

(2011) 04 DEL CK 0146
In the Delhi High Court
Case No : CM (M) No. 1364 of 2010

Smt. Anita Maharishi

APPELLANT

Vs

Sh. Shashi Bhushan

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Delhi Rent Control Act, 1958 — Section 14(1), 14(2), 15(1), 15(7)

Citation : (2011) 2 RCR(Rent) 543

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : V.K. Sharma, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this petition under Article 227 of the Constitution of India is to the judgment of the Addl. Rent Control Tribunal dated 30.8.2010, and which has condoned one day's delay in the compliance of payment of rent.

2. The facts of the case are that the Petitioner landlord filed a petition for eviction on the ground of nonpayment of rent u/s 14(1)(a) of the Delhi Rent Control Act, 1958, and in which, an interim order was passed u/s 15(1) of the said Act to deposit the arrears in court. The eviction petition was ultimately allowed and eviction ordered by first court of the Addl. Rent Controller by holding that the benefit u/s 14(2) of the Act could not be given as the Respondent tenant had delayed the deposit of rent pursuant to the order u/s 15(1) dated 27.2.2009 by one day.

3. By the impugned judgment, Addl. Rent Control Tribunal relying upon the decision of the Supreme Court in the case of Ram Murti v. Bhola Nath and Anr. AIR 1984 SC 1362, a decision under the Delhi Rent Control Act, 1958, has held that there is no willful default in deposit of rent and delay of one day was caused

on account of peculiar circumstances inasmuch as the last date was declared as a holiday on account of Ambedkar Jayanti. The relevant portions of the impugned judgment are contained in paras 16 to 18 which read as under:

16. The Id. Trial Court as well as Id. Counsel for the Respondent placed reliance upon the Delhi Cloth and General Mills Co. Ltd. v. Hem Chand, AIR 1977 Del 275. However, this very authority was subsequently considered by the Hon''ble Supreme Court in Ram Murti (Supra) and it was observed as under

The narrow construction placed by the Full Bench of the Delhi High Court in Delhi Cloth and General Mills Co. Ltd. Vs. Hem Chand and Others, on the powers of the Controller contained in Section 15(7) in the context of the Section 14(2) does not appeal to reason. It is not inconceivable that the tenant might fail to comply with the requirements of Section 15(1) by the date line due to circumstances beyond his control. For instance, it might not be possible for the tenant to attend the Court to make the deposit on the last day if it is suddenly declared a holiday or on account of a serious accident to himself or his employee, or while going to the treasury he is waylaid, or is stricken with sudden illness, or held up on account of riots or civil commotion or for that matter a clerk of his lawyer entrusted with the money, instead punctually making the deposit commits the breach of trust and disappears or some other circumstances intervene which make it impossible for him for reasons beyond his control to physically make the deposit by the due date. There is no reason why the refusal of the Rent Controller to strike out the defence of the tenant u/s 15(7) in such circumstances should not enure to the benefit of the tenant for the purpose of Section 14(2).

17. Perusal of this observation goes to show that the Id. Addl. Rent Controller or for that matter Rent Control Tribunal is not powerless to condone the delay in the given case, which may occur on account of reasons which are beyond the control of tenant physically make the deposit within period of one month as stipulated in law. Matter came up for consideration before the Hon''ble High Court in Rakesh Kumar v. Gandharv Singh, 2008 10 AD (Del) 197. By relying upon Ram Murti (Supra), Hon''ble High Court observed that the Addl. Rent Controller or for that matter Tribunal is not powerless to condoned the delay. However, in that case, the delay was not condoned because no such application for condonation of delay was moved either before the Rent Controller or before the Addl. Rent Controller Tribunal and it was observed by the Hon''ble High Court that the Addl. Rent Controller or the Tribunal could not ipso facto condone the delay. In view of these authoritative pronouncement, it become clear that that the Addl. Rent Controller and the Addl. Rent Controller Tribunal has the power to condone the delay if the tenant is able to show that the delay has occurred on account of reasons which were beyond his control.

18. Turning to case in hand, although the Id. Trial Court observed two defaults. However, as seen above there was no default regarding deposit of rent for the period 01.01.2008 to 31.03.2009. As regards the period 01.03.2006 to 31.12.2007, there was a delay of one day. This delay has occurred on inasmuch

as 14.4.2010 was declared holiday on account of Ambedkar Jayanti and challan was got allowed and was handed over by the Naib Nazir to the Appellant after lunch on 15.4.2010. As such, since cash counter had closed, therefore, rent could not be deposited by him, but was deposited on the next day. Under these circumstances, the Appellant has been able to assign sufficient cause for delay in depositing the rent by one day, which was beyond his control. That being so, in the interest of justice, delay in deposit of rent is condoned subject to Rs. 5,000/- as cost, which is to be paid to the Respondent within three days. Otherwise there is substantial compliance of the order u/s 15(1) of the DRC Act. That being so, since it was the case of first default, therefore, the Appellant is entitled to benefit u/s 14(2) of DRC Act. Accordingly, Appellant is granted benefit Section 14(2) of DRC Act. Accordingly, impugned order dated 19.4.2010 is set-aside and appeal is allowed.

(Emphasis added)

4. In view of the above, the present is hardly a case for interference under Article 227 of the Constitution of India which is only invoked in case of grave injustice or gross illegalities. Condonation of one day's delay in the facts and circumstances was fully justified. Learned Counsel for the Petitioner places reliance upon *Om Prakash v. Ashwani Kumar Bassi* 2010 (8) Scale 562 to contend that even one day's delay could not be condoned. In my opinion, the decision in the case of *Om Prakash* (supra) will not apply because said decision dealt with condonation of delay in filing of a leave to defend application under the East Punjab Urban Rent Restriction Act, 1949. This judgment will not apply because the issue of condonation of delay in the present case is governed by the Delhi Rent Control Act, 1958, and with respect to the provisions in the same, the Supreme Court had held in the case of *Ram Murti* (supra) that delay can be condoned in deposit of rent when the default is not willful and caused by circumstances beyond the control of a tenant.

5. Dismissed. No costs.