

(1981) 09 DEL CK 0018

In the Delhi High Court

Case No : Second Appeal No. 284 of 1981

Santosh Food Products and Others

APPELLANT

Vs

Leela Sharma

RESPONDENT

Date of Decision : 01-09-1981

Acts Referred:

Citation : (1981) 20 DLT 298 : (1982) 3 DRJ 88 : (1981) RLR 614

Hon'ble Judges : R.N. Aggarwal, J

Bench : Single Bench

Advocate : G.L. Sanghvi, M.L.Varma and H.L. Sabarwal, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) Briefly, the facts giving rise to this appeal are as follows:

The appellant had taken on rent the premises H-1. Maharani Bagh, New Delhi, at a rent of Rs. 4.500.00 per month on 5th October, 1978. The above lease was obtained u/s 21 of the Delhi Rent Control Act.

(2) On 4th October, 1980 the tenant filed an application for fixation of standard rent. During the pendency of the said application on 17th March, 1981 the landlord filed an application for eviction of the tenant on the ground of non-payment of rent. In the said application it is averred that the tenant had defaulted in paying the rent since November, 1979. According to the landlord except for a sum of Rs. 6000.00 the tenant has not paid rent from 4th November, 1979.

(3) On 3rd July, 1981 the Rent Controller passed an order u/s 15(1) of the Delhi Rent Control Act (hereinafter called "the Act") directing the tenant to pay or deposit the arrears of rent from 5th November, 1979 till date within a period of one month. The order provided that the tenant can deduct the amount of Rs. 6000.00 which had been paid by bank draft to the landlord. It may be mentioned that the arrears of rent amounted to about Rs. 80,000.00 .

(4) Against the aforesaid order the tenant filed an appeal. From the judgment, it appears that the only contention urged before the Tribunal was that no eviction petition u/s 14(l)(a) was competent as the premises were taken after obtaining permission u/s 21 of the T. The Tribunal did not agree with the contention of the appellant and dismissed the appeal on 17th July, 1981.

(5) Against the aforesaid judgment the tenant has come in second appeal. Mr. Sanghi, learned counsel for the appellant, contends that before the Rent Controller there was a dispute regarding the amount of rent payable by the tenant and the Controller was bound to fix an interim rent under sub-section (3) of Section 15. Sub-section (3) of Section 15 of the Act reads as under :-

"If, in any proceeding referred to in sub-section (1) or sub-section (2), there is any dispute as to amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of the first hearing of the proceedings, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of sub-sec. (1) or sub-section (2), as the case may be, until the standard rent in relation thereto is fixed having regard to the provisions of this Act, and the amount of arrears, if any, calculated on the basis of the standard rent shall be paid or deposited by the tenant within one month or the date on which the standard rent is fixed or such further time as the Controller may allow in this behalf".

(6) Mr. Sabharwal on behalf of the landlord contends that under sub-section (3), the Rent Controller is to fix interim rent only in case there is a dispute between the parties regarding the rate of rent, and that since in this case there is no dispute that the agreed rent was Rs. 4500.00 per month, the Controller u/s 15(1) had no option but to pass an order for depositing the arrears of rent calculated at the rate of rent at which it was last paid. The counsel also contended that in the application filed by the tenant for fixation of standard rent, the tenant had filed an application u/s 10 for fixation of interim rent but the application was rejected by the Additional Rent Controller Shri Jindal on 7th August 1961. Mr. Sabharwal, in support of his contention, referred to *M. M. Chawla v. J. S. Sethi*, 1969 1 RCR 861, *Smt. Bhonri Devi v. Gopi Ram*, AIR 1971 CJ 248 and *Mohan C Vaniani v. Shri Sant Dass*, 1971 (3) RCR 914.

(7) In *M. M. Chawla* (supra) the Supreme Court held that if in a proceeding u/s 14(l)(a) the tenant raises by way of defense a contention that the standard rent be determined the Controller may treat that as an application u/s 12 and deal with it according to law, but the Act confers no power u/s 15(3) upon the Controller. The power to determine standard rent is exercisable u/s 12 only.

(8) Their Lordships further dealing with the provision of Section 15(3) observed as follows -

"THE dispute, referred to in Section 15(3), is the dispute about contractual rent payable. When such a dispute is raised, the Controller has, within fifteen days of the date of the first hearing of the proceeding, to fix interim rent payable by the

tenant in accordance with the provisions of sub-section (1) including the arrears and such payment has to be made until the standard rent in relation thereto is fixed "having regard to the provisions of the Act". Sub-section (3) provides that "interim rent is to be paid at the rate at which it was last paid till standard rent is determined, but thereby it is not implied that standard rent is to be determined as an issue raising in the action for ejectment ; the clause only means that when there is a dispute relating to the rate of contractual rent payable the Controller shall, within fifteen days of the first hearing of the proceeding, fix the interim rent and the amount so fixed shall be paid by the tenant until standard rent in relation to the premises is fixed in an appropriate proceeding under the Act. The expression "having regard to the provisions of the Act" has in our judgment reference to Sections 9 and 12. Payment of arrears and standard rent under sub-section (3) must be made within one month of the date on which the standard rent is fixed, or within such further time as the Controller may allow in that behalf".

(9) Mr. Justice P.N. Khanna in *Smt. Bhonri Devi* (supra) held that u/s 15(3) the Rent Controller is to fix interim rent only if there is a dispute about the contractual rent payable, Mr. Justice Prakash Narain (as his Lordship then was) in *Mohan C Vaniani* (supra) expressed a similar view.

(10) Mr. Sanghi contended that u/s 15(3) irrespective of the fact whether the dispute was either about the agreed of contractual rate of rent or about the standard rate of rent or both, the Rent Controller was obliged-to fix the interim rent u/s 15(3). The counsel in support of his contention relied upon *Mohomad Atique Siddique v. Munshi Anus Ahmed*, 1974 Rent Control Reporter 472 : 1974 All India Rent Control Journal page 345.

(11) I have perused the cited authority and in my opinion the said case is totally distinguishable. In the case interim rent of the premises u/s 10 had already been fixed in the proceedings for fixation of the standard rent. It is clear that once the interim rent u/s 10 or the standard rent is fixed the landlord would not be entitled to receive a rent in excess of the interim rent of the standard rent. Section 14 prohibits the landlord from receiving any rent in excess of the standard rent.

(12) Mr. Sanghi next referred to the case of *Smt. Zohra Bi-v. Sh. Abdul Wali*, 1980 18 DLT 407. This case is also distinguishable, for, in this case also, the standard rent had been determined. The above cited case, in my view if read carefully, supports the contention of Mr. Sabharwal.

(13) On a consideration of the authorities cited at the bar. I am of the view that u/s 15(3) the Rent Controller is to fix interim rent only if there is a dispute between the parties regarding the agreed of rate of rent. As observed by the Supreme Court in *M. M. Chawla* (supra) that if in a proceeding u/s 14(I)(a) the tenant raised by way of defense a contention that the standard rent be determined by the Controller, can treat that application as one u/s 12 and deal

with it according to law, but the Controller is not competent to determine standard rent u/s 15(3). The tenant had in the application for the fixation of the standard rent filed an application u/s 10 for fixation of interim rent but that application was dismissed, (It may be mentioned that the application u/s 10 was filed by the tenant after the present appeal was filed. A perusal of the judgment of the Additional Rent Controller and of the Rent Tribunal would show that at no stage the tenant had asked the Court to fix the interim rent under sub-section (3). This was obviously because of the reason that there was no dispute regarding the agreed rent.,

(14) I Even assuming that the Additional Rent Controller was obliged to fix interim rent u/s 15(3), on the facts and circumstances of this case I find no reason why the agreed rent should not be fixed as the interim rent. The premises let out to the appellant comprises of five bed rooms with attached baths, one drawing room, one dining room, kitchen, two garages, three servant quarters, varandah, big courtyard and front and back lawns in the ground floor, one bed room with attached bath. study room and covered lobby in the first floor. The house is constructed on a plot of 800 sq. yards. The rooms are fitted with cooling fans, tubax, geysers, etc. Until standard rent is fixed I find no reason why the interim rent should be less than the agreed rent. The landlord had in the reply stated that the rent due upon 4th August 1981 is Rs 89,000.00 . Another amount of Rs. 4500.00 will fall due on 4th September, 1981

(15) On 3rd August, 1981 I had granted the stay subject to the appellant depositing Rs. 90,000.00 . The tenant in terms of the stay order had deposited Rs. 60,000.00 in the court of the Rent Controller.

(16) For the reasons stated I dismiss the appeal. I direct the tenant to pay the entire arrears of rent at the rate of Rs. 4500.00 per month with effect from 5th November, 1979 till date plus Rs. 500.00 being the arrears up to 4th November, 1979 within 15 days from today. The tenant will be entitled to deduct Rs. 8000.00 in terms of the order of the Additional Rent Controller and Rs. 60,000.00 paid under the orders of this court. The tenant shall also be liable to deposit the rent for the period 5th August to 4th September 1981 within the aforesaid period of 15 days. The tenant shall thereafter continue to deposit the future rent month by month by the 15th of each succeeding month as ordered by the Additional Rent Controller.

(17) It is stated that an application has been filed by the tenant u/s 10. The above directions are without prejudice and subject to the decision of the application u/s 10 and to the fixation of the standard rent.

(18) The amount already deposited and the additional amount which may be deposited by the tenant shall be paid to the landlord.

(19) The parties are left to bear their own costs.