

Ram Murti

Vs

Bhola Nath and Another

Civil Appeal No 3256 of 1982

(A. P. Sen, M. P. Thakkar JJ)

01.05.1984

JUDGMENT

A. P. SEN J. -

1. This appeal by special leave by the appellant Ram Murti is directed against the judgment of the Delhi High Court dated August 10, 1982 dismissing his second appeal under Section 39 and upholding the judgment and order of the Rent Control Tribunal dated August 23, 1977 affirming an appeal against the order of the Second Additional Rent Controller, Delhi dated March 8, 1976 and directing his eviction from the suit accommodation under Section 14 (1) (a) of the Delhi Rent Control Act 1958.

2. It is common ground that the parties stand in the relation of landlord and tenant. Respondent I Bhola Nath who is the landlord made an application dated December 18, 1968 claiming eviction of the appellant and respondent 2 Basant Lal who is his brother-in-law on the ground mentioned in Section 14 (1) (a) and (b) of the Act. It was alleged that although the appellant had taken the premises on rent from the Custodian of Evacuee Properties Rs 18 per month he vacated the premises after respondent 1 acquired the same and there was a new tenancy created in his favour on March 1, 1961 on a monthly rent of Rs. 80. On an application made by respondent 1, the Additional Rent Controller by his order dated February 14, 1969 passed under Section 15 (1) of the Act directed the appellant to deposit rent Rs. 18 per month w. e. f. December 1, 1965 and to deposit the future rent at the same date on the fifteenth day of each succeeding month. The second Additional Rent Controller by his order dated March 8, 1976 directed th

3. Aggrieved by the order of the Rent Control Tribunal affirming that of the learned Additional Rent Controller the appellant preferred a second appeal before the High Court under Section 39 of the Act but the High Court declined to interfere with the order of eviction passed under Section 14 (1) (a). The High Court relying upon the decision of this Court in Hem Chand v. Delhi & General Mills Co Ltd. (1978) 1 SCR; (1977) 3 SCC 483; AIR 1977 SC 1986 held that the Rent Controller had no power to extend the time prescribed by an order under Section 15 (1) which requires the tenant to deposit the arrears of rent within one month from the date of the order and future rents by the fifteenth day of the each succeeding month.

4. It is contended by learned counsel for the appellant placing reliance on later decision of this Court in Shyamcharan Sharma v. Dharamdas (1980) 2 SCR 334; (1980) 2 SCC 151; AIR 1980 SC 587 that inasmuch as the Rent Controller has a discretion under Section 15 (7) of the Act not to strike out the defence of a tenant for committing default in making payment or deposit of the rent as required by Section 15 (1) he has by necessary implication the power to condone the default in

making payment or deposit of future rent falling due after the institution of the proceedings as required under Section 15 (1) and also to extend the time for such payment or deposit.

5. In his reply learned counsel for respondent 1 has made a two-fold submission (1) In Hem Chand case (1978) 1 SCR 241; (1977) 3 SCC 483; AIR 1977 SC 1986 the Court held that when the tenant fail to make a deposit of the future rent in compliance with the order passed under Section 15 (1) against him a right to obtain an order recovery of possession under Section 14 (1) (a) accrues to the landlord and the Rent Controller has no power to condone the default of the tenant by extending the time for the payment. It us urged that the Court in Hem Chand case (1978) 1 SCR 241; (1977) 3 SCC 483; AIR 1977 SC 1986 interpreted the provision of Section 15 (1) in the context of Section 14 (1) (a) read with Section 14 (2) with which we are concerned and that the later decision in Shyamcharan case (1980) 2 SCR 334; (1980) 2 SCC 151; AIR 1980 SC 587 which relates to the Madhya Pradesh Accommodation Control Act 1967 having a different scheme altogether has no application to the present case. And (2) the tenant having committ

6. In order to deal with the rival contentions, it is necessary to set out the relevant statutory provisions. Sub-section (1) of Section 14 of the Act read with the proviso thereto, provides that, notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant, except on one or more of the grounds mentioned in clauses (a) to (l), set out in the proviso, subject to the conditions and qualifications mentioned in sub-sections (2) to (11). Sub-section (2) qualifies the right given to the landlord to recover possession under Section 14 (1) (a), and it reads :

14. (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 to 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.

When the tenant gets benefit of this protection is provided for by Section 15 which, insofar as relevant, reads as follows :

15. (1) In every proceeding for 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.

Sub-section (2) of Section 15 deals with the situation where 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 the 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 sub-section. Sub-section (3) lays down that if, in any proceeding referred to in sub-section (1) or sub-section (2), there is any dispute as to the amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of the first hearing of the proceeding, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions

15. (6) If a tenant makes payment or deposit as required by sub-section (1) or sub-section (3), no order shall be made for the recovery of possession on the ground of default in the payment of rent by the tenant, but the Controller may allow such costs as he may deem fit to the landlord.

Sub-section (7) provides for striking out the defence of the tenant when he fails to make payment or deposit as required by sub-section (7) of Section 15. It runs as follows :

15. (7) If a tenant fails to make payment or deposit as required by this section, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application.

7. From a conspectus of these provisions, it would be seen that the various sub-sections of Sections 14 and 15 form an integrated process seeking to strike a balance between the conflicting rights of the landlord to secure eviction of the tenant on any one or more of the grounds specified in the proviso to sub-section (1) of Section 14 and that of the tenant for protection against such eviction except under certain circumstances. The predominant object and purpose of the legislation, as a matter of social control, is to prevent eviction of tenants and to provide for control of rents etc. One must therefore give a meaningful interpretation to the various sub-sections of Sections 14 and 15 in furtherance of the purpose and object of the legislation.

8. The right of the landlord to claim eviction of the tenant on the ground that he has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him under Section 14 (1) (a) is made subject to the provisions of Section 14 (2). The opening words of Section 14 (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) ", clearly subordinate the landlord's claim for eviction on the ground of default in payment of rent to the statutory protection given to the tenant under Section 14 (2) against eviction on that ground on condition that he makes payment or deposit as required under Section 15. When a tenant can get the benefit of the protection under Section 14 (2) is provided for in Section 15 (1). Section 15 (1) of the Act is two parts. The first part requires the tenant to pay or deposit within

9. The narrow construction placed by the Full Bench of the Delhi High Court in *Delhi Cloth & Genera Mills Co. Ltd. v. Hem Chand* on the powers of the Controller contained in Section 15 (7) in the context of Section 14 (2) does not appeal to reason. It is not inconceivable that the tenant might fail to comply with the requirements of Section 15 (1) by the date line (sic) due to circumstances beyond his control. For instance, it might not be possible for the tenant to attend the court to make the deposit on the last day if it is suddenly declared a holiday or on account of a serious accident to himself or his employee, or while going to the treasury he is way-laid, or is stricken with sudden

illness, or held up on account of riots or civil commotion, or for that matter a clerk of his lawyer entrusted with the money, instead of punctually making the deposit commits breach of trust and disappears, or some other circumstances intervene which make it impossible for him for reasons beyond his control to physically m

10. In *Santosh Mehta v. Om Prakash*, it was pointed out that the provision contained in Section 15 (7) was a penal provision and in terms by the use of the word 'may' gave to the Controller a discretionary power in the matter of striking out of the defence and that, in appropriate cases, the Controller may refuse to visit upon the tenant the penalty of eviction for failure to pay or deposit the future rent. In that case, the tenant paid the amount to the advocate appearing for her but he betrayed her trust. In those circumstances, it was held that the Rent Controller could not have visited upon her the penal consequences of Section 15 (7) and should not have struck out the defence as this drastic power was meant for use only where a recalcitrant tenant was guilty of wilful or deliberate default in payment of future rent. It logically follows that if the Rent Controller has the power not to strike out the defence of the tenant under Section 15 (7) of the Act, he necessarily has by legal implication the power t

11. In *Hem Chand* case this Court partly reversed the Full Bench decision of the Delhi High Court in *Delhi Cloth & General mills Co. Ltd. v. Hem Chand* holding that the default on the part of the tenant to comply with the requirements of Section 15 (1) vests an indefeasible right' in the landlord and is not merely procedural right and therefore the Rent Controller was bound to pass order for eviction under Section 14 (1) (a) of the Act and Rent Controller had no power to condone the default by the tenant in making payment or deposit of arrears of rent within one month of the date of the order of the Rent Controller or of future rent month by month, by the fifteenth of each succeeding month. The underlying fallacy lay in the wrongful assumption by the Full Bench that Section 14 (2) was meant for the protection of the landlord. This Court while reversing the judgment of the Full Bench observed : (SCC pp. 488-89, para 8)

While we agree with the view of the Full Bench that the Controller has no power to condone the failure of the tenant to pay arrears of rent as required under Section 15 (1), we are satisfied that the Full Bench fell into an error in holding the right to obtain an order for recovery of possession accrued to the landlord. As we have set out earlier in the event of the tenant failing to comply with the order under Section 15 (10) the application will have to be heard giving an opportunity to the tenant if his defence is not struck out under Section 15 (7) and without hearing the tenant if his defence is struck out. The Full Bench is therefore in error in allowing the application of the landlord on the basis of the failure of the tenant to comply with an order under Section 15 (1).

In the concluding part of the judgment, there is an observation to the effect : (SCC p. 489, para 9)

The Rent Control Act protects the tenant from such eviction and gives him an opportunity to pay the arrears of rent within two months from the date of notice of demand as provided in Section 14 (1) (a). Even if he fails to pay, a further opportunity is given to the tenant to pay or deposit the arrears within one month under Section 15 (1). Such payment or deposit in compliance with the order under Section 15 (1) takes away the right of the landlord to claim recovery of possession on the ground of default in payment of rent. The Legislature has given statutory protection to the tenant by affording him an opportunity to pay the arrears of rent within one month from the date of the order. This statutory provision cannot be modified as rights of parties depend on the compliance with an order under Section 15 (1). In the circumstances, we agree with the Full Bench that the Rent Controller has no discretion to extend the time prescribed under Section 15 (1).

With respect, the observations in Hen Chand case expressing the view that the Rent Controller has no power to extend the time prescribed in Section 15 (1) cannot be construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under Section 14 (1) (a) without anything more due to the failure on his part to comply with the requirements of Section 15 (1). The question would still remain as to the course to be adopted by the Rent Controller in such a situation in the context of Section 15 (7) which confers on the Rent Controller a discretion not to strike out the defence of the tenant in the event of the contingency occurring, namely, failure on the part of the tenant to meet with the requirements of Section 15 (1).

12. We must mention that the scheme of the Madhya Pradesh Accommodation Control Act, 1961 is almost similar with regard to the claim of the landlord for eviction of the tenant on the ground that he has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for arrears of rent has been served on him under Section 12 (1) (a) of that Act, except for the difference that under that Act the landlord has to bring a suit for eviction before a Civil Court under Section 12 (1) (a) instead of an application before the Rent Controller under Section 14 (1) (a) as in the Delhi Act. Further, the difference is that the Civil Court is expressly given the power under Section 13 (1) in the event of a failure on the part of the tenant to pay the arrears of rent within two months from the date of the notice of demand under Section 12 (1) (a), to extend the time for deposit or payment of the arrears due on the date of the institution of the

13. Under the terms of Section 13 (1) of the Madhya Pradesh Accommodation Control Act, a tenant in default of a suit or proceeding being instituted by the landlord on any ground referred to in Section 12 is required to deposit the arrears of rent within one month of the writ of summons on him or within such further time as the Court may allow and shall thereafter continue to deposit or pay, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate. In a series of decisions, the Madhya Pradesh High Court uniformly took the view that though the Court had power to extend the time for deposit or payment of the arrears due till the institution of the suit, it had no power to extend the time for deposit or payment of future rent. The High Court was of the view that even if a tenant in default had complied with the first requirement i.e. made deposit or payment of the arrears within one month of the service of the writ of summons on him or within such further time as the C

14. In Shyamcharan case this Court reversed the view of the Madhya Pradesh High Court on the question as to whether the Court had the power to grant further time under Section 13 (1) of the Madhya Pradesh Act for payment or deposit of future rent. It was held that if the Court has discretion under Section 13 (7) not to strike out the defence of a tenant committing default in payment or deposit as required under Section 13 (1), the Court surely has the further discretion to condone the default and extend the time for payment. It was observed that another construction may lead, in some cases, to a perversion of the object of the Act namely, "the adequate protection of the tenant". Section 12 (3) entitles a tenant to claim protection against eviction on the ground specified in Section 12 (1) (a) if the tenant makes payment or deposit as required by Section 13. On the construction of Section 13 that the Court has the power to extend the time for payment or deposit, it must follow that payment or deposit within t

15. As to the absence of an express provision for extension of time for deposit or payment of future rent, it was said : (SCC pp. 154-55, para 40)

Obviously, express provision for extension of time for deposit or payment of rent falling due after

the filing of the suit was not made in Section 13 (1) as the consequence of non-payment was proposed to be dealt with by a separate sub-section, namely Section 13 (6). Express provision had to be made for extension of time for deposit or payment of rent that had accrued prior to the filing of the suit, since that would ordinarily be at a very early stage of the suit when a written statement might not be filed and there would, therefore, be no question of striking out the defence and, so, there would be no question of Section 13 (6) covering the situation.

In Shyamcharan case, the Court did not find any justification for adopting a narrow construction of Section 12 (3) and Section 13 (7) read in the context of Section 13 (1) and relied upon a decision of this Court in B. C. Kame v. Nemi Chand Jain where on an application made by the tenant, time for deposit or payment was extended. It was pointed out that in that case there was default both in payment of the arrears of rent that had accrued before the filing of the suit and in payment or deposit of the monthly rent that fell due after the filing of the suit.

16. It would be incongruous to hold that even if the defence of the tenant is not to be struck out under Section 15 (7), the tenant protection under Section 14 (2). In Hem Chand Case the Court went to the extent of laying down that even if the defence of the tenant is struck out under Section 15 (7), the Rent Controller could not straightaway make an order for eviction in favour of the landlord under Section 14 (1) (a). The Court held that the High Court was wrong in its assumption that failure to comply with the requirements of Section 15 (1) vests in the landlord an indefeasible right to secure an order for the eviction of the tenant under Section 14 (1) (a). The Court set aside the judgment of the High Court taking that view and remanded the matters to the Rent Controller observing that there was still an issue to be tried. If that be so, the question at once arises " What is the issue to be tried ? ". If the landlord has still to make out a case before the Rent Controller that he was entitled to an order

17. The further contention advanced by learned counsel for the respondents that in a case of consecutive defaults the proviso to Section 14 (20) is attracted, cannot be accepted for obvious reasons. On a plain construction, it provides that no tenant shall be entitled to the benefit under Section 14 (2) is attracted, cannot be accepted for obvious reasons. On a plain construction, it provides that no tenant shall be entitled too the benefit under Section 14 (2) if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent for that premises for three consecutive months. On a plain construction, the proviso is attracted only in a case where the tenant has been saved from eviction in an earlier proceeding for eviction before the Rent Controller under Section 14 (1) (a) of the Act. i.e. the tenant must have enjoyed the benefit of Section 14 (2) in a previously instituted proceeding.

18. In the premises, we cannot but reverse the view expressed by the High Court that the Rent Controller has not power to condone the default on the part of the tenant in making payment or deposit of future rent or to extend time for such payment or deposit. We are constrained to set aside its judgment and order as well as the order of the Rent Control Tribunal and that of the Rent Controller which proceed to order the eviction of the appellant under Section 14 (1) (a) of the Delhi Rent Control Act, 1958 upon that basis and the matter must be remitted back to the Rent Controller for a decision afresh. The Rent Controller shall now consider the question of exercising his discretion to condone the delay in making the payment or deposit for the rents which fell due for the months of May, June, July and August, 1975 in accordance with law. He shall further consider whether the appellant has to be evicted in terms of Section 14 (1) (a) keeping in view the provisions contained in Section 14 (2) and Section 15 (6)

19. The result therefore is that the appeal succeeds and is allowed. The judgment and order of the High Court and the order of the Rent Control Tribunal and that of the Rent Controller are set aside and the matter is remanded back to the Rent Controller for a decision afresh, with advertence to the observations made above.

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