

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 01.02.2012

CM(M) No.1635/2007

SMT. BALWANTI DEVI Petitioner
Through: Mr.Sanjay Jain,Sr.Advocate with Mr. Arjun Mitra, Advocate.

versus

SHRI MAHESH KUMAR CHOPRA Respondent
Through: Mr.M.G. Vacher, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the order dated 07.9.2007 passed by the Additional Rent Control Tribunal (ARCT) endorsing the finding of the Additional Rent Controller (ARC) dated 13.7.2007 whereby the delay in the deposit of rent by the tenant had been condoned and benefit of Section 14(2) of the DRCA had been extended to the tenant.

2. Petitioner Balwanti Devi is the landlady of property bearing No.10/18, Shankti Nagar, New Delhi. Mohan Lal Chopra was inducted as a tenant in the said premises initially at a rent of Rs.25/- per month which was subsequently increased to Rs.30/- per month. After the death of Mohan Lal Chopra his legal heir Mahesh Kumar Chopra became a tenant and he started paying the rent to the landlord. He paid rent up to 31.3.1994 and thereafter did not pay rent. Demand notice dated 26.3.2003 was served upon the tenant to which no reply was filed. Eviction petition bearing no.916/2003

was filed; on 12.2.2004 an order under Section 15(1) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) was passed by the ARC and the tenant was directed to pay the arrears of rent w.e.f. 01.8.2000 till 31.01.2004 @ Rs.30/- per month which was modified vide order dated 13.7.2007 vide which the tenant was directed to deposit rent @ Rs.33/- per month w.e.f. 01.5.2003. The Rent Controller after consideration of the report of the Nazir had noted that rent for the month of March 2004 was deposited after a delay of five days; for the month of December 2004 after one month and six days and rent for the month of January 2005 was deposited late by six days. He condoned this delay and gave the benefit of Section 14(2) of the DRCA to the tenant.

3. The landlord was not satisfied with this order passed by the ARC. He preferred an appeal before the RCT who dismissed his plea on 07.9.2007 endorsing the finding of the ARC. This judgment is the subject matter of the present proceedings.

4. On behalf of the petitioner, it is pointed out that the 'rent' which is payable by a tenant, if it is a delayed payment the quotient of interest has to be included and forms a part and parcel of the rent; in this case there has admittedly been a delay on the part of the tenant in the deposit of rent. This has been noted by both the courts below; the discretion exercised by the ARC in condoning the delay is arbitrary; attention has been drawn to the order passed by the ARC as also by the ARCT; submission being that no reasoned finding was given by either of the two courts below. To support this submission learned counsel for the plaintiff placed reliance upon a judgment of a Bench of this Court reported in 170(2010) DLT 134 Puneet Bajaj Vs. Baldev Kumar Pahwa ; contention being reiterated that delayed payment of rent has to be accompanied with interest as stipulated under section 26(1) of the DRCA. Further submission of the petitioner being that the provisions of DRCA are a beneficial legislation for the tenant and if he wants to seek the protective umbrella of the said legislation he must strictly comply with the provisions, in the absence of which such a protection cannot be afforded to him. To support this submission reliance has been placed upon a judgment of the Apex Court reported in 123 (2005) DLT 127 (SC) Atma Ram Vs. Shakuntala Rani; submission being that the conditions precedent required to be fulfilled by the tenant which in this case would be the payment of rent in time which admittedly not having been paid in time, benefit of the strict provisions of the DRCA cannot be taken advantage of by such a litigant.

5. The present petition is a petition under Section 14(1)(a) of the DRCA. The scheme of the DRCA encompasses that a ground of eviction is available to a landlord in case the tenant does not pay the rent which is legally recoverable from him within the prescribed period; in the absence of a contract to the contrary this payment has to be made by the 15th day of each succeeding month. It is only in a case of second default that the petition under Section 14(1)(a) of the DRCA would be decreed in favour of the landlord; in the case of first default benefit of Section 14(2) of the DRCA is granted to the tenant. Section 15(7) of the DRCA vests a discretion in the Rent Controller to strike out the defence of the tenant in the event where he does not comply with the direction passed against him under Section 15(1) of the DRCA i.e. for payment of arrears of rent within a period of one month; however, if this defence is not struck out under Section 15(7) by the Rent Controller the tenant would still have the other defences available to him under the Act; the irresistible conclusion being that he would have the right to claim a protection under Section 14(2) of the DRCA. In this context the Apex Court in the judgment reported in AIR 1984 SC 1392 Ram Murti Vs. Bholu Nath has inter alia held as follows:

“ The words “as required” by S.15(1) in these provisions must be construed in a reasonable manner. If the Rent Controller has the discretion under S.15(7) not to strike out the defence of the tenant, he necessarily has the power to extend the time for payment of future rent under S.15(1) where the failure of the tenant to make such payment or deposit was due to circumstances beyond his control. The previous decision in Hem Cand’s case interpreting S. 15(7) and S.14(2) in the context of S.15(1) of the Delhi Rent Control Act, 1958, although not expressly overruled, can not stand with the subsequent decision in Shyamcharan’s case interpreting the analogous provisions of the Madhya Pradesh Accommodation Control Act, 1961 as it is of a large Bench.”

6. It is thus explicit that Rent Controller has the power to condon the delay on the part of the tenant in the deposit of rent; if he is able to show that there were such circumstances which were beyond his control which made it not possible for him to deposit the rent in time; the late payment should, however, not be willful or contumacious. A recalcitrant tenant guilty of willful and a deliberate default in the payment of future rent is not entitled to the protective umbrella of the DRCA.

7. It is in this background that the orders passed by the two courts below have to be considered. Record shows that after the order had been passed by the Rent Controller under Section 15(1) on 12.02.2004 the deposit of the rent was being made by the tenant; in fact, the application filed by the tenant seeking condonation of delay in the deposit of rent has explained the circumstances due to which the delay had occurred; it is not in dispute that the first challan was submitted by the tenant for deposit of rent w.e.f. 01.8.2000 to 31.01.2004; amount was deposited on 20.2.2004. Rent for the month of February 2004 was deposited on 08.3.2004; challan submitted and entered at serial no.902 is dated 01.02.2004 for deposit of rent for the month of March 2004. It was given to the landlord on 20.4.2004 with another entry no.163 dated 19.4.2004; submission being that there was a wrong mentioning of the month in the challan as January 2005 instead of December 2004; the delay was due to this wrong calculation and wrong mentioning of the month in the challan. This delay was thus held to be bonafide and neither intentional nor willful.

8. Record substantiates that the delay was for five days in the deposit of rent for the month of March 2004; delay of one month and six days for the deposit of rent for the months of December 2004 and the delay of six days for the month of January 2005 was there. Explanation tendered by the tenant found favour with ARC as also RCT; there is no dispute to the proposition that the ARC has the discretion to condone the delay; The discretion was rightly exercised in favour of the tenant and the delay was condoned. This was clearly not a case where the tenant had willfully, intentionally or deliberately defaulted in make the payment of the rent. Admittedly payment of rent in terms of the order passed under Section 15(1) of the DRCA was being made; the delay in the aforementioned period was only for the reasons explained by him. Such a tenant can in no manner be said to be either contumacious or a recalcitrant. The exercise of discretion in favour of such a tenant was a fair discretion. This order of the DRCA having being endorsed by the ARCT on the same parameters in no manner calls for any interference.

9. There is no dispute to the proposition that a benefit which is available to a party under a special legislation, must be given to him only if he makes a strict compliance of the said legislation. In the instant case in view of the aforementioned factual scenario it cannot be said that this tenant had committed any willful or deliberate default.

10. The judgment of Puneet Baja (supra) relied upon by the learned counsel for the petitioner was in a totally different context; that was a case where in spite of a second notice of default which was a notice making a specific demand for rent along with arrears of rent; the tenant had not paid the said amount; his contention being that he had sent money orders; in this context, the court had noted that arrears of rent which were willfully withheld would necessarily envisage the quotient of interest as well. That judgment has no application to the factual scenario of the instant case. The impugned judgment in no manner calls for any interference. Petition is without any merit. Dismissed.

Sd/-
INDERMEET KAUR, J