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Court : Delhi

Decided On : Jul-31-1990

Reported in : 42(1990)DLT317

Judge : Sunanda Bhandare, J.

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

Appeal No. : Second Appeal No. 57 of 1989

Appellant : Sailendra Kumar Dutia and ors.

Respondent : Export Trade Development Officer and anr.

Advocate for Pet/Ap. : R.K. Anand,; S.P. Sharma and; I.S. Mathur, Advs

Judgement :

Sunanda Bhandare, J.

(1) A petition for eviction of the respondents No 2 from premises bearing No. 2-E/12 Jhandewalan Extension, Link Road New Delhi was filed by late Smt. Sunita Bala Dutta under Clauses (a), (c) and (i) of Section 14(1) of the Delhi Rent Control Act. The landlady gave up the ground under Clauses (c) and (j) of the said-Section, but continued with her petition under Clause (a) for non-payment of rent,

and it was alleged that respondent no. 2 had defaulted in paying the rent w.e.f. 1.8.1972 despite service of demand notice on respondent no. 2 on 11.1.1974. The Additional Rent Controller by his order dated 17th December 1977 dismissed the petition on the ground that the notice sent by the landlady was not in compliance with the provisions of Section 196 of the Transfer of Property Act. An appeal was filed by the landlady against that order to the Rent Control Tribunal which was also dismissed on 6th July 1979. Before the petition was dismissed on 17th December 1977, an application under Section 15(1) of the Delhi Rent Control Act was filed by the landlady before the Rent Controller praying that the respondent be directed to pay the arrears of rent from 1st August 1972. Accordingly, an order was passed on 29th January 1976 by the Addl. Rent Controller directing the respondent-tenant to deposit the arrears of rent from 1st August 1972 upto date at the rate of Rs. 350.00 per month within one month from 29th January 1976. The Rent Controller further directed the respondent to deposit future rent month by month by 15th of each succeeding tenancy month at the aforesaid rate. The respondent-tenant deposited rent of Rs. 1550.00 on 24th February 1976 for the period 1.8.1972 to 29.2.76. The landlady however was not satisfied with this deposit and she moved an application under Section 15(7) of the Delhi Rent Control Act praying that defense of the respondent-tenant be struck off because of non-compliance of the order passed under Section 15(1) dated 29.1.1979. It was contended by the landlady that the respondent was required to deposit the rent for the month of January 1976 by the 15th of February 1976 and since the rent was deposited on 24th February 1976, there was a delay of 9 days in deposit of that rent. The Rent Controller by his order dated 28th October 1976 observed that there is a delay of 9 days. However he further observed that the delay cannot be said to be contumacious and therefore, he refused to strike off the defense. The landlady being aggrieved by the order of the Tribunal dismissing her appeal filed a second appeal before the High Court which was allowed by order dated 11th July 1983 and High Court remanded the case back to the Rent Controller directing the Rent Controller to consider the question of notice afresh. The Rent Controller vide his judgment dated 26th February 1987 accepted the contention of the landlady and came to the conclusion that the respondent no. 2 is the tenant in respect of the demise premises and has failed to pay or tender the arrears of rent w.e.f. 1.8.72 onwards

despite service of demand notice. The Rent Controller observed that a case under Section 14(l)(a) of the Rent Act is made out. However, the Rent Controller did not pass any orders on the question whether there was compliance with the order passed under Section 15(1) of the Delhi Rent Control Act and observed as follows :

'This appears to be a case of first default. Order under Section 15(1) Drc 'Act was passed by my Id. predecessor. If the respondent no. 2 has complied with aforesaid order he shall get benefit under Sec. 14(2) Drc Act failing which it shall be deemed that an eviction order under Sec. 14(1)(a) Drc Act has been passed against respondent no. 2 in respect of demised premises No. 2E/12 Jhandewalan Extention, New Link Road, New Delhi, detailed as red in the annexed site plan Ex. AWI/5. In the circumstances of the case parties are left to bear their own costs. File be consigned to record room'.

(2) The respondents felt aggrieved by this order and filed an appeal before the Rent Control Tribunal. One of the grounds taken in the appeal was that the Rent Controller ought to have given a clear finding whether there was a compliance of the order under Section 15(1) of the Act and whether respondent no. 2 was entitled to the benefit under Section 14(2) of the Delhi Rent Control Act or not. The Tribunal dismissed the appeal filed by the respondents by order dated 19.11.88. On the question of compliance of order under Section 15(1) of the Delhi Rent Control Act the Tribunal observed as follows :

'No other point was urged. It may be noted that the respondent Nos. 1 to 5 have not submitted before this court that the appellant has failed to comply with the order made against it under Sec. 15(1) of the Act so the appellant gets the benefit of Section 14(2) of the Act in these proceedings.'