

**Ram Kumar Vs. Janki Parshad**

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**Court :** Delhi

**Decided On :** May-12-1981

**Reported in :** AIR1981Delhi219; 20(1981)DLT135; 1981(2)DRJ204; 1981RLR518

**Judge :** Sultan Singh, J.

**Acts :** [Delhi Rent Control Act, 1958](#) - Sections 15(1)(3)(7)

**Appeal No. :** Second Appeal No. 10 of 1977

**Appellant :** Ram Kumar

**Respondent :** Janki Parshad

**Advocate for Pet/Ap. :** J.K. Seth,; Sheba Gupta and; Kailash Vasdev, Advs

**Judgement :**

**Sultan Singh, J.**

(1) This is an appeal under Section 39 of the [Delhi Rent Control Act, 1958](#) (hereinafter, called 'the Act') by the landlord challenging the judgment and order dated November 17, 1976 of the Rent Control Tribunal, setting aside the orders for eviction of the respondent and striking out his defense passed by the Additional Controller. The Tribunal held that the defense was not liable to be struck out and that it was imperative for the Additional Controller to pass a fresh order under Section 15(1) of the Act after determination of the disputes regarding the rate of

rent and the period for which the arrears were due to the appellant-landlord.

(2) The appellant filed an application for eviction on the grounds covered by clauses (a) and (e) of the proviso to sub-section (1) of Section 14 of the Act. Subsequently the appellant gave up the ground of eviction covered by Section 14(l)(e) of the Act. The appellant alleges that the respondent became a tenant under him from April 1, 1972, that he neither paid nor tendered the arrears of rent for the period from April 1, 1972 at Rs. 50.00 per month in spite of service of a notice of demand dated March 11, 1975. The respondent in his written statement pleads that the premises were let to him in January 1962 at Rs. 12.00 per month, that the month of tenancy starts from 17th of every English calendar month and ends on 16th of the following month, that rent for the period ending 16th December 1974 had been paid. The Additional Controller by order dated August 19, 1975 passed an order under Section 15(1) of the Act directing the respondent to deposit arrears of rent at Rs. 12.00 per month for the period from December 17, 1974 within one month and continue to deposit future monthly rent at the said rate by the 15th of the succeeding month. There are thus two disputes between the parties (1) Whether the contractual rate of rent was Rs. 50.00 or Rs. 12.00 per month and (2) for what period the arrears were due. The Additional Controller did not decide the two disputed questions but, on the admission of the respondent had passed the order for deposit of rent. The respondent deposited Rs. 108.00 on September 9, 1975 and Rs. 36.00 on November 27, 1975. The first deposit of Rs. 108.00 is for the period 17.12.1974 to 16.9.1975. The second deposit is for the period 17.9.1975 to 16.12.1975. The respondent thus did not deposit rent for the period from September 17, 1975 to October 16, 1975 within 15 days of the expiry of the tenancy month. In other words it means that there was a delay of 27 days in depositing rent for one month ending 16.10.1975. The appellant by an application under Section 15(1) of the Act prayed for striking off the defense. The respondent in reply submitted that he had been depositing rent in advance much before the due dates, that there was delay in second deposit on account of mathematical error on his part. He said that he was always under the impression that he had cleared all dues up to October 1975, when he made the second deposit. On account of mathematical mistake, it appears, the tenant deposited the rent for one month ending October 16, 1975 on November 27, 1975. The Additional Controller

struck out the defense by order dated July 6, 1976 and after recording evidence passed an order of eviction on July 29, 1976.

(3) The respondent tenant filed two appeals before the Rent Control Tribunal, challenging the order of eviction as well as the order striking off his defence. The Tribunal held that the delay in depositing the rent was neither contumacious nor willful and set aside the order striking off the defense. The Tribunal further observed that as there were disputes regarding the rate of rent and the period for which the rent was due and legally recoverable, the Additional Controller was required to pass a fresh order under section 15(1) of the Act in supersession of the earlier order for deposit of rent.

(4) The learned counsel for the appellant has raised two questions ; (1) the Rent Control Tribunal wrongly condoned the delay and refused to strike off the defense when admittedly the respondent had committed default and (2) that if the respondent had not complied with the order for deposit under Section 15 of the Act no fresh order for deposit could be passed subsequently. He further says that if he had complied with the initial order for deposit a fresh order could be passed for depositing the difference in arrears of rent found due after the determination of the disputes.

(5) As already observed the tenant-respondent on account of some mathematical error did not deposit rent for one month ending October 16, 1975 within 15 days of the expiry of the tenancy month i.e. up to October 31, 1975 but deposited the same on November 27, 1975. It is admitted that for subsequent periods the respondent-tenant has been regularly depositing the rent within time. The Supreme Court in *Miss. Santosh Mehta v. Om Prakash*, 1980 R.L.R. 355 has held that for striking off the defense of the tenant under Section 15(1) of the Act there must be a failure to pay rent indicating willful or deliberate default. This Court in *Bharat Pulverising Mills P. Ltd. v. Tarachand Malik B. Trust etc.* 1971 R L.R. 35 had observed that defense against ejection should not be struck out for small delays and that it should be struck out only if the delay in deposit was willful or contumacious. Similarly in *K. C. Sharma v. Sant Ram Sharma*, 1976 Rlr 13, it was held that the defense should not be struck out if there was no contumacious default in deposit

of monthly rent in respect of one month. In the earlier case there was delay of one month and in the latter case there was delay of only three days in depositing rent. There was apparently a mathematical error on the part of the respondent when he calculated the arrears of rent as he was under the impression that he had deposited the rent for the month of October 1975 at the time of first deposit. In fact the first deposit was only for the period ending September 16, 1975. The default was neither willful nor deliberate. There is no ground to strike off the defense of the tenant. Moreover it is a matter of discretion which has been rightly exercised by the Rent Control Tribunal. There is no substantial question of law requiring interference under Section 39 of the Act by this Court.

(6) The learned counsel next argues that after the decision of disputes regarding rate of rent and the period of which the rent was payable to the landlord no fresh order can be passed by the Additional Controller when the tenant had already committed default in complying with the order for deposit of rent. His argument is that the respondent-tenant having committed default of an order under Section 15(1) of the Act was liable to be evicted under section 14(1)(a) of the Act as the Controller has no power to condone the delay in deposit of rent where ground of eviction is non-payment of rent. He further says that if the tenant had complied with the order for deposit then a fresh order may be passed for deposit of arrears found due after determination of the disputes.

(7) The scheme of the Rent Act under Sections 14 and 15 of Act provides that cause of action for eviction on ground of non-payment of rent accrues when a landlord serves a notice of demand for arrears of rent upon the tenant in the manner provided in Section 106 of the Transfer of Property Act and the tenant neither pays nor tenders the whole of arrears of rent legally recoverable from him within two months of the date of service of the notice upon him. Thus, cause of action consists of the demand and the failure of the tenant to pay or tender within two months. The landlord thereafter becomes entitled to file a petition for eviction on ground of non-payment of rent. The statute however gives further protection to the tenant. This protection is provided in Section 15 read with Section 14(2) of the Act. Sub-section (1) of section 15 of the Act requires the Controller to pass an order for deposit of arrears of rent and future monthly rent at the rate of rent at

which it was last paid and for the period for which the arrears of rent were legally recoverable. But when there are disputes between the parties regarding the rate of rent and the period for which the arrears were recoverable, the Controller is empowered to pass an order under Section 15(1) of the Act on prima facie evidence on record or may postpone the passing of order for deposit as held in *Shri Ram Narain Khanna v. S. Ishar Singh and ors.* 1978 (1) Rcr 420. The respondent in his written statement pleaded that the agreed rent was Rs. 12.00 per month and that arrears were due from him for the period from December 17, 1974. On the basis of this admission the Controller passed the order for deposit dated August 19, 1975 under Section 15(1) of the Act. After the decision of the disputes during the trial of the case if any arrears were found due to the appellant the Controller would be entitled to pass another order under Section 15(1) of the Act for that amount only. In other words if an order was passed under Section 15(1) of the Act on the basis of prima facie evidence on record, a tenant would comply with the same and when the disputed points arising under section 15(1) are settled, and arrears are found due, an order directing the tenant to deposit the arrears would be passed under Section 15(1) of the Act. When the second order is passed under Section 15(1) of the Act, the tenant is required to comply with the same in order to claim protection under section 14(2) of the Act. The Rent Control Tribunal in the instant case has observed that a fresh order is to be passed after the determination of the two disputes notwithstanding non-compliance with the earlier order dated August 19, 1975. I do not find any basis in law for passing of a fresh order under Section 15(1) of the Act in supersession of previous order for deposit of rent. In the present case as already observed the previous order was passed on the basis of admission made by the respondent. There is no question of setting aside or superseding the previous order dated August 19, 1975. Thus, if after decision of the disputes the Controller concludes that arrears were due from the respondent an order would be passed under Section 15(1) of the Act with respect to the arrears payable consequent to the decision of the disputes. Section 14(2) of the Act provides that if the tenant makes payment or deposit as required by Section 15 of the Act no order for recovery of possession on ground of non-payment of rent can be passed against him. In the present case the first order on the basis of admission of the respondent was passed on August 19, 1975. The

second order can be passed and in my view must be passed when the Controller determines that arrears were due to the landlord. The learned counsel for the appellant submits that fresh order is to be passed only in cases where the tenant complies with the first order and not in cases where the tenant commits a default in deposit of rent according to the first order. I do not agree. The second order for deposit of rent under section 15(1) of the Act is required to be passed if arrears are found due after the decision of the disputes. In other words if after the decision of the disputes nothing is found recoverable the second order for deposit of amount would not be passed I am also of the view that this second order for deposit will not be in supersession of the order already passed under Section 15(1) of the Act. Under Section 15(3) of the Act there is provision for passing an order for deposit of rent at the interim rate of rent to be fixed by the Controller and after the determination of the standard rent an order is required to be passed for deposit of the arrears of rent calculated on the basis of the standard rent. The order of the Tribunal holding that the Controller would pass a fresh order in supersession of the previous order appears to be contrary to Section 15 of the Act. The first order for deposit under Section 15(1) of the Act is only preliminary to the trial of the disputes and a final order for deposit is to be passed after the trial of the disputes. The tenant is bound to comply with all the orders which may be passed either under Section 15(1) or section 15(3) of the Act for claiming benefit under Section 14(2) of the Act. There is no provision in the Act for wiping out the initial order for deposit of rent passed after hearing the parties on the basis of prima facie evidence.

(8) I, therefore, partly accept the appeal. The order refusing to strike out the defense is maintained but the order directing the Controller to pass a fresh order in supersession of the previous order under Section 15(1) of the Act is set aside. I further direct that if after the decision of the disputes i.e. the rate of rent and the period for which the arrears were payable, the Controller concludes that any amount of rent was due to the appellant, he would pass a fresh order in addition to and not in supersession of the previous order dated August 15, 1975 requiring the respondent to deposit rent. The parties are directed to appear before the Additional Controller on May 28, 1981. No order as to costs.

