(1963) 08 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Second Appeal from Order No. 126-D of 1962

Shri Tara Chand Malik		APPELLANT
	Vs	
Mrs. G.J.D. Silva		RESPONDENT

Date of Decision: Aug. 9, 1963

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 15(7)

Hon'ble Judges: D.K. Mahajan, J

Bench: Single Bench

Advocate: A.N. Monga, for the Appellant; F.C. Bedi, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Mahajan, J.

This second appeal from order is directed against the order of the lower appellate Court setting aside the order of the trial Court rejecting the petitioner''s defence u/s 15(7) of the Delhi Rent Control Act, 1958. In order to appreciate the controversy it is necessary to set out a few facts. The landlord is Malik Tara Chand and the premises are tenanted by Mrs. Silva. An application was made by the landlord for eviction of the tenant on the ground, of sub-letting. Later on an application u/s 15(2) of the Act was filed for an order that the tenant be required to deposit arrears of rent. It may be mentioned that the agreed rate of rent was Rs. 712.50 N.P. per mensem and there were proceedings pending between the landlord and the tenant for fixation of fair-rent. Out he 4th February, 1961, the Rent Controller passed an order fixing the interim rent at the rate of Rs. 411/- p.m. Against this order an appeal was taken. That appeal was compromised and it was agreed that the interim rent be deposited in Court at the rate of Rs. 325/- p.m. with effect from the 1st June, 1960, within one month from that order. It was further agreed that the tenant would furnish security to the satisfaction of the Rent Controller to the extent of Rs. 100/- p.m. The security was to be a continuing security till the termination of the proceedings. It was also provided that in case of default, the appeal will stand dismissed and the order of the

Rent Controller fixing the interim rent at the rate of Rs. 411/- p.m. will stand. The arrears of rent were deposited in terms of the compromise but no security bond was furnished. However, a bond was filed on the 12th June, 1901, which was objected to by the landlord and was rejected. The tenant was thereafter required to furnish a fresh bond by the 15th July, 1961. This was not done. However, on the 16th August, 1961, a fresh bond was furnished. The landlord made an application on the 27th September, 1961, praying that as the terms of the compromise had not been complied with, the defence of the tenant be struck out. This application was allowed by the Rent Controller and the defence was struck out. Against this decision, an appeal was taken by the tenant. The Court below came to the conclusion that the mistake in not furnishing the bond on the 15th July, 1961, was bona fide and therefore, the bond furnished on the 16th August, 1961, should have been accepted. In this view of the matter, he set aside the order striking out the defence. It is against this order that the present second appeal has been preferred.

2. The short contention advanced by Mr. Monga, learned counsel for the appellant, is that u/s 15(7) of the Act, the jurisdiction to strike out the defence is that of the Rent Controller and if the Controller has not exercised that jurisdiction mala fide or perversely, the appellate Court could not interfere in its exercise and substitute its own discretion in its place. This contention would be perfectly sound and would have prevailed, but the real trouble in the way of Mr. Monga is that sub-section (7) of section 15 provides merely that if the tenant fails to make payment or deposit, the defence would be struck out. So far as the furnishing of the bond is concerned, it cannot be said to be either payment or deposit as required by this sub-section. The furnishing of the bond was the result of the compromise dehors the Act. That being so, it cannot be said that the lower appellate Court was in error in interfering with the order of the Rent Controller on the ground that there was a bona fide mistake in not furnishing the bond. It is well known that Courts have ample power to relieve parties against forfeiture. That being so, I see no reason to interfere in second appeal.

For the reasons given above, this appeal fails and is dismissed, but there will be no order as to costs.