

(2014) 07 DEL CK 0046

Delhi High Court**Case No:** CM (M) 360/2012 & C.M. No. 5474/2012 (for exemption)

Lok Nath

APPELLANT

Vs

Ashok Kumar

RESPONDENT

Date of Decision: July 30, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Delhi Rent Control Act, 1958 - Section 14(1)(a), 14(2), 15(1), 26, 27

Citation: (2015) 213 DLT 278 : (2015) 1 RCR(Rent) 208**Hon'ble Judges:** Valmiki J. Mehta, J**Bench:** Single Bench**Advocate:** Kamlakshi Singh and S.K.Kapoor, Advocate for the Appellant; Bhupesh Narula, Advocate for the Respondent**Final Decision:** Allowed

Judgement

Valmiki J Mehta, J.

The challenge by means of this petition under Article 227 of the Constitution of India is to the impugned order of the Additional Rent Control Tribunal dated 17.1.2012. The Additional Rent Control Tribunal by the impugned judgment has decided two appeals. One appeal was filed by the landlords and the other appeal was by the tenant both against the judgment/order of the Additional Rent Controller dated 09.11.2009. The judgment/order dated 09.11.2009 is a consequential order pursuant to the main judgment deciding the petition filed by the petitioners/landlords u/s 14(1)(a) (non-payment of rent) of the Delhi Rent Control Act, 1958 on 01.8.2008.

2. To put in seriatim and chronologically, it is to be noted that the petitioners herein/landlords filed the eviction petition on the ground of non- payment of rent u/s 14(1)(a) of the Delhi Rent Control Act, 1958. This petition was allowed in favour of the landlords by holding that the respondent/tenant had committed a default in payment of rent for the period from 01.10.1996 to 03.11.1996 by not paying,

tendering or depositing the rent inspite of service of the legal notice Ex. AW-1/10 dated 12.12.1996. In law, even if a default is proved in a petition u/s 14(1)(a) of the Act, an eviction order does not follow because a tenant is entitled to make up the default of rent by depositing rent pursuant to an order u/s 15(1) of the Delhi Rent Control Act. If it is found that the tenant has complied with the order passed u/s 15(1) of the Act, benefit of Section 14(2) of the Act is given and eviction order is not passed.

3. In the present case, the issue which is argued before this Court is that the respondent/tenant has not complied with the order u/s 15(1) of the Act because interest amount which was liable to be paid in terms of Section 26 of the Delhi Rent Control Act, 1958 on the amount of arrears of rent was not paid by the respondent/tenant as demanded in the legal notice dated 12.12.1996 Ex. AW-1/10, and therefore, benefit of Section 14(2) of the Act cannot be given.

4. At this stage, the interim order dated 2.12.1999 which was passed by the Additional Rent Controller u/s 15(1) of the Act during the hearing of the main petition u/s 14(1)(a) of Act is required to be examined. The relevant/operative part of this order reads as under

3. In reply to para 18(a) (iii) the respondent claims that he has been sending the rent through money order which was refused. The petitioner has alleged that the respondent was in arrears w.e.f. 1st October, 1996. The respondent does not claim to have paid the rent upto any specific month. From the contention of the respondent that he sent the rent through money order which was refused, it is presumed that the rent for period from 1st October, 1996 was sent by the respondent through money order which was allegedly refused by the petitioner. As such the respondent has not paid any rent w.e.f. 1st October, 1996. Therefore, I am of the prima-facie view that the monthly rent in respect of the premises last paid by the respondent was at the rate of Rs.375/- per month which has not been paid by the respondent w.e.f. 1st October, 1996. Accordingly without prejudice to the respective rights of the parties the respondent is hereby directed to pay to the petitioner or deposit in the court upto date arrears of rent w.e.f. 1st October, 1996 at the rate of Rs.375/- p.m within a period of 30 days from today and to continue to pay to the petitioner or deposit in the court monthly rent for each month by 15th of each succeeding month till further orders. Case is adjourned for petitioner's evidence on 24.2.2000.

(Emphasis added)

5. It is clear from a reading of the operative portion of this order dated 2.12.1999 that in this order passed u/s 15(1) of the Act, there is no direction, although wrongly, for the respondent/tenant to deposit interest payable on account of non-payment of rent in time. By this order, only arrears of rent were directed to be deposited and also the future rent month by month during the pendency of the petition before the

Additional Rent Controller and not interest payable as per Section 26 of the Act. The petitioners/landlords did not move for any variation in this order passed on 02.12.1999 by complaining that the order should also include payment of interest on the defaulted rent and be modified accordingly.

6. The main eviction petition was disposed of vide the judgment dated 01.8.2008, and which judgment has become final because this judgment has not been challenged by any of the parties. The relevant and operative paras of this judgment are paras 10 and 11, and which read as under

10. As far as the tender of rent within two months of the service of the notice is concerned, though the respondent through his brother Anil sent the money order within 60 days, but as already discussed, the same were incomplete as does not include the interest on the delayed payment and also the same was not deposited in the court u/s 27 of DRC Act after its being refused and I am of the considered opinion that a case of first default is made out in facts and circumstances mentioned herein above.

11. Order u/s 15(1) DRC Act have already been passed on 02.12.99 directing the respondent to pay or deposit the rent w.e.f. 01.10.1996 @ Rs.375/- per month. Let the compliance report be called from Nazir of orders u/s 15(1) DRC Act to see whether benefit of Section 14(2) DRC Act is to be given to respondent or not vide misc. file. Present file be consigned to Record Room.

7. A reading of the aforesaid paras shows that the main petition u/s 14(1)(a) of the Act was held to have been correctly filed and it was held that there was a default by the respondent/tenant of not complying with the legal notice dated 12.12.1996 Ex. AW-1/10 for payment of arrears of rent and interest, and therefore, it was directed simultaneously that for giving the benefit of Section 14(2) of the Act, it will have to be examined whether the respondent/tenant has complied with the order passed u/s 15(1) of the Act.

8. It is relevant to note that the petitioners/landlords did not apply even at this stage of passing of the judgment dated 1.8.2008 for the variation of the earlier interim order passed u/s 15(1) dated 02.12.1999 that the respondent/tenant must be directed to pay interest in addition to the arrears of rent. Petitioners also did not even ask for review of the judgment dated 01.8.2008 and they also did not file any appeal against the judgment dated 01.8.2008 on the ground that the said judgment wrongly records requirement of compliance of the order only u/s 15(1) passed on 02.12.1999 and that the order u/s 15(1) requires to be amended/modified/added by directing deposit of interest on the defaulted amount of rent. Therefore, neither at the stage of passing of the order u/s 15(1) on 02.12.1999 nor at the time of final judgment dated 01.8.2008, the petitioners/landlords did seek a direction to be passed u/s 15(1) of the Act or in the final judgment dated 01.8.2008 that the respondent/tenant should now be asked to deposit the interest on the defaulted

rent.

9. Pursuant to the main judgment passed on 01.8.2008, subsequent proceedings took place as to the compliance of the order passed on 2.12.1999 u/s 15(1) of the Act, and which order was only towards the arrears of rent and not interest. It was found that the said order dated 02.12.1999 was duly complied with except with respect to two future month to month payments, and on which aspect there were two small defaults of delay of one or two days, and which delay/s were condoned by the consequential order dated 09.11.2009, passed pursuant to para 11 of the judgment dated 01.8.2008. This aspect of condonation of delay of one/or two days with respect to two defaults is not the subject matter of challenge before this Court, and as already stated above, challenge which is raised is that the respondent/tenant cannot take benefit of Section 14(2) because the respondent/tenant has not deposited the interest on the defaulted rent as asked for in the legal notice Ex. AW-1/10.

10. During the course of hearing, learned counsel for the respondent/tenant has drawn the attention of this Court to an application filed by the present petitioners before the Additional Rent Controller on 14.10.2008 i.e., before passing of the consequential judgment/order dated 09.11.2009, and in which application the petitioners/landlords has raised no grievance of non-compliance of the order dated 01.12.1999 u/s 15(1) on the ground that the respondent/tenant cannot be given a benefit of Section 14(2), inasmuch as the interest claimed in the legal notice Ex. AW-1/10 has not been paid/deposited. This application dated 14.10.2008 refers to various defaults with respect to pendente lite deposit, but, there is no mention in this application with respect to non-compliance of the order u/s 15(1) on account of non-payment of interest as demanded in the legal notice Ex. AW-1/10. Therefore, even the petitioners/landlords had understood the order u/s 15(1) dated 02.12.1999 only with respect to arrears of rent and not with respect to interest which became due on account of default in payment of rent as per Section 26 of the Delhi Rent Control Act and which requires payment of interest @ 15% per annum. Though counsel for the petitioner argues that petitioner did argue the aspect before the Additional Rent Controller that eviction order be passed because of non- deposit of interest component, it is however noted that actually no grievance qua interest was raised being the reason for non-compliance of the order u/s 15(1) before the Additional Rent Controller, because if this argument had been urged then the ARC would have noted and considered this aspect, however, there is no such discussion in the order dated 9.11.2009. If the petitioner had raised such an argument and the ARC has not noted it then in law the petitioner had to approach the ARC itself pointing out this aspect and seek review. I may at this stage refer to the ratio of the judgment in the case of [State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another](#), wherein the Supreme Court has observed that if a factual aspect is wrongly recorded in an order/judgment then the only way in which the error can be corrected is by moving the court which passed the order/judgment immediately

after passing of the order/judgment when the matter is still fresh in the mind of the court and if this is not done then it is not permissible before an appellate court to argue that the order/judgment of the court below is factually wrong. Therefore, the aspect that there is a default on account of non-deposit of interest payable on delayed payment of rent was not argued before the Additional Rent Controller, and this aspect now cannot be urged for the first time in this petition under Article 227 (effectively almost a second appeal) because to permit the same grave prejudice will be caused to the respondent.

11. A collation of the facts as stated above shows that undoubtedly there is a default in payment of interest by the respondent/tenant as demanded in the legal notice Ex. AW-1/10, however, simultaneously it is also clear that the order u/s 15(1) which is required to be complied with for getting the benefit of Section 14(2) of the Act also did not order for payment of interest on the delayed payment of rent and even the petitioners/landlords never did apply for variation of the order dated 02.12.1999 u/s 15(1) or for variation of the final judgment dated 01.8.2008, in which the interim order dated 02.12.1999 merged that the interest component be directed to be paid/deposited by the respondent. Really, therefore, the present case is to be considered on the principle that an act of the court should not harm the litigant i.e., since u/s 14(2) an eviction order should not be passed against the tenant with respect to default in payment of arrears of rent if the tenant complied with the order passed u/s 15(1), then, a tenant cannot be allowed to be caused prejudice because of an act of the court by passing the order of eviction although the order passed u/s 15(1) did not direct payment of interest, and therefore, the respondent/tenant did not pay/deposit interest component.

12. Also, I disagree with the arguments urged on behalf of the petitioners/landlords that the petitioners/landlords should also not be prejudiced, inasmuch as the petitioners themselves never applied either for variation of the interim order u/s 15(1) dated 02.12.1999 or the final judgment dated 01.8.2008 by praying that the respondent/tenant in addition to the direction of deposit of arrears of rent should also be asked to deposit interest for delayed payment of rent.

13. In view of the above, the present is a fit case that in exercise of my inherent powers it is directed that the interest amount on the arrears of rent from 01.10.1996 to 30.11.1996 be deposited by the respondent/tenant in the Court of Rent Control Tribunal within six weeks or be deposited within six weeks in the bank account of the petitioner or anyone of them, particulars of which bank account the petitioners through their counsel will give to the respondent through his counsel within a period of two weeks from today. The respondent/tenant can also send within six weeks the amount of interest payable by a money order also, if the respondent /tenant so desires.

14. In view of the above, I hold that no eviction order can be passed in favour of the petitioners/landlords and against the respondent/tenant on account of the

respondent/tenant allegedly not having complied with the order u/s 15(1) of the Delhi Rent Control Act inasmuch as the fact of the matter is that the interest amount was not paid on the arrears of rent, because in fact, there was no such order u/s 15(1) of the Act for payment of interest by the court, and the petitioners/landlords also never asked for variation of the order u/s 15(1) of the Act to direct the respondent/tenant to pay interest, read with the principle that an act of the court should not harm any litigant.

15. Dismissed. Parties are left to bear their own costs.