

## DELHI HIGH COURT

Kishan Chand Makan

Vs.

B.S. Bhandari, (Delhi)

S.A.O. No. 213 of 1969.

(Parkash Narain and Pritam Singh Safeer, JJ.)

4.4.1977

### JUDGMENT

**Pritam Singh Safeer, J.**

1. This judgment will dispose of the reference made in S. A. O. No. 213 of 1969 as well as S.A.O. No. 231 of 1974.

2. S. A. O. No. 213 of 1966 was taken up by B. C. Misra, J. on 26th of March, 1975 and he made a reference in terms of the order passed on that date. S. A. O. No. 231 of 1974 was also taken up by him on the same date in accordance with the order he passed it was observed that a reference had been made in the earlier case and the appeals would be heard on merits. After the reference has been answered.

3. We need not notice the facts with which the two appeals are concerned, because we are to answer the reference only.

4. A careful perusal of the detailed order of reference made in S. A. O. No. 213 of 1969 leads to the conclusion that the learned Judge was faced with the question as to what would be the true interpretation of section 14(2) of the Delhi Rent Control Act 1958. The concerned provisions may notice at once. Section 14(2) in the Act is:

"14. *Protection of Tenants against eviction* (1)

\* \* \* \* \*

(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 make 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."

Sub-sections (1) and (7) of section 15 reads:

"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 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".

\* \* \* \* \*

"(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.

5. Although detailed facts have not been noticed it would be expedient to mention that S. A. O. 213 of 1969 was an appeal by a tenant which was concerned with the institution of a petition for eviction on the ground of non-payment of arrears of rent. The landlord had instituted a petition for eviction on 17th November, 1965 on the ground of non-payment of arrears of rent. The ground pleaded was covered by section 14(1)(a) of the Act. A significant plea raised, however, was that the tenant had taken the benefit of section 14 (2) in an earlier proceeding and, therefore, was not entitled to it any more. A certified copy of the earlier petition for eviction was proved on the record. The earlier petition for eviction on the ground of non-payment of rent had been filed on 13th August 1964. The tenant contested the same by filing a written statement. In the course of the proceeding on the 28th November, 1964, the Additional

Rent Controller passed the order Exhibit A-3 under sub section (1) of section 15 of the Act. On 30th December, 1964, he passed the order : "Dismissed. Announced". Before the passing of that order, the landlord had made a statement to the effect that he wanted to withdraw the petition because the tenant had deposited the rent till 30th November, 1964, which it was prayed, be ordered to be paid to him.

6. In the course of the proceedings initiated by the second petition for ejectment based on the ground of non-payment of arrears of rent a plea was raised by the tenant that the dismissal in the earlier case did not constitute the benefit to the tenant within the meaning of sub-section '2' of section 14 of the Act. The contention was rejected by the Additional Rent Controller but on appeal was upheld by the Rent Control Tribunal. The learned Single Judge (B. C. Misra, J.) while hearing the appeal came to the conclusion that there ought to be an authoritative interpretation of sections 14 (2) and 15 (1) of the Act. The learned Single Judge was of the view that it needed to be determined finally as to what was the real meaning of the word "benefit" used in the proviso contained in section 14 (2) of the Act. One of the views urged was that where after the institution of the petition for ejectment on the basis of non-payment of rent a tenant escapes eviction whether by making payment of the rent or otherwise depositing it after an order under section 15 (1) of the Act, he gets the postulate benefit and cannot claim the same in any subsequent pleadings. The other contention was that unless there is a specific order passed under section 15 (1), the benefit that can be taken by the tenant in terms of section 14(2) cannot be denied to him. The dismissal of a petition in default will fall in a different category than the withdrawal of a petition by the landlord. The dismissal on account of the default will be in a situation where the Rent Controller will be having no petitioner before him, and will be making the order on the basis petition was not pursued. The withdrawal will be a positive act to lord. Whatever their nature, we have to deal with the question as to whether it can be held that even without there being a specific order under section 15(1) there can be a substantial compliance with the provisions of section 14 (2) and any adjudication can be made on that basis.

7. Several cases have been cited before us and some of them deserve to be noticed, In Smt. Ram Gupta v. Rai Singh Kain (1), a Single Judge of this Court held that the proviso to section 14 (2) of the Act would be applicable only when

the benefit of avoiding eviction has once been availed of. The previous petition had been dismissed because the landlord had withdrawn the same. It was not dismissed on account of a deposit having been made in compliance with an order passed under section 15 (1) of the Act. D. K. Kapur, J. in the course of his judgment observed:

"It is impossible to come to the conclusion that the tenant got a benefit under section 14(2) when the case was withdrawn. The previous ejection petition was not dismissed on the ground that the tenant had made a deposit but on the ground that the landlord withdrew the ejection petition. This voluntary act of the landlord cannot be said to be a benefit to the tenant under section 14 (2) of the Act".

It was observed by V. S. Deshpande, J. in *Punjab National Bank, New Delhi v. The Rent Controller*,<sup>1</sup> that an order of deposit made under section 15 of the Act is not only for the benefit of the tenant alone because the landlord gets the benefit of having the rent deposited, and that even where the tenant has enjoyed the benefit under section 14 (2) and is not entitled to that benefit again, the proviso in section 14 (2) of the Act will still apply and an order under section 15 (1) should be passed. The view expressed is only to the effect that the opening phraseology employed in section 15 requires the passing of an order under that provision 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 of the Act. The observations are helpful only to a limited extent to us for determining the scope of sections 14 (2) and 15 of the Act.

In *V. N. Vasudeva v. Kirori Mal Luhariwala* (3), the Supreme Court observed that the order under section 15 of the Act to deposit the amount of arrears of rent was not a final order but was preliminary in the sense that it was to be made at the initial stage of the trial.

In *Shri Ram Parkash v. Jagmohan Khanna and ors*,<sup>2</sup> (4), a Single Judge of this Court in paragraph 24 of the judgment observed that where a tenant avoided his ejection by entering into some other arrangement with the landlord, he should be still deemed to have obtained the benefit contemplated by section 14 (2) of the Act.

We will be expressing ourselves in respect of these views a little later. The provisions have come in for direct interpretation and we are to lay down clear

law.

In *Manohar Lal v. R.B. Jai Chand Luthra*,<sup>3</sup> ., IAS (Retd)(5) observations were made to the effect in paragraph 7 of the judgment that on a perusal of the statement of the counsel reproduced earlier made, it was obvious that the landlord had received the arrears of rent as if under section 15 of the Act and that the statement having been made in the presence of the tenant and his counsel, even though a formal order under section 15 had not been specifically passed by the Controller, it could be taken that the rent was being accepted under section 15 of the Act. The court further observed that in the circumstances of that case, it could not be said that the tenant had not made payment or deposit as required by section 15 of the Act. The observation went to the extent :

"Sub-section (2) of section 14 of the Act does not in terms speak of a formal order under Section 15. It only mentions payment "as required by section 15."

The law laid down in *Smt. Sumitra Rani v. M/s Bennet Coleman and Co. Ltd.*,<sup>4</sup> (6) is also to the effect that even in the absence of compliance with the strict procedural requirements of section 15, there can be a situation where there may be a deeming compliance with the provisions.

It is because of the observation made in the foregoing manner that we have been called upon to record a final interpretation of the concerned provisions.

8. Section 14(2) falls into two parts. The first part is over if payment is made and there is no occasion for an order being passed under section 15(1) of the Act. The second part of the provision contemplates a situation in which an order under section 15(1) is necessarily to be passed. In that case, if the deposit is made by the tenant in accordance with the order passed under section 15(1) of the Act, the petition for ejectment will be dismissed.

9. It must be appreciated that a significant aspect of section 14(2) is that the benefit covered by the proviso in it can be had only once. The reference requires that it may be clearly determined as to when would it be taken that the benefit has been obtained.

10. Section 14(2) is a provision creating an additional protection against eviction on the ground specified in section 14(1)(a) of the Act. Such a protection can be had by the tenant if :

- (i) he makes a payment of the rent; or
- (ii) he deposits rent as required by section 15 of the Act.

It may become necessary for the landlord to file a petition for eviction of the tenant on the ground of non-payment of arrears of rent. If the tenant on acquiring the knowledge that such a petition has been filed, makes payment of the entire rent due to the landlord and the landlord does not attend to the proceedings at all, there would be a dismissal of the petition in default. The occasion for passing the order under section 15(1) would not arise in that case. The language used in section 15(1) is :

"The Controller shall, after giving the parties an opportunity of being heard"

The order under section 15(1) is to be passed after hearing both the parties. That occasion will not arise in a case where after the institution of the petition, the rent due is paid to the landlord and he abstains from pursuing the petition for ejection, which may be pending before the Controller. A close scrutiny of section 14(2) and section 15(1) of the Act leads us to the conclusion that in order to deprive the tenant of the benefit given by section 14(2) in any proceeding for his eviction on the grounds of non-payment of arrears of rent there should have been a specific order passed under section 15(1) in the earlier proceedings.

11. In order to pass an order under section 15(1) of the Act, the Controller has to determine as to at which rate the rent was last paid. After that determination an order can be made that the amount is to be calculated on that basis and deposited for the period for which the arrears of rent were legally recoverable as well as for the subsequent period till the end of the month previous to that in which the deposit is made. The tenant is to continue to pay or deposit the rent before the 15th of each succeeding month in terms of section 15(1) of the Act.

12. When a landlord files a petition for eviction of a tenant on the ground of non-payment of rent covered by section 14(1)(a) of the Act, three possible situations can arise. First, the tenant on coming to know of the filing of the petition either on receipt of a notice from the Rent Controller or otherwise, may pay the arrears of rent due to the landlord out of court prior to the hearing fixed before the Rent Controller, secondly, the tenant may pay the arrears of rent due or deposit the same on the first date of hearing before the Rent Controller or at

any time prior to the making of an order under section 15(1) of the Act, and thirdly, may wait for an order to be made under section 15(1) of the Act and deposit the arrears of rent mentioned in the said order and future rent specified by the order in terms of the said order under section 15(1) of the Act. In the first two situations mentioned above, the landlord may act in any of the following manners, namely:-

- (a) Withdraw his petition for eviction;
- (b) get his petition dismissed for default or as not proceed; and
- (c) press for an order under section 15(1) of the Act still being passed.

The occasion for insisting for an order under section 15(1) of the Act may arise because the tenant may be contesting the ground of eviction or the landlord may like to ensure that in case of a future default in payment of rent and he being compelled to come to court, he should be able to plead the proviso to section 14(2) of the Act. In case no order under Section 15(1) of the Act is made, or claimed that it should be made by the landlord, the payment or deposit of rent by the tenant cannot be regarded as having been made "as required by section 15".

13. We therefore, hold that where a deposit of arrears of rent has been made by the tenant in compliance with an order specifically passed under section 15(1) of the Act in the course of proceedings initiated for his ejection under section 14(1)(a), the benefit cannot be availed of in a subsequent proceeding for his ejection on the same ground. The existence and proof of such an order in an earlier proceeding covered by section 14(1)(a) is essential in order to deprive the tenant of the protection which section 14(2) gives him.

Reference answered.

Cases Referred.

1. 1974 RCR 470 : 1974 RLR 435.
2. 1974 RCR 370.
3. 1972 RCR 696
4. 1970 RCR 566 : 1970 RCJ 922.

