

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6461 OF 2017

(Arising out of S.L.P. (Civil) No.36427 of 2014)

PAWAN KUMAR GUPTA

... APPELLANT

VERSUS

B.R. GUPTA

...RESPONDENT

J U D G M E N T

S.ABDUL NAZEER, J.

1 Leave granted.

2 This appeal emanates from the proceedings of an eviction petition filed by the respondent-landlord on 12.4.2004 under Sections 14(1)(a),(b), (d) and (h) of the Delhi Rent Control Act, 1958 (for short 'the Act') against the appellant-tenant before the Additional Rent Controller, Tis Hazari Courts, Delhi, seeking eviction of the appellant-tenant from the premises bearing property No.47, 1st Floor, Bunglow Road, Kamla Nagar, Delhi. It is an

admitted position that the premises in question was let out by the landlord to the tenant for residential purposes and the last paid rent was @ Rs.500/- p.m. exclusive of other charges. The eviction petition was confined ultimately to the solitary ground under Section 14(1)(a) of the Act. The landlord issued a demand notice under Section 14(1)(a) of the Act to the appellant-tenant on 19.1.2004 demanding rent @ Rs.500/- p.m. w.e.f. 1.4.2001 along with interest thereon. Since the tenant failed to pay the rent, the petition for eviction of the tenant was filed as aforesaid.

3 The tenant filed the written statement denying the allegations made in the eviction petition besides providing his defence on merits. However, with regard to the ground of non-payment of rent, it was, *inter alia*, contended that he is not guilty of non-payment and he had paid the rent from time to time to the landlord who did not issue any receipt against the same. It was further contended that pursuant to the receipt of demand notice dated 19.1.2004, he had sent a reply dated 22.3.2004 whereby he tendered a sum of Rs.18,000/- to the landlord by way of a bank draft towards rent @ Rs.500/- p.m. for the period 1.4.2001 till 30.9.2004. To the aforesaid written statement of the tenant, the

landlord filed his replication categorically denying the allegations made in the written statement and reaffirmed the contents of his eviction petition.

4 After completion of the pleadings, the matter was taken up by the Rent Controller for consideration under Section 15(1) of the Act. Keeping in view the respective stand of the parties, the Rent Controller passed an order dated 7.2.2005 directing the tenant to pay or deposit a sum of Rs.500/- p.m. as rent w.e.f. 1.10.2004 and continue to pay the same at the aforesaid rate month by month.

5 Thereafter, parties led their evidence. After the conclusion of the evidence, the Rent Controller allowed the petition by order dated 27.4.2010 under Section 14(1)(a) of the Act. The Rent Controller held that the tenant has failed to prove that he had tendered the rent to the landlord pursuant to the demand notice dated 19.1.2004 and thus the tenant is guilty of non-payment of rent within the ambit of Section 14(1)(a) of the Act. While passing the said judgment the Rent Controller directed the Nazir to submit a report for the purpose of consideration of entitlement of the tenant to the benefit under Section 14(2) of the Act. The matter was taken up by the Rent Controller on 6.7.2010 on which date the Rent

Controller perused the Nazir's report who stated that the tenant even failed to deposit the rent regularly in compliance of the said order under Section 15(1) of the Act. Therefore, the Rent Controller by an order dated 6.7.2010 held that the tenant is not entitled to the benefit of Section 14(2) of the Act and passed eviction order under Section 14(1)(a) of the Act. The tenant challenged the said order by filing an appeal before the Additional Rent Control Tribunal, North Delhi (for short 'Tribunal'). The appeal was allowed by the Tribunal on 12.1.2011 whereby the matter was remanded to the Rent Controller.

6 Pursuant to the order dated 12.1.2011 passed by the Tribunal, the Rent Controller allowed the tenant to record examination of two witnesses. He was also permitted to mark certain documents. The Rent Controller after hearing the parties, allowed the petition by order dated 5.7.2011 under Section 14(1)(a) of the Act by holding that the tenant failed to pay the rent despite service of demand notice and committed default within the meaning of Section 14(1)(a) of the Act. The Rent Controller directed the tenant to deposit the arrears of rent from 1.4.2001 @ Rs.500/- p.m. along with interest @ 15% p.a. Accordingly, the earlier order dated 7.2.2005 passed

under Section 15(1) of the Act was modified. Nazir of the court was directed to submit report for consideration of the entitlement of the tenant to the benefit under Section 14(2) of the Act.

7 Nazir submitted a report whereby it was found that the tenant had been guilty of non-compliance of the order dated 7.2.2005 passed under Section 15(1) of the Act. The tenant took the stand that since he had complied with the final judgment dated 5.7.2011, the tenant is entitled to the benefit under Section 14(2) of the Act. After hearing the learned counsel for the parties, the Rent Controller by an order dated 24.8.2011 held that the tenant has failed to provide any explanation regarding delay in depositing of rent month by month in terms of the order dated 7.2.2005. Thus he is not entitled to the benefit under Section 14(2) of the Act. Therefore, the eviction order was passed by the Rent Controller against the tenant under Section 14(1)(a) of the Act.

8 The appeal filed by the tenant challenging the said order of the Rent Controller before the Rent Control Tribunal was allowed on 24.2.2012. The landlord challenged the said order before the High Court of Delhi in C.M. Main No.415 of 2012. The High Court by order dated 01.12.2014 has allowed the appeal and set aside the

order of the Tribunal and restored the order passed by the Rent Controller. The tenant has called in question the legality and correctness of the said order in this appeal.

9 Learned senior counsel appearing for the appellant-tenant argues that the order dated 7.2.2005 passed under Section 15(1) of the Act was modified by a later order dated 5.7.2011 wherein a direction was issued to the tenant to deposit the arrears of rent along with interest @15% p.a. within one month from the date of the said order. This order has been complied with by the tenant. Thus order dated 7.2.2005 has merged with the order dated 5.7.2011. Secondly, it is argued that the High Court has placed reliance in ***Hem Chand etc. etc. v. The Delhi Cloth & General Mills Co. Ltd. and Anr. Etc. etc.***¹. This judgment has been impliedly overruled in ***Shyamcharan Sharma v. Dharamdas***² whereby this Court has held that the Rent Controller is vested with the discretionary power to condone the default and extend the time for deposit of the rent. This position has been recognized by this

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(1977) 3 SCC 483

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(1980) 2 SCC 151

Court in **Ram Murti v. Bhola Nath and Anr.**³ whereby it was held that the Rent Controller has power to condone the default on the part of the tenant in making payment or deposit of the future rents. In the light of the judgment in **Ram Murti** (Supra), the High Court ought to have condoned the delay in payment of the rents.

10 On the other hand, learned counsel appearing for the respondent-landlord submits that the tenant is a contumacious and a willful defaulter of the rents. He had the opportunity to pay the arrears of rent in response to the notice issued under Section 14(1) (a) of the Act. Instead of paying the rents he raised a defence that he had paid the rent to the landlord who did not issue any receipt against the same. It was further contended that he had paid Rs.18,000/- towards the rent by way of bank draft from 1.4.2001 to 31.1.2004. That is why the Rent Controller, while considering the case under Section 15(1), directed the tenant to pay the rent @ Rs.500/- p.m. from 1.10.2004 and continue to pay the same at the same rate month by month. The question relating to payment from 1.4.2001 to 30.9.2004 was kept open. The tenant has failed to pay

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(1984) 3 SCC 111

the rent in terms of this order. When the matter was taken up for consideration under Section (14)(1)(a) the court directed the tenant to pay the rent for the aforesaid period. There is no merger of the order dated 7.2.2005 in the order dated 5.7.2011.

11 Similarly, it is contended that the tenant has failed to comply with the order under Section 15(1) of the Act. He has deposited the rent from 1.1.2004 to 31.1.2006 after the expiry of 9 months 12 days and for the period 1.4.2006 to 31.2.2007. The deposit of rent was made after the expiry of 3 months and 6 days. Similarly, the payment of rent for the subsequent period is also made sometimes after one year and sometimes after 3 months. The tenant has not offered any explanation for the delay in payment of rents. Therefore, the order impugned does not call for interference.

12 Before considering the rival contentions of the parties, it is desirable to set out relevant provisions of the Act. Section 14(1) provides that no tenant can be evicted except an application made to the Controller for an order for the recovery of possession on one or more grounds specified in the section. Section 14(1)(a) provides for eviction of a tenant on the ground of default in payment of rent, if the tenant has neither paid nor tendered the whole of arrears of

rent legally recoverable from him within two months of the date on which the notice of demand for arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882. It is clear that if the tenant pays the arrears of rent within two months of service of notice, the landlord cannot get order for recovery of possession on the ground of default in payment of rent but if the tenant fails to pay the rent as required under Section 14(1)(a), the proceedings are taken under Section 15(1) of the Act. Under this provision the Controller shall, after giving the parties opportunity of being heard, make an order directing the tenant to pay the landlord or deposit with the Controller within one month of the date 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 rent were legally recoverable from the tenant including the period subsequent thereto upto the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit month by month by 15th of each succeeding month a sum equal to the rent at that rate.

13 Sub-section (6) of Section 15 states that if a tenant makes payment or deposit as required by sub-section (1) or sub-section

(3), no order shall be made for recovery of possession on the ground of default in the payment of rent by the tenant, but the Controller may allow such costs as he deem fit to the landlord. Sub-section (7) of Section 15 states that if a tenant fails to make payment or deposit as required by this section, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application. The other important provision is sub-section (2) of Section 14 which states that no order for recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1), if the tenant makes payment or deposit as required by Section 15. Thus, payment of rent as directed by the Controller under sub-section (1) of Section 15 is a must in order to avoid eviction under Section 14(1)(a).

14 The first contention of the learned senior counsel for the tenant is that the order dated 07.02.2005 passed under Section 15(1) of the Act has been modified by the Rent Controller by his order dated 05.07.2011. Therefore, the Rent Controller was not justified in passing an order of eviction for non-payment of rent in terms of the order dated 7th February, 2005. There is no merit in this contention. As noticed above, the appellant claimed rent @

Rupees five hundred per month from 1st April, 2001 along with interest thereon by issuing a demand notice under Section 14(1)(a). Since tenant failed to comply with the demand made in the notice, the landlord filed the eviction petition under Section 14(1)(a) of the Act. The tenant filed a counter stating that he had paid the rent from time to time and that the landlord did not issue any receipt against the same. It was also contended that pursuant to the demand notice dated 19th January, 2004, he had sent the reply along with a demand draft for a sum of Rupees 18,000/- towards the rent @ Rupees five hundred per month from 1.4.2001 to 31.3.2004. The Rent Controller passed order dated 07.02.2005 under Section 15(1) of the Act, directing the tenant to pay or deposit a sum of Rupees five hundred per month with effect from 1.10.2004 within one month from the date of the order and further continue to pay or deposit future rent at the aforesaid rate month by month by 15th day of each succeeding month during trial. This order was passed because there was dispute in relation to payment of rent from 1.4.2001 till 30.9.2004. The question relating payment of rent for this period was kept open. After trial, the Rent Controller came to the conclusion that the tenant has failed to establish the

payment of arrears of rents from 1.4.2001. The tenant has also failed to pay the rents from 1.10.2004 in terms of the order dated 07.02.2005. In the circumstances, it is futile to contend that that the order dated 07.02.2005 has merged with the order dated 05.07.2011.

15 The second contention of the appellant is that the court below has not considered condonation of delay in payment of rent having regard to the decision in **Ram Murti** (supra). It is his submission that the decision relied on by the High Court in **Hem Chand** (supra) has been impliedly overruled in **Shyamcharan Sharma** (supra). In **Hem Chand** (supra) this Court has held that the Rent Controller has no discretion to extend the time for payment of rent under Section 15(1) of the Act. However, in **Ram Murti** (supra) this Court after taking into consideration the decision in **Shyamcharan Sharma** (supra) has held that Rent Controller has power to condone the default on the part of the tenant in making payment or deposit of the future rents. This decision has application in a case where the tenant seeks condonation of delay in payment of rents. It is relevant to notice here that the tenant is a willful defaulter of rents. He took a stand before the Rent Controller that he had paid the

entire arrears of rent. The Rent Controller passed an order dated 07.02.2005 under Section 15(1) of the Act directing him to pay or deposit the rent at the rate of Rs. 500/- per month with effect from 1.10.2004 and continue to pay the same at the aforesaid rate month by month. Admittedly, he has failed to pay the rent in terms of the said order. After conclusion of the trial, the Rent Controller allowed the petition by order dated 27.4.2010 under Section 14(1)(a) of the Act. The Rent Controller held that the tenant failed to prove that he had tendered the rent to the landlord pursuant to the demand notice dated 19.1.2004. The Rent Controller directed the Nazir to submit a report for the purpose of consideration of entitlement of the tenant to the benefit under Section 14(2) of the Act. The Nazir's report showed that the tenant had not paid the rent regularly in compliance with the order passed under Section 15(1) of the Act. There was a long delay in deposit of rents. Condonation of delay can take place only when the defaulting tenants so pleads with justifiable reasons which would show that he was prevented from compliance by circumstances beyond his control. The tenant has not offered any explanation for the delay in

deposit of rents. Therefore, we do not find any justification to interfere with the order of the High Court.

16 In the result, the appeal fails and it is accordingly dismissed. However, the appellant is granted three months time from today to vacate and deliver vacant possession of the premises in question to the respondent subject to filing of an undertaking before this Court to vacate the premises on or before three months from today. The undertaking shall be filed within two weeks from today.

.....J.
(J. CHELAMESWAR)

.....J.
(S. ABDUL NAZEER)

New Delhi
May 9, 2017