

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

+ CM (M) 1411/2011

Date of Decision: 28.09.2012

TABASSUM @ MONAPetitioner

Through: Mr.Pushpender Sehgal, Adv.

Versus

NAZUK BEGUMRespondent

Through: Mr.R.P.Bhardwaj, Adv.,
Mr.S.R.Padhy, Ms.Payal
Raghav, Advocates.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J.

1. This petition under Article 227 of the Constitution is directed against the order dated 11.8.2011 of District Judge-cum-Addl. Rent Control Tribunal (ARCT), whereby the appeal of the petitioner/tenant against the orders dated 6.8.2010 and 17.8.2010 of Addl. Rent Controller (ARC), came to be dismissed.

2. The petitioner is a tenant under the respondent in respect of one room on the ground floor in premises bearing No. L-233, Sunder Nagri, Nand Nagri, Delhi. Her eviction was sought by the respondent/landlady under Section 14 (1)(a) of the Delhi Rent Control Act (for short the 'Act') on account of the non-payment of rent since

6.12.2001 despite issue of legal notice dated 17.10.2006. The petitioner contested the eviction petition filed by the respondent/landlady. The learned ARC vide order dated 6.8.2010 decreed the petition under Section 14(1) (a) of the Act in favour of the respondent/landlady, and thereafter, vide order dated 17.8.2010, declined to grant benefit to the petitioner/tenant under Section 14(2) of the Act. These orders of ARC dated 6.8.2010 and 17.8.2010 were carried in appeal by the petitioner/tenant, which was dismissed by the learned ARCT vide impugned order dated 11.8.2011. The said order is under challenge in the instant petition.

3. The undisputed facts are that initially, an order under Section 15(1) of the Act was passed on 31.1.2009, directing the petitioner to deposit the arrears of rent w.e.f. 1st January, 2006 to 31st January, 2009 at the rate of Rs. 250/- per month within a month from the order. The petitioner deposited the rent on 3.3.2009. This order of 31.1.2009 under Section 15(1) of the Act was subsequently modified by the ARCT vide its order dated 25.3.2009, directing the petitioner/tenant to deposit arrears of rent w.e.f. 1.1.2004 to 31.12.2005 within a month of the order. Thus, the due date of deposit/payment was to be 25.4.2009. The petitioner/tenant however deposited the arrears of rent on 25.5.2009 i.e. after a delay of one month. The learned ARC recorded non-compliance of both the orders i.e. of 31.1.2009 as also of 25.3.2009 on account of delay of two days in respect of the compliance of the first order and one month of second modified order dated

25.3.2009 of ARCT. The ARC, consequently, held that the petitioner/tenant is not entitled to benefit under Section 14(2) of the Act. The findings recorded by the ARC have been maintained by the ARCT vide impugned order.

4. So far as the delay of two days in the deposit of rent in terms of the order dated 31.1.2009 under Section 15(1) of the Act is concerned, the petitioner's case is that the delay is of one day and not two days since the month of February has been counted as full month and not that of 28 days by the court Nazir. This aspect, in fact, is not necessarily to be gone into inasmuch as this order of 31.1.2009 was merged with the modified order dated 25.3.2009 of ARCT. What was to be seen was the compliance of the modified order under Section 15(1) passed on 25.3.2009. Undisputedly, as per this order of ARCT, the deposit of rent was to be made on or before 25.4.2009, but, the petitioner/tenant deposited the rent only on 25.5.2009, and apparently, there was a delay of one month in depositing.

5. The question for consideration would be as to what is the course to be adopted by the Controller in the event of delay in depositing the rent, particularly when, no application is filed by the respondent/landlady seeking striking off the defence of the petitioner/tenant under Section 15(7) of the Act. It is settled law that in the event of the tenant failing to comply with the order under

Section 15(1) of the Act, he has to be heard giving him an opportunity as to why his defence be not struck off under Section 15(7) of the Act. In the case of **Ram Murti Vs. Bhola Nath & Another**, (1984) 3 SCC 111, it was held by the Supreme Court that it would be incongruous to hold that even if the defence of the tenant is not to be struck out under Section 15(7), the tenant must still be visited with the punishment of being deprived of the protection under Section 14(2) of the Act. Under Section 15(1) of the Act, if a tenant makes payment or deposits as required by Sub-Section (1), no order is to be made for the recovery of possession on the ground of default in payment of rent by the tenant, but the Controller may allow such costs as he may deem fit to a landlord.

6. From the scheme of various sub-sections of Section 14 and Section 15 of the Act, it would be seen that they form an integrated process seeking to strike a balance between the conflicting rights of the landlord to secure eviction of the tenant on any one or more of the grounds specified in the proviso to sub-section (1) of Section 14, and that of the tenant for protection against such eviction. The predominant object and purpose of this social legislation is to prevent the landlord from taking the extreme steps of evicting the tenant merely on technicalities or carved grounds. The Act intends to promote social justice by safeguarding the interest of the tenants and at the same time, protecting the legitimate interest of the landlord. Thus,

the Rent Control Act is not required to be interpreted in a hyper technical manner.

7. As per Ram Murti (supra), the essence of Section 14(2) and of Section 15(6) is whether there has been a substantial compliance with the order passed under Section 15(1). The words “as required by Section 15(1)” in these provisions must be construed in a reasonable manner. If the Rent Controller has the discretion under Section 15(7) not to strike out the defence of the tenant, he necessarily has the power to extend the time for payment of future rent under Section 15(1), where the failure of the tenant to make such payment or deposit was due to circumstances beyond his control.

8. In the instant case, undisputedly, there was no application filed by the respondent/landlady under Section 15(7) of the Act, and no opportunity was afforded to the petitioner/tenant to explain the cause of delay of one month in complying the order dated 25.3.2009. In fact, in the absence of there being any application under Section 15(7) filed by the respondent/landlady, complaining the delay and seeking striking off the defence of the petitioner/tenant, the petitioner/tenant would necessarily presume the delay in deposit, if any, as acquiesced by the landlady (respondent), as also condoned by the court. At the time of passing of the order on 17.8.2010, the petitioner/tenant only had the opportunity of explaining verbally about the cause of delay in

obtaining the certified copy of the order. This order dated 17.8.2010 of ARC came to be passed after about 1½ year of the order dated 25.3.2009 passed by the ARCT, directing the petitioner to deposit arrears of rent w.e.f. 01.01.2004. If the respondent/landlady would have filed an application under Section 15(7), the petitioner/tenant would have got the exercise of discretion of the Controller in condoning the delay. The learned ARC as also the ARCT have grossly erred in recording the delay of one month in depositing of the rent as willful. The learned ARCT has also erred in observing that there was no documentary evidence placed on record by the petitioner/tenant to show that the delay in depositing the rent was not willful. Though there was no formal application filed by the petitioner/tenant as there was no occasion, in the absence of there being any application under Section 15(7), but at the time of consideration of benefit under Section 14(2), the prayer for condonation of delay on account of delay in obtaining the certified copy, was made before the ARC for his consideration. Thus, it could not be said that there was neither any application nor any prayer for condonation of delay, and so, the court could not have condoned the same. The power of condonation of delay and also default in deposit of rent by the tenant is well recognized by various judicial pronouncements of the Supreme Court and reference can be again made to the case of Ram Murti (supra).

9. The order under Section 15(1) passed on 31.1.2009 by the ARC as also the modified order of ARCT dated 25.3.2009 were substantially complied with by the petitioner/tenant and the delay of one month in compliance of the subsequent order, in all fairness, and keeping in view the scheme and object of the legislation, ought to have been condoned by the ARC. The ARC seems to have overlooked many important aspects of the issues, and the hyper technical interpretation of the provisions, has manifestly resulted in injustice to the petitioner.

10. In view of my above discussion, the petition is allowed. Instead of remanding the matter back to the ARCT or the Controller for consideration on the issue of condonation of delay, I in exercise of power under Article 227 of the Constitution, do hereby condone the delay in compliance of the order under Section 15(1) of the Act, and thereby, grant benefit under Section 14(2) to the petitioner/tenant.

11. Petition stands disposed of accordingly.

M.L. MEHTA, J.

SEPTEMBER 28, 2012

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