
(1975) 02 DEL CK 0005
In the Delhi High Court
Case No : Second Appeal No. 207 of 1973

S.L. Kapur

APPELLANT

Vs

P.D. Lal

RESPONDENT

Date of Decision : 28-02-1975

Acts Referred:

Citation : (1975) RLR 335

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : S.L. Bhatia, P.K. Seth, S.N. Chopra and K.L. Sethi, for the Appellant;

Judgement

B.C. Misra, J.

(1) Respondent had sued appellant u/s 14(l)(a) on 17.8.66. An order of deposit of rent arrears was made u/s 15(1) on 16.10.68 and deposit having been made petition was dismissed on 22.11.68. Tenant made default again and after notice he was sued on 20.2.70. Controller dismissed the petition but Tribunal held against tenant. Latter appealed to High Court.

(2) It is admitted case of parties that in previous case tenant had complied with order u/s 15(1) of the Act and having paid the arrears of rent for the period ending 10th Nov. 1968 escaped eviction. Thereafter the rent for subsequent period was due and payable, which is in dispute in the present petition. It is again not disputed that the tenancy month as the month for payment of rent commences on the 11th day of calendar month and expires . on the 10th day of the following month, as per the agreement of tenancy. The rent" note further requires the tenant to pay the rent at the commencement of the tenancy month. u/s 26 of the Act, it was the legal duty of the tenant to pay rent either within the contractual time or within fifteen days of its becoming due. In any view of the matter, the tenant was bound to pay or deposit the rent for the period ending on the 10th by the 25th of the following month. The deposit which had properly been made by the tenant in pursuance of section 15(1) order in the previous

petition on 22nd November, 1968 (amounting to about Rs. 13,650/.) covered the period till 10th Nov, 1968.

(3) The subsequent deposits by the tenant appellant were made in the following manner (1) on 11th February, 1969 he deposited Rs. 13,000.00-for the period from 11th November, 1968 to 10th January, 1969 ; (This deposit was made previous to the receipt of the notice.) (2) on 11th June, 1969 he deposited Rs. 2,600.00 for the period from 11th January, 1969 to 10th. May, 1969, vide Ex. R3. Th

(4) Mr. Chopra, the learned counsel for the- respondent has stressed the plea that deposit made on 11th June, 1969 before the Controller- was not a valid tender in accordance with law. For this purpose, he has invited my attention to the provisions of sections 26, 27 and 28 of the Act and has contended that under subsection (3) of section 28 the amount deposited would constitute a valid tender only if the tenant deposits the arrears of rent within 21 days. of its becoming due and also satisfies the controller with regard to the other prescribed averments. Prima facie, the language of the statute is capable of the construction placed on it by the counsel for the respondent. I am, however, unable to agree with Mr. Chopra that only way available to the tenant to comply with the notice of demand is to pay or tender the amount to the landlord himself and not deposit it with the Controller. Where the payment has been made and accepted no controversy arises, but if the amount has to be tendered, then the landlord can easily make himself scarce after serving the notice of demand for a period of two months and it would be impossible for the tenant to tender the amount to him at the proper time and place and run the risk of certain eviction. If the alleged method were the only one left with the tenant to comply with the notice, then surely it will open up (particularly in cases of second default), great scope for fraud. The tenant has to prove the tender and if instead of relying on his oral evidence of personal visit to the landlord and his refusing to accept the money, the tenant seeks to deposit the money in the court and tender it through the court, it will certainly constitute a far stronger evidence of the tender and will establish the bona fides of the tenant almost conclusively and such evidence coupled with other evidence would really be unassailable.

(5) Previous to the advent of the Rent Act, section 31 of the Punjab Relief of Indebtedness Act, 1934 as applied to Delhi contained the provision to the effect that a debtor could deposit the amount of debt in the court and the same would constitute a tender to the creditor and interest on the same would cease to run. Under the Delhi Rent Acts 1947 and 1952 the matter was being dealt with by civil courts and deposits would still be made in the court u/s 31 of the aforesaid Act. But, since the commencement of the Rent Act, 1958 it has been conferred on the Controller. In the Act, Chapter Iv has been inserted providing for deposit of rent. Thus the jurisdiction of the civil courts has been taken away by section 50 of the present Act and it has been conferred on the Controller. In the Act, Chapter Iv has been inserted providing for deposit of rent. This is a special

remedy providing for deposit of rent by the tenants. If all the conditions of the provisions are fulfilled and the rent is accordingly deposited within 21 days, then the deposit would constitute payment of rent to the landlord in terms of the statute itself. Should the conditions of the section be strictly not satisfied, but still a deposit has been made, it may not constitute a tender in terms of the statutory provision of section 28: (3). However, where a landlord has served a notice demanding all arrears of rent within a period of two months, the deposit with the Controller within the notice period (of which a notice should be sent to the landlord), would constitute a sufficient compliance with the terms of the notice of demand. This deposit, in my opinion, would relieve the tenant of the penalties attaching to non-payment of rent in compliance with the notice of demand. Subject to other circumstances of the case, since under the general law of the land, an obligation of a party if performed in a court of competent jurisdiction, would amount to offer of performance to the party concerned and it would relieve the visiting of penalties for non-performance of the obligation, unless there be a statutory bar to the contrary. Should I be obliged to hold that under the Act, the Controller had no jurisdiction to receive the deposit of arrears of rent from the tenant after the expiry of 21 days, then it would logically follow that section 50 of the Act does not constitute a bar to the civil court receiving the deposit u/s 31 of the Relief Act. In my opinion, this result was not intended by the Parliament. Hence, I am not persuaded to hold that the facility of tendering the amount due to the landlord by deposit either before the competent court or with the Controller having jurisdiction, as the case may be, was intended to be taken away by the Act to throw the tenant at a great peril. The deposits so made by the tenant can under the provisions of section 29 of the Act be withdrawn by the landlord without prejudice to his rights (as has been done in the present case). It is, therefore, difficult to accept the submission of Mr. Chopra that the deposit of rent with the Controller does not amount to a tender in compliance with notice of demands served by the landlord.

(6) Considered from another point of view the notice of demand required the amount to be paid within two months and the tenant was legally bound to pay the arrears of rent due till then including the previous periods as well as for the notice period and subsequently till the date of deposit. The limitation of 21 days for deposit of rent mentioned in section 28(1) of the Act must, therefore, be treated as directory. It would lead to an absurd result if in response to a notice of demand the tenant validly deposits one month's rent within 21 days of its becoming due, but along with it does not deposit the arrears of the preceding period on the ground that 21 days had expired. I am, therefore, of the opinion that the deposit of entire arrears of rent with the Controller amounts to a tender of the same to the landlord, but whether or not the same is valid and legally complies with the notice of demand would depend on the other facts and circumstances of each case. Consequently, I hold that the amount deposited by the tenant with the Controller for payment to the landlord was a tender to the landlord in the facts and circumstances of this case, although it had been made

more than 21 days of its becoming due, yet within two months of notice of demand.

(7) Even this discussion does not help the appellant tenant. Assuming the contention "of the appellant tenant to be correct that the .deposit made by him on 11th June, 1969 was a tender to the landlord in response to a notice of demand, still the requirement of the provisions of the Rent Act contained in clause (a) of sub-section (1) of section 14 and sub-section (2) of section 14 is that all arrears of rent due including the end of the tenancy month occurring in the month when the deposit was made must be made in order to comply with the notice and escape eviction. In the instant case, it was necessary for the appellant tenant to make the deposit of rent for the period to the period ending 10th June, 1969 at all events within the time allowed by the notice, viz. 7th July, 1969. In this the tenant has failed. Oral evidence of tender alleged by the tenant has been disbelieved by the lower appellate court and no ground has been shown to persuade me to hold the contrary. As a result, I find that the appellant tenant has committed second default in payment of the arrears of rent for three consecutive months and is liable to eviction under the proviso (a) to sub-section (1) of section 14 of the Act and he is not entitled to the benefit of protection available under the subsection 2 of section 14 of the Act. In the instant case, the language of the statute itself prohibits the granting of the benefit again u/s 14(2), but in view of the decision of the Full Bench of this Court in *Delhi Cloth Mill v. Hem Chand*, 1LR (1972) Delhi 503, it is obvious that in a case of eviction claimed on the ground mentioned in clause (a) of subsection (1) of section 14, the Controller does not possess any power or jurisdiction to extend the time for payment of the arrears of rent and the tenant must strictly conform to the provisions of law in order to escape eviction, otherwise on the establishment of the necessary ingredients, his eviction is inevitable.