

Subhash Chander Vs. Arjan Kaur

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Court : Delhi

Decided On : Aug-27-1982

Reported in : 23(1983)DLT48; 1983(4)DRJ33; 1982RLR721

Judge : Sultan Singh, J.

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

Appeal No. : Second Appeal No. 103 of 1982

Appellant : Subhash Chander

Respondent : Arjan Kaur

Advocate for Pet/Ap. : P.C. Mittal and; Deepak Gupta, Advs

Judgement :

Sultan Singh, J.

(1) The question for decision in this second appeal is : What is the effect of an order passed under section 15(1) of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the Act') in an eviction petition if the tenant had already enjoyed the benefit under section 14(2) of the Act in the previous eviction petition

(2) Briefly the facts are that the respondent-landlady filed a petition on 12th August, 1976 under section 14(l)(a) of the Act claiming eviction of the appellant on

the ground that he had failed to pay arrears of rent due from him for the period from 1st April, 1975 at Rs. 43.00 per month inspire of notice of demand. After trial Shri M.A. Khan, Additional Rent Controller passed a conditional order of eviction dated 29th October, 1976 in case No. E-445 on 1976 against the appellant directing him to deposit all arrears of rent for the period from 1st April, 1975 at Rs. 43.00 per month within one month from the date of the order and in case of such deposit he would be deemed to have enjoyed the benefit under Section 14(2) of the Act and the eviction petition would stand dismissed. It is admitted by the parties that the appellant deposited arrears of rent for the period ending 31st December, 1976, within time in the previous eviction case in accordance with the order dated 29th October, 1976.

(3) The appellant again fell into arrears with effect from 1st January, 1977. A notice of demand dated 26th August, 1977, requiring him to pay arrears of rent for the period from 1st January, 1977 at the rate of Rs.43.00 per month was served upon him. He neither paid nor tendered the rent in spite of expiry of more than two months. The respondent filed another petition under Section 14(1)(a) of the Act out of which this present second appeal has arisen. The Appellant pleaded that he tendered rent for January, 1977 to the respondent who refused to accept and thereafter it was deposited under section 27 of the Act. The Controller on 5th July, 1978 passed an order under section 15(1) of the Act requiring the appellant to deposit all arrears of rent from 1st February, 1977 within one month from the date of the order and future monthly rent by the 15th of the succeeding month. It appears that the appellant complied with the said order under section 15(1) of the Act. The Additional Controller held that the appellant had already enjoyed the benefit under section 14(2) of the Act previously and he was, therefore, not entitled to enjoy again the said benefit. Accordingly an order of eviction was passed by the Additional Controller on 16th April, 1980. The Appeal filed by the appellant was dismissed by the Tribunal on 10th January, 1982 and hence this second appeal.

(4) The contention of Mr. Mittal on behalf of the appellant is that an order under section 15(1) of the Act was passed by the Controller at the instance of the respondent requiring the appellant to deposit all arrears of rent within one month

from the date of the order and future monthly rent by the 15th of the succeeding month. His submission is that under section 15(6) of the Act no order for recovery of possession, can be passed if a tenant makes deposit required by section 15(1) of the Act. He relies upon Banarasi Das etc. v. Mewa Devi, 1980 Raj. L.R. 440 wherein it has observed that if in a case of second default, the landlord applies for order under section 15(1) of the Act and the order is complied with by the tenant, then ejectment cannot be ordered in view of section 15(6) of the Act and that the action of the landlord amounted to waiver of his rights. Learned counsel for the respondent submits that the judgment of Banarasi Das etc. (supra) was set aside by the Supreme Court in Mewa Devi v. Kala Devi etc, 1982 Raj. L.R. (S.C.) 273. In other words the ratio of the decision of this Court in the case of Banarasi Das (Supra) is no longer good law. The main contention of Mr. Mittal is that in cases of second default no order for deposit of arrears of rent and future rent within the meaning of section 15(1) of the Act can be passed, and if such an order is passed no order of eviction can be passed in view of section 15(6) of the Act. I do not agree. In Madan Lal Seth v. Amar Singh Bhalla, 1980 Raj. L.R. 693, I held that in cases of second default order under section 15(1) of the Act should be passed.' It has been consistently held in various judgments of this Court that if a tenant has once enjoyed the benefit under section 14(2) of the Act he would not be entitled to avail the said benefit for the second time. In Ashok Kumar v. Ram Gopal, : 22(1982)DLT188 also it has been held by this court that if the tenant has paid rent in accordance with the order passed under section 15(1) of the Act in cases where the tenant had already availed the benefit under section 14(2) of the Act, the tenant still remains liable to eviction under 14(1) (a) of the Act. In other words, it has been held that where a tenant has already taken the benefit of section 14(2) of the Act in an eviction application under section 14(l)(a) of the Act the mere fact that in a subsequent eviction application under section 14(l)(a) of the Act an order under section 15(1) is passed and complied with, would not entitle the tenant to get the benefit of section 15(6) of the Act. There is no other point involved in this second appeal. There is no merit. The second appeal is dismissed with no order as to costs.