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SMT. PRAKASH MEHRA

v.

K.L. MALHOTRA

APRIL 27, 1989

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[R.S. PATHAK, CJ AND S. NATARAJAN, J.]

*Delhi Rent Control Act, 1958: s. 14(1)(a)—Eviction—Notice of demand for arrears of rent—Satisfaction of—Held, arrears of rent due cannot be extended to rent falling due after service of notice.*

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The respondent-tenant fell into arrears of rent for two months consecutively. The rent was payable in advance. He was served with a notice of demand, within seven days of which he sent a bank draft purporting to be the rent for the first month, and within a month another bank draft for the like amount. The landlady neither encashed nor returned them. After the notice period she filed an application for his ejection.

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The Rent Controller held that the tenant was not in default. The Tribunal, however, found that when the notice of demand was served the arrears of rent for the two months had arisen, that the bank draft sent thereafter related to the rent for the first month only, that as the rent for the second month had also become due but had not been tendered, the landlady was justified in not accepting the tender, and that when the respondent again sent a draft for the second month the rent for the third month had also fallen due but was not tendered. It thus took the view that the respondent had not tendered the arrears of rent due up-to-date within two months of the notice of demand, and held that the ground of non-payment of rent stood established.

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Allowing the appeal, the High Court took the view that s. 14(1)(a) of the Delhi Rent Control Act, 1958 made out a ground for eviction only where the tenant had neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand was served on him by the landlord, the arrears being the rent due on the date of the notice. As in the instant case, the notice called for payment of the arrears due for the two months and the bank drafts were tendered within the period indicated in the notice, the notice was satisfied.

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Dismissing the appeal by special leave, the Court,

**HELD:** The arrears of rent envisaged by s. 14(1)(a) of the Delhi Rent Control Act are the arrears demanded by the notice for payment. The arrears of rent due cannot be extended to rent which has fallen due after service of the notice. [747DE]

In the instant case, the two bank drafts representing the arrears of rent covered by the notice of demand had been tendered within two months of the date of service of the notice. The High Court was, therefore, right in the view taken by it. [747DE]

*Jag Ram Nathu Ram v. Shri Surinder Kumar*, S.A.O. No. 52 of 1975 and *S.L. Kapur v. Dr. Mrs. P.D. Lal*, *All India Rent Control Journal*, [1975] 322, overruled.

**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 3119 of 1984.

From the Judgment and Order dated 20.9.1982 of the Delhi High Court in S.A.O. No. 181 of 1979.

Dr. Y.S. Chitale and Mukul Mudgal for the Appellant.

R.K. Garg, Gopal Singh, L.R. Singh and Mrs. Vimal Sinha for the Respondent.

The Judgment of the Court was delivered by:

**PATHAK, CJ.** This is a landlady's appeal by special leave arising out of proceedings for the ejectment of the respondent-tenant.

The appellant let out the premises in suit to the respondent on 1 September, 1962, the rent being stipulated as payable in advance. With effect from 1 January, 1972 the rent payable was Rs. 515 per month. On 29 November, 1972, the contractual tenancy was determined by notice. The respondent received a notice on 7 May, 1976 calling upon him to pay the arrears of rent. The rent in fact had been received upto 31 March, 1976 and, therefore, when the notice of demand was served on the appellant, rent for the months of April and May 1976 had fallen due. The rent was payable in advance.

On 13 May, 1976, the respondent offered a bank draft of Rs.515 to the appellant. The appellant refused to accept it. Two days later, the respondent sent the same bank draft by registered post. The appellant

A received the bank draft and retained it. On 7 June, 1976, the appellant wrote to the respondent informing him that his tender was not valid. On 11 June, 1976, the appellant sent another bank draft for Rs.515 to the landlady, and this draft again was neither encashed nor returned.

B On 2 August, 1976, the appellant filed an application for ejectment out of which the present appeal arises. After filing the application for ejectment, the appellant informed the respondent that both the bank drafts sent by him were lying uncashed.

C The Additional Controller, Delhi, dismissed the eviction petition holding that the tenant was not in default. The Rent Control Tribunal, Delhi, noted that the rent was payable in advance in accordance with the agreement between the parties, that the respondent had earlier enjoyed the benefit of section 14(2) of the Act, that when the notice of demand was served on 7 May, 1976 the arrears of rent for the months of April and May 1976 had arisen, that the bank draft sent on 13 May, 1976 related to the rent of April 1976 only, that as the rent for the month of May 1976 had also become due but had not been tendered, the landlady was justified in not accepting the tender, and that when the respondent again sent a draft on 11 June, 1976 to cover the rent for the month of May 1976 the rent for the month of June 1976 had also fallen due but was not tendered. Holding that the respondent had not tendered the arrears of rent due up-to-date within two months of the notice of demand, the Tribunal held that the ground of non-payment of rent stood established. The Tribunal noted that the rent had not been paid for the months of April, May and June 1976 in advance for each month and, therefore, the respondent had committed three consecutive defaults. That being so, the Tribunal observed, the respondent was not entitled to the benefit of s. 14(2) again.

F In second appeal, the High Court reversed the decision of the Rent Control Tribunal and dismissed the application for ejectment upon the finding that the notice demanding the arrears of rent related to the months of April and May 1976, and as one draft had been sent on 13 May, 1976 and another on 11 June, 1976 representing a total of two months' rent, and as this rent had been paid within two months of the service of notice of demand, it must be taken that the rent due at the time of the service of notice of demand had been tendered by the respondent to the appellant. The High Court proceeded on the view that s. 14(1)(a) of the Act made out a ground for eviction only where the tenant had neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on

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which a notice of demand for the arrears of rent was served on him by the landlord, the arrears being the rent due on the date of the notice. In this case, the High Court said, as the notice called for payment of the arrears due for the months of April and May 1976 and the bank drafts were tendered within the period indicated in the notice, the notice was satisfied and no default could be said to have been committed in terms of s. 14(1)(a) of the Act. Accordingly, the High Court allowed the appeal and dismissed the application for ejectment.

It is urged before us by learned counsel for the appellant that s. 14(1)(a) of the Act contemplates the payment or tender of the whole of the arrears of rent legally recoverable from the tenant on the date when the demand notice is sent including the rent which has accrued after service of the demand notice. When the notice was sent on 7 May, 1976, rent for the months of April and May 1976 had become due, and as two months was given for payment of the arrears, it would include also the rent which had accrued during the said period of two months. We are not satisfied that there is substance in the contention. The arrears of rent envisaged by s. 14(1)(a) of the Act are the arrears demanded by the notice for payment of arrears of rent. The arrears due cannot be extended to rent which has fallen due after service of the notice of demand. In this case, the two bank drafts representing the arrears of rent covered by the notice of demand had been tendered within two months of the date of service of the notice of demand. The High Court is right in the view taken by it. We are not satisfied that the construction placed by B.C. Misra, J. in *Jag Ram Nathu Ram v. Shri Surinder Kumar*, S.A.O. No. 52 of 1975 decided on 28 April, 1976 and in *S.L. Kapur v. Dr. Mrs. P.D. Lal*, All India Rent Control Journal 1975 p. 322 lays down the correct law on the point.

In the result, the appeal fails and is dismissed but there is no order as to costs.

P.S.S.

Appeal dismissed.