

**Gopal Singh Vs. Sheila Devi**

**Gopal Singh Vs. Sheila Devi**

**SooperKanoon Citation :** [sooperkanoon.com/702633](http://sooperkanoon.com/702633)

**Court :** Delhi

**Decided On :** Sep-27-2004

**Reported in :** 114(2004)DLT758

**Judge :** R.S. Sodhi, J.

**Acts :** Code of Civil Procedure (CPC) - Sections 144; Delhi Rent Control Act - Sections 14, 14(1), 15(1) and 38

**Appeal No. :** CM(M) 711/2001

**Appellant :** Gopal Singh

**Respondent :** Sheila Devi

**Advocate for Def. :** Sanjay Goswami, Adv.

**Advocate for Pet/Ap. :** R.L. Lamba, Adv

**Judgement :**

**R.S. Sodhi, J.**

1. CM(M) 711/2001 is directed against the Judgment dated 9th November, 2001, of the Additional Rent Control Tribunal, Delhi (for short 'the Tribunal') in RCA No. 694/2001, whereby the learned Tribunal has dismissed the appeal of the petitioner herein on the ground that order of the Rent Controller on an application under

Section 144 CPC is not appealable under Section 38 of the Delhi Rent Control Act and therefore, he has no jurisdiction to entertain the same.

2. The facts of the case are that by a petition under Section 14(1)(a) of the Delhi Rent Control Act the landlord had sought eviction on the ground of non-payment of rent. In reply thereto, the tenant had contested the ownership as also the rate of rent. The tenant contended that it was Rs. 300/- per month while the landlord contended that it was Rs. 500/-. The court while adjudicating under Section 15(1), as an interim measure, directed the tenant to deposit the rent at the rate of Rs. 550/- per month, which the tenant did. During the proceedings, the Controller held that the landlord was not able to prove rate of rent at Rs. 550/- per month and dismissed the petition. An appeal was filed against this order, which was subsequently withdrawn since payment continued to be made at the rate of Rs. 550/- per month by the tenant. The tenant thereafter moved an application under Section 144 CPC before the Additional Rent Controller to the effect that since the Controller had dismissed the petition of the landlord and had returned a finding that the landlord has not been able to prove the rate of rent at Rs. 550/- per month, he be refunded the excess amount paid by him. The aforesaid application was dismissed by the Additional Rent Controller and taken up in appeal before the Tribunal, which was dismissed.

3. Counsel for the petitioner submits that under Section 144 CPC, it is a duty of the court to ensure that the parties are restored to their original positions when final order or decree has been passed. It is needless to say that the Controller has the authority to do so since money has been deposited in the court at the instance of the Controller

4. Counsel for the respondent contends that the appeal was withdrawn from the Tribunal since the tenant, even after the dismissal of the suit for eviction, has continued to pay rent at the rate of Rs. 550/-. He further submits that a judgment of the Full Bench of this Court in *Pritam Dass v. Kumari Jiya Rani* 1981(2) RCR 46 says that an order under Section 15(1) can only be made once.

5. There is no quarrel with the proposition that order under Section 15(1) is made only once. While adjudicating for the purpose of Section 15(1) an interim order

under Section 15(1) has been made. The Controller finally arrived at a conclusion that there was no evidence on record to show that the rent payable was at the rate of Rs. 550/- per month. Thus the order under Section 15(1) was made to that effect and petition under Section 14(1)(a) of the Act was dismissed.

6. It appears to me that the Tribunal ought not to have dismissed the appeal purely on the ground that such an appeal does not lie under Section 38 of the Delhi Rent Control Act. Since it was a follow through of an order passed by the Controller, it could be taken up in appeal before the Tribunal. The Tribunal was wrong in dismissing the appeal and not restoring the position that had emerged on the petition for eviction under Section 14(a) of the Delhi Rent Control Act being dismissed by the Controller. In this view of the matter, I set aside the judgment dated 9th November, 2001 and remand the matter to the Tribunal to dispose of the same in accordance with law.

7. With this, CM(M) 711/2001 is disposed of. The parties are directed to appear before the Tribunal on 4th October, 2004. The trial court record, if any, be sent back.