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

Date of Decision : 29.01.2021

+ **CM(M) 72/2021 & CM APPLs. 3126/2021 & 3127/2021**

BASANT LAL Petitioner

Through: Mr.R.B. Trivedi & Mr.Saurabh
Sachdeva, Advs.

versus

NIRMLA DAWAR & ORS. Respondents

Through: None.

(34) **CM(M) 74/2021 & CM APPLs. 3233/2021 & 3234/2021**

BASANT LAL Petitioner

Through: Mr.R.B. Trivedi & Mr.Saurabh
Sachdeva, Advs.

versus

SMT NIRMLA DAWAR & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. These petitions have been filed challenging the common judgment/order dated 22.10.2020 passed by the learned Rent Control Tribunal (hereinafter referred to as the 'RCT') in RCT No. 56/2016 and 57/2016, dismissing the appeals filed by the petitioner herein and ordering his eviction from the tenanted premises being shop No. J-71, Milap Market, Hari Nagar, New Delhi.

2. The Eviction Petition was filed by the respondents, being the legal representatives of the erstwhile landlord Shri Kesho Ram, against the petitioner under Section 14(1)(a) of the Delhi Rent Control Act,

1958 ('Act'), claiming therein that the petitioner had defaulted in tendering the payment of the rent with effect from 01.06.2005 and had not paid or tendered the same inspite of service of statutory notice dated 08.11.2007.

3. By the order dated 03.09.2015, the learned Additional Rent Controller, West District, Tis Hazari Courts (hereinafter referred to as ARC) was pleased to allow the said petition against the petitioner, directing the petitioner to pay the arrears of rent with effect from 01.06.2005 and continue to pay the same on a month-to-month basis at the rate of Rs. 400/- per month. The case was thereafter listed on 07.11.2015 for considering compliance of the interim order dated 10.09.2010 passed under Section 15(1) of the Act and to consider whether the petitioner was entitled to the benefit under Section 14(2) of the Act.

4. By the subsequent order dated 02.08.2016, the learned Additional Rent Controller (hereinafter referred to as the 'ARC') was pleased to deny the benefit of Section 14(2) of the Act to the petitioner for having committed default in payment of rent in terms of the order dated 03.09.2015.

5. The orders dated 03.09.2015 and 02.08.2016 were challenged by the petitioner by way of the above appeals, which have been dismissed by the learned RCT.

6. The learned counsel for the petitioner submits that the learned RCT has erred in not appreciating that the rate of rent for the premises

was only Rs. 300/- per month and not Rs. 400/- as has been held by the learned ARC. He submits that the learned ARC has placed reliance on the counterfoil of the rent receipts for the months of April and May, 2005 to hold that the rent stood increased to Rs. 400/- per month. Infact, it is the case of the petitioner that this counterfoil was signed in blank by the petitioner and had been later filled up by the respondents to show the enhanced rent.

7. He further submits that there was no default in payment of the agreed rent of Rs. 300/- per month by the petitioner. Infact, inspite of the payment of rent, it is the respondents who had failed to issue the receipts. He submits that as the petitioner had been a tenant in the tenanted premises since 1976 and had good relations with Kesho Ram as also the respondents, he had no occasion to doubt the *bona fide* of the respondents and had never insisted upon the rent receipt. He further submits that the very fact that the respondents never demanded this rent for a period of more than two years shows that the case set up by the respondents was false, as no landlord would not initiate any action or even demand the rent, if not paid, by the tenant for such a long period.

8. As far as the statutory notice dated 08.11.2007 is concerned, the learned counsel for the petitioner submits that the same was admittedly not served on the petitioner and had been returned unserved. The respondents were well aware of the residential address of the petitioner, however, made no efforts to serve the petitioner at the said address. He submits that as the petition had been filed without

the service of the statutory notice of the petition, the petition was not maintainable.

9. As far as the denial of the benefit of Section 14(2) of the Act is concerned, the learned counsel for the petitioner submits that the petitioner had suffered a paralytic attack because of which there was a default of a few months in complying with the direction contained in the order dated 03.09.2015. The said default, being for *bona fide* reasons, could and should have been condoned by the learned ARC and therefore, the petitioner cannot be denied the benefit of protection provided under Section 14(2) of the Act.

10. I have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same. At the outset, it is to be noted that this Court is not exercising its jurisdiction as an Appellate Court and therefore, must confine its scrutiny to the jurisdictional error or substantial error on the face of the record, if any, made by the learned ARC or the learned RCT. All submissions made by the petitioner infact, call upon this Court to exercise its jurisdiction as if sitting as an Appellate Court, to re-appreciate the evidence and come to its own conclusion thereon. This is clearly impermissible.

11. Even otherwise, as far as the submission of the petitioner on the amount of rent is concerned, the learned ARC as also the learned RCT have disbelieved the case set up by the petitioner of having signed the counterfoil of the rent receipts in blank. I do not see any reason to interfere with this finding.

12. The plea of the petitioner that the petitioner had been regularly making payment of the rent, however, it is the respondents who refused to issue rent receipt of the same, again cannot be accepted. The learned ARC as also the learned RCT have rightly negated this plea relying upon the judgment of the Supreme Court in ***Sarla Goel & Ors. vs. Kishan Chand***, (2009) 7 SCC 658 wherein the Supreme Court has held that in such circumstances the tenant must take recourse to Section 27 of the Act, failing which the case set up by the tenant cannot be accepted.

13. As far as the service of notice is concerned, as held by the learned ARC and learned RCT, the notice was sent at the correct address by way of registered post. Both the Courts have rightly relied upon the presumption of service as contained in Section 114 of the Indian Evidence Act, 1872 and Section 27 of the General Clauses Act, 1897. The plea of the petitioner that the respondents should have made an effort to serve the petitioner at his residential address also, cannot be accepted.

14. As far as the benefit of Section 14(2) of the Act is concerned, the learned ARC in his order dated 03.09.2015 granted one month's time to clear the arrears of rent. Admittedly, the petitioner failed to do so and as recorded in the Impugned Order, paid a partial sum on 01.02.2016 and the remaining only on 05.07.2016. The learned RCT, while upholding the rejection of the benefit under Section 14(2) to the petitioner, has observed as under:-

“19. Coming to the subsequent impugned order dated 02.08.2016, admittedly the appellant / tenant had made belated payment of arrears of rent in terms of order passed u/s 15 (1) of the DRC Act on 03.09.2015 which should have been deposited by 22.10.2015 but it was deposited almost after 3^{1/2} months i.e. partly on 01.02.2016 and then after about nine months, the remaining balance was paid on 05.07.2016. Admittedly no application for condonation of delay for making such deposits on medical grounds was filed before the Ld. CCJ-cum-ARC (West), THC, Delhi.

20. Ms. Chaudhary, Ld. Counsel for the appellant / tenant has referred to the medical documents placed on the record to substantiate that the appellant/tenant had genuine and compelling medical reasons thereby failing to make deposit of rent within the stipulated time. The Spiral CT Scan report dated 19.02.2015 is placed on record whereby the appellant was diagnosed with “heamatoma in right basal ganglion”. There are then the reports with regard to the LIPID profile, blood sugar and urine sugar that make out no case of any serious ailment afflicting the appellant / tenant. Another document is from Khetarpal Neurodiagnostic Centre dated 19.02.2015, 31.03.2015 and 06.11.2015 which reiterate that the appellant / tenant had been suffering from heamatoma in right basal ganglion experiencing weakness and the left face under some kind of paralytic seizure or attack. I do not see as to how the documents placed on the record make out a compelling and irrefutable evidence of any serious medical ailment afflicting the appellant / tenant.

*21. Ms. Chaudhary, Ld. Counsel has relied on decision in **Kamla Devi v. Vasdev** (1995) 1 SCC 356. There is no quarrel with the proposition of law that the Rent Controller has wide powers to extend time prescribed u/s 15 (1) of the DRC Act for payment of arrears of rent or future rent. In other words, Rent Controller is vested with a lot of discretion but at the same time such discretion can only be exercised if justifiable grounds are shown. At the cost of repetition, non-exist. A simple bald*

assertion that the appellant was suffering from serious medical ailment cannot be accepted on its face value.”

15. The Supreme Court in ***Aero Traders (P) Ltd vs. Ravinder Kumar Suri***, (2004) 8 SCC 307 and ***Pawan Kumar Gupta vs. B.R. Gupta***, (2017) 14 SCC 541 has held that where the tenant fails to pay the rent of even a paltry sum of rent, inspite of earlier default and a direction to do so, the ARC as also the RCT would be right in refusing to exercise the discretion vested in them to condone such delay in favour of such recalcitrant tenant. I, therefore, find no infirmity in refusal of the ARC and the RCT to exercise the discretion vested in them in favour of the petitioner.

16. In view of the above, I find no merit in the present petitions. The same are dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

JANUARY 29, 2021/rv