A

JAGAN NATH

v.

B RAM KISHAN DASS AND ANR.

December 12, 1984

[Y.V. CHANDRACHUD, CJ. AND R.S PATHAK J.]

C *Delhi Rent Control Act, 1958—S. 14(1) proviso scope of.*

The respondents, Landlord, filed three ejectment applications on March 9, 1967, May 13, 1968 and March 9, 1971 respectively against the appellants, a tenant for possession of one room situate at Kamla Nagar, New Delhi. The first application was on the ground of non-payment arrears of rent and bona fide requirement, the second on the ground of bona fide D requirement of the landlord and the third one again on the ground of non-payment of arrears of rent. The first application, where the appellant complied with an order passed by the Rent Controller u/s 14(2) r/w s. 15(1) of the Delhi Rent Control Act, 1958 calling upon the appellant to deposit arrears of rent, was withdrawn by the respondents subsequently on the ground that they had not given to the appellant a notice to quit. The second application was dismissed on merits. In the third application out of E which the present appeal arises, the Additional Rent Controller passed an order of eviction against the appellant holding that no order u/s. 15(1), of the Act could be passed on the ground that such a benefit was given to the appellant in the first eviction petition and that by reason of the proviso to sub—s. 2 of s. 14 of the Act, the appellant could not claim that benefit once again. The appeal of the appellant against the order of eviction was allowed by the Rent Control Tribunal, which took the view that the F appellant was entitled to the benefit of the provision contained in section 14 (2) of the Act and that, the proviso to that sub-section had no application because, the benefit of the provision contained in section 14 (2) was being availed of by the appellant for the first time in the present proceedings. But the High Court in second appeal set aside the judgment of the Rent Control Tribunal and restored that of the Rent Controller.

G The appellant contended that the proviso to sub-s. (2) of s. 14 can have no application to the instant case because, in the first ejectment proceedings the appellant had not obtained any benefit under that sub—section. The respondent contended that if a tenant avails of the benefit of an order passed u/s. 15 (1), he must be regarded as having obtained the benefit of the provision contained in s. 14 (2) and that the final result of the eviction petition in which an order was passed under section 15 (1) for the first time, or the form of the final order passed in that proceeding, has no relevance on the question whether the tenant had obtained benefit of the provision con-H tained in section 14 (2).

Allowing the appeal, A

HELD : (1) Section 14 (2) of the Act provides that no order for the recovery of possession of any premises can be made on the ground that the tenant has committed default in the payment of rent, if he pays or deposits the rent in accordance with the provisions of section 15. The benefit which the tenant obtains under section 14 (2) is the avoidance of the decree for possession. Though he had committed default in the payment of rent, no decree B for possession can be passed against him. This benefit accrues to the terant by reason of the fact that he has complied with the order passed by the Controller under section 15 of the Act. The passing of an order under section 15 is not a benefit which accrues to the tenant under section 14(2). It is obligatory upon the Controller to pass an order under section 15(1) in every proceeding for the recovery of possession on the ground specified in section 14 (1) (a), that is, on the ground that the tenant has committed default in the payment C of rent. That is a facility which the law obliges the Controller to give to the tenant under section 15. It is through the medium of that facility that the tenant obtains the benefit under section 14(2). And that benefit consists in the acquisition of an immunity against the passing of an order of possession on the ground of default in the payment of rent. It must follow that, it is only if an order for possession is not passed against the tenant by reason of the provision contained in section 14(2), that it can be said that he has D obtained a benefit under that section. [394C-G]

(2) If the earlier proceeding was withdrawn by the landlord, it cannot be said that the tenant obtained the benefit of not having had an order of possession passed against him. It is self-evident that if a proceeding ends in an order granting permission for its withdrawal, it cannot possibly be said that "no order for the recovery of possession was passed therein for the E reason that the tenant had made payment or deposit as required by section 15". That is the gist of section 14(2). The stage or occasion for passing an order to the effect that 'no order for possession can be passed because of the fact that the tanant has complied with the order passed under section 15 does not arise in the very nature of things, in a case wherein the landlord is permitted to withdraw the application for ejectment of the tenant.

[394H; 395A-B]

(3) In the instant case, the reason leading to the termination of the F earlier ejectment application was that the respondents wanted to cure the formal defect from which the application suffered and not that no order for possession could be passed against the appellant for he reason that the had complied with the order passed under section 15. In other words, there was no nexus between the final order which was passed in the earlier ejectment application and the fact that the appellant had complied with the order G passed under section 15. The earlier ejectment application was founded on two grounds, namely, that the appellant had committed default in the payment of rent and that respondents wanted the premises for their personal need. The fact that the first of these grounds was no longer available to the respondents since the appellant had complied with the order passed under section 15 could not have resulted in the dismissal of the ejectment application because, the other ground on which eviction of the appellant was sought by the respondents had yet to be considered by the Rent Controller. This is an additional reason why it cannot be said on the facts, of this case H

A that the appellant obtained a benefit under section 14(2). But, the two circumstances, just mentioned will not make any difference to the fundamental legal position explained above that the proviso to section 14(2) can be attracted only if it is shown that the tenant had obtained the benefit of the provision contained in that section and not otherwise. [395D-H]

B (4) The Court allowed the appeal, set aside the judgment of the High Court and restored that of the Rent Control Tribunal with the modification that the period of one month for depositing the arrears of rent shall be computed from the date of this judgment. [397C]

Rama Gupta v. Rai Singn Kain 1972 All India Rent Control Journal 712, *Ashok Kumar v. Ram Gopal* 1982 (2) Rent Contral Journal 29 approved.

C

Kahan Chand Makan v. B.S. Bhambri, AIR 1977 Delhi 27 referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 653 of 1979.

D Appeal by Special leave from the Judgment and Order dated the 14th August, 1978 of the Delhi High Court in S. A. O. No. 166/73.

U. R. Lalit and *B. P. Maheshwari,* for the Appellant.

A. K. Goel for the Respondent.

The Judgment of the Court was delivered by

E

CHANDRACHUD, CJ. The appellant is a tenant of the respondents in respect of one room in a house at Kamla Nagar, New Delhi. The rent of the room is Rs.10/-per month. On March 19, 1967 the respondents filed an application for possession of the room on two grounds : one, that the appellant was in arrears of rent and, two, that they required the room *bona fide* for their own use and occupation. An order was passed by the Rent Controller in that proceeding under section 14 (2) read with section 15 (1) of the Delhi Rent Control Act, 1958 (hereinafter called "the Act"), calling upon the appellant to pay or deposit the arrears of rent within one month. The appellant complied with that order, whereupon, on April 1, 1968 respondents withdrew the ejectment application, with liberty to file a fresh application. The reason stated by the respondents for withdrawing the application was that they had not given to the appellant a notice to quit under section 106 of the Transfer of Property Act and that, therefore, the application was liable to fail for a formal defect.

F

G

Immediately thereafter, on April 7, 1968 respondents gave a notice to quit to the appellant, terminating his tenancy with effect

H

from May 9, 1968. On May 13, 1968, respondents filed a fresh application for possession against the appellant on the ground that they required the room *bona fide* for their personal use. That application was dismissed on February 14, 1969. A

On March 9, 1971 respondents filed the instant application against the appellant for possession of the room on the ground that the appellant was in arrears of rent from April 1968 until March 1971. In this proceeding, the learned Additional Rent Controller, Delhi, refused to pass an order under section 15 (1) of the Act on the ground that such a benefit was given to the appellant in the first eviction petition and that, by reason of the proviso to sub-section (2) of section 14 of the Act, the appellant could not claim that benefit once again. In that view of the matter, the Rent Controller passed an order of eviction against the appellant. B C

The appeal filed by the appellant against the order of eviction was allowed by the Rent Control Tribunal, which took the view that the appellant was entitled to the benefit of the provision contained in section 14 (2) of the Act and that the proviso to that sub-section had no application because, the benefit of the provision contained in section 14 (2) was being availed of by the appellant for the first time in the present proceedings. According to the Tribunal, the first ejectment application filed by the respondents against the appellant was dismissed because, respondents asked for leave to withdraw that application with liberty to file a fresh application on the ground that they had not served a notice to quit on the appellant, and not on the ground that the appellant had complied with the order passed under section 15 (1) of the Act. D E

The judgment of the Rent Control Tribunal was set aside in Second Appeal by the High Court of Delhi. The High Court took the view that though the first ejectment application was withdrawn by the respondents on the ground that they had not given a notice to quit to the appellant, that cannot alter the position that the appellant had availed of the benefit of the provision contained in section 14 (2) of the Act. Therefore, according to the High Court, by reason of the proviso to section 14 (2), the appellant was not entitled to invoke the provisions of section 15 (1) of the Act. By this appeal, the tenant challenges the correctness of the judgment of the High Court. F G

Section 14 of the Act contains provisions which are more or less similar to the provisions contained in various other Rent Acts. H

Sub-section (1) of that section contains the prohibitory provision that, 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 favour of the landlord against a tenant. The proviso to that sub-section enables or entitles a landlord to obtain possession of the premises let out to a tenant on one or more of the grounds only, which are mentioned in clauses (a) to (1) of the sub-section. Clause (a) of the proviso enables a landlord to obtain possession if the tenant has neither paid nor tendered the arrears of rent within two months from the date on which the notice of demand for the arrears of rent has been served on him by the landlord in the manner prescribed by section 106 of the Transfer of Property Act. Under clause (e) of the proviso, the landlord can obtain possession of the residential premises let out to the tenant, on the ground, broadly, that the premises are required by him for a personal need. Sub-section (2) of section 14 reads thus :

> "14 (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 tenan makes payment or deposit as required by section 15 :
>
> Provided that no tenant shall be 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."

Section 15 (1) of the Act reads thus :

> "15 (1) In every proceeding for the recovery of possession of any premines 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 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." A

Sub-section (6) of section 15 provides that if a tenant makes payment or deposit as required by sub-section (1), no order shall be made for the recovery of possession against him on the ground of default in the payment of rent by him. On the other hand, if a B tenant fails to make payment or deposit as required by section 15 (1), the Controller may order the defence of the tenant to be struck off under sub-section (7) and proceed with the hearing of the ejectment application.

The rent of the suit premises is small, only Rs. 10/ per month. C The tenant, of course, is much too small as would appear from the fact that he committed default in the payment of rent at that rate for a long time. But, quite often, small tenants have small landlords who are entitled to expect that the tenants will pay at least the small rent regularly and not drive them to a court proceeding which D is bound to cost more than the amount of arrears of rent which is at stake. This seemingly insignificant case raises a question of some public importance, which is partly evidenced by the fact that the learned Judges of the Delhi High Court have taken conflicting views upon the question. Those views were explained carefully and those judgments were read out to us by Shri A. K. Goel who appears on E behalf of the respondents. We do not propose to embark upon an analysis of those judgments since, that exercise is not likely to prove fruitful. The reason is that the facts of the various cases which were before the High Court differed from case to case, which partly accounts for the divergent views expressed by different learned Judges of the High Court. With respect, some of the judgments cited before us overlook that previous decisions turned on their own F peculiar facts.

It is contended by Shri Lalit, who appears on behalf of the appellant, that the proviso to sub-section (2) of section 14 can have no application to the instant case because, in the first ejectment G proceeding which was filed by the respondents against the appellant, the latter had not obtained any benefit under that sub-section. On the other hand, it is contended by Shri Goel that if a tenant avails of the benefit of an order passed under section 15 (1), he must be regarded as having obtained the benefit of the provision contained in section 14 (2). According to the learned counsel, the object of the proviso to section 14 (2) is to ensure that an order under section H

A 15 (1) is not passed in favour of a tenant more than once. Therefore, it is contended, the final result of the eviction petition in which an order was passed under section 15 (1) for the first time, or the form of the final order passed in that proceeding, has no relevance on the question whether the tenant had obtained benefit of the provision contained in section 14 (2).

B

We are of the opinion that the appellant's contention is preferable to that of the respondents, having regard to the language of section 14 (2) of the Act and of the proviso to that section. Putting it briefly, that section provides that no order for the recovery of C possession of any premises can be made on the ground that the tenant has committed default in the payment of rent, if he pays or deposits the rent in accordance with the provisions of section 15. The benefit which the tenant obtains under section 14 (2) is the avoidance of the decree for possession. Though he had committed default in the payment of rent, no decree for possession can be D passed against him. This benefit accrues to the tenant by reason of the fact that he has complied with the order passed by the Controller under section 15 of the Act. The passing of an order under section 15 is not a benefit which accrues to the tenant under section 14 (2). It is obligatory upon the Controller to pass an order under section 15 (1) in every proceeding for the recovery of possession on the E ground specified in section 14 (1) (a), that is, on the ground that the tenant has committed default in the payment of rent. That is a facility which the law obliges the Controller to give to the tenant under section 15. It is through the medium of that facility that the tenant obtains the benefit under section 14 (2). And, that benefit consists in the acquisition of an immunity against the passing of an F order of possession on the ground of default in the payment of rent. It must follow that, it is only if an order for possession is not passed against the tenant by reason of the provision contained in section 14 (2), that it can be said that he has obtained a benefit under that section. The Key words of the proviso to sub-section (2) of section 14 are : "Provided that no tenant shall be entitled to the benefit G *under this sub-section.*"

That brings out the relevance of the nature of the order which was passed in the earlier proceeding in which the tenant had complied with the order passed by the Controller under section 15. It the earlier proceeding was withdrawn by the landlord, it cannot be said that the tenant obtained the benefit of not having had an order of H possession passed against him. It is self-evident that if a proceeding

ends in an order granting permission for its withdrawal, it cannot possibly be said that "no order for the recovery of possession was passed therein for the reason that the tenant had made payment or deposit as required by section 15". That is the gist of section 14 (2). The stage or occasion for passing an order to the effect that 'no order for possession can be passed because of the fact that the tenant has complied with the order passed under section 15' does not arise in the very nature of things, in a case wherein the landlord is permitted to withdraw the application for ejectment of the tenant.

A

B

There are two circumstances which must be borne in mind in this case though, we must add, they will not make any difference to the legal position which is stated above. The first circumstance is that the respondents asked for leave to withdraw the earlier ejectment application, in which the appellant had duly comlied with the order passed by the Controller under section 15, on the ground that the application was liable to fail for a formal defect since they had not given a notice to quit to the appellant under section 106 of the Transfer of Property Act. Thus, the reason leading to the termination of the earlier ejectment application was that the respondents wanted to cure the formal defect from which the application suffered and not that no order for possession could be passed against the appellant for the reason that he had complied with the order passed under section 15. In other words, there was no nexus between the final order which was passed in the earlier ejectment application and the fact that the appellant had complied with the order passed under section 15. The second circumstance which must be mentioned is that the earlier ejectment application was founded on two grounds, namely, that the appellant had committed default in the payment of rent and that respondents wanted the premises for their personal need. The fact that the first of these grounds was no longer available to the respondents since the appellant had complied with the order passed under section 15, could not have resulted in the dismissal of the ejectment application because, the other ground on which eviction of the appellant was sought by the respondents had yet to be considered by the Rent Controller. This is an additional reason why it cannot be said on the facts of this case that the appellant obtained a benefit under section 14 (2). At the cost of repetition, we must clarify that the two circumstances which we have just mentioned will not make any difference to the fundamental legal position which we have explained above that the proviso to section 14 (2) can be attracted only if it is shown that the tenant had obtained the benefit of the provision contained in that section and not otherwise.

C

D

E

F

G

H

A As we have stated earlier, several conflicting decisions of the High Court of Delhi were read out to us. It is both needless and difficult to consider them individually. We will only indicate, that on facts similar to those before us, the view taken by D. K. Kapur, J, in *Rama Gupta* v. *Rai Singh Kain*,(1) is the correct view to take. The learned Judge held in that case that since the landlord B had withdrawn the earlier eviction petition, it could not be said that the tenant had derived a benefit under section 14 (2) of the Act. In *Kahan Chand Makan* v. *B. S. Bhambri*, (2) a Division Bench of the Delhi High Court noticed the conflicting judgments rendered by the different Benches of the High Court, including the judgment of D. K. Kapur, J., in *Rama Gupta* v. *Rai Singh Kain*. It is not possible C to say with certainty whether the view taken by D. K. Kapur, J., was approved because, the judment of the Division Bench refers to various decisions of the High Court without stating which of those is correct and which not. In any case, the conclusion recorded by the Division Bench in paragraph 13 of its judgment seems too broad D to apply to varying situations. Besides, the learned Judges, with respect, have apparently confused the availing of the facility under section 15 by the tenant with the benefit which accrues to him under section 14 (2). They say :

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

The benefit which the proviso to sub-section (2) of section 14 speaks of is : "the benefit under this sub-section" and not the benefit under section 15.

A recent decision of a learned Single Judge of the Delhi High Court is reported in *Ashok Kumar* v. *Ram Gopal*. (3) That was a typical case which attracted the proviso to section 14(2).The landlord

(1) 1972 All India Rent Control Journal 712.
(2) AIR 1977 Delhi 247.
H (3) 1982 2 Rent Control Journal 29.

therein had filed an application under section 14(1)(a) in 1973 for the eviction of the tenant on the ground of non-payment of rent. The Rent Controller passed an order under section 15 (1) which was duly complied with by the tenant. Thereupon, the landlord's application was dismissed by the Controller. In May 1979, the landlord filed another petition for possession against the tenant on the ground that he had committed default in the payment of rent. It was held by Kirpal J, and rightly, that since the tenant had obtained the benefit of section 14 (2) in the previous ejectment application, he was not entitled to the benefit of that section once again.

A

B

For these reasons, we allow the appeal, set aside the judgment of the High Court and restore that of the Rent Control Tribunal with the modification that the period of one month for depositing the arrears of rent shall be computed from the date of this judgment. If the appellant deposits the arrears of rent due until December 31, 1984 on or before January 12, 1985 the respondent' application for possession will stand dismissed. On the other hand, if the appellant fails to deposit the arrears of rent as directed above, there shall be an order for possession in favour of the respondents which they will be entitled to execute. The amount of arrears will be deposited in the Court of the Additional Rent Controller, Delhi, in which the ejectment application was filed against the appellant.

C

D

There will be no order as to costs throughout.

M. L. A. *Appeal allowed.*