

Shri Ravinder Kumar Suri Vs. Aero Traders Private Ltd.

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SooperKanoon Citation : sooperkanoon.com/699961

Court : Delhi

Decided On : Sep-09-2003

Reported in : 2003VIAD(Delhi)653; 107(2003)DLT77; 2003(71)DRJ437

Judge : R.C. Jain, J.

Acts : [Constitution of India](#) - Article 227; Madhya Pradesh Accommodation Control Act 1961 - Sections 13 (6)

Appeal No. : CM (M) Nos. 512 and 669/01

Appellant : Shri Ravinder Kumar Suri;aero Traders Private Ltd.

Respondent : Aero Traders Private Ltd.;shri Ravinder Kumar Suri

Advocate for Pet/Ap. : R.S. Endlaw and; Abhinav Vashisht, Advs

Judgement :

R.C. Jain, J.

1. Once again we are called upon to consider and answer the vexed question - 'Is the order striking out the defense a must where an order under Section 15(1) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') has not been complied with or is there a discretion in the Controller not to take the penal action of striking out the defense, if so, how such a discretion should be exercised?'

2. These petitions under Article 227 of the [Constitution of India](#) are directed against the order of the Additional Rent Control Tribunal, Delhi, (referred to as Tribunal) dated 22-05-2001 by which an appeal filed by the tenant against the order of the Rent Controller dated 19-03-2001 striking off the defense of the tenant for not complying with the order of payment/deposit of rent passed under Section 15(1) of the has been allowed and the tenant has been directed to deposit the arrears of rent along with penalty equivalent to the amount of rent. In CM(M) No. 512/01 the petitioner-landlord has prayed for quashing the order passed by the Tribunal while in CM (M) No. 669/01 the tenant has sought for striking out certain observations/findings recorded by the Controller in its order dated 19.3.01. This order would govern the disposing of both these petitions.

3. The petitioner herein, has filed a petition under Section 14(1)(a) of the Act against the tenant for his eviction on the ground of willful default in the payment of arrears of the rent despite service of a demand notice. The tenant is contesting the petition. On 22-12-1999, the Controller passed an order under Section 15(1) of the Act directing the tenant to deposit in the Court or pay to the petitioner the entire arrears of rent with effect from 1-6-1996 up date at the rate of Rs.30/- per month within one month from the date of the order, i.e. 20-12-1999 and to continue to pay future rent at the said rate month by month by 15th of each succeeding month. Admittedly the tenant did not deposit any rent in the Court in compliance of the said order, but once an application under Section 15(7) of the Act was made for striking off the defense of the tenant, he came up with the plea that he had remitted the amount of arrears of rent through a cheque by a forwarding letter dated 3-1-2000. It was claimed that another cheque vide letter dated 30-6-2000 was forwarded but the same were, however, not received by the landlord. The Controller found the plea of the tenant as false and mischievous firstly because no proof of sending the said cheques and the letters was brought on record from the side of the tenant and held that the said plea was otherwise falsified because the arrears of rent required to be remitted with effect from 1-6-1996 to 31-12-1999 amounted to Rs. 1260/- while the tenant claimed to have remitted a sum of Rs. 930/- through cheque and letter dated 3-1-2000. Yet another reason which has weighed with the Controller in passing the order was that there was no compliance of the Court's order passed under Section 15(1) of the Act inasmuch as the future

rent was not paid/deposited by the tenant month by month by the 15th of each succeeding month. Accordingly the Controller returned a positive finding that there was willful default on the part of the tenant in complying with the order dated 22.12.2000 passed under Section 15(1) of the Act and consequently struck off the defense of the tenant.

4. The learned Tribunal without upsetting the finding of the Controller in regard to the default committed by the tenant in complying with the order dated 22.12.1999 passed under Section 15(1) of the Act, has still on its own interpretation and construction of the provisions contained in Section 15(7) of the Act has chosen to set aside the order of the Controller on the ground that the Controller had failed to exercise his discretion in accordance with the principles of equity, justice and good conscience. The tenant was, given further opportunities to deposit whole arrears of rent along with penalty of the equivalent amount within 30 days from the order. Failure to comply the same would too result in striking out of the defense of the tenant.

5. Mr. R.S. Endlaw, learned counsel for the petitioner has vehemently urged that the order of the Tribunal is erroneous and is in excessive exercise of its jurisdiction while sitting in an appeal which lay to him only on question of law. He submitted that the Tribunal has not set aside the finding of the Controller in regard to gross negligence and contumacious default on the part of the tenant in not complying with the order under Section 15(1), rather it re-enforced the same by additional reasons and still for the simple reason that the power to strike off the defense under Section 15(7) of the Act is discretionary and not mandatory, the Tribunal has allowed the appeal and disturbed the order of the Controller on wholly untenable premises.

6. It is fairly settled legal position that the power to strike out the defense of a tenant for his failure to pay or deposit the arrears of rent/future rent in terms of order passed by the Controller under Section 15(1) of the Act is discretionary with the Controller. However, such discretion has to be exercised judiciously and not arbitrarily. This is for the obvious reasons that the statutory provisions contained in Section 15(7) cannot be under read and diluted as the right of party depends on

the compliance with the Order under Section 15(1). While it is not possible to lay down exhaustively the circumstances in which an order striking out the defense may follow for that is what the legislature has left unsaid in its wisdom. The defense is to be struck out if there is willful failure or default on the part of the tenant in complying the order under Section 15(1) because the tenant cannot be allowed to ignore and disregard the direction of the Court with impunity and go scot free. However where a tenant has substantially complied with the order or has been able to offer cogent and reasonable Explanationn for his failure to comply with the order or their exist circumstances of mitigating nature, the Controller has the discretion not to strike out the defense of the tenant.

7. The question is no longer res-integra and has been subject matter of decision in a number of cases of this Court and the Apex Court. A full Bench of this Court considered this question in the case of Delhi Cloth and General Mills Vs . Hem Hem Chand & Anr. : AIR1972 Delhi275 holding that the Rent Controller had no jurisdiction to condone the delay in deposition of the Rent under Section 15 of the Act and further that once a default is committed by a tenant, his defense is liable to be struck down under Section 15(7) with no alternative but to order his eviction. This decision of the Full Bench to the extent that the time for depositing the rent cannot be extended or the delay cannot be condoned/was upheld by the Supreme Court in the case of Hem Chand Vs . Delhi Cloth General Mills : [1978]1SCR241 , but it did not agree with the full bench on the second aspect of the matter that the default must necessarily result in the striking out of the defense and passing of an order of eviction. The Apex Court in the said case held that to strike out or not to strike the defense was a matter within the discretion of the Rent Controller and the decree for eviction could not ipso facto be passed merely on the ground of default in depositing the rent under Section 15(1) of the Act. The Court observed as under:-

' Now the question that remains is whether the Rent Controller has any discretion to extend the time prescribed in Section 15(1). This Section requires the Controller after hearing the parties, to 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 the arrears of rent with a direction that they continue to pay or deposit month by

month, a sum equivalent to the rent. This is a second opportunity given to the tenant to pay arrears of rent, without the protection given under the Act the landlord can on 15 days notice get the tenants evicted. The Rent Control Act protects the tenant from such eviction and gives him an opportunity to pay the arrears of rent within two months from the date of notice of demand as provided in Section 14(1)(a). Even if he fails to pay, a further opportunity is given to the tenant to pay or deposit the arrears within one month under Section 15(1). Such payment or deposit in compliance with the order under Section 15(1) takes away the right of the landlord to claim recovery of possession on the ground of default in payment of rent. The legislature has given statutory protection to the tenant by affording him an opportunity to pay the arrears of rent within one month from the date of the order. This statutory provision cannot be modified as rights of parties depend on the compliance with the order under Section 15(1). In the circumstances we agree with the Full Bench that the Rent Controller has no discretion to extend the time prescribed under Section 15(1).

8. The question again came to be considered by a Three Bench Decision of the Supreme Court in the case of *Shyamcharan Sharma Vs . Dharamdas* : [1980]2SCR334 with reference to a *pari materia* provision contained in Section 13 (6) of the M. P. Accommodation Control Act 1961 and the Court answered the question thus:

' If Section 13 were to be construed as mandatory and not as vesting a discretion in the Court, it might result in the situation that a tenant who has deposited the arrear of rent within the time stipulated by Section 13 (1) but who fails to deposit thereafter the monthly rent on a single occasion for a cause beyond his control may have his defense struck out and be liable to summary eviction. We think that Section 14 quite clearly confers a discretion, on the court, to strike out or not to strike out the defense, if default is made in deposit or payment of rent as required by Section 13(1), the court surely has the further discretion to condone the default and extend the time for payment or deposit. Such a discretion is a necessary implication of the discretion not to strike out the defense. Another construction may lead, in some cases, to a perversion of the object of Act, namely 'the adequate protection of the tenant'. Section 12(3) entitles a tenant to claim protection against

eviction on the ground specified in Section 12(1)(a) if the tenant makes payment or deposit as required by Section 13. On our consideration of Section 13 that the Court has the power to extend the time for payment or deposit, it must follow that payment or deposit within the extended time will entitle the tenant to claim the protection of Section 12 (3).

9. Both these decisions came to be considered by the apex Court in the case of Ram Murty Vs . Bhola Nath : AIR 1984 SC1392 and the Court noticed that two decision in the case of Hem Chand and Shyamcharan Sharma (Supra) were reconcilable and held as under:

' 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 straightaway 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 requirement of Section 15(1) vests in the landlord and '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), 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 the 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 provision 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 of 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) and Section 14(2) in the context of Section 15(1) of the Delhi Rent Control Act, 1958, although not expressly overruled, cannot stand with the subsequent decision in Shyamcharan's case interpreting the analogue's provision of the Madhya Pradesh Accommodation Control Act 1961 as it is of a larger Bench.

10. Taking note of the Full Bench decision of the Court and the above referred decisions of the Apex Court with reference to the facts, the Apex Court held that the High Court was not justified in relying upon the decision of the Supreme Court in the Case of Hem Chand (Supra) which was deemed to have been overruled or, in any case, lost its efficacy as a binding decision of the Three Judge Bench decisions in Shyamcharan Sharma Vs . Dharmdas : [1980]2SCR334 and Kamla Devi (Smt.) Vs . Vasdev : AIR 1995 SC985 . However on the facts and circumstances of the case, the Apex Court justified the order of the High Court striking out the defense of the tenant for the reasons that the tenant was careless in depositing the rent and did not chose to interfere in the Order of the High Court, though the Courts below had declined to strike out the defense.

11. Keeping in view the above legal position, we may now proceed to examine the legality or otherwise of the impugned order passed by the Tribunal in the case in hand. As noticed above both the Controller and Tribunal have categorically held that the tenant was negligent in not comp[lying with the order dated 20.12.99 passed under Section 15(1) firstly by not paying or depositing the arrears of Rent w.e.f. From 1.6.96 uptill date at the rate of Rs. 30/- p.m. within one month from the date of the order and then by not paying or depositing the future rent at the said rate month by month by 15th of each calendar month. A bald plea/assertion was put forth on behalf of the tenant that the arrears of rent amounting to Rs. 930/- were remitted to the landlord through a cheque dated 3.1.2000 and thereafter the rent for subsequent months w.e.f. January 1999 to June 1999 was remitted through another cheque dated 30.6.2000 by means of covering letters of the counsel Ms. Paramjit Banipal. However no proof what to talk of any cogent proof

was furnished either about dispatch of the same or its receipt by the landlord. The landlord has denied the receipt of any such cheques and the letters. thereforee, it is impossible to believe that the arrears of rent or future rent was in fact remitted by the respondent-tenant within the stipulated period. The Controller has rightly held that even if it was presumed that the said cheques were in fact sent to the landlord who did not encash the same, no effort was made by the tenant to deposit the arrears of rent and future rent in Court so as to ensure the compliance of the order dated 20.12.1999. Non resort to such a course had strengthened the belief of the Controller that the plea was false and mischievous.

12. It is pertinent to note that the Tribunal not only confirmed this finding of the Controller but has re-inforced the same by additional reasons observing as under in paragraph 7 of the order:-

' It is not disputed that the appellant was to pay rent w.e. f. 1.6.96 in terms of order rent up to 31.12.99 This comes to Rs. 1290/- which according to the respondent was not received by him or was sent to him. The appellant during the hearing of the petition under Section 15(7) of D. R. C. Act has not produced any material from which it could be inferred that cheque addressed to the respondent was actually sent. No account books were produced nor the bank statement was produced. Thus the plea of the appellant that the appellant had sent the cheque is not acceptable. However, subsequent to the amount of cheque registered cover and courier letters have been sent. This cheque of six month rent was sent on 4.7.2000. Even then the rent was not deposited in terms of the order of the court that the rent was to be deposited month by month. In spite of the application of the respondent under Section 15(7) of D. R. C Act that the respondent had not received the rent due vigilance was not shown to check the bank statement of the appellant if the alleged cheque which was allegedly sent in fact encased and if not encased should the appellant not deposit the rent immediately in the court or tender to the respondent pleading the mistake which has been committed with respect to the order of the court. This too was not done. Consequently, the court below passed the impugned order.'

13. Surprisingly without upsetting or disagreeing with the aforesaid findings of the Controller in regard to the willful default on the part of the respondent-tenant, the learned Tribunal but placing uncalled for reliance on the principle of equity, justice and good conscience and stretching the same has set aside the order of the Controller merely by asking the tenant to deposit the whole arrears of rent along with the penalty of the same amount within 30 days of the passing of the order, the amount of penalty being a few hundred rupees because the arrears of rent were also some hundred rupees. The crucial question which arises, therefore, is as to whether in passing the impugned order the learned Tribunal has acted within the parameters of its jurisdiction and powers or he has acted arbitrarily. It is not out of place to note that the Tribunal has passed the impugned order in an appeal filed under Section 38 of the Act which lay before him only on question of law. In the opinion of this Court, the learned Tribunal ought not to have exercised its appellate powers so as to interfere in the discretion exercised by the learned Controller particularly when he himself was convinced about the willful and contumacious default on the part of the respondent-tenant in compliance of the order passed under Section 15(1) of the Act. The whole discussion in the impugned order of the Tribunal revolves around the assumption that the provisions of Section 15(7) of the Act are discretionary and not mandatory, unmindful of the legal position that the Statute vested this discretion of striking off or not to strike off the defense in the Controller and not in the Tribunal. The Court of first instance, in this case the Controller is considered to be the best judge to see as to in what manner he should exercise its discretion and whether the defense of the tenant should or should not be struck off on the facts and circumstances of the said case and unless the exercise of such discretion is shown to be non-judicious, arbitrary or perverse, the superior court should not lightly interfere in the same.

14. Having regard to the facts and circumstances of the case in hand can it be said that the approach and exercise of discretion by the Controller was not judicious or it was arbitrary or capricious. Again the answer would be in negative because the Tribunal itself affirmed the findings of contumacious default on the part of the tenant. Then what prompted the Tribunal to put the shield of equity, justice and good conscience in the defense of the tenant? In the opinion of this Court there appears to be none because the principle of equity, justice and good

conscience are available to both sides and are to be applied with even scales. It would be unjust to provide succor to one party on the strength of equity, justice and good conscience at the cost of other particularly when he cannot be relegated to the same position. These principles should not come to the aid of a party who is a defaulter tenant of a commercial premises at a meagre a rent of Rs.30/- per month and who fails to pay the arrears of rent for years together. Such tenant is not is entitled to any benevolence or mercy of the court. Because by doing so would amount to something a statutory provision i.e. Section 15(7) of the Act and rendering the same as a dormant and ineffective provisions of law. We cannot forget that the Legislature in its wisdom has already provided two opportunities/protection to the tenant against his eviction. The first opportunity is contemplated before filing of the petition viz if the tenant pays to the landlord the entire amount of arrears of rent demanded from him by the landlord within two months from the date from which the notice of demand was served upon him, it would not be possible for the landlord to institute the proceedings for his eviction on the ground enumerated under the proviso of Section 14(1)(a) of the Act. Second opportunity is provided to him after the institution of the proceedings, by Section 14(2) which provides that no order for the recovery of possession on the ground of default in payment of rent shall be made if the tenant has deposited or made payment of the rent in accordance with the provisions of Section 15 under which the Rent Controller can call upon the tenant to pay the landlord or deposit in Court within one month from the date of the order, the arrears of rent calculated at the rate it was last paid for the whole of the period for which the arrears were legally recoverable from him including the period subsequent thereto month by month. Giving a further opportunity to the tenant to pay or deposit the arrears of rent and to pay future rent without any just Explanationn coming forth and justification would clearly amount to giving him a third opportunity which is not envisaged by the Legislature. There may be cases where the tenant is able to convince the Court with his bona-fides about non-compliance of the order under Section 15(1) of the Act that despite his willingness to comply with the order, its compliance could not be accomplished due to circumstances beyond his control. Perhaps in those type of cases alone, a tenant is entitled to the discretion of the Court in his favor. However, if a tenant by his own showing exhibits a willful and

contumacious default and disregards the orders of the Court passed under Section 15(1) and puts up a palpably false plea about compliance of the order, such a tenant is not entitled to any indulgence from the Court.

15. In the case in hand the premises are commercial in nature and the tenant had the audacity not to pay even this meagre rent of Rs. 30/- p.m. for years together even when he is called upon to do so by the landlord by a demand notice prior to the filing of the petition and then failed to pay or deposit the arrear of rent despite an order under Section 15(1) does not deserve any leniency and must be left to face the consequences ensuing from his willful and contumacious default.

16. For the foregoing reasons, there is no escape from the conclusion that the order of the Controller striking out the defense of the tenant was fully justified and in accordance with law and the Tribunal has acted arbitrarily in upsetting the same.

In the result CM (M) No. 512/01 is hereby allowed and the impugned order of the learned Additional Rent Control Tribunal dated 22.5.01 is hereby quashed and set aside and the order of the learned Controller dated 19.3.01 is affirmed. Consequently CM (M) No. 669/01 is hereby dismissed.