

(1982) 08 DEL CK 0009

In the Delhi High Court

Case No : Second Appeal No. 125 of 1978

The Jain Motor Car Co.

APPELLANT

Vs

Shyam Prabha Jain and Others

RESPONDENT

Date of Decision : 19-08-1982

Acts Referred:

Citation : (1983) 23 DLT 66 : (1983) 4 DRJ 121 : (1982) 2 ILR Delhi 629 : (1982) RLR 754

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : S.L. Bhatia, Virender Mehta and B.B. Jain, for the Appellant;

Judgement

Sultan Singh, J.

(1) The question for decision in this second appeal u/s 39 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") is : Whether the tenant is entitled to benefit u/s 14(2) of the Act if he deposits only the arrears of rent and not future monthly rent by the 15th of the succeeding month in pursuance of an order of the Controller passed u/s 15 of the Act ?

(2) Briefly the facts are that Shri Prem Chand Jain predecessor of respondent No. 1 on 20th January, 1971 filed an application for eviction of the appellant-tenant Jain Motor-Car Company and Brij Behari Lal Jain, respondent No. 2 u/s 14(I)(a) & (b) of the Act alleging that the appellant was a tenant in a portion of Municipal House No. XI/4239A, Raj Kishan Jain Street, I Ansari Road, Delhi on a monthly rent of Rs. 200.00 besides water and electricity charges, that he had been in arrears of rent since 1st June, 1970 which he failed to pay in spite of a notice of demand dated 6th November, 1970 within two months of the service of notice of demand, that the notice of demand was served on 18th November, 1970, that the appellant paid Rs. 800.00 by cheque on 21st November, 1970 and that the appellant had sublet, assigned or otherwise parted with possession of the whole of the suit premises to respondent No. 2 without obtaining his consent. The

appellant denied the grounds of eviction. He pleaded that he paid Rs. 200.00 by cheque on 5th December, 1970 and another sum of Rs. 290.00 by another cheque dated 5th January 1971. He denied the ground of subletting. The Controller on 24th March, 1971 passed an order u/s 15(1) of the Act requiring the appellant to deposit arrears of rent @ Rs. 200.00 per month with effect from 1st June, 1970 up to date within one month from the date of the order after adjusting the amount of Rs. 800.00 admittedly received by the landlord. The appellant was further directed to deposit future monthly rent at the rate of Rs. 200.00 by the 15th of each succeeding month. An appeal was filed by the appellant challenging the said order u/s 15(1) of the Act but it was dismissed on 21st January, 1972. The appellant deposited all arrears of rent as well as future monthly rent in accordance with the order dated 24th March, 1971 passed u/s 15(1) of the Act excepting the rent for the month of February, 1972 which was deposited on 30th March, 1972. The landlord filed an application for striking off the defense of the appellant u/s 15(7) of the Act. The Controller dismissed his application on 24th April, 1972 and the appeal was dismissed by the Tribunal on 19th April, 1973. The landlord Therefore files second appeal (S.A.O. No. 198 of 1973) in this court on 25th June, 1973 challenging the dismissal of his application u/s 15(7) of the Act. The Additional Controller by his judgment and order dated 27th October, 1975 passed an order of eviction u/s 14(l)(a) of the Act against the appellant but dismissed the landlord's prayer for eviction u/s 14(l)(b) of the Act. The Additional Controller held that the appellant committed default in deposit of rent for the month of February, 1972 within the time prescribed u/s 15(1) of the Act and Therefore the appellant was liable to be evicted u/s 14(l)(a) of the Act. The tenant filed an appeal before the Tribunal and the landlord filed cross objections. The appeal and the cross-objections were dismissed by the Tribunal by its judgment and order dated 20th March, 1978. The tenant filed this second appeal (S.A.O. No. 125 of 1978) in this court u/s 39 of the Act. The suit property was gifted on 5th August, 1978 to Smt. Swayam Prabha Jain. She was sub- situated by order dated 29th November, 1979.

(3) Learned counsel for the appellant submits that all arrears of rent in accordance with order dated 24th March, 1971 passed u/s 15(1) of the Act were deposited by the appellant within one month of the date of the order. He further submits that future monthly rent for the period ending January, 1972 were also deposited by him by the 15th of the succeeding month. He admits that the appellant, however, failed to deposit rent for the month of February, 1972 by 15th March, 1972 and in fact deposited the same on 30th March, 1972. His contention is that the rent could not be deposited in time as attorney of the appellant had fallen ill and Ajit Prasad Jain partner of the appellant had forgotten the date of deposit on account of being busy in connection with the election in which his brother was also a candidate. He submits that this was sufficient cause for the failure of the appellant to deposit rent for February, 1972 up to 15th March, 1972. Learned counsel for the respondent- landlord submits that the appellant is a partnership firm, that if the attorney had fallen ill, there were other

persons including partners who ought to have taken steps for deposit of future monthly rent. His submission is that it was not a bona fide default but a mala fide one. He says that the appellant had parted with the possession of the premises to respondent No. 2 and as respondent No. 2 had not paid the rent to the appellant, monthly rent was not deposited. Learned counsel for the respondent submits that the judgment and order of the Additional Controller and the Tribunal dismissing his application u/s 15(7) of the Act for striking off the defense of the appellant is not sustainable in law. Learned counsel for the appellant on the other hand submits that the appeal against the order dismissing the application u/s 15(7) of the Act does not involve any substantial questions of law and Therefore the same is liable to be dismissed. In support of his appeal he submits that the appellant is entitled to protection against eviction u/s 14(2) of the Act if he had deposited only the arrears of rent in pursuance of the order dated 24th March, 1971 passed u/s 15(1) of the Act. In other words, his contention is that Section 15 of the Act contains two parts. According to him first part of an order u/s 15 of the Act requires the tenant to deposit all arrears of rent and the second part requires the tenant to deposit future monthly rent. He submits that u/s 15(7) of the Act if the tenant fails to make deposit in accordance with the order u/s 15 of the Act it is discretionary with the Controller to strike off the defense against eviction. He submits that the defense of the appellant was not struck off by the Controller and Therefore the appellant is not liable to eviction if he has committed default in depositing future monthly rent i.e. in complying with the second part of the order u/s 15(1) of the Act.

(4) Sections 14(l)(a), 15(1), 15(7) and 14(2) of the Act pertaining to the ground of eviction for non-payment of rent are as under :

"14(1)Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or controller in favor of the landlord against a tenant ; Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely: (a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the (late on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882 ; 15(1) In every proceeding for the recovery of possession of any premises on the ground specified in clause (a) to the proviso to subsection (1) of Section 14, the Controller shall) after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month, by month, by the fifteenth of each succeeding month, a sum

equivalent to the rent at that rate. 15(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. 14(2) No order for the recovery of possession of any premises shall be made on the ground specified in clause (a) of the proviso to sub-section (1), if the tenant makes payment or deposit as required by Section 15:"

(5) To claim eviction on the ground of non-payment of rent a landlord it required to serve a notice of demand upon the tenant and if he neither pays nor tenders the whole of the arrears oi rent legally recoverable from him within two months of the date of service of the notice of demand, cause of action accrues to the landlord to claim eviction of the tenant u/s 14(l)(a) of the Act. This is not the end. Even if the tenant has neither paid nor tendered the whole of the arrears of rent legally recoverable within two months from the date of service of the notice of demand, he is granted further opportunity to pay the rent in pursuance of the order u/s 15(1) of the Act. This Section requires the Controller to pass an order directing the tenant to pay the rent at the rate at which it was last paid within one month from the date of the order. This section further requires the Controller to pass an order for deposit of future monthly rent by the 15th of each succeeding month. Section 15(1) of the Act is thus into two parts. Under the first part the tenant is required to deposit the arrears of rent and under the second part he is required to deposit future monthly rent. Under 15(7) of the Act if the tenant fails to deposit either the arrears of rent or future monthly rent the Controller has discretion to strike off the defense of the tenant. Further u/s 15(3) of the Act if there is any dispute as to the amount of rent payable by the incant ,it provides for fixation of interim rent and requiring the tenant to deposit arrears as well as future monthly rent at the rate of interim rent. This section further provides that after the determination of the standard rent) the tenant shall be required to pay the arrears on the basis of the determined rent within one month of the date of the order or such further time as the Controller may grant in this behalf. Thus u/s 15(3) of the Act first an order is passed for deposit of arrears and future rent at the interim rate of rent and second order is passed requiring the tenant to deposit the difference between the standard rent and the interim rate of rent. Section 14(2) of the Act provides that no order for eviction of the tenant on the ground mentioned u/s 14(l)(a) of the Act shall be passed if the tenant makes payment or deposit in pursuance of the order passed u/s 15 of the Act. In other words, it would mean that if a tenant has neither paid nor-tendered the whole of the arrears of rent legally recoverable from him within a period of two months from the date of the service of notice of demand he is to be protected against eviction if he deposit all arrears of rent and future monthly rent in pursuance of an order passed u/s 15(1) of the Act Section 14(2) of the Act docs not speak of the payment of deposit overeats or rent only within the meaning of Section 15 of the Act but it speaks of payment or deposit as required by section 15 of the Act. As already stated, it would mean the deposit of arrears as well as future monthly rent in pursuance of the order u/s 15(1) of the Act. It

appears to me that unless the arrears of the rent and future monthly rent are deposited the tenant would not be entitled to any protection u/s 14(2) of the Act. The provisions of Section 15(1) of the Act are mandatory. In *Delhi Cloth and General Mills Co. Ltd. Vs. Hem Chand and Others*, it has been held that the Rent Controller has no inherent power and no jurisdiction to condone the delay in deposit of the amount of rent directed to be paid or deposited u/s 15(1) of the Act so as to wipe off the default that has occurred. In other words, it was held that the Controller has no discretion to extend time either for deposit of arrears of rent or future monthly rent in pursuance of the order passed u/s 15(1) of the Act. On appeal it was held by the Supreme Court in *Hem Chand Vs. The Delhi Cloth and General Mills Co. Ltd. and Another*, that the Rent Controller has no discretion to extend the time prescribed u/s 15(1) of the Act. Thus the Supreme Court agreed with the Full Bench of this court to that extent, In other words, it means that provisions of Section 15 read with Section 14(2) of the Act are mandatory and if a tenant either fails to deposit or pay arrears of rent within one month of the date of the order u/s 15(1) of the Act or fails to deposit or pay any future monthly rent by the 15th of the succeeding month, the Controller has no jurisdiction to extend the time and the tenant is not entitled to claim benefit u/s 14(2) of the Act. In the said Full Bench case the tenant had committed default with respect to arrears of rent as well as future monthly rent as is apparent from the report *Delhi Cloth & General Mills Co. Limited (Sua)* and Therefore the various observations made by the Supreme Court must be held to mean that a tenant is required to comply with the entire order u/s 15(1) of the Act to avail protection u/s 14(2) of the Act. The Supreme Court in para 9 observed as under :

" NOW the question that remains is whether the Rent Controller has any discretion to extend the time prescribed in Section 15(1). This section requires the Controller after hearing the Parties, to make an order directing the tenant to pay to the landlord or deposit with the Controller within one month of the date of the Order, the arrears of rent with a direction that he should continue to pay or deposit, month by month, a sum equivalent to the rent. This is a second opportunity given to the tenant to pay arrears of rent. Without the protection given under the Act the landlord can on 15 day's notice ending with the month get the tenant evicted. The Rent Control Act protects the tenant from such eviction and gives him an opportunity to pay the arrears of rent within two months from the date of notice of demand as provided in Section 14(I)(a). Even if he fails to pay a further opportunity is given to the tenant to pay or deposit the arrears within one month u/s 15(1). Such payment or deposit in compliance with the order u/s 15(1) takes away the, right of the landlord to claim recovery of possession on the ground of default in payments of rent. The legislature has given statutory protection to the tenant by affording him an opportunity to pay the arrears of rent within one month from the date of the order. This statutory provision cannot be modified as rights of parties depend on the compliance with an order u/s 15(1). In the circumstances, we agree with the Full Bench that the Rent Controller has no discretion to extend the time prescribed u/s 15(1)".

(6) This observation of the Supreme Court concludes the matter and Therefore I am of the view that tenant is required to comply with the entire order u/s 15(1) of the Act i.e. he should deposit arrears of rent Within one month from the date of the order and also deposit future monthly rent by the 15th of the succeeding month in order to claim protection u/s 14(2) of the Act. There have been judgments of this - court holding the same view. In Smt. Darshan Devi v. Vidya Nath 1969 R.C.R. 478 there was dispute about the rate of rent. Interim rent was fixed requiring the tenant to deposit arrears of rent at the rate of interim rent within one month and future monthly rent at the said rate by the 15th of the succeeding month Subsequently the standard rent was fixed and the tenant was required to deposit the difference between the standard and interim rate of rent within one month from the date of the order. The tenant defaulted in depositing the rent at the rate of interim rent. This court held that the tenant ought to have complied with the order requiring him to deposit at the interim rate of rent as well as the order requiring him to deposit the difference between the determined and interim rate of rent. In other words it was held that the tenant was required to comply with all orders passed u/s 15(3) of the Act. The tenant had committed default and Therefore the order of eviction was passed against him. In Shri Munshi Lal v. Thakur Prem Chand, 1970 R.C.J. 496 V.S. Deshpande, J. (as he then was) observed as under :

" FOR the above reasons I find that the correct construction of Section 14(2) of the Act is that its benefit is available to the tenant only when the tenant has made the payment or deposit of the rent as required by section 15(3) read with section 15(1) and that such rent includes not only the arrears of the rent but also the rent becoming due subsequently".

In Devi Dayal v. Mst. Zamam Begum, 1975 R.C.J. 332 B.C. Misra, J. held that a tenant to get protection u/s 14(2) of the Act is required not only to deposit the arrears of rent but future monthly rent by the 15th of the succeeding month i.e. in accordance with the order passed u/s 15(1) of the Act. In Shri Madan Lal v Shri Hakam Chand and others, 1977 (2) R.C.J 643 Yogeshwar Dayal, J. held that though the delay in deposit of rent was condoned for the purpose of Section 15(7) of the Act, the landlord was entitled to an order of eviction against the tenant for his failure in depositing the monthly rent in accordance with the order u/s 15(1) of the Act. He observed as follows :

" IT must ,Therefore, be held that in spite of the fact that the delay in depositing the future rent was condoned for the purpose of section 15(7) of the Act, that condensation does not ensure to wipe out the default completely and the landlord is entitled to claim the benefit of the said defaults in complying with the order u/s 15(1) by the tenant and to claim an order for eviction as stated in Section 14(2) of the Act".

(7) In the last three cases arrears of rent were deposited within one month from the date of the passing of the order u/s 15(1) of the Act but there were defaults in depositing future monthly rent by 15th of the succeeding month, meaning

thereby that the order u/s 15(1) of the Act requiring deposit of future monthly rent by the 15th of the succeeding month was not complied with and the landlord was held entitled to an order of eviction against the tenant. It was held that the tenant was not entitled to protection u/s 14(2) of the Act although he had deposited arrears of rent but committed default in depositing future monthly rent. Learned counsel for the appellant submits that Section 14(2) read with Section 15(1) of the Act is not mandatory but directory. I do not agree in view of the Full Bench decision of this court in Delhi Cloth & General Mills Co. Ltd. (Supra) and Hem Chand (Supra) decided by the Supreme Court where it has been held that the Rent Controller has no discretion to extend the time prescribed u/s 15(1) of the Act. Learned counsel for the appellant refers to Shyamcharan Sharma Vs. Dharamdas, which is a case under M.P. Accommodation Control Act, 1961. That was a case for eviction of a tenant on the ground of non-payment of rent. Section 13(1) of the M.P. Accommodation Control Act reads as under ;

"13(1)On a suit or proceeding instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of the writ of summons on him or within such further time as the Court may on an application made to it, allow in this behalf, deposit in the court or pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate".

(8) Section 12(3) of the said Act provides that an order for eviction of a tenant shall not be made on ground of non payment of rent as mentioned in Section 12(1)(a), if the tenant makes a payment or deposit as required by Section 13. A bare reading of Section 13 of the said Act shows that the tenant is required to deposit or pay to the landlord all arrears of rent within one month of the service of the writ of summons or within such further time as the court may on an application made by the tenant allow him. It further requires the tenant to pay or deposit future monthly rent by the 15th of the each succeeding month. In that Act, discretion is given to the court to extend the time for deposit of rent on the application of the tenant. Under the Delhi Rent Control Act, 1958 no such discretion has been conferred upon the Controller as has been held by the Full Bench of this court which view was confirmed by the Supreme Court. Thus it appears to me that the Supreme Court judgment in Shyamcharan (Supra) is not applicable to the facts of the present case. Learned counsel for the appellant next relies upon B.C. Kame Vs. Nemi Chand Jain, which is also a case under the M.P. Accommodation Control Act, 1961 I am, Therefore, of the view that the appellant having failed to deposit future monthly rent by the 15th of the succeeding month in accordance with the order passed u/s 14(2) of the Act.) This appeal has no merit and is liable to be dismissed.

(9) In other appeal. S.A.O. No. 193 of 1973 of the landlord challenging the judgment and order of the Tribunal dismissing his application u/s 15(7) of the Act the defense of the appellant-tenant was not struck off by the Controller. In other words, the tenant was allowed to defend the eviction case. He was allowed to lead evidence and take part during the trial of the eviction proceedings. The appellant had claimed condensation for the purpose of Section 15(7) of the Act on the ground that the attorney of the appellant had fallen ill and the partner of the firm Ajit Prasad had forgotten the date of deposit on account of being busy in connection with the election in which his brother was also a candidate. These facts are not sufficient to condone the delay in deposit of rent. These acts amount to negligence on the part of the appellant which is a partnership firm. The attorney had fallen ill and one partner had forgotten of the date deposit, there were other partners and other officials of the firm who ought to have taken steps to deposit within time. I am, Therefore, of the view that it was not a fit case for refusing to strike off the defense of the appellant-tenant u/s 15(7) of the Act. I, Therefore, set aside the judgment and order of the Tribunal and the Controller and strike off the defense of the tenant. The appeal of the landlord (S.A.O. No. 198 of 1973) is, Therefore, accepted and the appeal of the tenant (S.A.O. No. 125 of 1978) is dismissed. Parties are left to bear their own costs.