

**Ashok Kumar Vs. Ram Gopal**

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**Court :** Delhi

**Decided On :** Apr-08-1982

**Reported in :** 22(1982)DLT188; 1982RLR598

**Judge :** B.N. Kirpal, J.

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

**Appeal No. :** Second Appeal No. 40 of 1982

**Appellant :** Ashok Kumar

**Respondent :** Ram Gopal

**Advocate for Pet/Ap. :** Vijay Kishan and; V.K. Makhija, Advs

**Judgement :**

**B.N. Kirpal, J.**

(1) In this appeal the challenge is to the correctness of the order of the Rent Control Tribunal who has held that when an order under Section 15(1) had been passed for the second time and the rent paid by the tenant, then eviction could not be ordered under Section 14(I)(a) read with proviso to Section 14(2) of the Delhi Rent Control Act.

(2) The appellant is a landlord-owner of shop No. M-19, Greater Kailash-I, Market, New Delhi. The said shop had been taken on rent by the respondent. The respondent was in arrears of rent. The appellant filed an application under S. 14(1)(a) on 13th March, 1973 for the eviction of the respondent on the ground of non payment of rent. The Rent Controller passed an order under Section 15(1) requiring the tenant to deposit the arrears of rent. On the rent having been deposited an order was passed on 11th March, 1974 dismissing the eviction petition by giving to the tenant the benefit of Section 14(2).

(3) It appears that the tenant again defaulted in payment of rent. A notice dated 28th April, 1978 was sent by the landlord, calling upon the tenant to pay arrears of rent with effect from 1st April, 1977 to 31st March, 1978 as well as to pay the future rent. According to the landlord this notice was not complied with. Rent for some of this period, namely, up to September, 1977 was paid. In August, 1978 a fresh petition under Section 14(1)(a) was filed. This petition was dismissed in April, 1979 on the ground that it had not been proved that the father of the appellant had the authority to file the said application for eviction. Thereupon the present application was filed on 24th May, 1979. On 6th September, 1979 the Controller, inter-alia, passed the following order :

'As agreed between the counsel for the parties, the respondent is directed to pay to the petitioner or deposit with the court, the rent for the period 1st August, 1979 up to date @ Rs. 100.00 p. m. within one month from the date of this order without prejudice.'

(4) This order was passed requiring the deposit of rent with effect from 1st August, 1979 because by that time the tenant had paid rent up to 31st July, 1979.

(5) By order dated 27th November, 1979 the Additional Rent Controller, Delhi allowed the eviction petition by holding that the respondent had already availed of the benefit of Section 14(2) earlier and, therefore, he was not entitled to the benefit once again. He rejected the other contentions on behalf of the respondent. One other main contention being that the identity of the premises in respect of which the present petition was filed was different from the one which was a subject matter of the eviction petition earlier which had culminated in the passing of the

order dated 11th March, 1974. On the eviction order being passed the tenant was given 15 days time to vacate the premises.

(6) An appeal was filed against the said order. The first question raised before the Tribunal was as to whether the present eviction petition was in respect of the same premises which were the subject matter of the earlier petition. This point was decided by the Tribunal against the respondenttenant. The appeal of the respondent was, however, allowed on the other ground. It had been contended by the tenant that an order under Section 15(1) having been passed he was entitled to the protection of Section 15(6) and he could not be evicted. Following the decision of this court in the case of Banarsi Dass v.MewaDevi,xviii Dlt (1980) 36 (SN), the Tribunal held that the tenant was entitled to the benefit of Section 15(6). The eviction petition filed by the landlord was accordingly dismissed.

(7) The aforesaid decision of the Tribunal is assailed in the present appeal.

(8) The first question which has to be decided is as to whether the tenant is entitled to the protection of Section 15(6) or not. Before dealing with this question it is necessary to set out the relevant provisions of the Act. The relevant provisions of the Act read as follows :

'SEE.14. Protection of Tenant against eviction-(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favor of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely :- (a) that the tenant has neither paid nor tendered the whole of the arrears of the 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 Transfer of Property Act, 1882 (4 of 1882). (2) No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to Subsection (1), if the tenant makes payment or deposit as required by Section 15. Provided that no tenant shall be entitled to the benefit under this Sub-section, if, having obtained such benefit once

in respect of any premises, he again makes a default in the payment of rent of those consecutive months.

SEC. 15. When a tenant can get the benefit of protection against eviction-(1) In every proceeding for the recovery of possession of any premises on the ground specified in clause (a) of the proviso to Sub-section (1) of Sec, 14, 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 within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate. (6) If a tenant makes payment or deposit as required by Subsection (1) or Sub-section (3), no order shall be made for the recovery of possession on the ground of default in the payment of rent by the tenant, but the Controller may allow such costs as he may deem fit to the landlord.'

(9) The aforesaid provisions have been subject matter of a number of decisions of this court. In the case of Manmohan Chawla v. Jaswant Singh 1969 D.L.T. 375, V. S. Deshpande, J. (as he then was) held that the proviso to-Section 14(2) had been added by the Legislature because it felt that there must be some limit to the remedy available to the tenant and he should not be allowed the benefit of depositing the arrears of rent and defeating the eviction proceedings ad-indefinitum. It was observed therein that the said proviso was, in fact, a proviso to both Section 14(2) as well as to the relevant provisions of Section 15, viz. Sub-sections (1), (3) and (6) thereof. This judgment was approved by the Supreme Court in the case of M. M.. Ohawla v. J. S. Sethi 1970 (1) S.C. C. 14, though the Supreme Court did not clearly discuss this aspect of the case.

(10) Though in Manmohan Chawla's case (supra) V. S. Deshpande, J. had observed that the Controller was bound to refuse the benefit of Section 15(1) and Section 15(3) read with Section 14(2) and Section 15(6) if the proviso to Section 14(2) applied, nevertheless in the case of Punjab National Bank, New Delhi v. The

Rent Controller and another (1974) Dlt 209, it was held by him, that even if a tenant had obtained the benefit of Section 14(2) earlier, the Controller was bound to pass an order under Section 15(1) when a second petition for eviction under Section 14(1)(a) is filed. The view expressed was that provisions of Section 15(1) were not only for the benefit of the tenant, it afforded a favorable right to the landlord as well. The view in Manmohan Ghawla's (supra) case was applied and followed by Om Perakash, J. in the case of Ishwar Dutt v. Ram Piarey, 1 74 Raj. L. R. 302. It was held that in the case of a second default in the payment of arrears of rent, even if the tenant had deposited the rent as ordered under Section 15(1), he was still not entitled to the benefit of Section 15(6) and, in view of the provisions of proviso to Section 14(2) he was liable to be evicted. To the same effect is the judgment of Sultan Singh, J. in the case of Madan Lal Sethi v. Amar Singh Bhalla, : 18(1980)DLT427 . In that case the tenant had already obtained the benefit of Section 14(2). When a default had been committed by him again and a fresh petition under Section 14(1)(a) was filed the Controller did not pass an order under Section 15(1). The question arose whether an eviction order could be passed. While holding that the Controller ought to have passed an order under Section 15(1) of the Act, as the said provision was also for the benefit of the landlord, it was observed that in view of the provisions of proviso to Section 14(2) the tenant was not entitled to the benefit of Section 15 and an eviction order had to be passed against him.

(11) I am in respectful agreement with the aforesaid decisions of this court. There can be no doubt that the legislative intent in enacting the proviso to Section 14(2) was that the tenant should not have more than one opportunity in making good the default. Originally the view of this court appeared to be that once a tenant had got the benefit of the Section 14(2) then subsequently the Controller had no jurisdiction to pass an order under Section 15(1) when a fresh petition under Section 14(1)(a) is filed (See Tula Ram v. D.K. Aawani, 1972 D.L.T. 482. But the other decisions of this court have taken the view that the provisions of Section 15(1) are also for the benefit of the landlord and, therefore, an order under the said provision can be passed. The tenant would not, under such circumstances, be entitled to get the benefit of Section 15(6), because as had been held in Manmohan Chawla's case by V. S. Deshpande, J. (as he then was) that the

proviso to Section 14(2) was also the proviso to Section 15(6). There are two views which are possible. One view is that once a benefit under Section 14(2) has been availed of, the Controller will not have the jurisdiction to pass an order under Section 15(1) when a petition for eviction under Section 14(1)(a) is filed again. The other view is the one which has been expressed by V. S. Dcihpandc,J.in Manmohan Ghawla's case. Whichever view is the correct view, one thing is clear, namely, that the tenant under no circumstance is entitled to have the benefit of the provision of Section 14(2) more than once. In the present case admittedly the benefit of Section 14(2) had been availed of by the tenant earlier. This being so, the mere fact that an order under Section 15(1) was passed on 5th September, 1969, would not entitle the tenant to get the benefit of Section 15(6). In any case it will be seen that the order dated 6th September, 1979 was passed by the consent of the parties and without prejudice to the rival contentions. The implication was that the passing of the order or the payment of the amount would not in any way adversely affect the contention of the landlord, namely, that he was entitled to an order of eviction under Section 14(1)(a) and the tenant was not entitled to get the protection of Section 14(2).

(12) As already observed, the Tribunal had relied upon a decision of Avadh Behari,J in the case of Banarasi Dass v. Mewa Devi, Dlt (1980) 36 (SN). In that case an order under Section 15(1) had been passed. The learned Judge had observed that as the landlady had taken advantage of obtaining the rent it must be held that she had waived her right to get the eviction of the tenant. The said decision did not refer to any of the earlier decisions of this court which have been noticed by me earlier. In any case the respondent can no longer rely upon this decision in the case of Mewa Devi v. Kala Devi etc. 1982 Raj. L. R. 273-A with the following observations :-

'AFTER hearing counsel we arc satisfied that the order passed by the Delhi High Court is clearly erroneous.'

It must follow, therefore, that the ratio of the decision of Avadh Behari, J. is no longer good law. For the aforesaid reason the only conclusion possible is that by virtue of the provisions of the proviso to Sub-section(2) of Section 14, the tenant

was not entitled to the protection under Section 15(6).

(13) Another contention which has been raised by Mr. Makhija is that a petition for eviction on the ground of non-payment of arrears of rent can only be filed for those arrears for which notice of demand was given and which amount is still in arrears on the date of the petition. In this respect he has relied upon the case of Sh. Prabhali v. Smt. Budho Devi and another, 1974 R.G.R. 354 and sought to contend that the default complained of must be with reference to the notice of demand. I am unable to agree with this contention. The cause of action accrues and the provisions of proviso to Section 14(2) become applicable the moment there is a default committed on the part of the tenant in not making the payment pursuant to the receipt of the notice of demand. It is admitted that in the present case the tenant was in arrears of rent with effect from 1st April, 1977 to 31st March, 1978 when a notice of demand was sent on 28th April, 1978. This was the second default which had been committed. Within two months of the receipt of notice, admittedly the full amount of arrears of rent were not paid. It has been observed in the case of Mst. Saeedan v. Shri Jawala Pershad, 1978 (1) R.G.R. 31, that the cause of action for the landlord consists in the fact that the tenant has failed to pay the rent within two months of the receipt of the notice, and this cause of action would not be obliterated and would continue to exist till the date of the petition for eviction, and the delayed payment on the part of the tenant does not wipe off the cause of action and does not defeat the petition for eviction, excepting, perhaps on the grounds of waiver and estoppel. In that case the tenant had paid the rent before the institution of the fresh proceedings under Section 14(1)(a) but the court still held that as the cause of action had already accrued, the tenant was not entitled to the benefit of Section 14(2). In arriving at this decision, the learned Judge relied upon Gajanan Dattatraya v. Sherbanu Hosang Patel and Others, 1975 R.G.J. 672, Mst. Begum Jan v. Mst. Mehr Nigar, : 9(1973)DLT516 . Botto Mal v. Rameshwar Nath 1970 R.C.R. 532 and Gian Singh v. Tarlok Singh, 1975 R.G.J. 475.

(14) For the aforesaid reasons it must follow that as rent after September, 1977 had not been paid despite a notice of demand dated 28th April, 1978 having been served, the tenant forfeited the protection under Section 14(2) and an eviction

order had to be passed against him. The last contention urged was that the premises with respect to which the present petition was tiled were different from the one with respect to which the earlier petition was filed. There is no merit in this contention. The same contention was raised before the courts below and, to my mind, was rightly rejected. The lease deed has been filed on the record. According to the lease deed what has been let out to the tenant is only the shop. In the earlier eviction petition it was stated that the tenant was in possession of the shop which had been let out to him. In the present eviction petition it has been stated that the premises which have been let out are a shop and there is a courtyard for user only. In para 14 of the petition the details of the rent agreement are given. A copy of the rent note dated 9th February, 1968 was filed. As already observed, in the said rent note, the description of the premises let out was only of a shop. This being so, there was a complete identity of the premises in question with the premises with respect to which the earlier petition had been filed. Moreover, the number of the premises which is the subject matter of the two eviction petitions is the same and the date of letting is also the same. There is, therefore, no force in this contention either.

(15) For the aforesaid reasons the appeal is allowed. The order of the Rent Control Tribunal dated 15th December, 1981 is set aside and the eviction petition filed by the landlord under clause (a) to the proviso to Sub- Section (1) of Section 14 of the Delhi Rent Control Act is allowed and the eviction of the respondent-tenant from shop No. M.-19 Market Greater Kailash-I, New Delhi, is ordered. The parties will, however, bear their own costs.