

(1970) 05 DEL CK 0044

In the Delhi High Court

Case No : Second Appeal No. 39 of 1966

Sumitra Rani Sondhi and Others

APPELLANT

Vs

Bennet Coleman and Co. and Others

RESPONDENT

Date of Decision : 14-05-1970

Acts Referred:

Citation : (1970) 6 DLT 502

Hon'ble Judges : P.N. Khanna, J

Bench : Single Bench

Advocate : S.K. Mehta, Sona Bhatiani, Nagraj, R.L. Aggarwal and Arun Kumar, for the Appellant;

Judgement

P.N. Khana, J.

(1) The second appeal from order dated December 21, 1965 of the learned Rent Control Tribunal, Delhi, raises the question : Whether the appellant has already obtained the benefit under sub-section (2) of section 14 of the Act in respect of the premises in dispute and has again made a default in the payment of rent of those premises for three consecutive months and is, Therefore, not entitled to the benefit of the said provisions in these proceedings?

(2) On April 21, 1960, an application was filed by the respondent against one Shri Ram, deceased, the husband of Smt. Sumitra Rani, appellant No. 1, and father of appellants Nos. 2 to 8, under proviso (a) to section 14(2) read with section 22 of the Delhi Rent Control Act (herein called "the Act) for his eviction on the ground, inter alia, of non-payment of rent from November, 1956 up to March 31, 1960 at the rate of Rs 45 per month. Shri Mast Ram, deceased was an employee in one of the associated concerns of the respondent. The premises in dispute, it is stated, had been given to him on rent, when he was in such employment, for his residence during the time he remained in that employment. His employment was terminated on April 22, 1953 and his right of residence in terms of the agreement Is said to have come to an end. He was asked to vacate,

but he did not do so on one pretext or the other. There appear to have been constant defaults on the side of Mast Ram in payment of rent. Litigation started for his eviction in August, 196 when a suit was filed, which was subsequently withdrawn.

(3) It was then that the said application for his eviction was filed on April 21, 1960 u/s 14(1) proviso (a) and section 22 of the Act. "An order for eviction would have been passed in the normal course, but the tenant agreed to pay all the arrears and made a statement in court on May 3, 1960 whereby he admitted the arrears of rent claimed to be due at the rate of Rs. 40 per month. He, Therefore, "prayed that the order for his eviction be passed on the condition that if arrears of rent were paid by him within one month to the respondent or were deposited in court, the order for eviction would stand cancelled. This was accepted by the respondent's counsel. x x x orders of eviction to be made in the said terms He further added that the rate of rent being Rs 45 per month, he will take separate proceedings for the recovery of Rs. 5 per month. The learned Additional Controller, then passed an order for the eviction of Shri Mast Ram, tenant, on the ground of non-payment of rent on the condition that if the- arrears of rent at the rate of Rs. 40. per month were paid by June 3, 1960 against receipt or were deposited in court, the order of eviction shall be deemed to have been satisfied .This order was made on May 3, 1960. As the rent was paid, Shri Mast Ram was not evicted.

(4) On April 18, 1961 a second application for the eviction of Shri Mast Ram was filed again on the same grounds. This application was dismissed on September 25, 1961. On appeal, however, a compromise was arrived at between the parties and an order was passed by the Rent Control Tribunal on April 12, 1962 for recovery of possession on the condition that if the arrears of rent were paid, the order of eviction will be deemed to have been satisfied This time, again the payment was made and the question of eviction did not arise.

(5) The tenant again committed default and a notice of demand was served on him on February 25, 1963. Payment not having been made, an application for eviction u/s 14(1)(a) read with section 22 of the Act was made for a third time, on June 5, 1963. On February 5, 1965, the Additional Controller held that the tenant had availed himself of the benefit u/s 14(2) of the Act In the earlier proceedings. That being so, he was no longer entitled, to the same benefit over again, in view of his having committed default this time also. He, Therefore, ordered the tenant to be evicted from the premises on the ground of second default in the payment of rent as contemplated by the proviso to section 14(2) of the Act. The learned Rent Control Tribunal in appeal concurred with the findings of the Additional Controller and dismissed the appeal with costs. It is against the said order of the Rent Control Tribunal that the appellants have come up to this court in second appeal.

(6) During the pendency of the appeal before the learned Rent Control Tribunal, the tenant Shri Mast Ram died. Smt. Sumitra Rani, his widow and defendants

Nos. 2 to 8 his children, were brought on record as his legal representatives.

(7) The learned counsel for the appellants contended that the compromise order dated May 3, 1960 passed in the first application for eviction cannot be treated as an order u/s 15 of the Act. Proviso to section 14(2), Therefore, was not attracted because the Appellants had not obtained the benefit mentioned therein as the default referred to in that section must be in the payment of money as required by an order u/s 15. At there was no such order, the proviso to section 14(2) did not come into play and the bar of section 14(2) to an order for recovery of possession remained unlifted, as the appellants were prepared to pay when the order u/s 15 was passed in these proceedings.

(8) The learned counsel for the respondent contended on the other hand, that the tenant in this case was habitual defaulter, inspire of repeated opportunities given to him to avoid lapses, he had been committing defaults in payment of rent. He has always been irregular on which the standard rent is fixed or such further time as the Controller may allow in this behalf. xx xx xx xx xx xx 6) If a tenant makes payment or deposit as required by subsection (1) or sub-section (3), no order shall be made for recovery of possession on the ground of default in the payment of rent by the tenant, but the Controller may allow such costs as he may deem fit to the landlord. (7) If a tenant fails to make payment or deposit as required by this section, the Controller may order the defense against eviction" to be struck out and proceed with the hearing of the application."

(9) It is thus clear that while protection was afforded to honest tenants, the landlords were not to be denied justice; and habitual defaulters" who were not keen to honour their commitments, were not allowed the concession again and again.

(10) The provisions do not appear to have been designed to allow unscrupulous tenants to escape through technical loopholes. Although u/s 15(1), the Controller is required to make an order directing the tenants to pay the arrears of rent within one month of the date of the order, there is nothing to prevent the tenant from waiving this concession given to him. He may pay the arrears then and there; and need not wait for an order allowing him one month Of again, he may pay outside court or may persuade the landlord to give him more than one month"s time for payment and have the order of the Controller moulded to suit his convenience. Whatever concession the tenant may enjoy or may give up in this manner, he would be having the benefit of avoiding an order of eviction. Having thus obtained this benefit once. he cannot be permitted to turn round after committing "a second default, to say that the earlier benefit enjoyed by him, was no benefit, merely because the procedure laid down in section 15 was, at his own request, varied.

(11) u/s 15(1) of the Act, the Controller could have passed an order directing the tenant to pay to the landlord ,within one month of the date of the order the amount of rent. After the expiry of one month ,if payment had been made, the

Controller would have dismissed the application for eviction, but may have allowed costs against the tenant; or if payment had not been made as required, defense against eviction would have been struck out and the Controller would have proceeded with the hearing of the eviction application. This is precisely what has been done in this case. The tenant was given one month time to pay the agreed amount of rent. Instead of putting in appearance before the Controller after the expiry of the month to have the application dismissed if the rent was paid as required, or to have the defense against eviction struck out if the rent had not been paid; the tenant, as also the landlord, had agreed to avoid the second appearance and a decree for ejectment was suffered on the day of the passing of the order itself which was to be deemed satisfied automatically in the event of payment of rent as required, or to remain in full force in case of default.

(12) In this case the respondent by filing application for eviction on the first Occasion had invoked the provisions of proviso (a) to subsection (1) of section 14 of the Act. An order for eviction could have been made, if the tenant's defense had been struck out on his failure to pay the arrears of rent if ordered to do so u/s 15. The benefit of avoiding the eviction could be enjoyed by the tenant by making payment of all arrears as ordered. Such an order for eviction was made in this Case; but the appellants obtained one month's time for making payment of arrears of rent and enjoyed the benefit of avoiding eviction by making the payment in that time. While enjoying this benefit, the appellant tenants themselves avoided the strict procedural requirements of section 15. The tenants in effect avoided another inconvenient appearance in court, which would have been necessary if one month's time had been given to them for payment in terms of section 15(1). This was, thus, a substantial compliance with the relevant provisions of the Act; and the departure from the strict rule of section 15, was made only to suit the appellants' convenience. The benefit enjoyed by the tenants, in the shape of protection from eviction, cannot be said to be insufficient for the purposes of the proviso to section 14(2) merely because the tenants have obtained a further benefit of avoiding an extra inconvenient court attendance. The earlier proceedings for eviction, like the present one, were within the frame work of the Act. And if the appellants obtained the benefit of avoiding eviction, that was a substantial compliance with section 14(2) of the Act. Having obtained that benefit once, the appellants were not entitled to the benefits of that section again after committing a second default (in this case a third default) in payment of rent for three consecutive months. The order of eviction passed by the Additional Controller on the ground of second default in payment of rent and confirmed by the learned Rent Control Tribunal is, thus, in order and there is no merit in the appeal. The same is dismissed, but the parties are left to bear their own costs.