

B.R. Mehta Vs. Atma Devi

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Court : Delhi

Decided On : Jan-16-1989

Reported in : 37(1989)DLT416; 1989(17)DRJ74

Judge : B.N. Kirpal, J.

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

Appeal No. : Second Appeal No. 81 of 1988

Appellant : B.R. Mehta

Respondent : Atma Devi

Advocate for Pet/Ap. : Swami,; Rajan Mahapatra,; H.L. Sabarwal and;

Judgement :

B.N. Kirpal, J.

(1) An important question of law which has arisen in this appeal is whether the Rent Controller can pass a composite order disposing of the petition for eviction under Section 14(1)(a) read with Sections 14(2) and 15(1) of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the Act').

(2) Briefly stated, the facts are that the appellant is a tenant of the ground floor of House No. 2/14, Kalkaji Extension, New Delhi. The said premises were taken on

rent at Rs. 340.00 per month from the respondent who is the landlady and owner of the premises in question.

(3) On 12th July, 1977 the respondent filed a petition for eviction of the appellant on the ground of bona fide requirement and also on account of non-payment of arrears of rent amounting to Rs. 3100- up to 30th June, 1977. The appellant-tenant claimed that he had spent some money on carrying out the repairs and white washing of tile premises in question. By an interim order dated 19th April, 1978 passed under Section 15(3) of the Act, the Additional Rent Controller, Delhi directed the deposit of the arrears of rent from 1.10.76 to 31.3.78 after allowing adjustment of Rs. 2961.07 being the amount spent by the appellant on account of repairs and while washing of the premises in question. The amount ordered to be paid vide order dated 19th April, 1978 after allowing adjustment of Rs. 2961.07 was deposited by the appellant on 16.5.1978.

(4) The eviction petition was subsequently disposed of by the Additional Rent Controller vide order dated 22nd October, 1986. The petition was dismissed on the ground of bona fide requirement but eviction of the appellant was decreed (on ground of non-payment of arrears of Rs. 2961.07. which was the amount for which adjustment had been allowed by the Additional Rent Controller vide order dated 19th April, 1978 passed under Section 15(3) of the Act. In the judgment dated 22nd October, 1986 the Additional Rent Controller came to the conclusion that this amount of Rs. 2961.07 was payable by the appellant to the respondent landlady. Benefit was sought to be given by the Additional Rent Controller to the appellant under Section 14(2) of the Act and a fresh order under Section 15(1) was passed on 22nd October, 1986 directing the tenant to deposit the arrears amounting to Rs. 2961.07 within one month of the order. In the said order it was further observed that 'if the respondent will comply the order and has complied such order passed under Section 15(1) of Drc Act dated 19.4.1978 then he shall be entitled for the benefit of Section 14(2) of Drc Act otherwise eviction shall follow in respect to the suit premise. bearing No. 2.14 Kalkaji Extension, New Delhi as shown in the site plan Ext. Aw 10/1.'

(5) On 24th December, 1986 the respondent filed an application for execution of the order of eviction alleging that the arrears of Rs. 2961.07 had not been paid by the appellant-tenant within the stipulated period of one month. Notice was issued by the executing Court and, in reply thereto, it was contended on behalf of the tenant that payment had been remitted to the landlady by cheque but the same was not encashed.

(6) Before the Additional Rent Controller, an application was also filed by the tenant praying for condensation of delay in depositing the arrears. The case of the tenant was that the cheque turn the arrears of rent was sent under Certificate of Posting to the landlady. This cheque was not encashed. It was also the case of the tenant that for the month of October, 1986 rent was sent by Money Order on 11th November, 1986 but the landlady refused to receive the rent. The Additional Rent Controller vide his order dated 20th May, 1988, came to the conclusion that there was no proof of the cheque having been sent, as alleged by the tenant. He further held that, in any case, payment by cheque was not the agreed mode of payment of rent and even if the cheque was issued, the same would not have amounted to compliance of the order dated 22nd October, 1986. Lastly, it was held that there was no reason for condoning the delay in the making of the deposit by the tenant. It may here be stated that the delay in the of rent were deposited in Court on 2nd January, 1987. The Additional Rent Controller was of the opinion that the executing Court had no jurisdiction to extend the time and, therefore, the application for condensation of delay could not be allowed.

(7) Appeal was filed by the tenant against the said order. The Rent Control Tribunal did not go into the question as to whether rent was tendered by cheque. It was observed by the Tribunal that even if it be assumed that the rent was remitted by the tenant to the landlady by cheque within one month of the order of the trial court even that would not amount to payment of the rent and compliance of the court's order. According to him. the word 'tender' and 'payment' were not synonymous and there were other alternative modes available with the tenant for the compliance of the order. With regard to condoning the delay in payment of rent, the Rent Control Tribunal took into consideration the observations of this Court in the case of Nawab Khan v. Vidya Wanli 1986 (1) R.C.J. 34 and came to

the conclusion that the executing court had no jurisdiction to extend the time.

(8) Before me, a number of contentions have been raised by the learned counsel for the appellant. It has first been contended that the composite order which has been passed by the Additional Rent Controller under Section 15(1) of the Act on 22nd October, 1986 is a nullity. The submission of the learned counsel is that on a correct interpretation of the relevant provisions, it was incumbent upon the Additional Rent Controller to have directed the tenant to make the payment within one month of determining as to what was the quantum payable and if it was found. after one month had elapsed, that the payment had not been made then the trial court could exercise its jurisdiction under Section 15(7) of the Act. The submission of Shri Sabharwal, on behalf of the respondent is that such composite orders have been made in the past and have even been approved by this Court.

(9) In order to decide this question, it is necessary to first refer to some of the relevant provisions of the Rent Control Act. Under Section 14(1) proviso (a) a tenant can be evicted if he has neither paid nor tendered the whole of the arrears of the rent legally recoverable within 2 months of the date on which notice of demand for the arrears of the rent has been served on him by the landlord. Sub-section (2) provides that no order for recovery of possession shall be made on the ground specified under Clause (a) of the proviso to Sub-section (1) if the tenant makes payment or deposit as required by Section 15. Section 15 is as follows :

'15.(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 Section 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.

(2)If, in any proceeding for the recovery of possession of any premises on any ground other than referred to in Sub-section (1), the tenant contests the claim for eviction, the landlord may, at any stage of the proceeding, make an application to the Controller for an order on the tenant to pay to the landlord the amount of rent legally recoverable from the tenant and the Controller may, after giving the parties an opportunity of being heard, make an order in accordance with the provisions of the said Sub-section.

(3)If, any proceeding referred to in Sub-section (1) or Sub-section (2), there is any dispute as to the amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of the first hearing of the proceedings, fix an in term rent in relation to the premises to be paid or deposited in accordance with the provisions of Sub-section (1) or Sub section (2), as the case may be. until the standard rent in relation thereto fixed having regard to the provisions of this Act. and the amount of arrears, if any, calculated on the basis of the standard rent shall be paid or deposited by the tenant within one month of the date on which the standard rent is fixed or such further time as the Controller may allow in this behalf.

(4)If, in any proceeding referred to in Sub-section (1) or Sub-section (2), there is any dispute as to the person or persons to whom the rent is payable, the Controller may direct the tenant to deposit with the Controller the amount payable by him under Sub-section (1) or Sub-section (2) of Sub-section ?3), as the case may be, and in such a case, no person shall be entitled to withdraw the amount in deposit until the Controller decides the dispute and makes an order for payment of the same.

(5)If the Controller is satisfied that any dispute referred to 'in Subsection (4) has been raised by a tenant for reasons which are false or frivolous, the Controller may order the defense against eviction to be struck out and proceed with the hearing of the application.

(6)If a tenant makes payment or deposit as required by Sub-section (1) or Sub-section (3), no order shall be made turn 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.

(7) If a tenant fails to make payment or deposit as required by this section, the Controller may order the defense against eviction to be struck out and proceed with the hearing of the application.'

(10) The perusal of Section 15 shows that when an application is filed under Section 14(l)(a) of the Act the Controller is required to pass an order under Section 15(1) directing the payment of rent within one month of the date of the order calculating the amount at the rate of rent at which it was last paid. Under Sub-section (3), if there is a dispute as to the amount of rent payable, the Controller is required to fix an interim rent in relation to the premises in question. In the present case an order under Section 15(1) read with Section 15(3) was passed on 19th April, 1978. According to Sub-section (6) if the payment is made by the tenant as required by Sub-section (1) or Sub-section (3), then no order for the recovery of possession is to be passed but under Sub-section (7) the Controller may order the defense against eviction to be struck off if a tenant fails to make payment deposit as required by the section.

(11) On a plain reading of Section 15 it is clear that if the tenant does not pay or deposit the rent which he was required to deposit pursuant to an order under Section 15(1) or 15(3) then the power which has first to be exercised by the Rent Controller is, under Section 15(7) of the Act, to strike out the defense of the tenant. This power is to be exercised after the period, within which the payment had to be made, has elapsed. Previously the judicial opinion of this Court as well as the Punjab High Court was that if payment was not made within the prescribed time once an order was passed under section 15(1) or 15(3) then the eviction order was more or less automatic. The Court, it was held, had no jurisdiction but to allow the application for eviction under Section 14(l)(a) of the Act. The Supreme Court, however, have now in a catena of authorities held that under Section 15(7) of the Act the Additional Rent Controller is not bound to pass an order striking off the defense. The Court has taken note of the fact that Section 15(7) uses the expression 'may' and according to the Supreme Court this shows that the Controller has the jurisdiction to decide whether to strike off the defense or not, even though default may have been committed by the tenant in not depositing the rent within the prescribed period. Some of the decisions of the Supreme Court

wherein this proposition has been laid down and reiterated are *Shyamcharan Shanta v. Dharamdar*, : [1980]2SCR334 , *Ram Murti v. Bhol Nath and another*, : AIR 1984 SC1392 , *Ganesh Prasad Sah Kesri and another v. Lakshmi Narayan Guput*, : [1985]3SCR825 , *M/s. B.P. Khemka Pvt. Ltd v. Birendra Kumar Bhowmick and another*, : [1987]2SCR559 and *Manmohan Kaur v. Surya Kant Bhagwanti*. Judgments Today 1988 (4) 406.

(12) The position in law therefore, being that the Controller has the jurisdiction under Section 15(7) to order the striking off the defense or not. the question which arises is whether at the the time when an order under Section 15(1) is passed the Controller can simultaneously direct the eviction of the tenant if no rent is paid within the stipulated period. If a composite order is passed, as in the present case it has been passed on 22nd October, 1986, directing the payment or arrears of rent within one month, and eviction of the tenant if this amount is not paid, the effect of this would be that the right of the tenant for a discretion to be exercised by the Controller under Section 15(7), after a default has been committed, is taken away. In view of the aforesaid decisions of the Supreme Court, it is not only the court which has the jurisdiction to apply its mind and pass an order under Section 15(7) but, correspondingly, it the tenant who has been given a right to approach the court and try and satisfy as to why its defense should not be .struck off. This right of the tenant which is provided by the statute, and can only be exercised after a default has been committed, cannot be taken away by the Controller choosing to pass a composite order under Section 15(1). If a composite order was permissible like the one which has been passed in the present case, then the consequence would be that there would be no occasion for the Controller to apply its mind and to exercise its discretion under Section 15(7) of the Act. The Controller cannot invoke the provisions of Section 15(7) at the time when an order under Section 15(1) is being passed. The occasion for the Controller to exercise its jurisdiction under Section 15(7) can only arise if the tenant had failed to make the payment or deposit as required under Section 15(1) or 15(3) of the Act.

(13) It has been contended by the learned counsel for the respondent that there have been a number of decisions of this Court where similar composite orders have been passed. My attention has been drawn to *Imtiaz All v. Nasim Ahmed*

1987 (1) R.C.R. 413. In that case it is this Court, in appeal, which passed a composite order directing the eviction of the tenant if he did not deposit the arrears of rent within the time granted by the Court. This case can be of no assistance to the learned counsel for the respondent because the Court had no occasion to consider the argument which has been raised before me. Similar is the position with regard to the decision in the case of R. C. Madan v. Atma Devi. 1986 (Sup.) R.C.R. 510 where again a similar order was passed but without any discussion. In Chattar Singh v. Banarsi Lal 1976 R.C.R. 641 a contention had been raised that a composite order could not be passed and it was incumbent upon the Controller to pass two orders, one under Section 15(1) and the other under Section 15(8). This argument was not accepted because in that particular case a composite order had been passed on the consent of the parties but it was also observed by the Court 'that during those days, it was the usual practice before the Controller and the Tribunal to pass such orders directing the payment of the arrears of rent and that if the same were not paid then eviction was to follow, otherwise eviction petition was to be dismissed'. The learned Judge did not go into the correctness of this practice. Lastly, reliance has been placed by Shri Sabharwal on M/s. Mebrose Ice Cream and Frozen Food Company v. Jaswant Rai 1979 (2) R.C.R. 95. It was contended before T.P.S. Chawla, J. (as he then was) that Section 15 envisaged two orders being passed. It was observed by the Court that 'I agree that by the strict letter of the law, after making an order under Section 15(1), the Controller must wait for a month to see whether that order is complied with or not. It is only then that it can be known whether the bar in Section 14(2) is to prevail. The joint effect of those two sections is to afford relief to the tenant where otherwise he is exposed to an order for recovery of possession.' Notwithstanding the aforesaid observations, the learned Judge then held that it did not follow that an order under Section 15(1) 'conjoined with a conditional order for recovery of possession is invalid'. The learned Judge took note of the fact that such composite orders were frequently made and had almost become a practice. It was further observed that the counsel for the tenant could not bring to his notice as to what was the prejudice which could be caused if the composite order was passed.

(14) The attention of the learned Judge in Mebrose Ice Cream's case (supra) was, however, not drawn to the provisions of Section 15(7) of the Act which, as already

observed, gives the tenant an opportunity to require the Controller to apply his mind and to decide whether to order the striking off the defense or not. If a Composite order is passed then the Court itself will not have an opportunity of taking into consideration the relevant facts which may exist which may help it to decide, under Section 15(7), whether to pass an order directing the striking off the defense or not. To put it differently the provisions of Section 15(7) would be completely short circuited if a composite order is passed under Section 15(1). This is the prejudice which would be caused to the tenant and this prejudice was not brought to the notice of T.P.S. Chawla, J. in Mebrose Ice Cream's case. Ordinarily in a situation like the present, where I find that the decision in Mebrose Ice Cream's case is not correct, one course which would be open would be to refer the case to a Larger Bench. I would have done this but for the fact that a decision of the Supreme Court has now set the matter at rest and, in view of the same, it can be safely said that the decision in Mebrose Ice Cream's case is no longer good law.

(15) A question like the present arose before the Supreme Court, dealing with a case under the Tamil Nadu Cultivating Tenants Protection Act, 1955, in the case of Chinnamarkathian alias Muthu Gounder and another v. Ayyavoo alias Periana Gounder and others, : [1982]2SCR146 . Under Section 3 of the Tamil Nadu Cultivating Tenants Protection Act, 1955 a landlord could make an application to the Revenue Divisional Officer for eviction of the tenant, inter alia, on the ground of non-payment of rent Sub-section (4) (b) of Section 3 further provided that the Revenue Divisional Officer was to pass an order allowing the cultivating tenant reasonable time to deposit the arrears of rent. It was further provided that 'if the cultivating tenant deposits the same as directed, he shall be deemed to have paid the rent under Sub-section (3)(b). If the cultivating tenant fails to deposit the same as directed, the Revenue Divisional Officer shall pass an order for eviction'. The Supreme Court held that at the time when Revenue Divisional Officer allows time to the cultivating tenant to deposit the arrears of rent he could not simultaneously pass a conditional order of eviction which is to take effect on a default to occur in future. It was observed that as the orders in that case directing eviction were passed in contravention of the express provision of the clause, the same were without jurisdiction.

(16) The provisions of Section 3(4)(b) of the Tamil Nadu Cultivating Tenants Protection Act, 1955 are in pari materia with the provisions of Section 15(1), 15(3), 15(6) and 15(7) of the Act. There was no express provision in Section 3(4)(b) of the Tamil Nadu Act which required the- Revenue Divisional Officer to once again apply his mind, after a default had been committed, in order to decide whether any further time could be granted or not. While D.A. Desai. J. observed that further time could be granted by the Revenue Divisional Officer the other two learned Judges, namely, Koshal, J. and R.B. Misra, J. came to the conclusion that it was unnecessary to determine the question as to whether it is incumbent on the Revenue Divisional Officer, while acting in pursuance of the provisions of clause (b), to grant time to a tenant who had been found by him to be in arrears of rent. Nevertheless, the unanimous opinion of the Court was that a composite order, like the one passed in the present case could not be passed. Under the Delhi Act, Section 15(7) in terms contemplates a further application of mind by the Controller while deciding whether to strike off the defense or not and this is in fact been so held by the Supreme Court in a number of decisions cited above

(17) The position in law therefore, as it stands after the decision of the Supreme Court in Chimamarkathians case (supra), is that a composite or conditional order of eviction to take effect on a default to occur in future cannot be passed. Before concluding, I might take note of the fact that the aforesaid decision in Chinnamarkathian's case has been followed by this Court by Sunanda Bhandare, J. in the case of H P. Vaid v. S.K.R. Bhandari 1988(1) R.C.J. 740 though there is no elaborate discussion on the point in issue.

(18) As has already been noted above, the Supreme Court has held in Chinnamarkathian's case that the orders passed by the Revenue Divisional Officer in contravention of the express provisions of clause (3) are without jurisdiction. Similarly, in the present case, the orders passed on 22nd October, 1986 decreeing the eviction in the event of non-payment of the areas in future was without jurisdiction and it is now well settled that any order which is passed without jurisdiction would be regarded as a nullity and it is open to the executing court to go behind a decree which is a nullity or without jurisdiction and grant appropriate relief. (See Kiran Singh and others v. Chaman Paswan and others, :

[1955]1SCR117 and Sunder Dass v. Ram Parkash. : [1977]3SCR60).

(19) The next question which has to be decided is whether the tender by cheque can be regarded as a valid tender or not. The Rent Control Tribunal has come to the conclusion that tender by cheque cannot be regarded as a valid tender. In the modern day and age when most of the financial transactions are done either on the basis of the credit cards or by issuing cheques, it is surprising to note that the Tribunal has come to the conclusion that issuing a cheque does not amount to tendering payment of the rent. The payment of rent by cheque, after it is encashed, must be regarded as payment having been made in cash. If a 'cheque is tendered by the tenant to the landlord then it has to be regarded as payment of rent by the tenant to the landlord unless the cheque is not encashed. If the cheque which is tendered is not encashed then it would be deemed that no valid payment has ever been made by the tenant to the landlord. It may happen that the parties may expressly agree that the payment will be by a particular mode, namely, only by cash and by no other mean. In the present case, there is no evidence on record to show that the parties had agreed that payment could not be made by a cheque and the payment had always to be made by cash. Learned counsel for the appellant has contended before me that even earlier payments of rent used to be made by the tenant to the landlady by issuing cheques. That apart, unless and until the Court is satisfied that the only method of payment which was agreed to between the parties was by cash and not by cheque, the courts below were in error in coming to the conclusion that tendering of cheque could not be regarded as a valid payment. In this connection, reliance has been rightly placed. by the learned counsel for the appellant on *Kirloskar Bros. Ltd v. Comm. of Income-tax, Bombay*, : AIR1952 Bom306 where a Division Bench of the Bombay High Court has held that the payment under a cheque relates back to the date of the cheque and it is immaterial as to when the cheque is encashed. The matter is in any case now set at rest with the following observations of the Supreme Court in the case of *Damadilal and others v. Parashram and others*, : AIR 1976 SC2229 where it was held that 'rent is payable in the same manner as any other debt and the debtor has to pay his creditor in cash or other legal tender, but there can be no dispute that the mode of payment can be altered by agreement. In the contemporary society it is reasonable to suppose such agreement as implied unless the circumstances of

a case indicate otherwise. In the circumstances of this case, the High Court, in our opinion, rightly held that the cheque sent to the plaintiffs amounted to valid tender of rent'.

(19) The last question which arises in this case is whether the tenant did tender the rent by cheque on 11th November, 1986. This is essentially a question of fact which has to be gone into on the evidence on record. Learned counsel for both the parties have agreed that this question of fact may be decided by this Court in this appeal and the case need not be remanded to the Tribunal for decision on this issue. It is because of this express consent having been given by both the counsel that I am proceeding to adjudicate on this point.

(20) There is no dispute that there is a long history of litigation between the parties with regard to the premises in question. The fact that after order under Section 15(1) had been passed on 22nd October, 1986 the tenant had sent the rent for the month of October by Money Order is not denied. It is also admitted that the landlady refused to receive this rent. The submission of the respondent is that the rent was not received because the Court had ordered all the arrears to be paid but what was tendered was only one month's rent. But that as it may, the record as it stands at the present shows that a cheque was sent under Certificate of Posting on 17th November, 1986. The submission of the tenant's counsel is that in December, 1986 the tenant found that the cheque which had been sent had not been encased and thereupon the entire arrears of Rs. 2961.07 were deposited in Court on 2nd January, 1987.

(21) The respondent-landlady has denied the receipt of the cheque. Both the tenant and the landlady live in the same house, the tenant lives on the ground floor and the landlady on the first floor. The tenant has placed on record a Certificate of Posting showing the dispatch of a letter to the landlady in November, 1986. The tenant has also placed on record a photo copy of the cheque which was sent. According to the tenant he was to take precaution of taking photo copies of all the letters and cheques which he used to send to the landlady. The Addl. Rent Controller has, inter alia, held that the tenant has not placed on record the envelope in which the cheque was sent nor has the cheque been placed on

record. It is evident that once a cheque is dispatched in an envelope under Certificate of Posting, neither the envelope nor the original cheque can be in the custody of the sender. If the cheque was sent under Certificate of Posting, as has been alleged in the present case, the only proof which could have been submitted by the tenant was to place on record the Certificate of Posting. The tenant in the present case has placed on record the Certificate of Posting, showing dispatch of a letter to the landlady in November, 1986. There is nothing on record which can possibly persuade me to disbelieve the genuineness of the Certificate of Posting. I cannot presume that litigants do obtain, by unscrupulous means, false certificate of posting. Sending letter under certificate of posting is a recognised way and method and unless there is any evidence on record to disprove the genuineness thereof, the Court cannot presume that a certificate of posting produced in court of law has to be disregarded. Be that as it may, in the present case the tenant in fact deposited the rent on 2nd January, 1987. As on that day the tenant was not aware of the execution application having been filed by the landlady. The execution application was filed by the landlady on 24th December, 1986 but notice was directed to be issued by the court only vide its order dated 5th January, 1987, 3 days before the notice was directed to be issued, the entire arrears of rent had been deposited in Court by the tenant. This act of the tenant leads me to believe that it could not have been the intention of the tenant not to pay the areas of rent and thereby suffer a decree for eviction being executed. I am unable to come to the conclusion that the story put forth by the tenant is a false one. In my opinion, therefore, the terms of the order dated 22nd October, 1986 have in fact been complied with the tenant having sent the cheque for the arrears of rent under Certificate of Posting on 17th November, 1986. In this view of the matter, the question whether the delay should be condoned or not does not arise.

(22) For the aforesaid reasons the appeal is allowed and the orders of the Additional Rent Controller and of the Rent Control Tribunal are quashed and the eviction of the appellant ordered on the ground of non-payment of rent is set-aside. There will be no order as to costs.