

Debi Ram Vs. Devi Chand

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Court : Delhi

Decided On : Mar-24-1992

Reported in : 46(1992)DLT705; 1992RLR203

Judge : S.C. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1) and 15(1)

Appeal No. : Second Appeal No. 174 of 1978

Appellant : Debi Ram

Respondent : Devi Chand

Advocate for Pet/Ap. : S.P. Aggarwal and; Sandeep Agarwal, Advs

Judgement :

S.C. Jain, J.

(1) -THE facts giving rise to this second appeal are that Devi Chand, respondent herein alleging himself to be the owner-landlord of the premises forming part of house No. 2372, Gali No. 177, Ganesh Pura, Tri Nagar, Delhi, filed an eviction petition against Shri Debi Ram appellant herein under Section 14 of the Delhi Rent Control Act on the ground of non-payment of rent. The Addl. Rent Controller vide his detailed judgment dated 29.1,1977 held that a default had been committed by the tenant appellant herein in terms of Section 14 in not paying or tendering legally

recoverable rent to the landlord respondent herein within 2 months of the service of notice of demand. As it was the first default, so the benefit under Section 14 of the Delhi Rent Control Act was given to the tenant subject to the condition that the tenant should comply with the modified order under Section 15 to the effect that he should pay or deposit arrears of rent from 12.12.1974 up to the date of order at the rate of Rs. 60.00 per month after deducting the amount which he had already deposited in compliance of order dated 5.7.76 within one month. In case of compliance of the order u/Section 15(1), the eviction petition under Section 14 would stand dismissed and the tenant would be deemed to have taken the benefit of Section 14(2) and in case of default in compliance of Section 15, the order of eviction would be deemed to have been passed against the tenant on the ground of non-payment of rent.

(2) Later on, another application was filed before the Addl. Rent Controller mentioning therein that compliance u/Section 15 was not made and therefore, the possession of the suit premises may be got delivered to the landlord. The plea of the tenant was that he did not commit any default and that he had complied with the order u/Section 15. Any how, he submitted that if there was any shortage in the deposit of rent, it was Rs. 34.84, and that was on account of erroneous legal advice. He had been sending rent to the landlord even by money order but he avoided to receive the same with the motive to get the premises vacated somehow or the other. That plea of the tenant was not accepted by the Addl. Rent Controller and warrant of possession were ordered to be Issued against the appellant tenant in terms of eviction order dated 29.1.1977.

(3) Aggrieved, the tenant filed first appeal before the Rent Control Tribunal who vide his detailed order dated 9.5.78 did not agree with the contention of the appellant herein and held that there was nothing wrong in passing the composite order under Section 15 and that of eviction under Section 14 of the Act and dismissed the appeal. Not satisfied with the order of the Rent Control Tribunal, this second appeal has been filed before this Court.

(4) The first legal question raised by the learned Counsel for the appellant in this second appeal is whether the composite order u/Section 15 of the Delhi Rent

Control Act and eviction order u/Section 14 is legally maintainable. According to him, when the order is passed u/Section 15 and the same is not complied by the tenant, and he fails to deposit the rent as required under the order, the Controller may order the defense against the eviction petition to be struck off and proceed with the hearing of the application. According to the Counsel, in this case if there was any non-compliance of the order passed u/Section 15, the Addl. Rent Controller should have proceeded against the tenant u/Section 15 and an opportunity should have been granted to the tenant to show his bonafides but this procedure has not been adopted by the Addl. Rent Controller and straightaway passed a conditional order of eviction under Section 14. This according to the Counsel, is contrary to law. According to the Counsel when defense is struck off, the appellant tenant may not be entitled to lead any evidence of his own but he can cross-examine the witnesses and advance arguments. The second point raised by the Counsel for the appellant is that both the Courts below have wrongly calculated the amount of rent due as per order under Section 15. According to the learned Counsel on the date of the order passed u/Section 15 only rent up to 11.1.77 was due from the tenant. The deposit of rent up to 11.1.77 was in due compliance with the order passed on 29.1.77. Both the Courts below have interpreted this order wrongly.

(5) Section 14 of the [Delhi Rent Control Act, 1958](#) provides that no tenant can be evicted except on the application made to the Controller on one or more of the grounds specified in the Section. Section 14 provides that if the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord, he can apply for recovery of possession. If the tenant pays rent within 2 months then the landlord cannot get recovery of possession on the ground of non-payment of rent. If he fails to pay the rent, proceedings are taken under Section 14 of the Delhi Rent Control Act. The Controller after giving opportunity to the parties of being heard order directing the tenant to pay to the landlord or deposit with the Controller within one month 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 with the direction that the tenant shall continue to pay or deposit rent month by month by 15th of

each succeeding month equivalent to the rent at that rate. This is the second opportunity provided to the tenant to pay arrears of rent. The legislature has given statutory protection to the tenant by affording him to pay rent within one month from the date of the order.

(6) Section 15 of the Act provides that if the tenant fails to pay or deposit the rent, the Controller may order the defense against eviction to be struck off and proceed with the hearing of the application. This sub-Section affords a discretion to strike off the defense or not according to the circumstances of the case. If the defense is not struck off the hearing of the application of the landlord will have to be proceeded with giving an opportunity to the tenant to raise his defense. But if the defense is struck out, the Rent Controller will proceed with the hearing of the application and if the landlord makes out a case of non-compliance of Section 14, order his application for recovery of possession. In the event the tenant fails to comply with Section 15, the application will have to be heard giving an opportunity to the tenant. If his defense is not struck out under Section 15 and without hearing the tenant if the defense is struck out.

(7) In view of this legal aspect of the matter no such composite order is maintainable in law and the Rent Controller is bound to take out the matter again for non-compliance and to hear the application on merits. Hence the composite conditional order of eviction passed on 29.1.77 is totally illegal and invalid and the order passed by the Rent Control Tribunal on 9.5.78 is also contrary to law.

(8) The second question which needs answer is whether the tenant appellant herein failed to pay or deposit arrears of rent as directed under Section 15 of the Act. In this case the defense of the tenant was not struck out under Section 15 of the Act. The finding of the Courts below that the tenant failed to comply with the order under Section 15. Record shows that on 29.1.77 the Addl. Rent Controller passed a conditional order directing the 709 appellant under Section 15 to pay or deposit the entire arrears of rent from 12,12.1974 till the date of the order at the rate of Rs. 60.00 per month within one month of the order after deducting rent already deposited in terms of the interim order already made. Admittedly the appellant deposited Rs. 720.00 earlier and after passing of the order dated 29.1.77

he deposited Rs. 780.00 on 26.2.77 so in all he deposited Rs. 1500.00 . This rent is for the period 12.12.74 to 11.1.77. According to the Counsel for the respondent in terms of the order dated 29.1.77 the tenant ought to have deposited Rs.1560.00 i.e. rent up to 11.1 2.1977 as has been held by the Rent Control Tribunal. There is short deposit of Rs. 60.00 and hence there is non-compliance of the order passed under Section 15 of the Act and the order of eviction is correct.

(9) This to my mind is not in accordance with the provisions of the Act. The order was passed on 29.1.77. The amount up to 11.2.77 had not become due at that time. According to Section, 26 of the Act the tenant has to pay rent within the time fixed by contract or In its absence by the 15th of the month next following the month for which it is payable. In this case, as per the agreement between the parties, the month of tenancy starts from 12th of each English calendar month. The interpretation of the Addl. Rent Controller that rent becomes due on the first day of the month cannot be accepted as correct. The finding of the Rent Control Tribunal that rent up to 11.2.77 was to be paid is not correct. The word 'month' has reference to the tenancy month in Section 15 of the Act. The word 'month' has been used three times in Section 15. The first time it postulates deposit to be made with the Controller on payment being made to the landlord within one month of the date of the order under Section 15. In this case the order under Section 15 was made on 29.1.77 and payment was to be made within one month from that date i.e. on or before 28.2.77. Admittedly payment was made on 26.2.77 i.e. within one month. The second time that word occurs in Section 15 when liability is fixed on the tenant to pay or deposit arrears of rent legally recoverable from him, including the period subsequent there to up to the end of the month previous to that In which payment or deposit is made. Legally recoverable rent would be rent calculated backward for a period of three years from the date of filing of the eviction petition on the basis of the tenancy month. When it is stipulated that payment or deposit is made, it obviously makes a reference to rent due and recoverable. Rent is not recoverable or due for a part of the tenancy month. The third time that the word 'month' occurs in the phrase 'month by month by the fifteenth of each succeeding month' a sum equivalent to the rent at that rate. Here also 'month' means tenancy month. If the tenancy is from the first to the last day of a calendar month, rent becomes due on the last day or on the expiry of the last

day of the month. Fifteen days time is then given by Section 26 of the Act to pay the rent falling which it will be deemed to be in arrears.

(10) In this case, the appellant deposited the rent which is legally recoverable amounting to Rs. 1500.00 at the agreed rate of Rs. 60.00 p.m. for the last three years i.e. from 12.2.74 to 11. 1.1977 in compliance with the order dated 29.1.77 passed under Section 15 within one month from the date of the order. In these circumstances, it cannot be held that the appellant had committed default In the compliance of the order passed under Section 15 of the Act.

(11) Both the Courts below have not correctly interpreted the provisions of Section 15 of the Delhi Rent Control Act and wrongly held that the tenant appellant herein did not pay or deposit the rent as per the order passed under Section 15 of the Act and I, therefore, set aside the impugned order dated 29.1.77 and 9.5.78 and accept this appeal. Appeal allowed leaving the parties to bear their own costs.

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