

## **DELHI HIGH COURT**

Delhi Cloth and General Mills Co. Ltd., Delhi

Vs.

Shri Hem Chan

S.A.O. No. 200 of 1967

(S.N. Shankar, V.S. Deshpande and B.C. Misra, JJ.)

8.5.1972

### **JUDGMENT**

**S. N. Shankar, J.**

1. The appellant Delhi Cloth and General Mills Company Limited in these two connected appeals, S.A.O. No. 200/67 and 208/67 is the landlord of the premises occupied by respondent No. 1, Hem Chand, as a tenant. The agreed rent of the premises was Rs. 65/- per month. The tenant defaulted in payment of rent. The landlord issued and served notice of demand and ejection dated August 10, 1963 on him demanding arrears of rent and also complaining that he had unauthorized sublet the premises under his tenancy. The tenant paid a sum of Rs. 1,000/- only towards the arrears demanded within the notice period. On February 24, 1964, the Landlord filed an application for eviction of the tenant under Section 14 of the Delhi Rent Control Act thereafter called the "Act") on grounds of non-payment of rent and unauthorized subletting and otherwise parting with possession of the premises. The alleged sub tenants, M/s Bipin Kumar Satish Kumar, were also imp led as respondent No. 2 in the application. On September 9, 1964. the Additional Rent Controller; on the application of the landlord, passed an order under Section 15(1) of the Act directing the tenant to deposit all the arrears of rent due after deducting Rs. 1,000/- already paid and future rent at the rate of Rs. 165/- per month. In pursuance of the order, the tenant deposited a sum of Rs. 3,455/- on December 15, 1964 which represented rent till end of November, 1964. Rent becoming due thereafter was not deposited month by month as required in terms of the order under section 15(1). On July 15, 1965, the landlord, therefore, made an application under Section 15(1) of the Act and prayed that the defense of the tenant against eviction be struck out. The tenant thereupon made good

the deficiency and deposited the rent up to date On October 15, 1965 the Additional Rent Controller, however struck out the defense of the tenant By a second order dated November 26, 1965 he then passed an order for eviction in favor of the landlord and held that even though the tenant was not liable for eviction on ground of non-payment of rent because he had deposited the arrears of rent demanded from him in the notice of demand but he was liable to be evicted on the other ground of unauthorized subletting. The finding of subletting was based on evidence of the landlord alone and the evidence produced by the tenant was not at all seen because his defense had been struck out.

2. Aggrieved from these orders, the tenant filed two appeals before the Rent Control Tribunal, one directed against the order striking out the defense and the other against the order granting eviction. By a common order dated March 31, 1967, the Tribunal decided both the appeals and held that since the tenant had "gradually cleared off arrears amounting to Rs. 5,000/- or more" this indicated his *bonafide* intentions to pay all the rent and as the striking out of the defense was a drastic step in the facts of this case it should not have been resorted to. The delay in making the deposits was consequently condoned subject to payment of Rs. 150/- by the tenant as conditional, cost and the order of the Additional Rent Controller striking out the defense and granting an order for eviction in favor of the landlord was set aside. The case was remanded for being tried on merits after giving the tenant an opportunity to defend his eviction on the ground of subletting.

3. Against this order, the landlord has filed the above two appeals which came up before one of us (B. C. Misra, J.). Having regard to the importance of the questions involved he framed the following two questions for consideration by a Full Bench:

(1) Whether the Controller has jurisdiction and power to condone the delay in deposit of the amount of rent ordered by him under sub-sections (1), (2) and (3) of Section 15 of the Act?

(2) If the answer to the first question be in the affirmative, what is the legal effect of condonation of delay on the ground of eviction in view of section 14(2) and section 15(6) of the Act?

In order to decide the points involved in these questions it is necessary to examine the scope, intent, purpose and inter-relations of sections 14 and 15 of the Act. Section 14 affords protection to the tenant against eviction and lays down that notwithstanding anything to the contrary contained in any other law or contract no order or decree for recovery of possession of any premises shall be made by any court or Controller in

favor of the landlord against a tenant except on the grounds mentioned in clauses (a) to (1) of the proviso to sub-section (1) of this section subject to the conditions and qualifications mentioned in sub-sections (2) to (11). When a tenant can get the benefit of this protection as prescribed by Section 15 which reads as under:

"15 "WHEN A TENANT CAN GET THE BENEFIT OF PROTECTION AGAINST EVICTION.

(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 months 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 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 sub-section.

(3) If, 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 promises to be paid or deposited in accordance with the provisions of sub-section (1) or sub-section (2) as the case may be until the standard rent in relation thereto is fixed having regard to the provisions of this Act, and the amount of arrears, if any, calculated on the basis of the standard rent shall be paid or deposited by the tenant within one month of the date on which the standard rent is fixed or such further time as the Controller may allow in this behalf.

(4) If, in any proceeding referred to in sub-section (1) or sub-section (2), there is any dispute as to the person or persons to whom the rent is payable, the Controller may direct the tenant to deposit with the Controller the amount

payable by him under sub-section (1) or sub section (2) or sub-section (3) as the case may be, and in such a case no person shall be entitled to withdraw the amount in deposit until the Controller decides the dispute and makes an order for payment of the same.

(5) If the Controller is satisfied that any dispute referred to in sub-section [4] has been raised by a tenant for reasons which are false or frivolous the Controller may order the defense against eviction to be struck out and proceed with the hearing of the application.

(6) If a tenant makes payment or deposit as required by sub-section (1) or sub-section (3) no order shall be made for 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.

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

Sub-Section (1) of this section authorizes the Controller to make an order directing the tenant to pay to the landlord or deposit with the Controller the arrears of rent and also the future rent where eviction is sought on ground specified in clause (a) of the proviso to sub-section (1) of Section 14. Sub-section (2) authorizes him to make a similar order in a case where eviction is claimed on grounds other than clause (a) of the proviso. Sub-section (3) also provides for the making of a similar order both in cases of sub-sections (1) and (2) where the tenant raises a dispute as to the amount of rent payable by him and where standard rent may have to be fixed for the purpose of ascertaining the amount of rent payable by the tenant. Sub-section (4) likewise provides for the making of this order for the same purpose in a case where the tenant raises a dispute as to the person or persons to whom the rent is payable. The policy underlying all these sub-sections is that the tenant should not be allowed to contest the eviction applications without payment of rent during the pendency of the proceedings. Sub-section (5) then says that if the tenant raises a false and frivolous dispute under sub-section (4) his defense against eviction would be liable to be struck out. Sub-section (6) provides that no order for eviction will be passed against the tenant on the ground of default in payment of rent, if the tenant makes payment or deposit as required by sub-section (1) or sub-section (3). Sub-section (7) then prescribes the penalty that can be imposed on the tenant in case of his failure to make the payment or deposit as required by this section.

4. Sections 14 and 15 are, therefore, complementary in the sense that while the former

affords protection to the tenant against eviction the latter provides when the tenant can get the benefit of this protection; but the purpose and field of operation of the two provisions is not the same. Section 14 has the effect of giving a right of eviction to the landlord in the specified cases mentioned in clauses (a) to (1) of its proviso to sub-section (1) subject to the other provisions of section 14 but section 15 has no such effect. The power of the Controller to evict a tenant or refuse to do so is traceable to section 14 alone. Section 15, by making provisions for deposit of arrears of rent and future rent, does not add to the grounds of eviction provided in section 14. The sole purpose of section 15 is to secure payment of arrears of rent and future rent from the tenant to the landlord during the pendency of the eviction proceedings by making the default of the tenant to make this payment or deposit punishable under sub-section (7) of section 15. The nature of punishment and its extent is specified in sub-section (7). The only punishment that the Controller can inflict on the tenant for his default to make the payment or deposit is to strike out his defense.

5. In the exercise of his power, this sub-section confers a discretion on the Controller to relieve the tenant of his default if a case is made out by him for the exercise of the Controller's judicial discretion in his favor. To his extent the Controller has the power and jurisdiction to condone the delay. But the scope and effect of this condonation is prescribed by sub-section (7) itself. The only effect of condonation will be that the defense of the tenant against eviction will not be struck out i.e. the tenant will be allowed to contest the landlord's claim for eviction as if no default had occurred : but this will not have the effect to deprive the landlord of the rights conferred on him by Section 14. So that in a case when the landlord has fulfilled the conditions mentioned in section 14, the condonation of delay under sub-section (7) of section 15 will not have the effect to non-suit the landlord and deprive him of the rights that have accrued to him under section 14 because, as stated earlier, the purposes of sections 14 and 15 are different and they operate in different fields.

6. To resolve the controversy therefore let us refer to the provisions of section 14. The only provision directly related to the failure of the tenant to make the deposit as required by section 15 is sub-section (2) of section 14. This governs cases where eviction is claimed on grounds mentioned in clause (a) of section 14. The two provisions read as under:

14. "Protection of Tenant against eviction. (1) 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 favor of the landlord against a tenant :

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of the premises on one or more of the following grounds only namely:

(a) that the tenant has neither paid nor tendered the whole of the arrears of the 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 by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882 (4 of 1882)".

(a) X X X X X X X X

(b) X X X X X X X X

(c) X X X X X X X X

(d) X X X X X X X X

(e) X X X X X X X X

(f) X X X X X X X X

(g) X X X X X X X X

(h) X X X X X X X X

(i) X X X X X X X X

(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."

The expression "may" in the proviso to sub-section (1) has a mandatory content. Reference in this connection may be made to *Bhaiya Punjalal Bhagwanddin v. Dave Bhagwatprasad Prabhuprasad*<sup>1</sup> on page 313, *Vora Abbasbhai Ali Mohomed v. Haji Gulamnabi Haji Safibhai*<sup>2</sup>, on page 1345 and *Mrs. Manorama S. Masurekar v. Mrs. Dhanlaxmi Shah and another*,<sup>3</sup> on page 1079. In *Bishan Paul v. Mothu Ram*,<sup>4</sup> a similar provision came up for consideration of the Supreme Court Section 13 of East Punjab Urban Rent Restriction Act (3 of 1949) provided for eviction of tenants Sub-section (2) provided that a landlord who sought to evict his tenant shall apply to the Controller for direction in that behalf and if the Controller, after giving a reasonable opportunity of showing cause, was satisfied that the tenant had not paid or tendered the rent due in respect of the building within the time mentioned in clause (1) of sub-section (2) and if he does not also on the first date of hearing of the application pay or

tender the arrears of rent and interest at 6 per cent in terms of the proviso, the Controller, "may" make an order directing the tenant to put the landlord in possession of the building or if the Controller is not so satisfied he "shall" make the order rejecting the application. It was contended on behalf of the tenant that the word "may" in this provision conferred a discretion on the Controller and that this was especially so by way of contrast because in the case of the Controller being not satisfied it was provided that he "shall" make an order rejecting the application. The argument was not accepted. It was held that it was incumbent on the Controller to order eviction.

7. This brings the position in law, the inevitable conclusion is that in lease the landlord satisfied the conditions mentioned in the clauses to proviso to sub-section (1) of section 14, including clause (a), the Controller was bound to pass an order for recovery of possession against the tenant and has no discretion to refuse it.

8. By the first part of sub-section (2) of section 14 the Legislature has made clause (a) subject to sub-section (2) by providing that no order for recovery of possession shall be made on the grounds specified in clause (a) if the tenant makes payment or deposit as required under section 15. This is an additional protection conferred on the tenant. In case he does not avail of this additional protection also and fails to make the payment or deposit "as required by section 15 the conditions mentioned in clause (a) are fully satisfied and the Controller is bound under section 14 to pass an order for recovery of possession in favour of the landlord. The order of the Controller refusing to strike out the defense under sub-section (7) of section 15 in such a case will not have the effect of depriving the landlord of this right. The Controller will thus have no power (and also no jurisdiction in that sense) to condone the failure of the tenant for purposes of section 14 (2). In other words if eviction is claimed by the landlord under clause (a) of the proviso to sub-section (1) of section 14 and the tenant fails to make the payment or deposit as required by section 15 the Controller shall have no power to condone the delay to have the effect to wipe off the default.

9. If sub-section (7) of section 15 has not its effect there is no other provision in the Act conferring jurisdiction or empowering the Controller, to condone the delay to relieve the tenant of his failure to make payment or deposit of rent as required by section 15. The question therefore arises whether the Controller has any inherent jurisdiction to do so. This question has also to be answered in the negative. Firstly, because in face of specific provisions in the Act authorizing the Controller to grant relief against default under section 15 and the extent to which this relief can be granted the Controller will not be competent to resort to inherent powers. Secondly

because section 14 (2) in clear terms states that benefit under the provisions can be availed of by the tenant only if he makes the payment or deposit within the time prescribed by the Legislature itself in sub-section (1) of section 15. Sub-section (1) of section 15 it may be stated, is the only clause of section 15 that is attracted in the case when eviction is claimed on the ground mentioned in clause (a) of proviso to sub-section (1) of section 14 and it is settled law that when time is fixed by the Statute itself inherent powers cannot be invoked to extend it. Thirdly, because inherent powers cannot be invoked to defeat a vested right of the litigant and fourthly because to provide for the invocation of inherent powers to extend time for purposes of sub-section (2) of section 14, this sub-section would need to be rewritten by the Court and after the words "as required by section 15" in the sub-section, the additional words reading "or where under sub-section (7) of section 15 the default has been condoned" shall have to be added to the sub-section, which obviously cannot be done.

Inherent powers of the Court are not meant to override the substantive rights conferred by the Statute. They can be exercised only to prevent an abuse of the process of the court but not to override the provisions of law. In *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*,<sup>5</sup> while conceding that the Civil court had inherent powers to issue temporary injunctions in cases which were not covered by the provisions of Order 39 of the Civil Procedure Code, Raghubar Dayal, J. speaking for the Court on page 461 of the report said :-

"But those powers are not to be exercised when their exercise may be in conflict with what had been expressly provided in the Code or against the intentions of the Legislature. This restriction, for practical purposes, on the exercise of these powers is not because these powers are controlled by the provisions of the Code but because it should be presumed that the procedure specifically provided by the Legislature for orders in certain circumstances is dictated by the interests of justice."

The nature of inherent powers also came up for scrutiny of the Supreme Court in *Padam Sen and another v. The State of Uttar Pradesh*<sup>6</sup> It was observed on page 287 (987)

"The inherent powers of the Court are In addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in

the Code against the intentions of the Legislature.

Sub-section (7) of section 15 thus is the only provision which enables the Controller to condone the default in the payment or deposit under section 15. Inherent powers cannot be exercised to enlarge the scope of that sub-section or to cut across the right which sub-section (2) of section 14 confers on the landlord. The fact that while sub-section 7 of section 15 confers jurisdiction on the Controller to grant relief against the default of the tenant, sub-section (2) of Section 14 confers no such discretion. Sub-section (2) of section 14 unmistakably shows that the intention of the Legislature was to strictly enforce the deposit or payment as enjoined by section 15 in cases where eviction was claimed under clause (a) of the proviso to sub-section (1) of section 14 and that no relief was intended for the tenant if he failed to make the payment or deposit "as required by section 15."

10. It was urged that this would be a narrow interpretation of sub-section (7) of section 15 in relation to sub-section (2) of section 14 and would work a great hardship in some genuine cases and honest tenants might suffer. It is certainly not inconceivable that in some cases hardship may result to the tenant if for reasons beyond his control he is not able to make the deposit on the last date provided for it as, for example, if the last day is suddenly declared a holiday or while going to the treasury to make a deposit the tenant is waylaid or an employee of the tenant 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 intervenes which makes it impossible for him for reasons beyond his control to physically make the deposit but the Court is helpless and has no power to interpret the law contrary to the expressed wish of the legislature. If it is intended to ameliorate the hardship likely to be caused to honest or poor tenants, it is for the Legislature to intervene and consider the advisability of conferring an express power on the Controller to extend the time as it occurs in sub-section (3) of section 15 or sub-section (2) of section 13 of the previous Act.

It was then suggested that section 15 was nothing more than a procedural enactment and too rigid a construction of its provision should be avoided. Reference was made to *Mahanth Ram Das v. Ganga Dass*<sup>7</sup> where it was held that procedural orders though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay and the Court is not estopped from taking note of events and circumstances which happen within the time fixed. The argument cannot prevail because it is not possible to say that section 15 is merely

procedural. It confers a right on the landlord to enforce payment or deposit of the arrears of rent and future rent during the pendency of the eviction proceedings. Even if it be assumed that the section is procedural that does not help the tenant because what really comes in the way of the tenant from securing a relief against his default is not section 15 but sub-section (2) of section 14. This sub-section in the scheme of section 14 cannot in any sense be said to be procedural and confers a substantive right on the landlord as is borne out by the above cited decisions of the Supreme Court interpreting the expression "may " in the context of provisions like those of section 14. So that if the landlord fulfils the conditions mentioned in clause (a) of the proviso to sub-section (1) of section 14 and the tenant also makes a default in deposit or payment under section 15 the Controller is bound to pass an order for recovery of possession and cannot refuse the landlord's prayer for eviction. The default under sub-section (2) of section 14 thus vests an indefeasible right in the landlord and is not merely procedural.

11. In Mahanth Ram Das's case (supra) which was cited in support of the argument, he observations were made in the context of the application of the appellant for extension of time for payment of the requisite court fees. That certainly was a procedural matter. The observations in this case, therefore, do not assist the tenant.

12. In *Munshi Lal v. Thakur Prem Chand* ;<sup>8</sup> *Kishan Singh Verma v. S.K. Kalra*,<sup>9</sup> , *Shri B.S. Bhambri v. S. Amar Singh*<sup>10</sup> and *Tula Ram v. Mam Chand*,<sup>11</sup> this Court has already taken this view though on slightly different grounds.

13. It would be seen that in relation to the right of the landlord to obtain order for recovery of possession the default of the tenant in payment or deposit in compliance with the orders of the Controller under section 15(1) has the effect of vesting a right of eviction in the landlord. The same is the effect when an order for deposit in a case covered by clause (a) is passed under section 15(3). This would not, however, be so in cases where eviction is claimed on grounds other than those mentioned in clause (a) because there is no provision in section 14 operating to vest any right in the landlord because of the default of the tenant. In those cases, therefore the condonation of delay by the Controller will have the effect of condoning the default of the tenant and the tenant shall be entitled to contest the landlord's claim for eviction as if no default had occurred.

14. As a result of the above discussion our answers to the question referred to the Full Bench are as under:-

Question No. 1.

15. Controller has no powers and no jurisdiction in the sense to condone the delay in deposit of the amount of rent, directed to be paid or deposited under section 15, sub-section (1) and sub-section (3) on the latter case only when the order is under sub-section (1) of section 151 so as to wipe off the default that has occurred, but in all other cases where no right of eviction is vested in the landlord by reason of the default the Controller can condone the default.

Question No. 2.

16. In view of the answer in the negative to the first question the second question does not arise.

In the instant case clause (a) of the proviso to sub-section (1) of section 14 was one of the grounds on which the eviction of the tenant was claimed by the appellant-landlord. When the tenant failed to make the deposit of future rents in compliance with the order passed under section 15(1) against him a right to obtain an order for recovery of possession accrued to the landlord and the Controller had no power to condone the default of the tenant and to refuse to grant this order. The learned Rent Control Tribunal was, therefore, in error in holding that the delay in deposit by the tenant could be condoned. The learned Additional Rent Controller was also not right in his view that eviction of the tenant could not be granted because he had deposited the rent demanded of him in the notice of demand. By reason of sub-section (2) of section 14 the tenant was bound to deposit and continue to deposit not only the arrears of rent but all future rents also as required by section 15. Therefore, when the tenant failed to make deposit of the future rent (in spite of his previous deposit of the arrears of rent demanded in the notice) he was liable to be evicted.

17. In the result, for reasons aforesaid, these appeals of the landlord are accepted and an order for recovery of possession of the premises mentioned in the application is granted in favor of the appellant-landlord against the tenant on ground (a) of the proviso to sub-section (1) of Section 14.

In the circumstances of this case the parties are left to bear their own costs.

Sd/- V.S. Deshpande

Judge.

Sd/- B.C. Misra

Judge.

Cases Referred.

1. (1963) 3 S.C.R. 312
2. AIR 1964 Supreme Court 1341)
3. AIR 1967 Supreme Court 1078)
4. AIR 1965 Supreme Court 1994)
5. (1962) 2 Suppl. S.C.R. 450,
6. (1961) S.C.R. 884,
7. (AIR 1961 Supreme Court 882)
8. (1970 RCR 393)
9. S.A.O. 191/70 decided on March 26, 1971
- 10.S.A.O. 20-D of 1966 decided on April 5, 1971,
11. S.A.O. 26168 decided on September 1, 1971,