

Subhash Mehta

Vs

S. P. Choudhary (dead) by Lrs

Civil Appeal No. 355 of 1981

(Ranganath Misra, M.M. Punchhi, S.C. Agarwal JJ)

20.02.1990

JUDGMENT

PUNCHHI, J. -

1. For the view we take in this appeal by special leave and leaning as we would be on our discretionary power under Article 136 of the Constitution, no elaborate details are necessary of the facts involved therein and for its disposal by a brief order.
2. The appellant, Subhash Mehta, more than two decades ago obtained a residential lease of the first floor in premises bearing No. D-32, South Extension, Part II, New Delhi from Dr. S. P. Choudhary (now dead) that landlord who was himself residing on the ground floor thereof. The settled rent was Rs. 800 per mensem. The landlord on November 27, 1972 served a notice on the tenant demanding arrears of rent from September 1, 1972 onwards. The demand having not been met he instituted an eviction petition before the Rent Controller, Delhi on March 13, 1973 on grounds of non-payment of rent as also on other grounds. On June 1, 1973 the Rent Controller passed an order under Section 15(1) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Act') directing the tenant to deposit arrears of rent within one month from the date of the order and further to pay month to month rent by the 15th of every calendar month. The appellant, within the period allowed, deposited Rs. 10,000 to cover arrears of rent as well as to cover future rent up-till September 15, 1973. Thereafter neither on October 15, 1973 nor on November 15, 1973, did the tenant deposit monthly rent as required by the aforesaid order of the Rent Controller. He was alleged to have defaulted on that count. Yet on December 1, 1973 he made a deposit of Rs. 2800 partly covering the default of the previous period. The landlord took objection to the late deposit and after much debate the Rent Controller struck off the defence of the appellant. The Rent Appellate Tribunal, Delhi set aside the order of the Rent Controller striking out the defence of the tenant on appeal by the tenant and remitted the case back to the Rent Controller for further proceedings. Second appeal to the High Court of Delhi by the landlord was dismissed.
3. The Additional Rent Controller who became seisin of the matter on remand went into all the grounds as originally raised in the eviction petition; the other grounds, besides the tenant being in arrears of rent, being sub-letting, conversion of the user of premises from residential to commercial, the tenant having acquired vacant possession of a residential house in M-18, Green Park Extension, New Delhi and for bona fide requirement of the daughter of the landlord who being a student of MBBS was expected to set up medical practice. The Additional Rent Controller by his order dated December 12, 1978 ordered eviction of the tenant on the sole ground of non-payment of future rent in terms of his order passed under Section 15(1) of the Act, granting the tenant two months' time to vacate the premises. The other grounds of eviction were rejected.

4. The tenant's appeal before the Rent Control Tribunal entered round the sole question of delayed payment of arrears of rent and of the scope and rigour of Section 15(1) of the Act. In assailing the order of the Additional Rent Controller, reliance was placed by the tenant on a judgment of this Court in *Hem Chand v. Delhi Cloth Mills Co. Ltd.* ((1977) 3 SCC 483 : (1977) 2 Ren CR 440), to contend that even if the tenant had not strictly complied with the terms of the order made under Section 15(1) of the Act inasmuch as depositing future rent late it was not imperative in all events of the defence of the tenant being struck off and a fair amount of discretion had been left with the Rent Controller under Section 15(7) which should have been exercised in his favour and before his defence was to be struck off the Rent Controller had to come to the view that his conduct was wilful or contumacious in disobeying the order made under Section 15(1) of the Act, and which in the instant case he had failed to record. Even being aware of these principles the Rent Control Tribunal on August 18, 1979 dismissed the appeal observing that no infirmity in the order of the Additional Rent Controller could be found. On the same lines and reasoning second appeal of the tenant was dismissed by the High Court of Delhi on October 27, 1980 keeping maintained the ejection of the tenant for non-compliance of the order made under-Section 15(1) of the Act. This has led to the instant appeal on the grant of special leave.

5. The landlord Dr. S. P. Choudhary as hinted earlier died on the year 1981 during the pendency of this appeal leaving behind a widow and a daughter; the latter now being a divorcee rearing a minor son. This is the uncontroverted assertion of the successors-landlords. The eviction order in their favour has been assailed by Mr. Sanghi, learned counsel for the tenant-appellant on the strength of the decision of this Court in *Ram Murti v. Bhola Nath* ((1984) 3 SCC 111), stressing the point that the word 'as required by Section 15(1) of the Act' occurring in sub-section (7) of Section 15 must be construed in a reasonable manner and that the said provision confers a wide discretion on the Rent Controller not to strike off the defence of the tenant which indicates that defences could still be open to the tenant under the Act to claim plain protection under Section 14(2) thereof. In that case this Court ruled that the Rent Controller necessarily by legal implication has power to condone the default on the part of the tenant for deposit of future rent or to extent time for such deposit. On the said plea advanced on behalf of the tenant the result sought to be achieved is that the delay in making deposit of future rent be excused saving him from eviction. The tenant had before the Rent Controller while explaining cause for late deposit of future rent put up the plea that the counsel present at the time of the passing of the order under Section 15(1) in place of his engaged counsel had only intimated to him about the payment of arrears of rent and not about the deposit of future rent by the 15th of every calendar month. On that basis the order of eviction was sought to be upset by accepting such plea of the tenant. On the other hand, learned counsel for the successor-landlords tactically took shelter behind the other grounds of eviction which were rejected by the Additional Rent Controller and besides raising them vehemently before us projected that in the facts and circumstances of this case and the subsequent events which have come by this court should refrain from interfering in the matter under Article 136 of the Constitution. On such stance adopted it is plain that the ground on which eviction has been maintained before the Tribunal and the High Court concurrently the successor-landlords seemingly had an uphill task to have it maintained in view of *Ram Murti* case ((1984) 3 SCC 111). Yet, without conceding on that score other grounds of eviction were pressed despite opposition by learned counsel for the tenant that these grounds were neither pressed in the court of the Rent Control Tribunal nor in the High Court while supporting the order of eviction and no cross appeals in these two forums were filed by the landlord, which if serious he legitimately could. It is true that the Tribunal and the High Court are both silent on the point.

6. The order of the Additional Rent Controller suggests that the tenant is an industrialist. His finding is that within the years 1971 to 1974 he was active in incorporating three companies and that he was

a proprietor of M/s. Globe Marketing and Management Limited, a Director of M/s. Sports Equipment Private Limited and again a Director in M/s. India Consultant Private Limited. His further finding is that while living in the demised premises he had floated these companies and later taken in other directors. Insofar as the latter two companies were concerned, this act of the tenant was not sub-letting, assigning or parting with the possession of the disputed premises as held by the Rent Controller. Sequel to the finding further recorded was that there was no misuser of the disputed premises inasmuch as the respective offices run by the companies therein had caused no damage to the premises. With regard to the fact that the tenant had acquired another premises at M-18, Green Park Extension, New Delhi the Rent Controller took the view that factually the father of the tenant had acquired the same and the tenant could not live in that premises with his father as a matter of right. Lastly with regard to the bona fide requirement of the landlord the Rent Controller took the view that the landlord's family comprising of himself, his wife and daughter had sufficient accommodation in their possession even though his daughter had to establish practices a doctor. The additional plea of the successor-landlord as given out in their counter-affidavits now is that the telephone connections standing in the name of afore-referred three companies, with which the tenant is intimately connected, are at the demised premises as per the Mahanagar Telephone Nigam Directory and that the tenant is a right and well-connected industrialist deserving no protection of the rent laws, misplacedly sought by him.

7. We have pondered over the matter and have weighed every aspect of the case. The facts and circumstances now emerging are that the successor-landlords are two ladies; one a widow and the other a divorcee. If we were to allow the appeal by releasing and relaxing the rigour of the order of eviction relying on Ram Murti case ((1984) 3 SCC 111), we unhesitatingly then would take the step to have the matter remitted back at an appropriate stage where the successor-landlords could conveniently have the other grounds of eviction adjudicated upon and overrule the objection that the landlord could have filed an appeal before the Rent Appellate Tribunal and the High Court seeking eviction of the tenant on grounds other than the ground on which the eviction was ordered. This course, however, appears to us to be not only unfair and unreasonable in the facts and circumstances of this case but time consuming and inequitable as well to the successor-landlords who, as said before, are two ladies brought in the fray by operation of law. Now since almost eighteen years have passed by we feel there should be an end to the dispute and this course is in the interest of all concerned as well as the State. Instead of putting the parties to a fresh bout of litigation we would in these circumstances prefer and opt to let remain the order of eviction sustained however on slender ground, and consequently order dismissal of this appeal but without any order as to costs. Still we do not wish to dislocate the appellant abruptly, concerned as we are for him also and for that purpose grant him sufficient time ending on March 31, 1991 for vacating the premises subject to his giving an undertaking before this Court for vacation on or before the said date but on payment of rent to the landlords as has fallen due for the period up-till and by March 31, 1990 and future monthly rent by the 10th of each calendar month. Let the undertaking be filed by March 10, 1990 in the Registry in the usual manner.

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