

(2009) 08 DEL CK 0419

Delhi High Court

Case No: CM (M) 1271 of 2007 and CM No. 7327 of 2008

Prof. Ram Prakash

APPELLANT

Vs

D.N. Shrivastava

RESPONDENT

Date of Decision: Aug. 21, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Delhi Rent Control Act, 1958 - Section 14, 14(1), 14(2), 15, 15(1)
- Transfer of Property Act, 1882 - Section 106

Citation: (2009) 162 DLT 419

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Party in Person and Pankaj Gupta, Amicus Curia, for the Appellant; None, for the Respondent

Judgement

Manmohan, J.

Present petition has been filed under Articles 226 and 227 of Constitution of India challenging the orders dated 05th July, 2006 and 16th September, 2006 passed by the Additional Rent Control Tribunal, Delhi.

2. Since for the last five hearings, none has appeared for the respondent despite the respondent's Counsel having been specifically informed by Mr. Pankaj Gupta, Amicus Curiae, I am left with no other option but to proceed with the hearing of the matter. Accordingly, the present case is taken up for final disposal.

3. Petitioner-landlord who appears in person submitted that the Additional Rent Control Tribunal has decided the matter contrary to the explicit directions given by this Court vide judgment dated 01st December, 2005 in CM(M) 661/2003 while remanding the matter back to the Tribunal.

4. Briefly stated the material facts of this case are that petitioner-landlord let out one room with attached WC/bathroom on Barsati (top floor) of property bearing No. B-48, South Extension, Part-I, New Delhi-110049 to the respondent at a monthly rent of Rs. 700/-. Rent was payable in advance for each month on or before the 7th day of the concerned month.

5. Since the respondent-tenant did not pay rent for five months i.e. from May, 1992 to September, 1992 at the rate of Rs. 897/- prevalent at that time, petitioner-landlord issued a notice of demand dated 10th September, 1992 asking the respondent-tenant to pay not only the outstanding arrears of rent of five months but also up-to-date rent till the date of payment as well as the interest on arrears in accordance with Section 26(1) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "Act 1958") and other charges. However, as respondent-tenant only offered to pay outstanding arrears of rent of five months without any interest and without making payment of rent for October, 1992, which was due and payable by the said date, the petitioner-landlord refused to accept the same.

6. On non-acceptance of part payment of rent, respondent-tenant deposited on 23rd October, 1992 the said part payment before the Court below u/s 27 of the Act 1958.

7. On 31st March, 1993, the Additional Rent Controller passed an order u/s 15(1) of the Act 1958 giving benefit of first default u/s 14(2) read with Section 15(1) of the Act, 1958 to the respondent-tenant. The relevant portions of Sections 14 and 15 of Act, 1958 are reproduced hereinbelow:

14. Protection of tenant against eviction.

xxxxx xxxxx xxxxx

(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.

xxxxx xxxxx xxxxx

15. When a tenant can get the benefit of protection against eviction - (1) In every proceeding of the recovery of possession of any premises on the ground specified in Clause (a) of the proviso to Sub-section (1) of Section 14, the Controller shall, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the

period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate.

(2) If, in any proceeding for the recovery of possession of any premises on any ground other than that referred to in Sub-section (1), the tenant contests the claim for eviction, the landlord may, at any stage of proceeding, make an application to the Controller for an order on the tenant to pay to the landlord the amount of rent legally recoverable from the tenant and the Controller may, after giving the parties an opportunity of being heard, make an order in accordance with the provisions of the said subsection.

8. On 31st October, 1994, petitioner-landlord issued a notice to the respondent-tenant claiming statutory revision of rent w.e.f. 01st December, 1994 in accordance with Section 6A of the Act, 1958. Sections 6A and 8 of Act, 1958 are reproduced hereinbelow:

6A. Revision of rent. - Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent. every three years.

xxxxx xxxxx xxxxx

8. Notice of increase of rent. - (1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

9. Since the respondent-tenant failed to make payment of revised rent of three consecutive months, according to the petitioner-landlord, the respondent-tenant committed second default.

10. However, on 24th November, 1995, Additional Rent Controller modified the order dated 31st March, 1993 passed u/s 15(1) of the Act 1958.

11. On 01st December, 1997, petitioner-landlord issued another notice claiming revision of rent in accordance with Section 6A of the Act 1958. Since the respondent-tenant did not comply with the aforesaid notice, according to the petitioner-landlord, the respondent-tenant committed third default.

12. However, on 11th May, 1999, the Additional Rent Controller condoned this default by modifying the earlier order dated 31st March, 1993 passed u/s 15(1) of the Act, 1958.

13. According to petitioner-landlord, respondent-tenant committed fourth default in payment of rent when he failed to comply with the statutory notice dated 24th October, 2000 wherein the petitioner-landlord claimed another statutory revision of rent in accordance with Section 6A of the Act, 1958.

14. Subsequent to the year 2000, the respondent-tenant has without demur complied with all the notices issued by the petitioner-landlord seeking periodic revision of rent after every three years u/s 6A of the Act 1958.

15. The Courts below had on 24th November, 1995 and 11th May, 1999 modified the initial order dated 31st March, 1993 u/s 14(2) read with Section 15(1) of the Act 1958 and further as interest on outstanding rent was not considered as a default. Consequently, the eviction petition No. E-288/1992 was disposed of vide order dated 02nd July, 2003 by observing that there is no default in payment of rent which view was upheld by learned Additional Rent Control Tribunal vide judgment and order dated 28th August, 2003. Aggrieved thereby, petitioner-landlord filed CM(M) No. 661/2003, wherein this Court vide a detailed order held as under:

6. ...It goes without saying that even the increase of rent by ten per cent envisaged under the Delhi Rent Control Act, would be legally recoverable rent and if the increase of ten per cent, as demanded in accordance with law, has not been paid or tendered within two months of the service of notice upon the tenant, action would lie u/s 14(1)(a) of the Act. The tenant cannot claim protection of contractual rates for use and occupation of the premises contrary to the statutory mandate which makes it obligatory upon the tenant to pay interest on delayed payment of rent as also enjoins upon him to pay a ten per cent increase in rent over the period of time. Consequently, I hold that "rent" includes in its ambit "contractual rent" together with "interest on delayed payment", if any, as also "statutory increase of rent" for the purpose of eviction u/s 14(1)(a) of the Act.

16. After laying down the aforesaid proposition of law, this Court remanded the matter back to Rent Control Tribunal to dispose of the same in accordance with law.

17. Though respondent-tenant challenged this Court's order by way of a Civil Appeal No. 1968/2007, the same was dismissed vide order dated 19th May, 2009. The said order is reproduced hereinbelow for ready reference:

In our opinion, the High Court order has worked itself out since the tenant has complied with the order in the subsequent proceedings and it is reported before us that the Rent Controller has passed subsequent order as per the direction of remand passed by the High Court.

2. In that view, we are not interfering with the judgment of the High Court. However, the parties are free to take such steps as they are advised in law if they feel aggrieved by any further proceedings.

3. The appeal is dismissed.

18. In the meantime, the Additional Rent Controller vide impugned orders dated 05th July, 2006 and 16th September, 2006 held that there is no provision under the Act 1958 by which the petitioner-landlord can claim a default of payment of rent on account of non-compliance of notice for increase in rent during pendency of eviction petition u/s 14(1)(a) of the Act 1958. The relevant portion of the impugned order dated 05th July, 2006 is reproduced hereinbelow for ready reference:

14. The appellant has claimed a sum of Rs. 1132.99 paisa on account of interest for delayed payment. The respondent has not filed reply to the appeal nor the Ld. Counsel for the respondent has disputed the amount of Rs. 1132.99 paisa as interest for delayed payment.

15. In view of the aforesaid circumstances, a fresh order u/s 15(1) of the Act is passed with the direction to the respondent to pay to the appellant or deposit in the court of the Ld. Rent Controller a sum of Rs. 1132.99 paisa as interest for delayed payment of the rent within one month of the passing of the order so that he can get the benefit of the provision of Section 14(2) of the Act.

16. I do not find any merit in the contention of the appellant that the non-compliance of the notice for increase in the rent for continuously three months, may be treated as second default. It has been argued that such default may be treated as "deemed default" after getting the benefit of the provision of Section 14(2) of the Act. Benefit u/s 14(2) of the Act is to be granted by the Rent Controller and after grant of such benefit if the tenant makes a default in the payment of rent for three consecutive months, only then he will be liable to be evicted. There is no provision under the Act which can help the appellant to claim that the noncompliance of the notices for increase in rent during the pendency of the eviction petition u/s 14(1)(a) of the Act, may be treated as second default.

17. The provision of Section 14(2) of the Act reads as under:

no order for the recovery of possession of any premises shall be made on 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.

18. Thus, a landlord can seek eviction of the tenant u/s 14(2) of the Act only if the Controller has first given benefit of such default in the payment of rent to the tenant. There is no provision in the Act under which the Controller can hold that during the pendency of the eviction petition it can be held that with the compliance of the order passed u/s 15(1) of the Act, the tenant can be held to have availed "deemed benefit" and non-compliance of the notice to increase in the statutory rent can be treated as second default. The argument of the appellant is devoid of merit.

On the basis of such contention, a tenant cannot be evicted with the help of provision of u/s 14(2) of the Act.

19. To conclude, the appeal is allowed only to the extent that a modified order u/s 15(1) of the Act has been passed with the direction to the respondent/tenant to pay to the appellant or deposit in the court of Rent Controller of sum of Rs. 1132.99 paisa on account of interest for the delayed payment of rent, within one month of the passing of the order. If, the tenant will not comply the order then the appellant/landlord can seek further remedy in the court of the Rent Controller. Parties to bear their own costs.

19. Subsequently, on 16th September, 2006, the petitioner-landlord's review petition was also dismissed by the Tribunal.

20. Having heard petitioner-landlord in person and Amicus Curiae at length, I am of the view that the present case has to be decided in accordance with the observations made by this Court vide judgment dated 1st December, 2005 delivered in CM(M) No. 661/2003 while remanding the present case to the Tribunal. In the said judgment, this Court held that the expression "rent" includes in its ambit "contractual rent" together with "interest on delayed payment", if any, as also "statutory increase of rent" for the purposes of eviction u/s 14(1)(a) of the Act. Consequently, non-payment of statutory increase of rent, being a component of rent, would also give a right to a landlord to file an eviction petition u/s 14(1)(a) of the Act, 1958.

21. In Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), the Supreme Court has held that landlord is entitled to issue notice for statutory revision of rent during pendency of the eviction proceedings and is also entitled for the said statutory increase. The relevant portion of the said judgment is reproduced hereinbelow for ready reference:

10. Let us now deal with Issue Nos. 3 and 4. Since both these issues are interlinked, we shall deal with these two issues together. Let us first consider whether the respondent landlord could issue a notice u/s 6A of the Act for increase of rent when the petition for eviction of the appellant was pending before the Additional Rent Controller and when there had been an order to the tenant for deposit of rent on a month to month basis u/s 15 of the Act. In our view, the first appellate court as well as the High Court were fully justified in holding that it was open to a landlord to increase the rent of the suit premises by 10% after giving a notice u/s 6A of the Act. In this connection, it would be appropriate to reproduce Section 6A of the Act which talks about revision of rent and Section 8 of the Act which contemplates notice of increase of rent. Section 6A runs as under:

6A. Revision of rent - Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be

increased by ten per cent every three years.

From a bare perusal of this provision u/s 6A of the Act, it is evident that by this statutory provision, the standard rent and in cases where no standard rent is fixed under the Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by 10% every three years. It is, therefore, open to the landlord u/s 6A of the Act to increase the rent agreed upon between him and the tenant by 10 % every three years, irrespective of the fact that an eviction proceeding is pending and an order u/s 15 of the Act has been passed by the Additional Rent Controller except that when a land lord wishes to so increase the rent of any premises, a notice of increase of rent, as provided u/s 8 of the Act, has to be served on the tenant thereby intimating the tenant his intention to make the increase. Section 8 of the Act runs as under:

Notice of increase of rent - (1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under Sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882).

Therefore, if the landlord wishes to increase the rent of any premises at any time, only a notice expressing his intention to make such increase is required to be given to the tenant and Section 6A of the Act, as noted herein earlier, clearly permits the landlord to increase the rent by 10% every three years. In this view of the matter, after the completion of three years, it was open to the landlord at any point even during the pendency of an eviction petition to increase the rent of the suit premises after giving the prescribed notice to the tenant.

22. Consequently, the Tribunal's view that a landlord cannot seek increase of rent during pendency of eviction proceedings is untenable in law. I am further of the view that no prior declaration of default in payment of rent has to be made by the courts below before initiation of eviction proceedings under 14(1)(a) of the Act, 1958.

23. Moreover, from the scheme of the Act, 1958 it is apparent that while first instance of non-payment of rent can be condoned u/s 15(1), second default cannot be condoned provided the tenant has not paid rent including statutory revision of rent for three consecutive months.

24. In Budh Prakash Sethi v. Smt. Sumitra Devi and Ors. reported in 1981 (2) RCJ 265 this Court held that when an express order was passed u/s 15 of the Act and tenant deposited arrears of rent, then it must be taken that the tenant has enjoyed the benefit of Section 14(2) of the Act, 1958. In Kamla Devi v. Sadhu Ram reported in

2000 (2) RCJ 127 this Court further held that for every default on the part of the tenant, the landlord is entitled to issue a demand notice for arrears of rent, and if the same is not complied within the statutory period of two months, then landlord has a right to seek eviction on the ground of non-payment of rent. It was further held that the date on which appeal was accepted, will relate back to the date when eviction proceedings were initiated.

25. Accordingly, in the present case as respondent-tenant had availed the benefit of first default vide order dated 31st March, 1993 on account of non-payment of interest and rent for the month of October, 1992, respondent-tenant was liable to be evicted in case he once again failed to pay arrears of rent for three consecutive months. Admittedly, since in the present case respondent-tenant did not pay the statutory increase of rent within a period of three months, in my view, the Additional Rent Controller could not have, vide its orders dated 24th November, 1995 and 11th May, 1999, amended the order dated 31st March, 1993 and granted benefit of default in payment of rent u/s 15(1) of the Act, 1958 to respondent-tenant.

26. In view of aforesaid, present petition is allowed and it is held that petitioner-tenant has committed default in making payment of three statutory revision of rent and further that the first default having been condoned on 31st March, 1993, the Additional Rent Controller could not have granted respondent-tenant further benefit of default in payment of rent vide orders dated 24th November, 1995 and 11th May, 1999. Accordingly, respondent-tenant is liable to be evicted from the tenanted premises. Consequently, respondent-tenant is directed to vacate the premises on or before 31st December, 2009.

27. Before concluding, this Court would like to place on record its appreciation for the assistance rendered by Mr. Pankaj Gupta, Amicus Curiae.

28. With the aforesaid observations, present petition and pending application are disposed of.