

**(2010) 05 DEL CK 0270**

**Delhi High Court**

**Case No:** CM (M) 910 of 2008 and 1 of 2009

Puneet Bajaj

APPELLANT

Vs

Baldev Kumar Pahwa <BR>

Baldev Kumar Pahwa Vs Puneet

RESPONDENT

Bajaj

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**Date of Decision:** May 12, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13
- Delhi Rent Control Act, 1958 - Section 14(1), 14(2), 15, 15(1), 26

**Hon'ble Judges:** S.N. Dhingra, J

**Bench:** Single Bench

**Advocate:** Atul Nigam and A. Nayak, in C.M. M 910/2008 and Sandeep Sethi and Pankaj Batra, in C.M. M 1/2009, for the Appellant; Sandeep Sethi and Pankaj Batra in C.M. (M) 910/2008 and Atul Nigam and A. Nayak, in C.M. (M) 1/2009, for the Respondent

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### **Judgement**

Shiv Narayan Dhingra, J.

By this order, I shall dispose of the above two petitions, one preferred by the landlord and the other by the tenant, arising out of the same order dated 28th August, 2003 passed in RCA 541 of 2003.

2. Brief facts relevant for purpose of deciding these petitions are that the landlord Mahendra Singh Bajaj, who is no more in this world, had filed an eviction petition bearing number 153 of 1988 against the tenant Baldev Kumar Pahwa, proprietor of "Pahwa Garments" in respect of a shop let out to him on monthly rental of Rs. 300/- on account of non-payment of rent u/s 14(1)(a) of Delhi Rent Control Act. Notice of this eviction petition was served upon the tenant and the tenant appeared in the proceedings of eviction petition but later on stopped appearing. The eviction petition u/s 14(1)(a) was allowed ex parte. However, an order u/s 15(1) was passed by the ARC and benefit of Section 14(2) of DRC Act was given to the tenant. The tenant filed an application under Order 9 Rule 13 CPC for setting aside the ex parte

order passed in eviction petition number 153 of 1988 giving benefit to the tenant u/s 14(2) of DRC Act. In this application under Order IX Rule 13 CPC the tenant took a stand that he had given Rs. 5,000/- in cash to the landlord, without any receipt, and the landlord had assured him that he shall not proceed further with the eviction proceedings and will withdraw the eviction petition and therefore he did not appear before the court. This plea of tenant was not believed by the ARC and the application filed by the tenant under Order 9 Rule 13 CPC was dismissed by learned ARC on 17th March, 1994 observing as under:

Regarding other pleas of the respondent that the petitioner had accepted Rs. 5000/- while the matter was pending and a compromise was reached also does not inspire confidence because the respondent was assisted by a counsel and once the matter is pending and the parties reached compromise it is recorded in the court as no compromise outside the court is recognized and admittedly when the parties were litigating and once there is litigation, how the respondent has paid a sum of Rs. 5,000/- in cash without any receipt also cannot be believed without any prima facie proof of the transaction.

3. After the first eviction petition was allowed by the learned ARC vide order dated 27th July, 1989, the landlord sent a second default notice dated 21st November 1989 to the tenant alleging second default and demanded rent with effect from 1st July, 1989 up-to-date @ Rs. 300/- per month along with 15% interest calculated from the date when rent of each month became due and for the period it was not paid. The landlord filed second default petition in March, 1993 and the same was registered as E-624/06/93. Vide order dated 22nd March, 2007, an eviction order u/s 14(1)(a) of DRC Act was passed by learned ARC holding that the tenant was guilty of second default. Against this judgment of learned ARC, tenant preferred an appeal before the learned Additional Rent Control Tribunal (ARCT) and the learned ARCT allowed the appeal of the tenant holding that there was no second default. Against this order of learned ARCT, the landlord has filed the present petition being CM(M) 910 of 2008. The tenant also filed a petition being CM(M) 1 of 2009 against the order of learned ARCT since the Tribunal gave a finding against the tenant about service of notice and upheld the decision of learned ARC that there was a valid service of second default notice on the tenant and also upheld that the tendering of rent by money order sent to the landlord received back by the tenant with the postal remarks "the landlord was not found at the address" was not valid tender of rent.

4. As far as service of notice on the tenant is concerned, the two courts below after appreciating the evidence adduced before it and keeping in view the law had come to conclusion that notice was validly served upon the tenant and AD card bearing the signatures of the tenant was duly received back. Mere denial by tenant of his signatures would not rebut the presumption of service more so when the signatures of tenant on other documents itself varied and were not uniform at difference places. I find no ground to interfere with this finding.

5. Even otherwise, I find that the fact that tenant sent money orders of rent to the landlord on 29th November 1989 while the notice was sent by the landlord to him on 21st November 1989 makes it abundantly clear that it is only after receipt of notice alone that the tenant thought of sending amount of Rs. 1200/- on account of rent by money order. If he had any intention of sending the rent to the landlord regularly by money order, he would have been sending the money order every month. The fact that he did not send money order of rental amount every month and sent lump sum payment after the date of the notice makes it crystal clear that his plea that signature on AD were not his was a false plea and the two courts below rightly came to conclusion that notice was duly served.

6. The issue whether tendering of rent by money order was a valid tender or not is no more res integra. It is now settled law that in case money order is refused by the landlord or is not received for any reason whatsoever by the landlord, the next step to be taken by the tenant is to deposit the rent u/s 27 of DRC Act and mere sending of money order would not be considered as a valid tender [M.K. Mukunthan v M. Pasupathi 2001 RLR 537 (SC)]. I, therefore, find no force in the petition of the tenant assailing the order of learned ARCT on the above two counts.

7. The other issue to be addressed is whether the tenant had committed second default or not, in the eyes of law. It has been the case of tenant all along that he sent Rs. 900/- and Rs. 300/- by two money orders which he booked on 29th November 1989 to the landlord and these money orders were received back with postal endorsement with the addressee not available. The endorsements on two money orders are not the same and are different but that would not have much impact on the issue. The fact remains that money orders came back to the tenant and were not received by the landlord although there was no refusal on the part of the landlord. The plea of tenant is that after the money orders came back, the tenant deposited the rent before learned ARC where an application under Order 9 Rule 13 CPC was pending and this deposit of rent was a valid tender of rent. The learned ARC observed that the deposit of rent for defaulting months in the Court where an application under Order 9 Rule 13 CPC was pending, by presenting Treasury Challans to the learned Presiding Officer, would not amount to compliance with the notice of demand of depositing rent within two months. Learned ARC found that there was no order of the Court of ARC permitting the tenant to deposit the rent. ARC thus observed that passing of Treasury Challan by learned ARC for deposit of rent was merely an administrative act and this deposit could not be construed as a valid tendering of rent and the proper course available to the tenant was to deposit the arrears of rent before Rent Controller u/s 27 of the DRC Act as observed by Hon"ble Supreme Court in Atma Ram v. Smt. Shakuntala Devi AIR 2005 SC 3765. The learned ARC also relied upon K. Babu Rao v. Yadamma 2002 (2) RCJ 291 and observed that in case of refusal by the landlord to accept rent, the tenant was bound to take steps as per the provisions of Rent Control Act, only failing which he has to be adjudged as a defaulter. Support was also taken from S.V. Janardanam and Anr.

v. D. Kivraj Sowkar and Ors. 2002 (2) RCJ 343 whereby the Court held that the rent deposited in civil court in an injunction suit would not inure to the benefit of rent control proceedings. It was also argued that even if it is considered that the amount of Rs. 1200/- was deposited by the tenant, that would not amount to satisfaction of the notice of second default because the landlord had specifically asked the tenant to deposit or to pay due rent along with accrued interest thereon in terms of Section 26 of DRC Act and the tender made by the tenant was not complete tender. Reliance was placed by the landlord on [Prof. Ram Prakash Vs. D.N. Srivastava](#),

8. The learned ARC after discussing the entire case law came to conclusion that the notice dated 21st November 1989 issued by the landlord for second default was not complied with by the tenant. The landlord proved that three consecutive defaults were made by the tenant and therefore the eviction petition was allowed.

9. The learned ARCT, however, disagreed with learned ARC on the issue that deposit of rent with learned ARC under Order 9 Rule 13 during pendency of an application under Order 9 Rule 13 CPC was not a valid tender and observed that this Court in [Sant Ram Vs. Janki Parshad](#), with the question of validity of deposit of rent u/s 27 in case of second default and observed that the Rent Control Tribunal could not have gone behind the order passed u/s 27 of the Act and deposit made by the tenant had the authority of ARC. The ARCT observed that though the proceedings of eviction petition filed by the landlord on account of first default had come to an end with passing of an ex parte order, but to certain extent these proceedings remained continued because the order had been challenged under Order 9 Rule 13. If the tenant had thought it proper to deposit the amount in those very proceedings it shows his genuineness and it could not be held that the order passed by the ARC was only an administrative order more so when the landlord had knowledge of deposit. The learned ARCT, however, made no observation on non deposit of complete arrears of rent along with interest, as was contended by landlord and did not touch the issue.

10. This Court in Raghbir Singh v. Sheela Wanti (2009) 2 RCR 220 observed as under:

6. It is contended by learned Counsel for the landlord that though the tender of rent to the advocate was not a legal tender, however, even if it is considered as a legal tender, the tenant had not made tender of rent due on the date of tender. The rent due would have included rent up to October 1992 plus interest @ 15% per annum as provided u/s 26 of DRC Act. The landlord was not supposed to serve a notice on the tenant after every few months demanding arrears of rent. Once the tenant has suffered an order, Section 14(1)(a) but the eviction order is not passed and the tenant is given benefit of Section 14(2), it became obligatory upon the tenant to continue to pay the rent every month and tenant should not be allowed the liberty to accumulate the rent and pay it only after service of a notice by the landlord calling upon the tenant to pay arrears of rent. If this interpretation is given to Section 14(2), then the sole purpose of proviso to Section 14(2) stands defeated. Section 14(2) of

the DRC Act reads as under:

14. Protection of tenant against eviction. - (1) xxxx

(2).... No order for the 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:

Provided that no tenant shall be entitled to the benefit under this SUB-section, if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months.

(emphasis added)

7. A perusal of this Section makes it abundantly clear that in case of first default, where learned ARC finds that a ground u/s 14(1)(a) is made out, no order is passed against the tenant if the tenant makes the payment or deposits the rent as required by Section 15 of DRC Act. The proviso to above section would also make it clear that the tenant would not be entitled to this benefit if after obtaining such a benefit once in respect of any premises, he continues to make a default in payment of rent of the same premises for three consecutive months. The Court cannot ignore the significance of three consecutive months. It only implies that the tenant is obliged to pay the rent thereafter every month and if he does not pay rent continuously for three months, the landlord gets a right for eviction of the tenant and the tenant is not given benefit of tendering of rent u/s 14(2) of the said Act.

8. There is no doubt that even in case of second default, the eviction of tenant can be sought by the landlord only u/s 14(1)(a) and 14(1)(a) provides that eviction petition can be filed where the tenant has neither paid nor tendered "whole of the arrears of rent" legally recoverable from him within two months of the date on which the notice of demand for the arrears of the rent has been served. Thus, even in case of second default, the notice of demand becomes necessary in view of the fact that the landlord can resort to eviction only u/s 14(1)(a). However, the approach of the Court in case of second default has to be different from the approach in case of first default. In case of first default, the tenant is given benefit of Section 14(2) as a matter of warning that he should not commit second default and if he commits second default, the landlord would be entitled for his eviction. It must be understood that the Delhi Rent Control Act is a special statute which takes away certain rights of the landlord and gives protection to the tenants against eviction and the eviction cannot be sought by the landlord in accordance with Transfer of Properties Act exercising his rights over the property but that can be sought only in those circumstances which are enumerated under Delhi Rent Control Act. While this Act is for the benefit of the tenants but if the landlord has been given certain rights under DRC Act, the same cannot be denied to him. The Act provides that if there are three consecutive month defaults by the tenant in making payment of the rent of the premises, the tenant will not be entitled to benefit under sub Section 14(2). If the

law has to be strictly construed for the benefit of the tenant, no separate rule can be applied for construing the law when it falls for the benefit of the landlord. A tenant cannot make a landlord rush to an advocate after every few months to serve upon him a notice of demand to claim rent. It is obligatory on the tenant under law to tender rent month by month to the landlord. In the present case, the tenant was having the account number of the landlord but despite having account number of the landlord, he was not depositing even meager rent of Rs. 80 per month in the account of landlord up to September 1992 and @ Rs. 88/- per month from October 1992 in the account of the landlord. This account number was given by the landlord to the tenant only to facilitate deposit of the rent. The landlord in this case had to serve notice upon the tenant through an advocate for claiming meager amount of Rs. 80 per month. Hiring of services of an advocate does not come free. The landlord may have to spend more amount in hiring an advocate for claiming rent, than the rent itself. The statute provides protection to the tenant but not at the cost of perpetual harassment to the landlord.

9. Section 14(1)(a) specifically provides that on receipt of notice the tenant has to pay whole of the arrears of rent legally recoverable from him. There can be no doubt that payment of rent is an obligation of the tenant and "whole of arrears" of rent would only mean that the rent payable up-to-date on the date of tendering of rent. The legislature cannot be intended to have provided that the landlord will keep on serving notice every time on the tenant and then only the tenant would tender arrears of rent as demanded in the notice and unless it is not demanded in the notice, the arrears of rent would not be tendered. The tendering of "whole of arrears of rent" as envisaged u/s 14(1)(a) cannot be construed as arrears demanded in the notice by the landlord. I, therefore, consider that learned RCT went wrong in observing that the tenant was only obliged to pay arrears only up to September 1992 as demanded and he was not obliged to pay the whole of arrears legally recoverable from him on the date of tendering.

11. I also consider that the learned RCT went wrong in observing that the tenant was not liable to pay interest as demanded by the landlord on demand notice. Section 26(1) of the DRC Act reads as under: "26. Receipt to be given for rent paid. - (1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable [and where any default occurs in the payment of rent, the tenant shall be liable to pay simple interest at the rate of fifteen per cent. per annum from the date on which such payment of rent is due to the date on which it is paid.]"

12. This amendment was inserted by the legislature in 1988. The amendment makes it abundantly clear that the rent is to be paid month by month and where any default occurs for payment of rent, the tenant has to pay simple interest @ 15% per annum from the date of which such payment of rent became due till the date when it is paid. Thus, the legislature made it clear that in case the rent is not tendered

month by month by the tenant, the tenant incurs additional legal liability of paying interest @ 15% on the amount due for the delayed period. This additional liability has become part of the rent. A landlord can recover from the tenant only legally recoverable arrears rent and the landlord has no liberty to recover beyond what has already been agreed upon between the parties or the market rent. Where the rent is not paid by month to month, the interest over the rent, as levied by the statute, becomes part of the legally recoverable rent and it cannot be said that unless there is an amendment in Section 14(1)(a) or Section 15, the provisions of Section 26 would not apply. The rent due would mean that the rent due as per law and where the law specifically provides that if rent is not paid for the month when it is due, it has to be paid with interest of 15% per annum, then the rent due would include the rent plus the interest over it. The tenant in this case had been tendering rent with a gap of six month or nine month or so and had not been tendering rent month by month. The tenant had to tender rent along with accrued interest of 15% per annum to the landlord in view of the statutory provisions of DRC Act. In the case in hand, the landlord had specifically demanded interest of 15% over the delayed rent from the tenant vide notice of demand and once this notice is made, non tendering of rent with interest, tantamount to non fulfillment of obligation u/s 14(1)(a) of DRC Act. I consider that the tender made by the tenant was not in accordance with law and was not a valid tender.

11. In the judgment of D.N. Srivastava (supra) relied upon by the landlord, this Court had held that interest over the arrears was a part of the rent and tender must be made of the complete rent. A plea was taken by the tenant before the learned ARC that this judgment had been stayed by the Supreme Court, however, the final order dated 19th May, 2009 passed by the Supreme Court in Civil Appeal No. 19681 of 2007 would show that this judgment was not set aside by the Supreme Court and it still holds ground.

12. In *Atma Ram v. Shakuntala Rani* (supra), the Supreme Court had categorically laid down as to what is required to be done by the tenant in case of refusal and observed as under:

19. It will thus appear that this Court has consistently taken the views that in Rent Control Legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision.

20. Section 26 of the Delhi Rent Control Act, 1958 provides that every tenant shall pay rent within the time fixed by contract, and in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable. Every tenant who makes a payment of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorized agent a written receipt for the amount

paid to him, signed by the landlord or his authorized agent. It is also open to the tenant to remit the rent to his landlord by postal money order. The relevant part of Section 27 of the Act reads as under:

27. Deposit of rent by the tenant. - (1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner:

Provided that in cases where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to the Controller by postal money order.

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely:

(a) the premises for which the rent is deposited with a description sufficient for identifying the premises;

(b) the period for which the rent is deposited;

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;

(d) the reasons and circumstances for which the application for depositing the rent is made;

(e) such other particulars as may be prescribed.

(3) On such deposit of the rent being made, the Controller shall send in the prescribed manner a copy or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent, the Controller shall, if satisfied that the applicant is the person entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed.

21. The Act, therefore, prescribes what must be done by a tenant if the landlord does not accept rent tendered by him within the specified period. He is required to deposit the rent in the Court of the Rent Controller giving the necessary particulars as required by Sub-section (2) of Section 27. There is, therefore, a specific provision which provides the procedure to be followed in such a contingency. In view of the specific provisions of the Act it would not be open to a tenant to resort to any other procedure. If the rent is not deposited in the Court of the Rent Controller as required by Section 27 of the Act, and is deposited somewhere else, it shall not be treated as a valid payment/tender of the arrears of rent within the meaning of the Act and consequently the tenant must be held to be in default.

13. Whether a deposit made by presenting the challans to a Judge who is dealing with an application under Order IX Rule 13 CPC can be considered a valid tender or not is the issue. When an application under Order 27 of DRC Act is made by the tenant, the tenant has to give particulars as required under the Act and make an application for deposit of rent to the ARC and it is under these circumstances that the ARC passes an order for deposit of rent by the tenant and the ARC authorizes the tenant by signing a treasury challan to deposit rent with the Treasury. If under Order 9 Rule 13 CPC the tenant had made an application to learned ARC that he wanted to deposit the rent because it was refused by the landlord or because of the reason that money order had come back and the learned ARC had applied its mind and passed an order for deposit of rent, there would have been a case for the tenant that he complied with the provisions of DRC Act. Since there was no order passed by the Court of ARC for deposit of rent, the Court of ARC could not have signed the treasury challan of the tenant for depositing money. In fact several challans are put before the learned ARC by his "Ahlmad" in a routine manner because learned ARC passes various orders allowing deposit of rent and in consequence of those orders, the learned ARC is supposed to sign challans and amongst these challans, if the staff puts some such challans for which there is no order, the same are also signed by learned ARC. Signing of such challans by learned ARC for which he has not passed orders of deposit, would be inconsequential. If any amount is deposited by a party against such challans that would be deceitful deposit, without notice to the learned ARC by way of slipping challans through staff before learned ARC. I consider that such a deposit can never be considered as a valid deposit. Where the challans of deposit of rent by the tenant are got signed without there being an order made in the file for deposit of rent, I consider that such a deposit cannot be considered a valid deposit and the learned ARC has rightly considered the deposit not a valid deposit or in compliance of Section 27 of DRC Act. Under no circumstances, a deposit by slipping challans along with the other challans before learned ARC can be considered a deposit u/s 27 of DRC Act and such a deposit is an invalid deposit and the judgment relied upon by the ARCT that the ARC cannot go behind provisions of Section 27 of DRC Act would not be applicable here. When rent is deposited u/s 27, it is deposited by following a definite procedure as laid down u/s 27 of DRC Act and it is not deposited by merely getting Treasury challans signed from ARC, as was done in this case. I also find that even this deposit made by the tenant was not in compliance with the notice. A perusal of notice of the landlord would show that the landlord had specifically demanded interest in terms of Section 26 of DRC Act. Relevant paragraph of notice reads as under;

6. That you are also called upon to pay the entire arrears of rent calculated at the agreed rate of Rs. 300/- w.e.f. 1st July, 1989 along with upto date interest at the rate of 15% p.a. calculated from the date on which such payment of rent is due within two months from the date of service of this notice, failing which our abovenamed client shall have no other alternative but to initiate appropriate legal proceedings

against you for your eviction as well as recovery of the entire arrears of rent along with upto date interest at the rate of 15% per annum.

14. In view of judgment in Shakuntala Rani's case(supra) I consider that deposit as made by tenant of Rs. 1200/- or sending money order of Rs. 1200/- would not condone second default. I, therefore, allow the petition filed by the landlord being CM(M) No. 910 of 2008 and hold that learned ARCT went wrong in observing that the deposit made by the tenant under Order 9 Rule 13 CPC by getting Treasury Challans signed without there being an order, before learned ARC, was a valid deposit. The order of learned ARCT is hereby set aside and the order passed by learned ARC is restored and the eviction order passed by learned ARC is upheld. The petition preferred by the tenant being CM (M) No. 1 of 2009 is hereby dismissed. Both the above petition stands disposed of with above order.