

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 542/2000

Reserved on : 27th May, 2008

Date of decision: 30th May, 2008

RAKESH KUMAR Petitioner
Through: Mr. R.M. Bagai, Advocate.

versus

GANDHARV SINGH Respondent
Through : None.

&

CM(M) 544/2000

RAJESH KUMAR Petitioner
Through: Mr. R.M. Bagai, Advocate.

versus

GANDHARV SINGH & ANR. Respondent
Through : None.

CORAM:

HON'BLE MR. JUSTICE V.K.SHALI

1. Whether reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

%

V.K.SHALI, J

1. These are two petitions filed by two separate petitioners who are brothers in respect two separate shops situated in property No. D-19/8, Main Road, Vijay Colony, 3rd Pushta, Usman Pur. The landlords of these two shops are different but the question involved is common. The present petitions have been filed on account of the order passed by Learned Additional Rent Controller on 3rd June, 2000 denying the benefit of Section 14(2) of the Rent Control Act. Against the said order, an appeal was preferred to the learned Additional Rent Control Tribunal which was also rejected by Shri

R.L. Chugh, the then Additional Rent Control Tribunal on 3rd July, 2000, resulting in filing of the two separate petitions.

2. Briefly stated the facts, which are not in dispute, are that the petitioners are the tenants in respect of the two shops. An eviction petition was filed by the respondent, Gandharv Singh in respect of both these shops against Shri Rakesh Kumar and Shri Rajesh Kumar on the ground that they had defaulted in payment of rent despite service of demand notice. The relationship between the landlord and the tenant was not disputed between the parties. So far as the period of rent is concerned that was also not disputed by the petitioners. The petitioners contended that arrears of rent stood paid/deposited upto 23rd April, 1999. So far as the shortfall in deposit is concerned, it was to the tune of Rs.175/- while as in the other case it was to the tune of Rs.250/-.

3. The Learned Additional Rent Controller passed an order u/s 15(1) of Rent Control Act on 12th March, 1999 and 27th September, 1999 directing the petitioner herein to pay or deposit rent @ Rs.150/-. The parties were permitted to adduce their evidence on 27th April, 2000, the learned Additional Rent Controller in both the petitions arrived at a finding that the rate of rent was Rs.250/- per month and accordingly the learned Additional Rent Controller ordered that petitioner herein in both the cases should pay or deposit the arrears of rent @ Rs.250/- per month from December 1995 to 27.4.2000 after adjusting the amount already paid within a period of one month and the case was adjourned to 3rd June, 2000 for the purpose of observing the compliance. The petitioner did not deposit the rent within the stipulated period of one month on 3rd June, 2000, accordingly an order of eviction was passed by denying

the benefit of Section 14(2) of the Rent Control Act to the petitioners. Against the said order, the petitioner preferred an appeal which was dismissed by the learned Additional Rent Control Tribunal on 3rd July, 2000. The learned Additional Rent Control Tribunal dismissed the appeal of the petitioner herein on the ground that the petitioner deposited the rent beyond the period of one month, therefore the benefit of Section 14(2) could not be given. It is in this back drop that the petitioners have preferred the present two separate petitions before the Hon'ble High Court assailing the order of the learned Rent Control Tribunal.

4. I have heard learned counsel for the petitioner and perused the record. The contention which has been raised by learned counsel for the petitioner is to the effect that after passing of the order on 27th April, 2000, the petitioner had not deposited the arrears of rent @ Rs.250/- per month within a period of one month. Against the order dated 27.4.2000 passed u/s 15(1), the petitioner had preferred an appeal before the Tribunal on 29th May, 2000 which was dismissed in limini by the learned Tribunal. After dismissal of the appeal the petitioner had approached the learned ARC for getting the voucher signed for deposit of rent however the same could not be done as the learned ARC was on leave for two days. The learned ARC signed the voucher of the petitioner only on 2.6.2000 and it was only after that he could deposit the rent only on 3rd June, 2000. This resulted in delay of 4/5 days on account of which he was denied the benefit of Section 14(2) of the DRC Act. It is submitted by the learned counsel for the petitioner, since the delay in deposit of the amount in terms of the order dated 27th April, 2000 was only by four or five days and it was occasioned on

CM(M) Nos. 542/2000 & 544/2000 Page 3 of 7

account of the fact that for two days, the learned Additional Rent Controller was on leave, therefore, there was no wilful or intentional default on the part of the petitioner. Accordingly, the delay ought to have been condoned and the benefit of Section 14(2) ought to have been given to the petitioner. Learned counsel for the petitioner in support of his contention has relied upon the judgments in the cases of B.R. Mehta vs. Smt. Atma Devi 37(1989) DLT 416, Surain Singh vs. Tulsi Ram Araun 1996 (36) DRJ 551 I have gone through the judgments which have been cited by learned counsel for the petitioner. However, they essentially deal with the question of non-compliance of an order passed u/s 15(1) of the Delhi Rent Control Act and the consequent striking off of the defence of the tenant on account of such a non-compliance. It has been broadly held in these judgments that merely on account of the fact that the tenant has not complied with the order passed u/s 15(1) of the Delhi Rent Control Act, it is not mandatory for Additional Rent Controller to strike off the defence of the tenant u/s 15(7) of the Rent Control Act. This is a discretion which is conferred on the Additional Rent Controller which is to be exercised keeping in view the facts and circumstances of the each case. In the instant case, the question of striking off the defence of the petitioner does not arise as it was an order which was passed at the stage of the final disposal of the case. Therefore, the question which arises in the instant case is as to whether in a given situation where the learned Additional Rent Controller has passed an order u/s 15(1) at the time of disposal of the petition, whether it is open to the learned Additional Rent Controller to condone the delay. Both the Learned Additional Rent Controller and the learned Rent Control Tribunal

have held to the contrary stating that once an order u/s 15(1) is passed at the time of final disposal there is no power vested in them to condone the delay in depositing of the rent.

5. I have considered this point which has been raised in both the impugned judgments before this Court. I find that this is against the law laid down by the Supreme Court in Ram Murti vs. Bhola Nath and another AIR 1984 Supreme Court 1392 in paragraph 8 which reads as under:

“8. The narrow construction placed by the Full Bench of the Delhi High Court in Delhi Cloth and General Mills Co. Ltd. vs. Hem Chand, AIR 1972 Delhi 275 on the powers of the Controller contained in S. 15(7) in the context of S. 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 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 waylaid 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 make the deposit by the due date. There is no reason why the refusal of the Rent Controller to strike out the defence of the tenant under Section 15(7) in such circumstances should not enure to the benefit of the tenant for purposes of Section 14(2)”.

A perusal of aforesaid observations in the judgment would clearly show that the Learned Additional Rent Controller or for that matter Tribunal is not powerless to condone the delay in a given case which may occur on account of the reasons which are beyond the control of the tenant to physically make the deposit within a

period of one month as stipulated in law. The said paragraph gives various illustrations under which the tenant may be unable to deposit the rent. In all such contingencies the ARC would not be powerless to condone the delay. Therefore in the light of the aforesaid facts, it could not be said that the Ld. Tribunal or the ARC did not have the power to condone the delay. However, so far as the question of actually delay being condoned in the present case is concerned, that aspect has to be seen as to whether the delay could have been condoned or not. In the instant case, there was no application filed by the petitioner for condonation of delay nor was such an application filed before the Learned Additional Rent Control Tribunal therefore the delay could not be ipso facto condoned automatically by the learned Additional Rent Controller or by the Tribunal without there being an application. To that extent, I feel that the order of the learned Additional Rent Controller as well as that of the Tribunal cannot be found fault with.

6. In addition to this, there is another factor which has to be borne in mind that while considering the question of condoning the delay which is even relevant at this late stage, that is a fact that according to the petitioner himself, the shop in question has already been demolished and the photographs of such demolition have already been placed on record. A perusal of these photographs would clearly show that the substantial portion of the shops have been already demolished. Having done so the shops cease to be the premises within the definition clause of the DRC Act and thus there is no question of condonation of delay in the instant case. These photographs clearly show that although it is contended by learned counsel for the petitioner that the shops

have been partially demolished but a visual impression after seeing the photographs one gathers that the substantial portion of the shop has been demolished therefore at this late stage to pass an order condoning the delay would only foment further litigation between the parties. Moreover, there was no application filed by the petitioner for condoning the delay.

7. For the reasons mentioned above, I find that there is no jurisdictional error or illegality or impropriety in the order which has been passed by the learned Additional Rent Controller or the impugned order passed by the learned Additional Rent Control Tribunal. Accordingly both the petitions are dismissed. No order as to costs.

30th May, 2008
nk

V.K.SHALI, J