

**SUPREME COURT OF INDIA**

Shanti Prasad Jain (D) Thr.Lrs.

Vs.

Prakash Narain Mathur

C.A.No.2544 of 2009

(Tarun Chatterjee J.)

15.04.2009

**JUDGEMENT**

**Tarun Chatterjee, J.**

1. Leave granted.

2. This appeal is directed against a judgment and order dated 31st of January, 2008 passed by a learned Judge of the High Court of Delhi at New Delhi in CM (Main) No. 50 of 2005 whereby an application filed under Article 227 of the Constitution at the instance of the landlord/respondent was allowed and the order passed by the Additional Rent Control Tribunal, Delhi dated 5th of November, 2004 allowing the tenant's appeal and setting aside the order dated 18th of May, 2004 passed by the Rent Controller, Delhi was set aside whereby the High Court had allowed the application filed by the landlord/respondent under Section 15(7) of the *Delhi Rent Control Act, 1958* (in short 'the Act') and rejected the application for condonation of delay in depositing the rent under Section 151 of the Code of Civil Procedure (in short, "the Code") of the tenant and consequent thereupon, the defence of the tenant was struck out.

3. The facts in brief are as follows :- The landlord/respondent has filed an eviction petition in respect of Property No.2076, Katra Roshan Dola, Kinari Bazaar, Delhi (hereinafter referred to 'premises in question') against the tenant/appellant inter alia on the grounds of non-payment of rent and subletting before the Rent Controller, Delhi. In the eviction petition, an order was passed under Section 15(1) of the Act by the Rent Controller, Delhi on 15th of March, 1989 directing the original appellant, Shanti Prasad Jain (since deceased) to pay or deposit rent @ Rs. 105/- per month with effect from 1st January, 1985 and to continue to pay or deposit at the said rate by 15th of each succeeding month. Shanti Prasad Jain died on 23rd of May, 1997. During his lifetime, there was no dispute that the rent was not regularly paid in compliance with the aforesaid order of the Rent Controller. One of the heirs and legal representatives of the deceased tenant Shanti Prasad Jain namely, Sunil Kumar Jain, thereafter filed an application for impleadment in the aforesaid eviction petition in the year 1995 during the lifetime of Shanti Prasad Jain before the Rent Controller seeking

impleadment on the ground that he was a member of the HUF of Shanti Prasad Jain and that he was running the business in the name and style of M/s Vardhman Jewels (India) as a member of the HUF and that he was not a sub-tenant in respect of the premises in question. This application was allowed by an order dated 1st of September, 1995 by the Rent Controller, Delhi. Against the aforesaid order, the landlord/respondent filed a Civil Revision Case No. 1043 of 1995 before the High Court at Delhi and the High Court had only stayed the eviction proceeding till the disposal of the Revision Case. It is not in dispute that after the death of Shanti Prasad Jain (since deceased), the rent was not deposited in compliance with the aforesaid order passed under Section 15(1) of the Act. The admitted position in respect of the deposit of rent and default and belated payment of rent was as follows:-

“1) Rent for the period from 23rd May, 1997 to August, 1999 was deposited on 2/9/1999.

2) Rent for the period from September, 1999 to September, 2000 was deposited on 27th of March, 2000.

3) Rent for the period from October, 2000 to March, 2003 was deposited on 27th of September, 2002. Be it mentioned here that deposit of rent for the period from October 2000 to March, 2003 was, however, made at the time when the respondent had already filed an application under Section 15(7) of the Act before the Rent Controller, Delhi for striking out the defence of the tenant.”

4. In view of the aforesaid default and delayed payment of rent for the aforesaid period, an application under Section 15(7) of the Act for striking out the defence of the appellants was filed by the landlord/respondent on 3rd of January, 2003. This application under Section 15(7) of the Act filed by the respondent was opposed by the appellants on the ground that the rent upto 31st of January, 2003 was already deposited before moving the application under Section 15(7) filed by the respondent and therefore the respondent was not entitled to any relief on the application under Section 15(7) of the Act. It may be mentioned herein that no plea was made out by the appellants that they were advised by their learned counsel not to deposit the rent in compliance with the order passed under Section 15(1) of the Act as at that time, they were not brought on record in the eviction proceeding. As noted herein earlier, the application for striking out the defence of the appellants was filed on 3rd of January, 2003 and after about a year or so, the appellants filed an application for condonation of delay in depositing the rent for the period as mentioned herein earlier on the ground that they were advised by their learned counsel who appeared for the original tenant, Shanti Prasad Jain (since deceased) not to deposit the rent because they were not brought on record in the eviction proceeding at that point of time and that the appellants used to deposit the monthly rent regularly with the clerk of the learned counsel for the appellants or their predecessor in interest but it was not known why such deposits were not made. Believing that the counsel or his clerk would be taking steps to make the deposit of rent, no enquiry was made by them either from the clerk or from the counsel as it was taken by them that the order passed was duly complied with. In the said application for condonation, it was further alleged that since the eviction proceeding was stayed by the High Court in Civil Revision Case No. 1043 of

1995 and that on the death of the original tenant, application was filed for impleadment of the heirs and legal representatives of the deceased tenant, which was allowed only on 21st of October, 2002 in the aforesaid Revision Petition, the cause shown in the application under Section 151 for not depositing the rent in compliance with the order passed by the Rent Controller must be accepted to be sufficient cause for condoning the same.

5. The Rent Controller, Delhi by an order dated 18th of May, 2004 had rejected the application for condonation of delay in depositing the rent for the period as mentioned herein earlier as it was found by the Rent Controller that no satisfactory explanation was given by the heirs and legal representatives of the deceased tenant as to why the rent was not deposited month by month by 15th of each succeeding month as per the order passed under Section 15(1) of the Act. It was also held that the rent for the period mentioned herein earlier was deposited collectively for three years in two installments which would clearly show that the order was not complied with willfully by the heirs and legal representatives of the deceased. Consequent thereupon, the Rent Controller rejected the application for condonation of delay filed by the appellants and allowed the application filed under Section 15(7) of the Act directing the defence of the appellants to be struck out.

6. Feeling aggrieved by this order of the Rent Controller, an appeal was taken by the appellants before the Additional Rent Control Tribunal, Delhi which came to be registered as MCA No.302 of 2004 which was allowed by taking a view that notwithstanding the fact that the succession was not held in abeyance and took effect immediately upon the demise of the original tenant Shanti Prasad Jain and in view of the definition of "tenant" under the Act which includes heirs and legal representatives of the tenant, there was no obligation on the heirs and legal representatives of the deceased tenant to comply with the order passed under Section 15(1) of the Act until the heirs and legal representatives of the deceased tenant were brought on record in the eviction proceeding. The Additional Rent Control Tribunal further held that since in the revision case before the High Court challenging the order of impleadment, the High Court had stayed all further proceedings pending before the Rent Controller on 1st of September, 1995, the Rent Controller was not justified in striking out the defence of the appellants. It was against this order of the Additional Rent Control Tribunal, the landlord/respondent filed an application under Article 227 of the Constitution before the High Court of Delhi at New Delhi. The High Court, by the impugned order, inter alia, held that the Additional Rent Control Tribunal had gone wrong in failing to appreciate that the application filed by Sunil Kumar Jain, one of the heirs and legal representatives of the deceased tenant seeking impleadment as a party respondent on the ground that he was a member of HUF of late Shanti Prasad Jain and the impleadment application of Sunil Kumar Jain, as HUF, was allowed by the Rent Controller on 1st of September, 1995 and that in view of the fact that the High Court had only stayed all further proceedings in the Civil Revision Case, but had not granted stay of operation of the order allowing impleadment, it was held that the Additional Rent Control Tribunal was not correct in holding that merely because the formal order bringing the legal representatives of late Shanti Prasad Jain was not passed, the obligation of his heirs and legal representatives to pay rent stood suspended till they were brought on record as heirs and legal representatives of the deceased tenant. The impugned order of the High Court also disclosed that the liability of the heirs and legal representatives

of the deceased tenant to pay or deposit rent in compliance with the order passed under Section 15(1) of the Act did not absolve the heirs and legal representatives of the deceased tenant of their obligation to continue to pay rent after the demise of the tenant. So far as the application filed by the appellants for condoning the delay in deposit of rent was concerned, the High Court agreed with the order of the Rent Controller rejecting the said application and thereby the defence of the appellants was struck out under Section 15(7) of the Act. Feeling aggrieved by the impugned order of the High Court, the appellants have come up by way of a special leave petition which on grant of leave was heard in presence of the learned counsel for the parties.

7. Having heard the learned counsel for the parties and after examining the impugned order including the orders passed by the Additional Rent Control Tribunal, Delhi and Rent Controller, Delhi and considering the materials on record, we are of the view that in the facts and circumstances of the present case and in view of the nature of the explanation offered by the appellants in their application for condonation of delay, which was not accepted either by the Rent Controller or by the High Court in the impugned order, we do not find any ground to interfere with the impugned order of the High Court allowing the application for striking out the defence of the appellants under Section 15(7) of the Act and rejecting the application for condonation of delay in depositing the rent for the periods mentioned herein earlier.

8. Learned counsel appearing on behalf of the appellants, at the first instance, contended that the liability of the appellants to deposit rent in compliance with the order passed under Section 15(1) of the Act would only arise when the appellants were brought on record in the eviction proceeding. Therefore, according to the learned counsel for the appellants, no duty was cast upon the appellants to comply with the order passed under section 15(1) of the Act till the appellants were brought on record in the eviction proceeding. If this position is accepted, and the court finds that the explanation offered by the appellants for not depositing the rents in compliance with the order passed under Section 15(1) of the Act must be accepted, the question of striking out the defence of the appellants under Section 15(7) of the Act cannot arise at all.

9. Learned counsel for the appellants further contended that although some delay in depositing the rent in compliance with the order of the Rent Controller, Delhi under Section 15 (1) of the Act was committed either by the original tenant Shanti Prasad Jain, since deceased, or by his heirs and legal representatives, namely, the appellants, even then, the entire amount was deposited either by the original tenant during his life time or by the appellants after they were brought on record in the eviction proceeding, the High Court ought to have used its discretion in favour of the appellants by not striking out the defence and allowed the application for condonation of delay in the matter of deposits under Section 15(1) of the Act. Therefore, learned counsel for the appellants contended that the High Court was not justified in not taking a lenient view of the matter and in not accepting the explanation given by the appellants in their application for condonation of delay in depositing the rents in compliance with the order passed under Section 15(1) of the Act. It was further contended by the learned counsel for the appellants that in the facts and circumstances of the present case and in view of the admitted fact that the rents were

deposited in their entirety, the explanation offered by the appellants in their application for condonation of delay, ought to have been accepted and the application for striking out the defence under Section 15(7) of the Act ought to have been rejected.

10. These submissions of the learned counsel for the appellants were contested by the learned counsel for the respondent. Learned counsel for the respondent had drawn our attention to the order of the Rent Controller, Delhi as well as of the High Court and also of the Additional Rent Control Tribunal to show that even if deposits were made either by the original tenant (since deceased) or after the heirs and legal representatives were brought on record in the eviction proceeding, the default was committed by depositing rents not within the time contemplated under Section 15(1) of the Act and no proper explanation was given by the appellants for not depositing the rent in time as it would be evident from the record that neither the clerk of the learned counsel for the appellants nor the learned counsel for the appellants came forward to support the case of the appellants in their application under Section 151 of the Code. It was also contended by the learned counsel for the respondent that on the death of the tenant, the succession of his heirs and legal representatives to the tenancy of the deceased tenant immediately came into being and, therefore, it was the duty of the heirs and legal representatives of the deceased tenant to comply with and deposit rents in compliance with the order passed under Section 15 (1) of the Act although they were not brought on record in the eviction proceeding. According to the learned counsel for the respondent, even if it can be presumed that after the death of the original tenant Shanti Prasad Jain, that is, on 23rd of May, 1997 till the heirs and legal representatives were substituted and brought on record in the eviction proceeding on 23rd of October, 2002, even after 23rd of October, 2002 the substituted appellants had failed to comply with the order passed under Section 15(1) of the Act.

“Therefore, the learned counsel for the respondent contended that the High Court having acted within its jurisdiction and found that the explanation offered by the appellants in their application for condonation of delay was not acceptable, the question of interfering with the impugned order of the High Court striking out the defence under Section 15(7) of the Act and also rejecting the application for condonation of delay in deposit of rent would not arise.”

11. We have carefully examined the submissions so made by the learned counsel for the parties and examined the impugned judgment as well as the orders passed by the Additional Rent Control Tribunal and the Rent Controller, Delhi and also the averments made in the application for condonation of delay and the averments made by the landlord/respondent in the application under Section 15(7) of the Act and after carefully examining the same, we are of the view that the learned counsel for the respondent was fully justified in submitting that no interference is needed in respect of the impugned judgment of the High Court. Reasons are as follows:-

12. The appellants were guilty of negligent default in depositing the rent in compliance with the order of the Rent Controller, Delhi, under Section 15(1) of the Act.

“From a bare reading of the averments made in the application for condonation of delay, it would be evident that the appellants could not provide any explanation or justification for such willful default and in fact they have made contradictory statements in their application for condonation of delay which was not the defence taken by them in the objection filed to the application under section 15(7) of the Act filed by the respondent. From a bare reading of the response to the application under Section 15(7) of the Act filed by the appellants, it is clear that the appellants had never pleaded that they were acting on the basis of advice given by the learned counsel nor was it mentioned that the appellants had given the rent regularly to the learned counsel or his clerk as was subsequently pleaded in the application for condonation of delay filed by them after more than one year of the filing of the application under Section 15(7) of the Act. It also appears from the record that the application for condonation of delay was filed when the hearing of the application under Section 15(7) of the Act was concluded and the matter was adjourned for orders on 16th of February, 2004 and since on 16th of February, 2004, the learned Judge was on leave and the matter was again deferred to 23rd of February, 2004, only at that stage, that is, on 23rd of February, 2004, the application for condonation of delay was filed at the instance of the appellants. In view of the above, it can be safely concluded that the application for condonation of delay was a belated one and an afterthought attempt was made to explain the willful default. That apart, as noted herein earlier, in the application for condonation of delay, the appellants, for the first time, contended that they were advised by their counsel that they were not obliged to comply with the order under Section 15(1) of the Act, till the appellants were brought on record. Whereas a contradictory stand was taken by them that rent was submitted regularly to their learned counsel through their clerk to assure that it was duly deposited. That apart, neither any affidavit from the learned counsel or from his clerk was filed regarding deposit of rent with them nor any details of deposit of money given to the learned counsel through his clerk were given.

Therefore, in our view, the explanation, apart from being an afterthought, was clearly bogus and unworthy of any credence. As noted herein earlier, the order passed under Section 15(1) of the Act was passed by the Rent Controller, Delhi on 15th of March, 1989 directing the original tenant to pay or deposit rent at the rate of Rs.105/- per month w.e.f. 1st of January, 1985 and to continue to pay or deposit the rent at the aforesaid rate by 15th of each succeeding month. It also appears from the record that in the year 1995, one of the sons of the deceased tenant Shanti Prasad Jain, who is now appellant No.2, had filed an application for impleadment in the eviction petition on the ground that he was a member of HUF of the original tenant Shanti Prasad Jain and he was in fact running a business in the name and style of M/s.Vardhman Jewel (India) as a member of the HUF and was not a sub-tenant in respect of the premises in question. As noted herein earlier, the aforesaid son, namely, Sunil Kumar Jain, was impleaded by an order dated 1st of September, 1995 against which, a revision petition was filed by the landlord/respondent before the High Court which only stayed all further proceedings in the eviction proceeding. As noted herein earlier, Shanti Prasad Jain, the original tenant died on 23rd of May, 1997 and after his death, the rent was

admittedly not paid in compliance with the order dated 15th of March, 1989 under Section 15(1) of the Act. Therefore, in view of our discussions made herein above, we do not find any possible ground to interfere with the judgment of the High Court. While rejecting the explanation offered by the appellants in the application for condonation of delay which was duly considered by the High Court and the High Court came to a positive finding in the following manner :- "The application seeking condonation of delay was not supported by the affidavit of the counsel who is alleged to have received the rent from the respondents from time to time and failed to deposit the same in the Court and is also alleged to have tendered the advice that the rent need not be paid or deposited till the respondents are brought on record. No action appears to have been taken against the counsel before the Bar Council complaining about his aforesaid conduct. I may note that though it was stated by the respondents in their reply to the application under Section 15(7) of the Act that they had taken action against the counsel, no details thereof were furnished before the Lower Court and none have been furnished even before me. Thus, the respondents have failed to disclose what action has been taken by them against their erstwhile counsel. This belies their stand with regard to the legal advice allegedly given by their counsel and also the stand that they had tendered the rents regularly to their counsel who failed to deposit the same in court."

13. In view of the aforesaid findings of the High Court and in view of our discussions made hereinabove, we are of the view that the High Court was fully justified and within its jurisdiction to reject the application filed by the appellants for condonation of delay in the matter of deposit of rent in compliance with the order passed under Section 15(1) of the Act, even if the entire amount of rent defaulted by the appellants or by their predecessor-in-interest was subsequently deposited in the office of the Rent Controller.

14. In this connection, we may refer to two decisions of this Court in the case of *Jain Motor Car Co. Delhi vs. Swayam Prabha Jain (Smt.) by Anr.*<sup>1</sup> and *Aero Traders (P) Ltd. vs. Ravinder Kumar Suri*<sup>2</sup>. So far as Jain Motor Car case (supra) is concerned, this Court has held that striking out the defence under Section 15(7) of the Act in paying or depositing the rent in compliance with the order passed under Section 15(1) of the Act is discretionary in nature and in appropriate cases having regard to the facts and circumstances, it is open to the Rent Controller to exercise his power to condone the delay in deposit of rent. It was also held in that decision that the Rent Controller at the same time is entitled to strike out the defence if the Rent Controller finds that default in deposit of rent was willful default and, therefore, the Rent Controller is conferred with the power to exercise his discretion to strike out the defence under Section 15(7) of the Act. So far as Aero Traders (P) Ltd. case (supra) is concerned, a Three-Judge Bench of this Court similarly laid down that the power to strike out the defence under Section 15(7) of the Act was discretionary in nature. Keeping in mind the principles laid down by this Court in the aforesaid two decisions, which clearly say that the power of the Court either to strike out the defence under Section 15(7) or to reject the application for condonation of delay in deposit of rent was discretionary in nature, we examined the impugned order of the High Court and the statements made in the applications and the findings arrived at by the High Court, we do not find any ground that the High Court

had failed to exercise its discretion in favour of the tenant for not condoning the delay in depositing the rent and therefore, it was open to the High Court not to use its discretion in favour of the tenant in rejecting the application for condonation of delay and accordingly, the discretion used by the High Court in favour of the landlord/respondent to strike out the defence under Section 15(7) of the Act was perfectly justified.

15. That apart, the High Court in the impugned order has also considered that the appellants had failed to explain as to why the deposits made for the period from 23rd of May, 1997 to 27th of September, 2002 were so deposited belatedly and deposited the same in lumpsum only on three occasions.

16. In view of such discretion having been exercised by the High Court as well as the Rent Controller in favour of the landlord/respondent which, in our view, cannot be held to be arbitrary or unjust, we are unable to interfere with the impugned judgment of the High Court.

17. Before we conclude, we may also take into consideration the maintainability of the appeal before this Court as we find that the appellants had failed to implead one Shri Prakash Chandra Khatri and Shri Mahesh Chand Khatri, owners of the property in question having purchased the same from Respondent No.1 as respondents despite the fact that the said parties were impleaded in the eviction proceeding before the Rent Controller as well as in the High Court from which the appeal arises.

18. For the reasons aforesaid, we do not find any merit in this instant appeal and the appeal is thus dismissed.

There will be no order as to costs.

<sup>1</sup>[1996 (3) SCC 55]

<sup>2</sup>[2004 (8) SCC 307]