Asha Rani Gupta Vs Vineet Kumar

Court: Supreme Court Of India

Date of Decision: July 11, 2022

Acts Referred: Constitution Of India, 1950 â€" Article 227
Code Of Civil Procedure, 1908 â€" Order 15 Rule 5, Order 15 Rule 5(1), Order 15 Rule 5(2)
Transfer Of Property Act, 1882 â€" Section 106, 109
Delhi Rent Control Act, 1958 â€" Section 15(1), 15(7)
Tripura Building Lease And Control Act, 1975 â€" Section 13, 13(1), 20

Citation: (2022) 10 Scale 378

Hon'ble Judges: Dinesh Maheshwari, J; Aniruddha Bose, J

Bench: Division Bench

Advocate: Dinesh K. Garg, Dhananjay Garg, Abhishek Garg, N. Suresha, Ishaan Tiwari, Vineet Kumar, Praveen Jain

Final Decision: Allowed

Judgement

Dinesh Maheshwari, J

1. Leave granted.

2. The present appeal arises out of a suit for eviction and recovery of arrears of rent as also damages for use and occupation, as filed by the plaintiff-

appellant against the defendant-respondent [Hereinafter, the parties have also been referred to as Ã¢â‚¬Ëœthe plaintiffÃ¢â‚¬â„¢ or as Ã¢â‚¬Ëœthe defendantÃ¢â‚¬â„¢, as

per their status in the suit.], wherein the order dated 01.03.2017, as passed by the Trial Court striking off the defence of the defendant-respondent for

failure to pay or deposit the due rent, which was approved by the Revisional Court in its order dated 18.01.2018, has been set aside by the High Court

in its impugned order dated 02.11.2018.

3. The root question calling for determination in this appeal is as to whether the High Court was right in reversing the order striking off defence in

terms of Order XV Rule 5 of the Code of Civil Procedure, 1908 [Ã¢â‚¬ËœCPCÃ¢â‚¬â„¢, for short.], as applicable to the present case [Rule 5 of Order XV was

inserted to CPC for its application in the State of Uttar Pradesh by the Uttar Pradesh Laws (Amendment) Act, 1972; it was substituted by the Uttar

Pradesh Civil Laws (Reforms and Amendment) Act, 1976 w.e.f. 01.01.1977 and was slightly amended by Notification No. 121/IV-h-36-D dated

10.02.1981 w.e.f. 03.10.1981.]?

4. The relevant factual and background aspects, so far relevant for the present purpose, are as follows:

4. 1. The plaintiff-appellant has filed the suit leading to this appeal, being S.C.C. Suit No. 27 of 2011, in the Court of Judge, Small Causes, Aligarh

against the defendant-respondent on 30.04.2011 with the averments, inter alia, that she is the owner of a shop bearing Municipal Corporation No.

1/225, situated at Naurangabad Sahar, Kol, Aligarh, for having purchased the same from the erstwhile owner Shri Rajiv Kant Sharma through a

registered sale deed dated 10.05.2010. The appellant has further averred that the defendant-respondent is a tenant in the suit shop since the time of its

erstwhile owner on a monthly rent of Rs. 625/- apart from statutory taxes; that after her purchasing the shop, the defendant became her tenant; and

that after registration of the sale deed, the erstwhile landlord had informed the defendant about sale of the shop to the plaintiff.

4. 2. The plaintiff-appellant has alleged that the defendant-respondent was a chronic defaulter in payment of rent and taxes; and despite information of

the sale deed dated 10.05.2010 and despite demand made by her, the rent along with taxes had not been paid by him since the month of May 2010.

The plaintiff has averred that she got served a legal notice under Section 106 of the Transfer of Property Act, 1882 to the defendant on 08.02.2011,

who refused to accept the notice and has neither paid the balance rent and damages nor vacated the suit shop. It has also been pointed out that the

suit shop was a newly constructed one to which, the provisions of U.P. Act No. 13 of 1972 were not applicable. While asserting her right to receive

the rent and damages in relation to the suit shop from the month of May 2010 and with other averments regarding cause of action, jurisdiction and

court fee etc., the plaintiff has claimed the reliefs in the following terms: -

Ã¢â‚¬Å“10. That the plaintiff is entitled for the following relief: -

a) the decree may kindly be passed in favour of the plaintiff and against the defendant for realizing amount of Rs. 8,050/- and damages for use and

occupation @ Rs.625/- per month presently and in future besides the taxes.

b) a decree of eviction in favour of plaintiff and against the defendant for the shop which is in the possession of defendant and after eviction of the

defendant the possession of the shop may be given to the plaintiff through the Amin of the Court, may be passed.

c) the expenses of the suit may be recovered from the defendant and be given to the plaintiff.

d) any other relief which this HonÃ¢â‚¬â„¢ble Court may deem fit and proper in the circumstances of the case may be given to the plaintiff.Ã¢â‚¬â€‹

4.3. In his written statement, the defendant-respondent has, in essence, denied the relationship of landlord and tenant between the plaintiff and himself,

though he would not deny his status as tenant in the suit shop. The defendant has also asserted that the alleged sale deed dated 10.05.2010 is illegal

and void. He has assigned the reasons for this assertion by relying on certain recitals made by said Shri Rajiv Kant Sharma in another sale deed dated

04.05.2010 executed in favour of Abhishek Gupta (son of the present plaintiff) and particularly, the Ã, boundaries on the northern side of the said

property. In other words, the assertion is that in the sale deed dated 04.05.2010, no such shop was shown on the northern side as attempted to be sold

by the sale deed dated 10.05.2010. The defendant has further asserted that the shop in question was let out to him by Smt. Sudha Sharma wife of Shri

Rajiv Kant Sharma; and not by Shri Rajiv Kant Sharma, the alleged transferor of the plaintiff. According to the defendant, Shri Rajiv Kant Sharma

was not the landlord; and his landlady Smt. Sudha Sharma had not transferred the shop in question to the plaintiff. The defendant has also alleged that

Smt. Sudha Sharma was earlier issuing the rent receipts but afterwards, stopped giving the receipts though she was regularly receiving rent and that

the rent up to 31.08.2010 had been paid to Smt. Sudha Sharma. The defendant has also refuted the averments about inapplicability of U.P. Act No. 13

of 1972 and has alleged that the shop in question being too old, the said Act is applicable to it. The defendant has yet further asserted that the notice

dated 18.02.2011 never reached him and he had never refused to receive the notice.

4.4. It is also noticed that at the stage of evidence in this suit, the defendant moved an application seeking appointment of a Court Commissioner with

the submissions that a site plan, containing the details of the property, including the measurement of the suit shop and the house situated on the

southern side of the shop was required to be called. The Trial Court considered and rejected this application by its order dated 03.02.2016, for there

being no reason to issue a commission in view of the respective stand of the parties and the real questions involved in the matter.

4.5. Thereafter, the plaintiff-appellant filed an application with reference to the provisions of Order XV Rule 5 CPC as applicable to the present case

and prayed that the defence of the defendant-respondent be struck off, for the reason that defendant had not deposited any rent and no evidence was

adduced by him to establish any payment of rent. This application was contested by the defendant-respondent with the submissions that the provisions

of Order XV Rule 5 CPC were applicable only to a case where the defendant would accept the plaintiff as his landlord; and in the present case, he

had taken the special plea that the plaintiff was not the landlord or the owner of the suit shop and had clearly averred that there was no relationship of

landlord and tenant between the plaintiff and defendant. The defendant-respondent also referred to certain rent receipts said to have been issued by

the said Smt. Sudha Sharma.

4.6. After having examined the record and the rival contentions, the Trial Court, in its order dated 01.03.2017, found that no evidence was placed on

record by the defendant to show his payment of rent to the plaintiff and observed that even if the tenant would deny the relationship of landlord and

tenant, the application under Order XV Rule 5 CPC was maintainable. The Trial Court, accordingly, proceeded to strike off the defence while

observing, inter alia, as under: -

Ã¢â‚¬Å“No such evidence has been filed on the record by the defendant so that it could become explicit that on the date of sale deed on 10.05.2010, the

alleged rent was deposited in favour of Asha Devi or payment was made to the plaintiff Asha Devi. According to the aforesaid documentary evidence

available on the record, principle of law laid down in the citations, if the tenant has denied the relationship landlord and tenant, then the application shall

be maintainable under the provision of Order XV Rule 5 of Civil Procedure Code. As per the citation relied upon on behalf of the plaintiff is more

recent in comparison to the citation relied upon by the defendant. Although the principle of law laid down in both citations are applicable with respect

to the case in this Court, but due to the citation relied upon by the plaintiff being more recent, so it has more significance. Therefore, the application

61Ga of the plaintiff ought to be allowed and the defence of the defendant ought to be struck off.

ORDER

The application 61Ga is allowed and the defence of the defendant is struck off. The record be put up on 16.03.2017 for cross examination of the

witness PW-1.Ã¢â‚¬â€‹

4.7. The order aforesaid was challenged by the defendant-respondent in S.C.C. Revision No. 11 of 2017, which was duly considered and dismissed by

the Fourth Additional District Judge, Aligarh on 18.01.2018, while agreeing with the Trial Court and observing as under: -

Ã¢â‚¬Å“The revisionist has admitted as the tenant of the shop in suit in the written statement. But it was mentioned that the respondent / plaintiff is not the

owner of the shop in suit and the respondent has averred that she is the owner of the shop in suit on the basis of the sale deed. This fact is undisputed

that the revisionist did not deposit the rent of the shop in suit in the Court on the first date of hearing and even he did not deposit the rent corresponding

to the period thereafter. In case the revisionist denies the relationship of tenant and landlord, then he should have complied with second part of the

Order XV Rule 5 of Civil Procedure Code, but it was not done so as per the principle of law laid down by the HonÃ¢â‚¬â„¢ble High Court of Allahabad in

the citation 2012 (1) CAR, 93 Allahabad, Mukesh Singh & Ors. Vs. Ramesh Chand Solanki. Therefore, in view of facts and circumstances of the

present case, no error of law is found in the impugned order passed by the Ld. Subordinate Court and even the Ld. Subordinate Court has not

superseded its jurisdiction. Therefore, there appears no sufficient ground to interfere with the impugned order. Consequently the revision ought to be

set aside.Ã¢â‚¬â€‹

5. The defendant-respondent, being aggrieved of the orders aforesaid, approached the High Court under Article 227 of the Constitution of India and

his petition (No. 2419 of 2018) came to be allowed by the High Court by way of its impugned order dated 02.11.2018.

5. 1. The High Court took note of the background aspects and the long-drawn arguments with case laws cited by either of the parties; and after a

survey of various decisions of the Allahabad High Court as also of this Court, took the view that the discretionary power as regards striking off

defence must be exercised with great circumspection. Thereafter, though the High Court observed that the pleas taken by the defendant-respondent

might apparently be for the purpose of protracting the litigation as the property was purchased through a registered sale deed that distinctly carried the

number (1/225) of the shop which was let out to the defendant-respondent but, opined that the defendant-respondent was entitled to Ã¢â‚¬Ëœsome

indulgenceÃ¢â‚¬â„¢. The High Court, thus, set aside the orders impugned before it; and issued directions to the defendant to deposit the arrears of rent

together with interest within one month; and further to deposit the current rent as determined by the Trial Court, month by month, by seventh of every

month during the pendency of litigation.

5.2. In the impugned order dated 02.11.2018, where first 42 paragraphs are devoted to background facts, rival contentions and discussion concerning

cited decisions with several extractions, entire of the reasoning and then, conclusion and directions of the High Court are contained in paragraphs 43 to

47, which could be usefully reproduced as under: -

Ã¢â‚¬Å“43. This Court finds from a consideration of the judgments cited by the counsel for either of the parties that the language of Order XV, Rule 5

CPC is similar to the language used in sub section 7 of Section 15 of the Delhi Rent Control Act, 1958 and sub section 1 of Section 13 of the Tripura

Building Lease and Control Act, 1975. The Delhi Rent Control Act, was considered by the Supreme Court in Miss. Santosh Mehta Vs. Om Prakash

and in Kamla Devi Vs. Basudev.

44. The Supreme Court observed that the Rent Control Court / Appellate Authority has been conferred with a discretionary power which must be

exercised with great circumspection.

45. In the case of the petitioner who is the defendant before the learned Trial Court, a specific plea was taken regarding non existence of relationship

of landlord and tenant. In fact the ownership of the landlord of the Suit property was also denied, as also the identity of the Suit property, which was

allegedly purchased by the plaintiffs. Though the pleas taken by the defendant / tenant may apparently be for the purpose of protracting the litigation

as the property was bought through a registered sale deed and the shop number mentioned in the said sale deed was 1/225 which was the same as the

shop rented out to the defendant / tenant, yet the defendant / tenant deserves some indulgence.

46. The orders impugned are set aside. However, a direction is issued to the petitioner / tenant to deposit arrears of rent @ Rs. 625/- per month along

with 9% interest per annum and cost before the learned Trial Court within a period of one month from today. The tenant shall also deposit the current

rent as determined by the learned Trial Court, month to month by the seventh of every month during the pendency of the litigation. All such deposits

made by the tenant shall be kept in a separate interest bearing account by the learned Trial Court and shall abide by the final decision of the SCC Suit

filed by the plaintiff / respondents.

47. This matter stands thus disposed of.Ã¢â‚¬‹

(emphasis supplied)

6. Assailing the order so passed by the High Court, learned counsel appearing for the plaintiff-appellant has strenuously argued that the High Court

has dealt with the matter in a rather cursory manner and has erroneously upset the considered orders dated 01.03.2017 and 18.01.2018, as passed

respectively by the Trial Court and the Revisional Court, striking off the defence of the defendant-respondent in terms of Order XV Rule 5 CPC for

non-payment of the due amount of rent/damages.

6. 1. Learned counsel has argued that the High Court has misinterpreted and misapplied the provisions of Order XV Rule 5 CPC and has allowed the

petition filed by the defendant by merely holding that he was entitled to some indulgence but, without giving any specific reason or finding to overturn

the considered orders passed by the subordinate Courts.

6. 2. Learned counsel has referred to the provisions contained in Order XV Rule 5 CPC and has submitted that as per the said provisions, the

defendant-respondent, being the tenant of the suit shop, was required to pay or deposit the entire rent for use and occupation of the shop in question

but, he neither paid nor deposited the due amount on the first hearing though he filed the written statement on 04.09.2012; and he did not pay or

deposit the monthly amount due during the continuation of the suit. According to the learned counsel, even if the defendant-respondent had taken the

plea suggestive of denial of title of the plaintiff and denial of the relationship of landlord and tenant, he is not absolved of the liability to make payment

of rent; and on his failure to make such payment/deposit, the consequences contemplated by the Order XV Rule 5 CPC would indeed follow and he

cannot be granted any so-called indulgence.

6.3. Learned counsel has also attempted to refer to the additional document filed with I.A. No. 24489 of 2022, inter alia, being of affidavit filed by the

defendant-respondent in the year 1990 admitting Shri Rajiv Kant Sharma as the owner of the suit property, from whom the plaintiff-appellant had

purchased under the registered sale deed dated 10.05.2010.

7. Per contra, learned counsel for the defendant-respondent has duly supported the order impugned and has submitted that the view taken by the High

Court calls for no interference.

7. 1.Ã, Ã, It has been submitted with reference to the decisions of this Court in the case of Bimal Chand Jain v. Sri Gopal Agarwal: 1981 (3) SCC 486

and Manik Lal Majumdar and Ors. v. Gouranga Chandra Dey and Ors.: AIR 2005 SC 1090 that when the defendant-respondent has taken specific

plea regarding non-existence of relationship of landlord and tenant, he is not liable to deposit any rent in terms of the Order XV Rule 5 CPC. It is

submitted that the plaintiffÃ¢â‚¬â„¢s ownership of the suit property has been denied by the defendant and the identity of the property allegedly purchased

by the plaintiff has also been questioned; and these contentions/objections of the defendant could only be decided after the trial. Thus, until the matter

is duly tried, the defendant cannot be compelled to deposit the arrears of rent due in this suit and the High Court has rightly extended him indulgence of

not striking off the defence. 7.2. It has also been submitted that the defendant-respondent had paid the rent to the erstwhile landlord Smt. Sudha

Sharma upto 31.08.2010 and the receipts said to have been given by her have been referred to. It has further been submitted that the defendant-

respondent, obviously, entertained genuine doubt about the entitlement of the plaintiff because the erstwhile landlord had never informed about her

having sold the property and for payment of rent to the plaintiff; and in view of obvious discrepancies in the description of properties allegedly sold by

Shri Rajiv Kant Sharma, there had been genuine confusion about the landlord/owner of the property. In this scenario, the defendant-respondent cannot

be faulted in raising objection and in not making deposit of rent in the present suit.

7.3. It has been asserted on behalf of the respondent that the expression Ã¢â‚¬Å“mayÃ¢â‚¬ in sub-rule (1) of Rule 5 of the Order XV merely vests

discretionary power in the Court to strike off the defence but, it does not oblige the Court to do so in every case of default or non-payment of rent. In

regard to the operation of Order XV Rule 5 CPC, learned counsel for the defendant-respondent has also relied upon the Division Bench decisions of

the High Court in Ladly Prasad v. Ram Shah Billa and Ors.: (1976) 2 ALR 8 and in Kunwar Baldevji v. The XI Additional District Judge,

Bulandshahar and Ors.: (2003) 1 ARC 637.

7.4. It has also been pointed out that pursuant to the order passed by the High Court, the defendant-respondent has deposited the entire rent from

10.05.2010 to 10.11.2018 and is also making further deposits regularly.

8. We have given thoughtful consideration to the rival submissions and have examined the record with reference to the law applicable to the present

case.

9. For dealing with the relevant question involved, it would be appropriate to take note of the provisions of Order XV Rule 5 CPC, as applicable to the

present case. These provisions read as under: -

Ã¢â‚¬Å“5. Striking off defence on failure to deposit admitted rent. - (1) In any suit by a lessor for the eviction of a lessee after the determination of his

lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit,

deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per centum per annum and whether or not he

admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of

its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as

aforesaid, the court may, subject to the provisions of sub-rule (2), strike off his defence.

Explanation 1.- The expression Ã¢â‚¬Ëœfirst hearingÃ¢â‚¬â„¢ means the date for filing written statement or for hearing mentioned in the summons or where

more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.- The expression Ã¢â‚¬Ëœentire amount admitted by him to be dueÃ¢â‚¬â„¢ means the entire gross amount, whether as rent or compensation for

use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any,

paid to a local authority in respect of the building on lessorÃ¢â‚¬â„¢s account and the amount, if any, paid to the lessor acknowledged by the lessor in

writing signed by him and the amount, if any, deposited in any court under section 30 of the U.P. Urban Buildings (Regulation of Letting, Rent and

Eviction) Act, 1972.

Explanation 3.- The expression Ã¢â‚¬Ëœmonthly amount dueÃ¢â‚¬â„¢ means the amount due every month, whether as rent or compensation for use and

occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on

lessorÃ¢â‚¬â„¢s account.

(2) Before making an order for striking off defence, the court may consider any representation made by the defendant in that behalf provided such

representation is made within 10 days, of the first hearing or, of the expiry of the week referred to in sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the court may require the

plaintiff to furnish the security for such sum before he is allowed to withdraw the same.Ã¢â‚¬â€‹

9.1. A few basic factors related with the provisions of Order XV Rule 5 CPC could be noticed at once. As per these provisions, in a suit by a lessor

for eviction of a lessee after the determination of lease and for recovery of rent or compensation for use and occupation, the defendant is under the

obligation: (1) to deposit the entire amount admitted by him to be due together with interest at the rate of 9% per annum on or before the first hearing

of the suit; and (2) to regularly deposit the monthly amount due within a week of its accrual throughout the pendency of the suit. The consequence of

default in making either of these deposits is that the Court may strike off his defence. The expression Ã¢â‚¬Ëœfirst hearingÃ¢â‚¬â„¢ means the date for filing

written statement or the date for hearing mentioned in the summons; and in case of multiple dates, the last of them. The expressionÃ¢â‚¬Ëœmonthly amount

dueÃ¢â‚¬â„¢ means the amount due every month, whether as Ã, rent or damages for use and occupation at the admitted rate of rent after making no other

deduction except taxes, if paid to the local authority on lessorÃ¢â‚¬â„¢s account. It is, however, expected that before making an order striking off defence,

the Court would consider the representation of the defendant, if made within 10 days of the first hearing or within 10 days of the expiry of one week

from the date of accrual of monthly amount.

10. At this juncture, we may also take note of the decisions which have been referred to and relied upon.

10.1. The High Court has primarily based its decision on the cases of Miss Santosh Mehta v. Om Prakash and Ors.: (1980) 3 SCC 610 and Smt.

Kamla Devi v. Vasdev: (1995) 1 SCC 356. Both these cases related to the operation of Section 15(7) of the Delhi Rent Control Act, 1957

[Hereinafter also referred to as Ã¢â‚¬Ëœthe Delhi Rent ActÃ¢â‚¬â„¢.].

10.1.1. In the case of Miss Santosh Mehta (supra), the tenant, a working woman, had regularly paid the rent to her advocate, who neither deposited

the same in the Court nor paid it to the landlord. In the given circumstances, this Court found it unjustified to punish the tenant by striking out the

defence. In that context, this Court observed that under Section 15(7) of the Delhi Rent Act, it was in the liberal discretion of the Rent Controller,

whether or not to strike out the defence. This Court also observed that it was of harsh and extreme step, and having regard to the benign scheme of

the legislation, this drastic power was meant for use in grossly recalcitrant situations where the tenant was guilty of disregard in paying rent. This

Court further said, -

Ã¢â‚¬Å“3. We must adopt a socially informed perspective while construing the provisions and then it will be plain that the Controller is armed with a

facilitative power. He may or may not strike out the tenant's defence. A judicial discretion has built-in-self-restraint, has the scheme of the statute in

mind, cannot ignore the conspectus of circumstances which are present in the case and has the brooding thought playing on the power that, in a Court,

striking out a party's defence is an exceptional step, not a routine visitation of a punitive extreme following upon a mere failure to pay rent. First of all,

there must be a failure to pay rent which, in the context, indicates wilful failure, deliberate default or volitional non-performance. Secondly, the section

provides no automatic weapon but prescribes a wise discretion, inscribes no mechanical consequence but invests a power to overcome intransigence.

Thus, if a tenant fails or refuses to pay or deposit rent and the court discerns a mood of defiance or gross neglect, the tenant may forfeit his right to be

heard in defenceÃ¢â‚¬Â¦.

4. There is no indication whatsoever in the Act to show that the exercise of the power of striking out of the defence under S. 15(7) was imperative

whenever the tenant failed to deposit or pay any amount as required by S. 15. The provisions contained in S. 15(7) of the Act are directory and not

mandatory. It cannot be disputed that S. 15(7) is a penal provision and gives to the Controller discretionary power in the matter of striking out of the

defence, and that in appropriate cases, the Controller may refuse to visit upon the tenant the penalty of non-payment or non-deposit. The effect of

striking out of the defence under S. 15(7) is that the tenant is deprived of the protection given by S. 14 and, therefore, the powers under S. 15(7) of the

Act must be exercised with due circumspection.Ã¢â‚¬â€‹

10.1.2. In the case of Smt. Kamla Devi (supra), the order for payment or depositing the arrears of rent was made on 27.01.1984 and the

payment/deposit was to be made within one month. The tenant paid certain amount to the appellant but did not pay the arrears. Earlier, the Rent

Controller passed the order denying benefit to the tenant and ordered eviction but the matter was remanded for consideration of the question of

condonation of delay in depositing the arrears. After remand, the Rent Controller held that there was some compromise between the parties and in

any case, delay in deposit could not be termed as wilful, deliberate or contumacious and hence, condoned the same. The order so passed was

maintained by the Tribunal and the High Court. The landlord then appealed to this Court. This Court referred to the scheme of the enactment as also

the decision in Miss Santosh Mehta (supra) and held that Section 15(7) of the Delhi Rent Act gave discretion to the Rent Controller, who may or may

not pass the order striking out defence but, exercise of this discretion will depend upon the circumstances of each case. This Court observed, inter alia,

as under: -

Ã¢â‚¬Å“23. Ã¢â‚¬Â¦Ã¢â‚¬Â¦ In our view, sub-section (7) of Section 15 of the Delhi Rent Control Act, 1958 gives a discretion to the Rent Controller and does not

contain a mandatory provision for striking out the defence of the tenant against eviction. The Rent Controller may or may not pass an order striking

out the defence. The exercise of this discretion will depend upon the facts and circumstances of each case. If the Rent Controller is of the view that

in the facts of a particular case the time to make payment or deposit pursuant to an order passed under sub -section (1) of Section 15 should be

extended, he may do so by passing a suitable order. Similarly, if he is not satisfied about the case made out by the tenant, he may order the defence

against eviction to be struck out. But, the power to strike out the defence against eviction is discretionary and must not be mechanically exercised

without any application of mind to the facts of the case.Ã¢â‚¬â€‹

10.2. In the case of Manik Lal Majumdar (supra), the question was slightly different and was related to the maintainability of appeal in terms of

Section 20 of Tripura Buildings (Lease and Rent Control) Act, 1975 where, in view of the embargo put by Section 13 of the said Act, the tenant was

not entitled to prefer an appeal unless he had paid or deposited all arrears of rent admitted by him to be due. This Court put a purposive interpretation

to the expression Ã¢â‚¬Ëœprefer an appealÃ¢â‚¬â„¢ while observing that mere filing of appeal was not prohibited but, the Appellate Authority may not proceed

with the hearing of appeal or pass an interim order in favour of the tenant until he had paid or deposited the arrears of rent.

10.3. The case of Bimal Chand Jain (supra) directly related to the provisions of Order XV Rule 5 CPC, as applicable to the present case. Therein,

though the tenant had deposited the arrears admitted to be due, but had failed to make regular deposits of monthly rent and to submit representation in

terms of sub-rule (2) of Rule 5 of Order XV. Thus, the Trial Court proceeded to strike off the defence; and the High Court affirmed the order of the

Trial Court. In the said case, the High Court proceeded with reference to an earlier decision of its Division Bench that in the given circumstances, the

Court was obliged to strike off defence. Such a construction of the said provisions by the High Court, giving them mandatory character, was not

approved by this Court and the matter was remanded to the High Court for reconsideration with the following observations: -

Ã¢â‚¬Å“6. Ã¢â‚¬Â¦ Sub -rule (2) obliges the court, before making an order for striking off the defence to consider any representation made by the defendant in

that behalf. In other words, the defendant has been vested with a statutory right to make a representation to the court against his defence being struck

off. If a representation is made the Court must consider it on its merits, and then decide whether the defence should or should not be struck off. This

is a right expressly vested in the defendant and enables him to show by bringing material on the record that he has not been guilty of the default

alleged or if the default has occurred there is good reason for it. Now, it is not impossible that the record may contain such material already. In that

event, can it be said that sub-r. (1) obliges the court to strike off the defence? We must remember that an order under sub-rule (1) striking off the

defence is in the nature of a penalty. A serious responsibility rests on the court in the matter and the power is not to be exercised mechanically. There

is a reserve of discretion vested in the court entitling it not to strike off the defence if on the facts and circumstances already existing on the record it

finds good reason for not doing so. It will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding

the absence of a representation under sub-rule (2), the defence should or should not be struck off. The word Ã¢â‚¬Å“mayÃ¢â‚¬ in sub -rule (1) merely vests

power in the court to strike off the defence. It does not oblige it to do so in every case of default. To that extent, we are unable to agree with the view

taken by the High Court in Puran Chand (1981 All LJ 82) (Supra). We are of opinion that the High Court has placed an unduly narrow construction on

the provisions of clause (1) of Rule 5 of Order XV.Ã¢â‚¬â€‹

(emphasis supplied)

10.4. In Ladly Prasad (supra), the Division Bench of Allahabad High Court held as follows: -

Ã¢â‚¬Å“8Ã¢â‚¬Â¦.In case the court after considering the representation made by the defendant comes to the conclusion that the circumstances justify grant of

further time on security being furnished for the amount, the court will be competent to do so. It is not obligatory on the court to refuse to entertain any

defence or to strike off the defence in a case default is committed by the defendant in making the requisite depositsÃ¢â‚¬Â¦..Ã¢â‚¬â€‹

10.5. In Kunwar Baldevji (supra), another Division Bench of the High Court observed as under: -

Ã¢â‚¬Å“13. If amount of rent is admitted then it is not required to be adjudicated by the Court. In case, tenant denies any rent to be due, Court shall be

required to decide the same. It is obvious that in such contingency Court will have to adjudicate and its finding will come subsequent to the Ã¢â‚¬Ëœfirst

date of hearingÃ¢â‚¬â„¢ contemplated under Order 15, Rule 5, Code of Civil Procedure. It is, therefore, evident that by the time the Court will render its

finding, Ã¢â‚¬Ëœfirst date of hearingÃ¢â‚¬â„¢ which is cut off date for deposition of rent, shall be over. It also requires no comment that such an issue is first to

be framed and thereafter adjudicated after parties have led evidence in accordance with law.Ã¢â‚¬â€‹

10.6. We have also noticed that in the case of Hisamul Islam Siddiqui and Anr. v. Mohd. Javed Barki: 2016 (131) RD 135, as referred to in the

impugned order, a learned Single Judge of the same High Court had referred to the provisions of Order XV Rule 5 CPC as also Section 109 of the

Transfer of Property Act, 1882; and after finding that the purchaser became the landlord by operation of law upon transfer of property, the High

Court took note of the fact that the defendant had not denied the status as tenant by filing written statement and had not deposited any rent. Hence, it

was held that the Trial Court had rightly struck off the defence.

11. The present suit has been filed by the plaintiff-appellant claiming her capacity as the lessor after having purchased the suit property from its

erstwhile owner. According to the plaintiff, the defendant has been the lessee in the suit shop and his lease was determined; and while alleging the

rent to be due and having not been paid despite demand, the plaintiff has filed this suit for eviction and recovery of arrears of rent and damages for

use and occupation. Having regard to the plaint averments, the suit in question is clearly the one to which the provisions of Order XV Rule 5 CPC are

applicable.

11.1.Ã, Though the aforesaid decisions in cases of Miss Santosh Mehta, Smt. Kamla Devi and Manik Lal Majumdar related to the respective rent

control legislations applicable to the respective jurisdictions, which may not be of direct application to the present case but and yet, the relevant

propositions to be culled out for the present purpose are that any such provision depriving the tenant of defence because of default in payment of the

due amount of rent/arrears have been construed liberally; and the expression Ã¢â‚¬Ëœmayâ€™ in regard to the power of the Court to strike out defence

has been construed as directory and not mandatory. In other words, the Courts have leaned in favour of not assigning a mandatory character to such

provisions of drastic consequence and have held that a discretion is indeed reserved with the Court concerned whether to penalise the tenant or not.

However, and even while reserving such discretion, this Court has recognised the use of such discretion against the defendant-tenant in case of wilful

failure or deliberate default or volitional non-performance. This Court has also explained the principles in different expressions by observing that if the

mood of defiance or gross neglect is discerned, the tenant may forfeit his right to be heard in defence. The sum and substance of the matter is that the

power to strike off defence is considered to be discretionary, which is to be exercised with circumspection but, relaxation is reserved for a bonafide

tenant like those in the cases of Miss Santosh Mehta and Smt. Kamla Devi (supra) and not as a matter of course. The case of Bimal Chand Jain

(supra) directly related with Order XV Rule 5 CPC where the tenant had deposited the arrears admitted to be due but, failed to make regular deposits

of monthly rent and failed to submit representation in terms of sub-rule (2) of Rule 5 of Order XV. The defence was struck off in that matter with the

Trial Court and the High Court taking the said provisions of Order XV Rule 5 CPC as being mandatory in character. Such an approach was not

approved by this Court while indicating the reserve of discretion in not striking off defence if, on the facts and circumstances existing on record, there

be good reason for not doing so. The common thread running through the aforesaid decisions of this Court is that the power to strike off the defence is

held to be a matter of discretion where, despite default, defence may not be struck off, for some good and adequate reason.

11.2. The question of good and adequate reason for not striking off the defence despite default would directly relate with such facts, factors and

circumstances where full and punctual compliance had not been made for any bonafide cause, as contradistinguished from an approach of defiance or

volitional/elective non-performance.

12. Reverting to the provisions under consideration, it is noticed that while the first part of sub-rule (1) of Rule 5 of Order XV CPC requires deposit of

the admitted due amount of rent together with interest, the second part thereof mandates that whether or not the tenant admits the amount to be due,

he has to, throughout the continuation of the suit, regularly deposit monthly amount due within a week from the date of its accrual. Read as a whole, it

is but clear that Order XV Rule 5 CPC embodies the fundamental principle that there is no holidaying for a tenant in payment of rent or damages for

use and occupation, whether the lease is subsisting or it has been determined. The only basic requirement in the suit of the nature envisaged by Order

XV Rule 5 CPC is the character of defendant as being the lessee/tenant in the suit premises. Viewed from this angle, we are not inclined to accept

the line of thought in some of the decisions of the High Court that in every case of denial of relationship of landlord and tenant, the defendant in suit

for eviction and recovery of rent/damages could enjoy holidays as regards payment of rent.

12.1. For what has been discussed hereinabove, the decision of the High Court in Ladly Prasad (supra) does not require much dilation when it remains

indisputable that it is not always obligatory on the Court to strike off the defence. However, the said decision cannot be read to mean that despite

default of the tenant in payment of rent, the defence has to be permitted irrespective of its baselessness. The decision in Kunwar Baldevji (supra),

again, would have no application to the facts of the present case. Herein, the defendant-respondent has not only omitted to deposit the rent on the first

date of the hearing but, has also omitted to deposit the accrued rent during the pendency of the suit.

13. In a suit of the present nature, where the defendant otherwise has not denied his status as being the lessee, it was rather imperative for him to

have scrupulously complied with the requirements of law and to have deposited the arrears of rent due together with interest on or before the first

date of hearing and in any case, as per the second part of sub-rule (1) of Rule 5 of Order XV CPC, he was under the specific obligation to make

regular deposit of the monthly amount due, whether he was admitting any such dues or not.

14. In the context of the proposition of denial of title of the plaintiff and denial of relationship of landlord and tenant between the plaintiff and

defendant, we may also observe that such a denial simpliciter does not and cannot absolve the lessee/tenant to deposit the due amount of

rent/damages for use and occupation, unless he could show having made such payment in a lawful and bonafide manner. Of course, the question of

bonafide is a question of fact, to be determined in every case with reference to its facts but, it cannot be laid down as a general proposition that by

merely denying the title of plaintiff or relationship of landlord-tenant/lessor-lessee, a defendant of the suit of the present nature could enjoy the

property during the pendency of the suit without depositing the amount of rent/damages.

15. Taking the facts of the present case, it is at once clear that the defendant-respondent, by his assertions and conduct, has left nothing to doubt that

he has been steadfast in not making payment of rent/damages, despite being lessee of the suit shop. The present one has clearly been the case of

volitional non-performance with nothing left to guess about the defendantÃ¢â‚¬â„¢s mood of defiance. Nothing of any fact or any circumstance is existing

on record to find even a remote reason for extending any latitude or relaxation in operation of Order XV Rule 5 CPC to the present case. It shall be

apposite at this juncture to also observe that the contentions on behalf of the defendant-respondent to the effect that he had made payment of rent to

the alleged erstwhile landlord Smt. Sudha Sharma and contra submissions on behalf of the appellant that even in the year 1990, the defendant-

respondent admitted the said Shri Rajiv Kant Sharma as the owner of the property as also the factors co-related with these submissions, do not call for

adjudication in this appeal. This is for two simple reasons: One, that so far as the fact of volitional non-performance by the defendant-respondent is

concerned, with no cogent evidence of lawful payment of rent, the findings of fact by the Trial Court and the Revisional Court against the defendant-

respondent stand final and have not been disturbed even by the High Court. There appears no reason for this Court to enter into any factual inquiry as

regards payment of rent to Smt. Sudha Sharma or otherwise, now in this appeal. Secondly, so far as any affidavit filed by the defendant-respondent in

the year 1990, allegedly admitting Shri Rajiv Kant Sharma as owner of property is concerned, it may be a matter of adjudication by the Trial Court but

would not be a matter of consideration in this appeal. Suffice it to observe that the present one is a case very near and akin to that of Hisamul Islam

Siddiqui (supra) wherein, the learned Single Judge of the same High Court has approved the order striking off the defence after finding want of

deposit of the amount of rent, despite the defendant having not denied his status as tenant.

16. In the totality of facts and circumstances, we are clearly of the view that there was absolutely no reason for the High Court to have interfered in

the present case, where the Trial Court had struck off the defence after finding that there was no evidence on record to show the payment or deposit

of rent in favour of the plaintiff by the defendant-respondent. The Revisional Court had also approved the order of the Trial Court on relevant

considerations. Even the High Court did not find the pleas taken by the defendant-respondent to be of bonafide character, particularly when survey

number of the shop let out to him was clearly stated in the sale deed executed in favour of the plaintiff. We find it rather intriguing that, despite having

not found any cogent reason for which discretion under Rule 5 of Order XV CPC could have been exercised in favour of the defendant-respondent,

the High Court, in the last line of paragraph 45 of the order impugned, abruptly stated its conclusion that: Ã¢â‚¬Ëœyet the defendant/tenant deserves some

indulgenceÃ¢â‚¬â„¢.

17. With respect, the said conclusion of the High Court could only be said to be an assumptive one, being not supported by any reason. In paragraph

44, of course, the High Court observed with reference to the decisions of this Court that the discretionary power must be exercised with great

circumspection but, such enunciation by this Court cannot be read to mean that whatever may be the fault and want of bonafide in the

defendant/tenant, he would be readily given the so-called Ã¢â‚¬Ëœindulgenceâ€™ of not striking off defence. Such an approach is neither envisaged by the

statutory provisions nor by the referred decisions. In fact, such an approach would simply render the relevant provisions of law rather nugatory. The

expected circumspection would require the Court to be cautious of all the relevant facts and the material on record and not to strike off the defence as

a matter of routine. However, when a case of the present nature is before the Court, disclosing deliberate defiance and volitional/elective non-

performance, the consequence of law remains inevitable, that the defence of such a defendant would be struck off.

18. For what has been discussed hereinabove, the impugned order as passed by the High Court cannot be approved and is required to be set aside.

19. The submissions made on behalf of the defendant-respondent that he had deposited the due rent from 10.05.2010 to 10.11.2018 and he has been

further making regular deposits do not take his case any further. The defendant-respondent has made such deposits only pursuant to the order of the

High Court. The said order, being not in conformity with the law applicable and with the record of this case, is required to be set aside. In any event,

any deposit made under or pursuant to the said order cannot wipe out the default already committed by the defendant-respondent. On the contrary,

with setting aside of the said order of the High Court, the order of the Trial Court shall stand revived. Simply put, the deposits belatedly made, pursuant

only to the unsustainable order of the High Court, do not enure to the benefit of the defendant-respondent.

20. Before concluding on this matter, a few peripheral aspects may also be indicated. The petition seeking special leave to appeal in the present case

was entertained on 28.01.2019 when this Court, while issuing notice, stayed the operation and implementation of the impugned order of the High

Court. Obviously, the impugned order dated 02.11.2018 as passed by the High Court stood eclipsed under and by virtue of the stay order of this Court.

Consequently, the suit was required to proceed with the order of the Trial Court dated 01.03.2017 striking off the defence of the defendant continuing

in operation. The facts have been placed before us to the effect that the plaintiff sought expeditious disposal of the suit and in that regard, also filed a

petition bearing No. 2810 of 2020 before the High Court, which was disposed of on 29.09.2020 with directions to the Trial Court to decide the said suit

expeditiously and preferably within two years from the date of production of the copy of the order without granting any unnecessary adjournment to

either of the parties. Thereafter, the Trial Court considered and granted an application moved by the plaintiff to amend the plaint, so as to seek eviction

of the defendant on the ground of denial of title. The said amendment was allowed on 18.02.2021. As per the material placed on record, the additional

written statement as filed by the defendant was taken on record on 21.04.2022 and the matter was placed for plaintiffÃ¢â‚¬â„¢s evidence.

21. Having taken note of the subsequent events after passing of the impugned order by the High Court, suffice it to say that with the impugned order

of the High Court being set aside and that of the Trial Court dated 01.03.2017 being restored by this judgment, it would be expected of the Trial Court

to take note of the fact that the suit filed way back in the year 2011 has remained pending yet and is required to be assigned a reasonable priority for

expeditious disposal. The order passed by the High Court on 29.09.2020 is also to be kept in view by the Trial Court.

22. Accordingly, and in view of the above, this appeal succeeds and is allowed; the impugned order dated 02.11.2018 is set aside with the result that

the order dated 01.03.2017 passed by the Trial Court stands restored. The Trial Court shall be expected to proceed with the matter while keeping in

view the observations foregoing.

23. Having regard to the circumstances of the case, there shall be no order as to costs of this appeal.