(2010) 07 DEL CK 0413

Delhi High Court

Case No: CM (M) No. 842 of 2010 and CM No. 11414 of 2010

Mr. Suraj Bhan and Sh. Gopi Ram (since deceased through his L.Rs. Smt. Sharrati Devi and Others)		APPELLANT
	Vs	
Sh. Bharat Singh (since deceased through L.Rs. Sh. Om Prakash Mittal, Smt. Suraj Mukhi, Smt. Dhanpati Gupta and Smt. Laxmi Devi Beniwala), Sh. Kripa Ram (since deceased through his L.Rs. Smt. Khillo and Others) and Sh. Tara Chand (since deceased through his L.Rs. Sh. Dev Kumar and Others)		RESPONDENT

Date of Decision: July 15, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Delhi Rent Control Act, 1958 - Section 14(1), 14(2), 15(1), 38

Citation: (2010) 171 DLT 619

Hon'ble Judges: Vidya Bhushan Gupta, J

Bench: Single Bench

Advocate: J.P. Singh and Rajiv Aneja and Sumeet Batra, for the Appellant; Nemo, for the Respondent

Final Decision: Dismissed

Judgement

V.B. Gupta, J.

Present petition has been filed under Article 227 of the Constitution of India, praying for setting aside order dated 26th March, 2010 passed by Ms. Bimla Makin, District Judge-VIII, Rent Control Tribunal (for short as "Tribunal") Delhi and in consequence

thereof set aside orders dated 16th October, 2008, 8th September, 2008, 12th May, 2008 and 14th January, 2008 passed by Mr. Amit Kumar, Additional Rent Controller, Delhi and further to set aside order dated 8th May, 2008, passed by Sh. Chander Sekhar, Rent Control Tribunal.

2. The facts as apparent from the record of this case are that, respondent No. 1 Sh. Bharat Singh (Since deceased) and respondent No. 2 Sh. Kirpa Ram (Since deceased) filed an eviction petition on the grounds u/s 14(1), (a), (c) and (j) of Delhi Rent Control Act, 1958 (for short as Act) stating that suit property i.e Shop No. 2081, on plot No. 16, Narela Mandi, Narela, Delhi, was let out to petitioner Nos. 1 and 2 (since deceased) at a monthly rent of Rs. 66/10/ 9 and the same had not been paid by petitioner Nos. 1 and 2 since 1st July, 1962 for which recovery suit was instituted against them. It was further alleged that rent from 1st July 1962 is due as on date of filing of this petition (2nd March, 1996).

3. It was also alleged that property was let out for commercial purposes but petitioner Nos. 1 and 2 are using part of it for residential purposes which is detrimental to the respondents interest and petitioners have caused or permitted to cause substantial damage to the suit property.

4. It was further alleged that 1/3rd share in this shop had been sold to Sh. Tara Chand (since deceased), respondent No. 3 herein, on 5th June, 1965 by way of registered Sale Deed. No relief was claimed against respondent No. 3.

5. Respondent No. 3 never appeared before the trial court and always remained ex parte.

6. In the written statement filed by present petitioners, they took the plea that they are the owners of this property as they have purchased it from Smt. Bhagirathi, who was also one of the co-owners apart from the respondents and thus they are not liable to pay any rent to the respondents being co-owner of this property.

7. Other defence taken in the written statement was that property has been used for shop, godown and residence since start of the tenancy and there is no nuisance or detrimental use against the interest of the respondents. Further no substantial damage has ever been caused by the petitioners.

8. The eviction petition was initially adjourned sine-die on 5th November, 1964 for the reasons that the title of the property was in dispute which could only be settled by Civil Court. Hence the parties were directed to establish their title and then reopen the case.

9. Thereafter, there was series of litigations between the parties which attained finality on 3rd August, 2000 when SLP filed by present petitioners against judgment of this Court given in RFA No. 345/1979 and RFA No. 19/1971, was dismissed.

10. Prior to that, this Court in litigation between respondents and petitioner No. 2 pronounced its judgment on 1st December, 1999 in RFA No. 19/197 1, RFA No. 16/1971 and RFA No. 345/1979, wherein it was held that respondents are owner of this property and petitioner Nos. 1 and 2 have no right, title and interest in this property. The suit of respondents was decreed by this Court and that of petitioner Nos. 1 and 2 was dismissed.

11. It is worthwhile to mention here that all the original parties in this case have expired and their legal heirs have been brought on record in SAO No. 231/84, which was second appeal filed by respondents against order of Additional Rent Controller (for short as "Controller")

12. On 14th January, 2008, in the eviction petition, the Controller passed an order u/s 15(1) of the Act holding;

That respondents are entitled to the arrears of rent and as such petitioner Nos. 1 and 2 were directed to pay rent or deposit the rent at the rate of Rs. 66.10 anna per month w.e.f July, 1965 till 30th November, 1988 and from 1st December, 1988 till 31st December, 2007 at the said rate along with 15 per cent interest as required after the amendment of 1st December, 1988 in the Act within 30 days from 14th January, 2008.

13. Petitioners thereafter, preferred an appeal against order dated 14th January, 2008, passed by Controller. However, the same was dismissed as withdrawn on 8th May, 2008 by Sh. Chander Shekhar ("Tribunal").

14. After withdrawal of their appeal petitioners filed an application before the Controller seeking extension of time to comply with order dated 14th January, 2008, passed u/s 15(1) of the Act.

15. Vide order dated 12th May, 2008, the Controller dismissed the application of petitioners holding:

That record also shows that appeal was dismissed on 08.05.08 and even thereafter, the respondents did not make any effort on the next working day to deposit the amount which is as meager as Rs. 66/- per month. I find no force in the contention of the counsel for the respondent since when Hon''ble Supreme Court of India has already decided against the respondents, there was no occasion of this Court to hold otherwise passing of the orders u/s 15(1) of DRC Act was a mere formality when the service of notice is not disputed in the WS/reply by the respondents. The case pertains to the year 1966 and the respondents by one mean or the other are trying to delay the trial of this case.

In facts, I find no merits in the present application seeing extension of time for compliance of the orders u/s 15(1) of DRC Act. the application is motivated and the same is, therefore, dismissed.

16. Thereafter, vide impugned judgment dated 8th September, 2008, the Controller held that relationship between the parties is not at all in dispute and petition u/s 14(1)(a) of the Act was allowed, while petition filed u/s 14(1) (c) and (j) of the Act was dismissed.

17. Later on, vide order dated 16th October, 2008, the Controller declined the benefit of Section 14(2) of the Act and passed an eviction order on the ground of non-payment.

18. Order dated 16th October, 2008, of the Controller was challenged by the present petitioners by filing an appeal u/s 38 of the Act before the Tribunal.

19. The Tribunal, vide impugned judgment dated 26th March, 2010, dismissed the appeal of the present petitioners.

20. This is how the present matter has reached before this Court.

21. It is contended by learned Counsel for the petitioners that u/s 15(1) of the Act, an obligation has been cast upon controller to calculate and quantify the amount of rent to be paid by the tenant and if the same is not done, then order passed u/s 15(1) of the Act is untenable and cannot be complied with by the tenant. Therefore, the same is required to be set aside.

22. It was further contented that it is never the duty of either tenant or landlord to calculate the rent and on this point learned Counsel referred a decision of Supreme Court reported as;

Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, .

23. Other contention of learned Counsel is that ,if the rent is not calculated by the controller and parties deposit the same on their own calculation, then the controller cannot simplicitor deny the tenant relief u/s 14(2) of the Act and proper opportunity ought to have been given to the tenant to make good the shortfall, if any. In the present case, petitioners never got any proper opportunity to deposit the actual arrears of rent due and payable as the same never quantified by the Controller.

24. Other contention is that the District Judge (Tribunal) erred in absolving the Controller or Nazir from their duty of quantifying/calculating the actual rent by saying that Nazir did not get any time for submitting the report despite the fact that Nazir never submitted its report in the present matter.

25. Another contention made by learned Counsel is that respondents were landlord only qua 1/3rd of undivided suit property i.e. shop No. 2081 in Narela Mandi and were owners of 1/3rd of undivided portion of other two properties i.e. shop No. 2067 and 2080 at Plot No. 32 and 45, in Narela Mandi. Thus, a serious miscarriage of justice has been done by the Controller while awarding the entire amount of rent for 1/3rd undivided portion.

26. Lastly, it is contended that intention of the appellants was to comply with the order but in the judicial file, there was no calculation/report submitted by Nazir, that the alleged amount as referred in the order as Rs. 56,141.45/- has been mentioned or any report is given thereto. Thus, the Tribunal and the Controller in a mechanical manner passed the order without application of judicial mind.

27. Present petition has been filed under Article 227 of the Constitution of India. It is well settled that jurisdiction of this Court in this Article is limited. Article 227 of The Constitution of India reads as under;

227. Power of superintendence over all courts by the High Court- (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may-

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein;

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed forces.

28. In Waryam Singh and Another Vs. Amarnath and Another, , the court observed;

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C. J., in - Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

29. In Mohammed Yusuf v. Faij Mohammad and Ors. 2009 (1) SCALE 71 SC held;

The jurisdiction of the High Court under Article 226 & 227 of the Constitution is limited. It could have set aside the orders passed by the Learned trial court and Revisional Court only on limited ground, namely, illegality, irrationality and

procedural impropriety.

30. In State of West Bengal and Others Vs. Samar Kumar Sarkar, Supreme Court held;

10. Under Article 227, the High Court has been given power of superintendence both in judicial as well as administrative matters over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to Courts and the Tribunals of every kind that the Constitution conferred the power of superintendence on the High Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the Court or the Tribunal subject to its superintendence.

12. In AIR 1975 1297 (SC) this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. High Court''s function is limited to see that the subordinate court or Tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.

31. In Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, , Apex Court observed;

The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

32. In light of principles laid down in the above decisions of Supreme Court, it is to be seen as to whether present petition under Article 227 of the Constitution of India against impugned orders is maintainable or not.

33. It is an admitted case of the petitioners that order u/s 15(1) of the Act was passed by the Controller on 14th January, 2008, directing the petitioners to deposit the arrears of rent from July, 1965 till December, 2007, within a period of 30 days.

34. Admittedly, the petitioners did not deposit any rent/arrears of rent in terms of order dated 14th January, 2008. Instead petitioners preferred an appeal against order of the Controller. For reasons best known to the petitioners they withdrew the appeal on 8th May, 2008.

35. After withdrawal of the appeal, petitioners filed application before the Controller seeking extension of time to comply with order dated 14th January, 2008. While dismissing the application of the petitioners, the Controller observed;

That record also shows that appeal was dismissed on 08.05.08 and even thereafter, the respondents did not make any effort on the next working day to deposit the amount which is as meager as Rs. 66/- per month.

36. This shows about the callous attitude on behalf of the petitioners, who had no intention to comply with the order dated 14th January, 2008. Under these circumstances, the Controller vide his order dated 16th October, 2008, was justified to decline the benefit of Section 14(2) of the Act and rightly passed eviction order on the ground of non-payment. In this regard, relevant findings of the Controller read as under:

I have heard the submissions. As per the orders of 15(1) DRC Act, the respondents were directed to pay interest only w.e.f. 01.12.88 and as such I find no reason to agree with the counsel for the petitioner that they are entitled to interest even for the arrears of rent accrued up to 30.11.1988 and the petitioners are entitled to interest only w.e.f. 01.12.88. However, for the reasons that orders u/s 15(1) DRC Act dated 14.01.08 were to be complied with within 30 days which admittedly was not done. The appeal filed by the respondents against this order was withdrawn by them of their own and also considering the fact that their application for extension of time was rejected by this Court and most importantly considering the fact that their battle to be of owner of the property was lost up to the Hon''ble Supreme Court of India in 2000. I find no reason to hold that the default is not willful. The respondents despite all these adverse findings against them as early as in 2000 from the Hon''ble Supreme Court of India took the risk of not compliance of the orders of their own and now, they cannot claim that there are still entitled to the benefit of Section 14(2) DRC Act.

There is another side of the matter that is the rent from 01.07.1965 up to 30.11.1988 for 281 month @ Rs. 66.60 paisa (approximately) comes to Rs. 18,714.60 paisa, the rent from 01 .12.1988 to 15.3.2008 at the same rate for 231 1/2 months comes to Rs. 15,41 7.90 paisa, the interest on this amount of Rs. 15,417.90 comes to Rs. 22,048.95 paisa which in all comes to Rs. 56,181.45 paisa. Against this amount only a sum of Rs. 38.355/- has been deposited by the respondent which otherwise is not a complete deposit and all these cumulative facts, I am of the opinion that the respondents have committed a willful and deliberate default in compliance of orders 15(1) DRC Act and as such are not entitled to the benefit of 14(2) DRC Act. Appeal against this order was withdrawn by them, the application for extension of time was rejected and in facts, they are declined the benefit of Section 14(2) DRC Act and an eviction order is passed on the ground of non-payment of rent in respect of the suit premises i.e. Shop No. 2081 on Plot No. 46, Narela Mandi, Delhi. More specifically shown red in the site plan Ex. PW 1/2.

37. Order dated 16th October, 2008 was challenged before the Tribunal. The Tribunal rightly, vide impugned judgment dated 26th March, 2010, dismissed the appeal of the petitioners holding that:

I have considered the arguments advanced by the advocates for the parties. I have carefully gone through the written submissions filed on behalf of the appellant and the respondent and have perused the trial court record carefully. The first ground of the appeal was the passing of the order dated 14.1.2008 u/s 15(1) of the Delhi Rent Control Act. Ld. Counsel for the appellant calculated the rent alongwith interest as Rs. 38,355/-. That amount was given by the appellants to their advocate for depositing in the court but ld counsel neglected to deposit the rent. On 12.5.2008 the appellants came to know that the amount given by them to their advocate was not deposited by him in the court. So immediately on 13.5.2008 they deposited the amount in the court. This contention raised by ld counsel is contrary to the record. After passing of the order dated 14.1.2008 the appeal was preferred by the appellants before the Rent Control Tribunal and that appeal was unconditionally withdrawn by the appellants on 8.5.2008 and on 9.5.2008 an application was moved by the appellant herein before ld ARC seeking extension of time to comply with the order dated 14.1.2008 and it was written in this application that:

Since the order was challenged by the respondents before the appellate court and as advised by the ld counsel, the amount in terms of the order dated 14.1.2008 was not deposited and ld Rent Control Tribunal was pleased to direct the respondents to move this Hon''ble Court for extension of time and without any further delay the respondent is filing the application for extension of time.

So there was no even a whisper in this application that this amount was given by them to their advocate who did not deposit it in the court. In the grounds of appeal it was projected that the appellant honestly gave the rent amount to the advocate for depositing it in the court but it was the advocate who committed default in depositing the rent in the court and the appellant should not be penalized for negligence of his advocate whereas the case is otherwise and even in the order dated 12.5.2008 ld. ARC observed that during the period of last four months no application for extension of time was moved by the appellant and hence there was a willful default on their part and there was no ground to grant extension of time and only after rejection of this application for extension of time for depositing the rent on 12.5.2008 the appellant deposited the rent on 13.5.2008.

It was also submitted on behalf of the appellant that Nazir never gave any report that what was the rent due and what was the shortfall. In fact there was no occasion for the Nazir to give any report because after passing of the order on 14.1.2008 the appellant never approached the Nazir for any calculation that what amount was to be deposited by them. For the first time on 13.5.2008 without moving an application to the Nazir for giving any calculation and after rejection of the application for extension of time they suo moto deposited the money. So there was no occasion for

the Nazir to give any report that what was the shortfall in the amount deposited by the appellants.

The third ground of appeal was that ld. ARC adopted the wrong method of calculating the amount due from the appellants. The appellants have given their own calculation according to which a sum of Rs. 840/- per year was due as a rent and a sum of Rs. 126/- was due as interest on this amount per annum. Per-se the calculation given by the appellants is wrong because after the amendment of 1988 the interest at the rate of 15% p.a. is payable on the rent due and the rent is due every month. So automatically the interest has to be calculated every month on the rent due on a particular month and the law does not provide that yearly interest is to be calculated because a sum of Rs. 840/- which is the rent per year is not due after the expiry of one year. It is due every month. During the course of arguments ld counsel for the appellants admitted that there was a bonafide mistake in calculating the amount which was required to be deposited in the court. Hence, I hold that there is no substance in the appeal.

38. This contention of learned Counsel for petitioners that u/s 15(1) of the Act, an obligation has been cast upon controller to calculate and quantify the amount of rent to be paid by the tenant and if the same is not done, then order passed u/s 15(1) is untenable and cannot be complied with by the tenant, is devoid of any force. As per Section 15(1) of the Act no such obligation has been cast upon the Controller. This provision reads as under;

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.

39. Thus Rakesh Wadhawan (Supra), cited by learned Counsel for the petitioners is not applicable to the facts of the present case.

40. Now, coming to the contentions of the petitioners that, respondents were landlord only qua 1/3rd of the undivided suit property. This issue had been dealt by the Controller, who vide order dated 16th October, 2008 categorically held;

Most importantly considering the fact that their battle to be of owner of the property was lost up to the Hon''ble Supreme Court of India in 2000. I find no reason to hold that the default is not willful. The respondents despite all these adverse

findings against as early as in 2000 from the Hon''ble Supreme Court of India took the risk of not compliance of the orders of their own and now, they cannot claim that they are still entitled to the benefit of Section 14(2) DRC Act.

41. Coming to the plea of the petitioner''s counsel that Nazir never gave any report as to what was the rent due and what was the shortfall. In this regard findings of the Tribunal in its judgment dated 26th March, 2010, are reproduced as under;

It was also submitted on behalf of the appellant that Nazir never gave any report that what was the rent due and what was the shortfall. In fact there was no occasion for the Nazir to give any report because after passing of the order on 14.1.2008 the appellant never approached the Nazir for any calculation that what amount was to be deposited by them. For the first time on 13.5.2008 without moving an application to the Nazir for giving any calculation and after rejection of the application for extension of time they suo-moto deposited the money. So there was no occasion for the Nazir to give any report that what was the shortfall in the amount deposited by the appellants.

42. Though, Section 14(1)(a) of the Act is a ground for eviction of a tenant for default in payment of rent, but inspite of that, protection has been given u/s 15 of the Act to the tenant to avail of the protection given by the Legislature by depositing rent in the manner indicated in Section 15 of the Act. However, proviso to Section 14(2) of the Act takes away the right of a tenant of the benefit of Sub-section (2) of Section 14 if the tenant having obtained such benefit once in respect of any premises and makes a further default in payment of rent of those premises for three consecutive months. Therefore, it has been made clear that when the tenant makes a second default, no protection can be given to the tenant for eviction.

43. Lastly, the benefit u/s 14(2) of the Act could not have been given to such a tenant who despite suffering a decree u/s 14(1)(a) of the Act fails to pay rent regularly and again commits defaults in payment of rent.

44. Hence, after going through the entire record and after giving due consideration to the judgments passed by the Court below, I do not find any reason to disagree with their findings.

45. The impugned judgments are well reasoned and no infirmity, irrationality or ambiguity can be found in the impugned judgments. Accordingly, present petition is not maintainable and same is hereby dismissed.

CM No. 11414/2010

46. Dismissed.

47. Copy of this Judgment be sent to the trial court.