

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

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CM(M) No.19/2007

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Date of decision: 08th January, 2010

HARI SINGH

...Petitioner

Through: Mr. K.R. Chawla, Advocate

Versus

SIKENDER SINGH

... Respondent

Through: Mr. Narinder Singh, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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|----|-----------------------------------------------------------------------|----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 227 of the Constitution of India has been preferred by the tenant against the order/judgment dated 8th November, 2006 of the Rent Control Tribunal in appeal preferred by the respondent/landlord. The ground of eviction under consideration is that of default in payment of rent i.e under Section 14 (1) (a) of the Delhi Rent Control Act, 1958. The Rent Controller gave benefit to the tenant of Section 14 (2) of the Act. On appeal by the landlord, the Tribunal has held the petitioner/tenant not entitled to the benefit of Section 14 (2) of the Act and consequently passed an order of eviction of the petitioner/tenant.

2. The factual matrix is in a narrow controversy. The ground of eviction being under Section 14 (1) (a) of the Act, an order under Section 15(1) of the Act was passed by the Rent Controller on 25th May, 2000 directing payment of rent at the rate of Rs.1,500/- p.m. At the time of final decision on the petition for eviction on 20th March, 2003 the Rent Controller while holding a ground of eviction under Section 14(1)(a) of the Act to have been made out modified the order under Section 15 (1) of the Act, directing the payment instead of at the rate of Rs.1,500/- p.m. as earlier ordered, at the rate of Rs.1,650/- p.m. The petitioner/tenant was directed to deposit at the rate of Rs.1,650/- less the amount already deposited, within one month of the said order.

3. The petitioner/tenant on 17th April, 2003 i.e. a few days prior to the expiry of one month given in the order dated 20th March, 2003 (supra), applied to the Rent Controller for extension of time for paying the arrears. The said extension was sought on the ground of the old age of the petitioner/tenant. The Rent Controller vide exparte Order dt. 17/04/2003 allowed the petitioner/tenant to deposit the arrears in two equal installments with the first installment being payable by 28th April, 2003. The said order was made in the absence of the counsel for the respondent/landlord. The first installment was paid on 24-04-2003. However, the counsel for the respondent/landlord appeared on 28th April, 2003 and contended that it was not permissible for the rent controller to extend the time under Section 15 (1) of the Act for payment. The petitioner/tenant in the mean while paid the second installment on 7th May, 2003. The application of the petitioner/tenant for extension of time was decided vide order dated 9th May, 2003. The Controller held that since vide order dated 17th April, 2003 the Controller had already extended time for payment of arrears with the first installment being payable on or before 28th April, 2003

and which had been paid on 24th April, 2003 and the entire arrears had been deposited by 7th May, 2003, the action of the court could not harm the petitioner/tenant. It was thus held that though the arrears of rent had not been deposited within one month of 20th March, 2003, but had been deposited on 24th April, 2003 and 7th May, 2003, but the default in payment within time could not be said to be contumacious and willful. The Controller thus held the petitioner/tenant entitled to the benefit of Section 14 (2) of the Act.

4. On appeal by the respondent/landlord, the Tribunal only went into the question of the power of the Rent Controller to extend the time for payment. Holding the Rent Controller not entitled to extend the time for payment, the Tribunal held the order dated 17th April, 2003 and 9th May, 2003 of the Controller to be bad in law and set aside the same. The Tribunal further held that the rent having not been deposited/paid within one month of 20th March, 2003, the petitioner/tenant is not entitled to the benefit of Section 14(2) of the Act; an order of eviction was passed in favour of the respondent/landlord and against the petitioner/tenant.

5. I am conscious that this court is exercising the power under Article 227 of the Constitution of India, the provision of second appeal against the order of Tribunal having been deleted by the Amendment Act of 1988. However, I am still constrained to hold that the Tribunal has completely misdirected itself and failed to address the matter in controversy. Thus a case of interference under Article 227 of the Constitution of India is made out. The question before the Tribunal was not whether the Rent Controller could extend the time under Section 15 (1) of the Act for payment of arrears or not. On that legal proposition there can be no dispute that the Rent Controller is not so entitled. Even
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the Rent Controller, though misguided on 17th April, 2003 in entertaining the application of the petitioner/tenant for extension of time and permitting the petitioner/tenant to pay the arrears in two installments with first installment being payable on 28th April, 2003 but in the final order dated 9th May, 2003 on the said application after hearing the counsel for the respondent/landlord did not hold that he was entitled to extend the time. The controller rightly held that though he was not entitled to extend the time but having on 17th April, 2003 entertained the application and permitted the first installment of arrears to be paid beyond the time of one month, such action of the court could not harm the petitioner/tenant. The Rent Controller thus condoned the delay by the petitioner/tenant in depositing of arrears of rent.

6. The Rent Control Tribunal instead of addressing on whether the Rent Controller was right in condoning the delay or not, by merely holding the extension of time to be illegal, deprived the petitioner/tenant of the benefit under Section 14 (2) of the Act.

7. The counsel for the petitioner has rightly contended that the application for extension of time had been filed by the petitioner/tenant prior to the expiry of time given in the order dated 20th March, 2003 to pay the arrears of rent; had the said application been not entertained by the Controller and had been dismissed on 17th April, 2003 itself, the petitioner/tenant could have still complied with the order; however the application having been entertained and the arrears being permitted to be paid in two installments with the first installment payable by 28th April, 2003, the petitioner/tenant did no wrong in acting on the basis of the said order. The Rent Control Tribunal has not dealt with/decided the said plea and/or the reasoning of the Controller and proceeded to deprive the petitioner/tenant of the benefit of Section 14 (2) of the Act without considering the
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impact of the order dated 17th April, 2003. In the opinion of this court, the Controller was absolutely right in holding that if after the order dated 17th April, 2003 extending the time for payment of rent even though wrongly, the petitioner/tenant was deprived of the benefit of Section 14 (2) of the Act, it would fall in the category of “*Actus curiae neminem gravabit*”. The Tribunal totally ignored the aspect of whether the default was willful, deliberate or contumacious or not. The reasoning of the Rent Controller holding the default by the petitioner/tenant to be not willful, deliberate or contumacious, for the reason of the application for extension of time having been considered and which in any case has not been interfered with by the Tribunal, is found by this court to be the correct approach in the matter.

8. Though the counsel for the parties have also referred to (i) *M/s Jain Motor Car Co. Vs. Smt. Swayam Prabha Jain* JT 1996 (4) S.C.479; (ii) *Yog Raj Srivastava Vs. Naresh Kumar* 1986 (2) RCR 607 (Delhi); (iii) *Krishnaswamy S. Prasad Vs. Union of India* V (2006) SLT 14; (iv) *Ram Murti Vs. Bhola Nath* AIR 1984 SC 1392; (v) *Shyamcharan Sharma Vs. Dharamdas* AIR 1980 SC 587.

All by the counsel for the petitioner/tenant; and

(vi) *Shri Khushbir Singh Vs. Shri Ajaib Singh* 1982(2) RCJ 251 (Delhi); (vii) *Hem Chand Vs. The Delhi Cloth & General Mills Co. Ltd.* 1977 (2) RCJ 438 (SC).

by the counsel for the respondent/landlord.

but in the face of the view taken by this court, it is not deemed necessary to discuss the aforesaid judgments.

9. The counsel for the respondent/landlord has also urged that the electricity connection to the tenancy premises has been disconnected for long; that the
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petitioner/tenant has not been using the shop and is again in default of payment of rent and for this reason this petition under Article 227 ought not to be entertained but in the absence of any finding on the aforesaid aspects and the same being otherwise irrelevant for adjudication of the matter in controversy, the said arguments do not prevail with me to deprive the petitioner/tenant of the order of allowing this petition to which he is otherwise entitled to in law.

10. The petition, therefore, succeeds. The order of the Rent Control Tribunal impugned in this petition is set aside and the order of the Rent Controller upheld. It is accordingly ordered that the petitioner/tenant shall be entitled to the benefit of Section 14 (2) of the Act.

The parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**8th January, 2010
PP**