

R.C. Madan Vs. Atma Devi

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Court : Delhi

Decided On : Aug-08-1986

Reported in : 30(1986)DLT386

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Second Appeal No. 226 of 1979

Appellant : R.C. Madan

Respondent : Atma Devi

Advocate for Pet/Ap. : Mukul Rohatagi and; Pinki Anand, Advs

Judgement :

Sultan Singh, J.

(1) This second appeal under Section 39 of the Delhi Rent Control Act. 1958 (for short 'the Act') is directed against the judgment and order dated 11th July, 1979 of the Rent Control Tribunal requiring the appellant to deposit all arrears of rent for the period from 1st January, 1974 onwards at Rs. 17.50 per month within one month. The Tribunal further ordered that in case rent was deposited the eviction petition on ground of non-payment of rent would stand dismissed giving benefit of Section 14(2) of the Act, and in case of default eviction order would be deemed to

have been passed. Similar order was passed by the Additional Rent Controller on 28th November, 1978.

(2) The respondent-landlady filed a petition for eviction of the appellant on ground of non-payment of rent and various other grounds. All grounds other than non-payment were negated by the Additional Controller and the Rent Control Tribunal. The appellant has challenged the ground of eviction as envisaged in Section 14(1)(a) of the Act. It is admitted that notice of demand dated 23rd December, 1976 Ex. A.2 was served upon the appellant who sent a reply dated 19th January, 1977 Ex.R.W. 1/10. The case of the respondent is that the appellant neither paid nor tendered arrears of rent in spite of expiry of two months from the date of service of notice of demand. The case of the appellant is that even prior to the service of notice of demand he had deposited rents in the courts of the Additional Controller from time to time and that the rent for the period 1st July, 1976 to 31st December, 1976 was sent vide cheque for Rs. 105.00 in response to the demand notice within two months of the service of notice. His contention is that the ground of non-payment of rent was not available to the respondent. The appellant has enumerated in para 18 of the written statement particulars of deposits of rent alleged to have been made by him in the courts of the Additional Controller. It is not necessary to reproduce these particulars here. The respondent in her replication pleaded that she was never served with any notice regarding deposits alleged to have been made by the appellant and therefore the deposits were invalid. The appellant in reply to the notice had only stated that he had deposited all rents in the courts of the Additional Rent Controllers and had not given particulars of any deposit. The appellant wanted the respondent to collect the particulars from him. The Additional Controller and the Tribunal have held that arrears of rent were not tendered within two months of notice.

(3) It is admitted that in reply to the demand notice particulars of the alleged deposits were not given by the appellant and thus the respondent was not in a position to withdraw the amount of rent alleged to have been deposited. In other words, it means that the amount deposited in the courts of the Additional Controllers was neither paid nor tendered to the respondent- landlady. If the appellant had given the particulars the respondent would have been in a position

to collect the same. Proof of alleged deposits was also not placed on record by the appellant. Learned counsel for the appellant submits that non-mention of the deposit particulars in reply to demand notice does not amount to failure to pay or tender. He further submits that when the amount of rent was deposited by the appellant under Section 27 of the Act in the court of Additional Controller, where the amount was deposited, must be deemed to have served in due course notice of deposit of rent. Both these questions have on substance. Unless the landlord is aware of the particulars of deposit of rent made by the tenant he is not in a position to withdraw the same. There is nothing on the record that any notice of the alleged deposits was ever served upon the respondent-landlady. In fact there is no proof of deposits alleged to have been made by the appellant. In the absence of proof of deposit and notice of service of deposit there can neither be payment nor tender of any amount to the respondent. Thus it means that after the service of notice of demand Ex A.2 the appellant neither paid nor tendered the amount of rent due from him. Thus cause of action arose to the respondent to file the application for eviction under Section 14(1)(a) of the Act. The order under Section 15(1) of the Act has been passed by the Tribunal in accordance with law.

(4) There is no merit in the appeal and the same is dismissed with no order as to costs.