

**(2011) 10 DEL CK 0126**

**In the Delhi High Court**

**Case No :** CM (M) No. 1284 of 2007 and CM No. 12865 of 2007

Ranjit Kaur and Another

APPELLANT

Vs

S. Manmohan Singh (Now Deceased) Through Legal Heirs

RESPONDENT

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**Date of Decision :** 31-10-2011

**Acts Referred:**

Constitution of India, 1950 — Article 227

Delhi Rent Control Act, 1958 — Section 14(1), 14(2), 26, 27

**Citation :** (2011) 10 DEL CK 0126

**Hon'ble Judges :** Indermeet Kaur, J

**Bench :** Single Bench

**Advocate :** B.L. Chawla, for the Appellant; M.S. Butalia, for the Respondent

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## **Judgement**

Indermeet Kaur, J.—This petition has impugned has the two concurrent findings of the two courts below i.e. orders of the Additional Rent Controller (ARC) dated 15.07.2004 and the order of the Rent Control Tribunal (RCT) dated 13.08.2007 whereby the eviction petition filed by the landlord Manmohan Singh u/s 14(1)(a) of the Delhi Rent Control Act (DRCA) seeking eviction of suit property i.e. premises No. WZ-33. Varinder Nagar, New Delhi for non-payment of rent had been decreed.

2. The petitioner is stated to be the owner of the aforementioned suit property. The property had been let out to Karam Singh; after his death his widow Ranjit Kaur and son claimed to be the tenants. Rate of rent was Rs.266/- per month which was exclusive of electricity and other charges. It was a commercial tenancy; inspite of notice of demand dated 30.09.1990 arrears of rent were not paid; benefit of Section 14(2) of the DRCA was given to the tenants by the then ARC vide order dated 19.09.1998. Contention before the ARC was that the tenant has not paid rent w.e.f. August, 1999 to January, 2000; this was inspite of service of legal notice dated 16.02.2001; there was no legal tender of rent; on 26.03.2001, a partial amount of rent had been sent but there was no deposit of rent u/s 27 of the DRCA. Present petition was accordingly filed.

3. Common written statement was filed; contention was that the entire rent had been paid and tendered to the landlord. Further contention was that Daljeet Singh, another son of Karam Singh had also inherited the suit property and the eviction petition was bad for non-joinder of Daljeet Singh. It was denied that any rent is due and payable to the landlord.

4. Oral and documentary evidence was led before the Rent Controller. It is an admitted position that the benefit of Section 14(2) had been given to the tenant vide judgment of the ARC dated 19.09.1998 (Ex.PW-1/A). The only dispute which was to be dealt with by the ARC related to the fact as to whether the rent had been paid/tendered w.e.f. August, 1999 to January, 2000. Ex. PW-1/B was the legal notice dated 16.02.2001 postal receipt of which had been proved as Ex. PW-1/C; there was also no dispute to the receipt of this legal notice; the tenant had appeared in the witness box as RW-1 and his contention was that he had paid the arrears of rent w.e.f. August, 1999 to January, 2000 and the same has been deposited in the Court of Ms. Mamta Tayal, the then ARC, Delhi. On enquiry by the petitioner, it was revealed that no such rent had been deposited; this was revealed on 28.08.2001 when the then ARC Dharmesh Sharma had requisitioned the record. The ARC was of the view that the tenant has failed to prove that he has made the legal tender of rent for the disputed period i.e. from August, 1999 to January, 2000 and he already having availed of the benefit of Section 14(2) of the DRCA, he was liable to be evicted u/s 14(1)(a) of the DRCA. Eviction order was accordingly passed against the tenant by the ARC.

5. In an appeal filed before the RCT u/s 38 of the DRCA, additional evidence was led before the RCT. This comprised of one sole testimony of the second son of the tenant namely Daljeet Singh. Another son of the tenant namely Harpreet Singh has been examined as DW-1 in the trial Court. Relevant would it be to extract the testimony of both these witnesses. Harpreet Singh as noted supra has appeared in the trial Court as DW-1. In his cross-examination he has stated that he had tendered the arrears of rent by post and on refusal, the rent was deposited in the Court; rent was being paid half yearly; he denied knowledge as to whether rent had been deposited from August, 1999 to January, 2000; he also denied the knowledge that the rent was being paid on a month to month basis. This was the version of Harpreet Singh in the trial Court. Before the first appellate court, the second son of Karam Singh namely Daljeet Singh had entered into the witness box. In his cross-examination he has stated that the rent was being given to the clerk of the Advocate a number of times to deposit the same in the Court; his mother was not maintaining the record of the amount given to the clerk; his brother also used to pay money to the clerk for deposit of rent. Ex. AW-1/1 to Ex. AW-1/6 were proved in the version of Daljeet Singh. Ex.AW-1/1 is a money order No. 742 sent for payment of arrears of rent for the months of May, June and July, 1999. This document is not relevant for the controversy in question as the disputed period in the present case relates to payment of arrears of rent between August, 1999 to January, 2000. Ex.AW-1/2 is also a money order for the aforementioned period i.e. May, June and July, 1999

informing the landlord that the amount for this aforementioned period is deposited in the Court of ARC; further rent is being sent for August, 1999 to January, 2000. Ex.AW-1/5 is the money order sent for February, 2000 to September, 2000; again this document is not relevant as it does not relate to the disputed period i.e. period between August, 1999 to January, 2000. The only relevant document would be Ex.AW-1/2. The deposition of Daljeet Singh qua Ex.AW-1/2 was that he had given the rent to his Advocate Kamlesh Kumar in connection with this case but he does not remember the exact date; he had gone with his mother to the counsel; a complaint was also filed before the Bar Council against Kamlesh Kumar which was dismissed. He has denied the suggestion that the rent for the disputed period i.e. August, 1999 to January, 2000 was not given to the clerk of the counsel; his further contention was that this money was not given by him personally.

6. Deposition of the aforementioned witnesses show that Harpreet Singh's version was that he had deposited the rent in the Court whereas Daljeet Singh had stated that his mother was giving the rent to the clerk of the Advocate for deposit in the Court; their mother was admittedly not examined; both are unaware as to what was the amount which was deposited; DW-1 i.e. Harpreet Singh and AW-1 Daljeet Singh are also not clear as to whom this amount was given i.e. whether to the Advocate Kamlesh Kumar or to his clerk. Relevant would it be to state that this controversy about the rent not having deposited in the Court of the ARC had surfaced for the first time before the Rent Controller; however even before the first appellate Court not a whisper has been stated in the affidavit/deposition of Daljeet Singh that either he or his brother Harpreet Singh or his mother had paid the rent either to their counsel or to his clerk for deposit to be made before the court of the ARC. This testimony (as noted hereinabove) has only been elicited in the cross-examination of Daljeet Singh; Daljeet Singh is categorical; he had not personally made any payment either to the counsel or to the clerk for deposit in the Court of ARC; his brother Harpreet Singh is also unaware of this; their mother Ranjit Kaur has not come to the witness box. Daljeet Singh has in fact admitted that his mother was not maintaining the record of the amount which used to be given to the clerk of the Advocate; DW-1 is also unaware of any such detail. RCT in these circumstances had correctly noted that neither the Advocate nor the clerk of the said Advocate had been examined by the tenant to substantiate this submission that he had made payment for deposit of rent to the Advocate but it was the Advocate who had fraudulently not deposited the said amount. The contention of the tenant on this ground also is that he had filed a complaint against his Advocate for misleading him and having played a fraud upon him with the Bar Council which complaint had been dismissed. Filing of complaint against the Advocate with the Bar Council and the dismissal of the same is also not a part of the court record. In these circumstances, the impugned order had correctly noted that there was no valid or legal tender of rent by the tenant in terms of Section 14(1)(a) of the DRCA.

7. It is further relevant to state that there was no contract of tenancy between the parties either in writing or oral. The tenancy was on a month to month basis. u/s 26 of the DRCA in the absence of any contract to the contrary, the tenant is liable to pay the rent before the 15th day of each succeeding month. The tenant was admittedly in arrears of rent for August, 1999 to January, 2000. Legal notice dated 16.02.2001 is not disputed; this legal notice alleged that there was no legal and valid tender of rent for the aforementioned period. On 20.03.2001 only a partial amount of rent had been sent; this has been stated in the eviction petition itself. It was now open for the tenant to make the deposit of the arrears of rent within two months from the date of receipt of the notice; even if it is presumed that the landlord was not accepting the rent, tenant could have deposited the same u/s 27 of the DRCA which provision enables him to make the payment of arrears of rent before the ARC but this has not been done. The submission of the petitioner that he had paid the money to the clerk of his counsel who in turn has played a fraud upon him is mis-founded. In the evidence discussed supra this could not be proved and the additional evidence which was specifically permitted to be led before the first appellate court on this score is also silent on this aspect. As noted supra, in the additional evidence of Daljeet Singh, not a whisper has been said about this version.

8. Reliance by the learned counsel for the petitioner on the judgments reported in 20 (1981) DLT 116 Budh Prakash Sethi v. Sumitra Devi & Others and Ram Kumar Gupta Vs. Smt. Durga Devi (Deceased) through L.R.s and Another, is misplaced. Both these judgments have only laid down the law of Section 14(1) (a) of the DRCA; each case has to be decided on its own factual matrix. In the instant case, even after the receipt of legal notice there was no legal and valid tender of entire arrears of rent. It is also not in dispute that the benefit of Section 14(2) of the DRCA has already been accorded to the tenant. In these circumstances, the eviction order dated 15.07.2004 suffers from no infirmity.

9. In 170 (2010) DLT 7 Raghbir Singh v. Sheela Wanti & Another, a Bench of this Court had noted that the amendment which has been inserted by the Act of 1988 in Section 14(1)(a) read with Section 26 of the DRCA makes it abundantly clear that rent is to be paid month by month i.e. in those cases where there is no contract to the contrary in the absence of which tenant is also liable to pay interest thereon.

10. This Court is also conscious of the fact that the right of second appeal which was envisaged u/s 39 of the DRCA has since been abrogated; jurisdiction of this Court under Article 227 of the Constitution of India is not to be substituted as an appellate forum. Unless and until there is a perversity or a manifest injustice which has accrued to a party, no interference is called for.

11. The impugned order in these circumstances decreeing the eviction petition of the landlord u/s 14(1)(a) of the DRCA suffers from no infirmity. Dismissed.