed that with respect to portion (a) rent of Rs. 555 per month would prevail up to August 12, 1970 (i.e. during the first five years of the tenancy); and thereafter Rs. 335 per month would be the standard rent. On the basis of this agreement, Shri S.R. Goel, the Additional Controller, fixed the standard rent of that portion of the premises at Rs. 335 per month with effect from August 13, 1970. Regarding portion (b), the parties mutually agreed that the rate of rent of Rs. 500 per month would prevail up to August 15, 1970; and thereafter the said rent was to be Rs. 300 per month. No order of the Controller was obtained to confirm this as the standard rent for this portion.

(3) On August 27, 1969 the appellant landlady filed an eviction petition against the respondent on the grounds that the premises were required bona fide by her for the purpose of construction of first and second floors and that the respondent had caused substantial damage to the premises. An application under section 15(2) of the Delhi Rent Control Act, herein called 'the Act' was also filed. The respondent tenant pleaded in reply that the landlady was entitled to claim for both the portions, rent at the rate of Rs. 635 per month only, which was said to be the standard rent. On December 4, 1969 Shri P. K. Bahri Additional Controller ordered the respondent-tenant to pay Rs. 555 per month for portion (a) and Rs. 500 for portion (b) from August 1, 1969 onwards, till the date of the application (November 13, 1969) and thereafter continue to pay at the same rate month by month by the 15th day of each following month till the disposal of the petition. No appeal was filed against this order, which became final under section 43 of the Act.

(4) On August 14, 1970 the respondent tenant filed an application under section 40 of the Act read with section 151 of the Code of Civil Procedure for amendment of the order under section 15(2), on the ground that there was an error in the order, arising out of an accidental slip or omission, as the aforesaid reductions in the rent after August, 1970 had been omitted to be given effect to. The reduced rent was said to be the standard rent. This application was opposed. Shri P. K. Jain Additional Controller by his order dated November 26, 1970 held that the standard rent of the premises has no bearing on the case inasmuch as the rent last paid was to be taken into account, which was Rs. 555 per month in the case of portion (a), and Rs. 500 per month in the case of portion (b). There was, thus, no

error in the said order. The application was dismissed. In appeal, the Rent Control Tribunal reversed the order of the Additional Controller and held that there was an accidental slip or omission. According to the Tribunal, the order under section 15(2) should require the tenant to pay the amount legally recoverable. therefore, the rate of rent at which it was last paid had no relevance. It was of the opinion that an error arising out of accidental slip or omission had arisen and the order was, therefore, liable to be amended. The appeal was accepted and the order of the Additional Controller under section 15(2) was set aside. The respondent tenant was directed to pay Rs. 335 per month for the portion (a) from August 13, 1970 onwards and Rs. 300 for the portion (b) from August 16, 1970 onwards. The landlady, in these circumstances, has come up to this Court in second appeal.

(5) The appeal came up for hearing before V. S. Deshpande J., who was of the view that the question whether the application under section 40 of the Act could be treated as an application for inherent review was an important question and further that two divergent views have been taken by this Court on the construction of the words 'at the rate of rent at which it was last paid' and the words 'a sum equivalent of rent at that rate', used in section 15(1) of the Act. The construction of these words was considered to have a bearing on the words 'the amount of rent legally recoverable' and the words 'in accordance with the provisions of the said sub-section', used in section 15(2). Reference was made to *M. L. Ahuja v. Lachman Das* 1970 Rcr 153, and *Lal Chand v. Ram Avtar Singh*, Sao 27 of 1970, decided on May 11, 1972, which were said to have expressed divergent views. For this reason he referred this appeal for decision to a Division Bench. It is in that context that the appeal has come up before us.

(6) It was contended by Mr. Madan Bhatia, the learned counsel for the appellant, that in section 15 the Controller has been empowered to direct the tenant to pay to the landlord or deposit with the Controller 'an amount' and not the rent. The said amount is to be calculated at the rate of rent at which it was last paid. The rate of last paid rent, therefore, was relevant only for calculation purposes. What was to be paid was not rent, but just an amount, assort ad hoc payment. Regarding future rent also. it is a 'sum' equivalent to the rent at that rate which can be directed to be paid and not the rent. Even in section 14(2), the legislature has carefully avoided

the use of the word 'rent' and according to the language employed, an order for recovery of possession on the grounds specified in clause (a) of the proviso to subsection (1) of section 14 cannot be made, 'if the tenant makes payment or deposit as required under section 15'. The argument of Mr. Madan Bhatia is that order under section 15 of the Act is of an interlocutory nature, subject to such adjustments as may be necessary after the conclusion of the proceedings. This is further borne out by a reference to section 13 of the Act, which provides for such adjustments. It is, therefore, not the rent or the standard rent which is required to be paid. It is just an amount which is required to be paid, though calculated at the rate of rent last paid, to secure the interest of the landlord and to avoid the tenant facing ultimately a demand for payment of heavy accumulated arrears.

(7) Another objective sought to be achieved, said the counsel, was to avoid conflict with sections 4 and 5, under which an agreement for payment of any rent in excess of standard rent is to be constructed as if it was an agreement for payment of standard-rent only and the claim for or the receipt of any rent in excess of the standard rent has been made illegal and subject to the penal consequences mentioned in section 48 of the Act. It is argued that, if in an eviction proceedings, the application by the tenant for standard rent is not barred by time and the Controller is required to direct payment by the tenant under section 15, before the standard rent is fixed, such direction for payment, if this was to be construed as payment of rent, may come in conflict with section 5, if the standard rent, which may ultimately be fixed, is less than the amount as directed to be paid. Such a conflicting construction between the two provisions of the same enactment, would even otherwise be undesirable and not permissible, (see *Shabzade Nand & Sons v. Central Board of Revenue*,). To prevent such a conflict, contended the learned counsel, the phraseology has been deliberately designed to avoid a situation where the landlord and the tenant may have to face complications, if what the tenant is required to pay is rent which may turn out to be in excess of the standard rent, that may ultimately be fixed. There was, therefore, no justification, said the counsel, to construe the plain language of section 15 to mean as if the Controller is required to direct payment of rent which may be legally recoverable. The order for payment is to be just an interlocutory order required to be passed at a preliminary stage, to remain in force during the pendency of the proceedings. Rent legally

recoverable, which may be the standard rent, may not be known at the time when order under section 15 is to be passed. In section 13(5) of the Delhi and Ajmer Rent Control Act, 1952, the Court had been given an unguided discretion to fix such amount required to be paid by the tenant under similar circumstances, as in its opinion would be deemed proper. The present Act has made a provision for fixing sort of an interim payment to be made by the tenant at the rate of rent at which it was last paid, without finding out the rate of rent which may have been or may at a subsequent stage be determined as the standard rent or which by agreement of the parties may at a subsequent stage be required to be increased or decreased, the attempt to determine which, may whip up drawn out controversies, that may divert attention from the main eviction proceedings. The rate of rent, at which it was last paid, would in almost all cases, be known; and for this reason it has been made to serve as a guideline. And this, said the counsel, would be in line with what Andley J. (as he then was), had said in *M. L. Ahuja v. Lachman Das*, 1970 Rcj 153. There was, therefore, no occasion, according to the learned counsel, to stretch the phrase 'the rate of rent at which it was last paid' to mean, 'the rent payable' or 'legally recoverable', especially when the last paid rate of rent was known. If the last paid rent be not known, as was the case in *Lalchand v. Ram Avtar Sao* 27 of 1970, decided on May 11, 1971, by Dalip Kapur J., then the rent legally recoverable may be fictionally taken as the rate of rent last paid. Resort to fiction is to be made to find out the rate of rent last paid, if it is not otherwise known, which may happen in a few rare cases. But in general, the law does not require to ascertain first the rent payable, which may not be easy to ascertain, and then to treat such rent payable as the rate of rent last paid. The Controller was thus required, said the counsel, to direct payment at the rate of rent last paid, ignoring what was payable under the agreement or under an order fixing the standard rent; and this is what the Additional Controller did in the instant case. There was, therefore, no error, urged the learned counsel, in the order of the Additional Controller; and none in any case, which could be said to be accidental.

(8) Mr. S. L. Bhatia, the learned counsel for the respondent tenant, on the other hand, contended that the tenant makes the payment to the landlord only in respect of his right to enjoy the premises. Whatever he pays will in substance be the rent and nothing else, whatever name one may choose to give it. So, what is directed

by the Controller to be paid to the landlord is the rent and nothing else. If, therefore, standard rent in a given case is known, as it is known in the instant case; or if the landlord himself has agreed to accept a lower rate of rent after a particular date, as would be the case, if the agreed rent in the instant case, is not considered to be the standard rent, then there would be no justification to order payment of rent agreed rent, as the case may be. The rate of rent last paid, therefore, urged the learned counsel has to be construed as meaning the legally recoverable rent and nothing else. The Additional Controller in the present case knew the agreed rent or the standard rent. He, while passing the order under section 15(2), omitted by an accidental slip to mention the standard rent or the agreed rent, which was at a reduced rate after a particular date and that is how the error has crept in.

(9) Mr. S. L. Bhatia, to further support his argument, referred to a possible case where for some reason or the other, the tenant may not have paid any rent in the past or the landlord may have refused to accept rent, and where, for this reason, there would be no rate of rent last paid. The criterion provided in section 15, if it is to be literally construed to mean the rate at which the rent was actually last paid, would fail in such a case, to provide the required guideline. The only meaning, therefore, which could be ascribed to these words, according to the learned counsel, was that direction should be given for payment of such rent as was legally recoverable. Such construction alone, he urged, would make the section workable in all situations. It was for this reason, the counsel submitted that the Additional Controller intended in fact, to direct payment of future rent at the reduced rate from the aforesaid dates; but owing to an accidental slip or omission, he failed to do so and the Additional Controller could correct the error in exercise of the powers under section 40 of the Act.

(10) It is not necessary for us to express any opinion on the merits of the one reasoning or the other; as the only question involved in the appeal is to determine the scope of section 40 of the Act, the aid of which is sought to be invoked by the respondent. The arguments of the learned counsel have been reproduced above in some details to show the sharp controversy in the reasoning raised in both sides, which itself appears to us to be sufficient, to lift this case out of the pale of

that section. The language of the section is in pari materia with the language of section 152 of the Code of Civil Procedure, and reads as follows :

'40. Clerical or arithmetical mistakes in any order passed by a Controller or the Tribunal or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Controller or the Tribunal on an application received in this behalf from any of the parties or otherwise.'

(11) Admittedly, there is neither a clerical nor arithmetical mistake in the order. An error would be caused by an accidental slip or omission. If a reading of the order itself would show that something has been left out. The order should indicate that it has not given effect to what the Controller in fact intended; and which then could be said to have been left out or omitted, accidentally. The intention of the Controller must be gatherable from the order itself; and not that the intention should be attributed to him by a process of keenly controversial reasoning. Section 40 cannot be dragged in to correct an error in the order, even if there is an error, It permits a correction only if the error can be discerned on the face of the order itself as having been due to some accidental slip or omission. The order may be wrong; it may be based on a wrong view of the law. But then have recourse to review or appeal, if that course is available. It cannot be corrected by simply calling it accidental, slip or omission. We are in respectful agreement with T. V. R. Tatachari J. when he, in *Life Insurance Corporation of India v. R. N. Mehta*, Cr 374-D of 1966, decided on January 29, 1971, observed, after discussing the case law on the subject : 'that an error committed by a court would be only an error on its part which has to be rectified in proper proceedings by way of review or appeal and cannot be regarded as an accidental slip or omission, unless there is some evidence or a clear indication in the judgment that the court had originally intended to provide or grant that which has been omitted.. . . . ' Further the words 'accidental slip or omission' imply that what was omitted was such as could be supplied without any mental process of a further consideration of the decision on facts and law. If such further decision on facts and law is necessary for supplying what was omitted, it cannot be regarded as an accidental slip or omission and the omission can be rectified only in proceedings by way of review or appeal and not by amendment under section 152 of the Code of Civil Procedure.'

(12) In the order dated December 4, 1969, which is sought to be amended, the Controller said that the agreed rent was to be the standard rent up to August 1970. The Controller was, thus aware that after August, 1970 there was a reduced rate of rent; but which he did not mention. The Controller continued to observe as follows :

'.....up to August 1970 the agreed rate of rent is to be the standard rent of the premises; so in respect of one premises, the tenant is directed to deposit arrears of rent of the period 1-8-69 onwards and up to date rent, at the agreed rate of rent of Rs. 550 p.m. within one month from today and in respect of the second premises, the tenant is directed to deposit arrears of rent of the period 1.8.69 onwards and up to date rent, at the agreed rate of rent of Rs. 500 per month within one month from today. He is further directed to deposit further rent month by month in respect of the said two sets of premises, at the above said rate of rents, on the 15th of every following month, till the disposal of the petition.'

(13) Although by mutual consent of the parties, the agreed rate of Rs. 550 per month and Rs. 500 per month was effective up to August 1970, yet the Additional Controller did not change the rate payable by the tenant in respect of the future payments, which were required to be made on the 15th day of every following month till the disposal of the petition. There is nothing in the order to suggest that this was a mere slip and not deliberate. This may be a wrong approach or a right one; but there is no indication as to how the mind of the Additional Controller worked when he made the order. It is not possible to say which of two rival arguments referred to above, would have appealed to him. We cannot ourselves say that one particular argument is the correct one, attribute it to the Additional Controller and mould his order in accordance therewith. For, then it would be our order and not that of the Additional Controller. Or it may result in our accepting or overruling the opinion of the Controller, which, we are afraid, is not the aim of section 40. The scope of that section is limited to such mistakes or errors which can be corrected without involving an exercise of mind in interpreting statutory provisions, reaching conclusions of or drawing inferences from facts. We are, therefore, clearly of the opinion that the order of the Additional Controller did not involve any error arising out of an accidental slip or omission. There was,

therefore, no occasion for the Tribunal to set it aside on the plea of correcting it. The order of the Tribunal, therefore, cannot be sustained.

(14) In the light of our views as to the scope of section 40 of the Act, we allow this appeal, set aside the order of the Rent Control Tribunal and restore that of the Additional Controller dismissing the application of the respondent under section 40 of the Act. There shall however, be no order as to costs.

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