

Jai Kumar Vs. Janki Devi and ors.

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Court : Delhi

Decided On : Dec-20-1984

Reported in : 1985(8)DRJ269

Judge : N.N. Goswamy, J.

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

Appeal No. : Second Appeal No. 92 of 1974

Appellant : Jai Kumar

Respondent : Janki Devi and ors.

Advocate for Pet/Ap. : Ravinder Sethi, Adv

Judgement :

N.N. Goswamy, J.

(1) This second appeal by the tenant is directed against, the order dated 5-3-1974 passed by the Rent Control Tribunal whereby the eviction Order passed against the appellant by the Addl. Rent Controller was confirmed and his appeal was dismissed :

(2) The respondent-landlord instituted a petition on on 12-8-1970 against the appellant on the ground of non-payment of rent with the allegations that the

appellant had neither paid nor tendered the arrears of rent due from 26-10-1969 in spite of service of notice of demand and termination of tenancy dated 5-6-1970 served on him on 10-6-1970. The eviction petition was contested by the appellant. Various pleas were raised including one that the premises were situated in a slum area and that no notice under Section 106 of the Transfer of Property Act was served. It was also pleaded that the appellant had deposited the arrears of rent in the Court of the Addl. Rent Controller.

(3) The learned Addl. Rent Controller passed an order under Section 15(1) of the Delhi Rent Control Act and directed the appellant to deposit the arrears of rent at the rate of Rs. 40.00 per month w.e.f. 26-10-1969 within one month from the date of the order and further rent month by month by the 15th of each succeeding month. According to the said order the deposit had to be made on 21-11-1970. However, the appellant did not deposit the rent on 21-11-1970 and instead the rent was deposited on 23-11-1970. The appellant filed an application for condensation of delay on the ground that he had presented the challan for the deposit of the rent to the court on 21-11-1970. The said date happened to be Saturday and by the time the challan was returned to him, the banking hours had finished and the amount could not be tendered in the bank. 22-11-1970 being Sunday the rent was deposited on 23-11-1970. Meanwhile the respondent filed an application under Section 15(7) of the Act for striking out the defense of the appellant on the ground that he had not complied with the order passed under Section 15(1) of the Act. The learned Addl. Rent Controller dismissed the application under Section 15(7) filed by the respondent on the ground that the default was not willful and as such the defense could not be struck off. After recording evidence, the learned Addl. Rent Controller came to the conclusion that the appellant had failed to prove that he had deposited the arrears of rent in the court of the Addl. Rent Controller as alleged by him and as such there was no default, It was further held that the appellant not having complied with the order under Section 15(1) of the Act was not entitled to the benefit of Section 14(2) of the Act since the time for depositing the rent under Section 15(1) of the Act could not be extended by the Addl. Rent Controller. Consequently an eviction order was passed against the appellant.

(4) Dissatisfied with the order passed by the Addl. Rent Controller, the appellant filed an appeal before the Rent Control Tribunal. The appeal met with the same fate and was dismissed by order dated 5-3-1974.

(5) In this second appeal, the learned counsel, for the appellant, has placed reliance on the case *Ram Murty v. Bhola*, : AIR 1984 SC1392 , for the proposition that the earlier case *Hem Chand v. Delhi Cloth & General Mills* is no longer a good law and stands explained in this judgment. It is true that after discussing the earlier cases, the Supreme Court has come to the conclusion that it is open to the Rent Controller to extend time for deposit of rent under Section 15(1) of the Act. Paragraph 16 of the said report may be reproduced usefully and the same is :

'IT would be incongruous to hold that even if the defense of the tenant is not to be struck out under Section 15(7), the tenant must still be visited with the punishment of being deprived of the protection under Section 14(2). In *Hem Chand's case* : [1978]1SCR241 , the Court went to the extent of laying down that even if the defense of the tenant is struck out under Section 15(7), the Rent Controller could not straightway make an order for eviction in favor of the landlord under Section 14(1)(a). The Court held that the High Court was wrong in its assumption that failure to comply with the requirements of Section 15(1) vests in the landlord an 'indefeasible right' to secure an order for the eviction of the tenant under Section 14(1)(a). The Court set aside the judgment of the High Court taking that view and remanded the matters to the Rent Controller observing that there was still an issue to be tried. If that be so, the question at once arises 'What is the issue to be tried?' If the landlord has still to make out a case before the Rent Controller that he was entitled to an order for eviction of the tenant under Section 14(1)(a), surely the tenant has the right to participate in the proceedings and cross-examine the landlord. It must logically follow as a necessary corollary that if the defense is not to be struck out under Section 15(7) it means that the tenant has still the defenses open to him under the Act. In the premises, the conclusion is irresistible that he has the right to claim protection under Section 14(2). What is of essence of Section 14(2) and of Section 15(6) is whether there has been a substantial compliance with the order passed under Section 15(1). The words 'as required by Section 15(1)' in these provisions must be construed in a reasonable manner. If the Rent

Controller has the discretion under Section 15(7) not to strike out the defense of the tenant, he necessarily has the power to extend the time for payment of future rent under Section 15(1) where the failure of the tenant to make such payment or deposit was due to circumstances beyond his control. The previous decision in Hem Chand's case interpreting Section 15(7) of the [Delhi Rent Control Act, 1958](#), although not expressly overruled, cannot stand with the subsequent decision in Shyamcharan's case interpreting the analogous provisions of the Madhya Pradesh Accommodation Control Act, 1961 as it is of a larger Bench.'

(6) In view of this latest pronouncement of the Supreme Court, there are two options open to me, the first is whether to send the case back to the Addl. Rent Controller to consider whether the appellant was entitled to extension of time and the second is to decide the question on the material existing on the record. In the facts of the present case, I think no useful purpose would be served by sending the case back to the learned Addl. Rent Controller because the Addl. Rent Controller has already recorded a finding that the default was not willful. Once such a finding is recorded there is no escape from extending the time for the deposit of the rent under Section 15(1) of the Act. In any case, it is an admitted fact that the challan for depositing the rent was presented to the court on 21-11-1970, and by the time it was returned to the appellant there was hardly time to deposit the same in the bank. No mala fides, in the circumstances, could be attributed to the appellant.

(7) For the reasons recorded above, this appeal is allowed. The eviction order passed by the Addl. Rent Controller as confirmed by the Tribunal is set aside and the appellant is given the benefit of Section 14(2) of the Delhi Rent Control Act. Since there is no appearance for the respondent the parties are left to bear their own costs.