

IN THE COURT OF MS. SHEFALI BARNALA TANDON ;
ADMINISTRATIVE CIVIL JUDGE- CUM- ADDITIONAL RENT
CONTROLLER (CENTRAL) ; DELHI

E-194/18

In the matter of:-

Sh. Kale Kumar,
S/o. Sh. Mishri Lal,
R/o. 1191, Gali Babu Ram,
Kucha Pati Ram, Bazar Sita Ram,
Delhi-110006.

....Petitioner

Versus

- 1 Smt. Anita Mittal,
W/o. Shri Rishi Ram.
- 2 Sh. Jitender Mittal,
S/o. Shri Rishi Ram.
- 3 Ms. Gudia,
D/o. Shri Rishi Ram,

All residents of :-
834, Kucha Pati Ram,
Bazar Sita Ram,
Delhi-110006.

Suit Premises :
1191, Gali Babu Ram,
Kucha Pati Ram,
Bazar Sita Ram, Delhi-6.

.....Respondents

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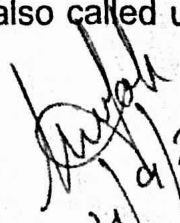
Date of Institution : 21.02.2018
Date of order when reserved. : 07.09.2020
Date of order when announced : 14.09.2020

J U D G M E N T

1. Vide this judgment, the undersigned shall decide the petition filed under Section 14 (1) (a), (d) & (h) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'), of the petitioner seeking eviction of the respondents from the premises i.e. two rooms, one baithak and a bathroom on the ground floor out of property bearing no. 1191, Gali Babu Ram, Kucha Pati Ram, Bazar Sita Ram, Delhi-110006 (hereinafter referred to as the '*tenanted premises*'), as shown in red colour in the site plan attached to the petition.

2. The brief facts of the case as stated in the petition are that , the petitioner is the owner/landlord of the '*tenanted premises*' vide sale deed dated 31.08.2002 as he purchased the property in question from the erstwhile owner. Sh. Nihal Chand, who was the father-in-law of respondent No. 1 Smt. Anita Mittal, was originally the tenant in the '*tenanted premises*' inducted orally by the erstwhile owner for residential purpose at the rate of rent of Rs.7.75 paise per month excluding electricity and water charges. However, Sh. Nihal Chand died in the year 1977 and after his death, his only son Sh. Rishi Ram who was under exclusive use and possession of the '*tenanted premises*' became the tenant under the erstwhile owner. After the purchase of the suit property by the petitioner Sh. Rishi Ram became the tenant under him by operation of Law and he was duly informed about the same. He was also called upon to attend in

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favour of the petitioner and pay the rent towards the 'tenanted premises' but he failed. Rishi Ram also expired on 04.05.2004, leaving behind his legal heirs, who are now the tenants of petitioner by operation of Law and are respondents no.1 to 3 in the present petition @ Rs.7.75 paise per month excluding electricity and water charges. Subsequently, the rent has been increased by 10% to Rs.8.52 paise per month w.e.f. 01.11.2013 after the legal notice was served upon the respondent.

3. It is averred that the respondents are in arrears of rent @ w.e.f. 31.08.2002 @ Rs.7.75 paise per month exclusive of all other charges. The petitioner sent a legal notice dated 03.10.2013 calling upon the respondents to pay the arrears of rent from 31.08.2002 till date i.e. the date of notice along with interest @ 15% per annum. It is also averred that the petitioner is also entitled to enhance the rate of rent by 10% to Rs.8.52 paise per month exclusive of any other charges. The respondents are liable to pay rent alongwith interest @ 15% per annum, however, respondents did not clear the arrears of rent due from them. The 'tenanted premises' are situated in the Slum Area and the permission to file the present petition has already been obtained by the petitioner from Competent Authority vide order dated 26.04.2017.

4. It is pertinent to mention here that during course of final arguments Ld. Counsel for petitioner did not press eviction petition u/s 14(1)(d)(h) of the Act, hence the petitioner has prayed for order of eviction of respondents from the tenanted premises under Section


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14 (1) (a) of the D.R.C. Act only.

5. Notice of the petition was served upon the respondents and thereafter, written statement has been filed on behalf of all the respondents. Wherein, the respondents admitted the induction of their predecessor-in-interest Sh. Nihal Chand in the 'tenanted premises' as tenant and their tenancy in the 'tenanted premises' by Law after his death. Further, they also admitted that they are using the 'tenanted premises' for residential purpose @ Rs.7.75 paise except electricity and water charges alongwith common usage of terrace. They also admitted their tenancy under the petitioner by stating that they have tendered rent on time to the petitioner along with the interest and have cleared all the arrears, however since beginning the petitioner refused to accept the rent in order to create false ground for eviction from the 'tenanted premises'. It is contended that the petitioner got them served with the false and frivolous legal notice dated 03.10.2013 illegally and unlawfully, which was duly replied and the outstanding rent was also paid alongwith the interest by them. The respondents tendered the rent amounting to Rs.398/- for the period of 10.01.2011 to 10.01.2014 by way of a petition under section 27 of DRC Act. The respondents had also tendered rent for the period w.e.f. 10.01.2014 to 10.01.2018 (48 months) by way of e-money order of Rs.372/-. The respondents had tendered rent for the period from January, 2015 to April, 2018 (40 Months) @ Rs.9.80 p.m. (i.e. after increasing the rate of rent of 15%) of Rs.392/- by way of e-money order. Further, there is concealment of facts and wrong site plan has been filed. Hence the petition is

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liable to be dismissed, being filed on false grounds

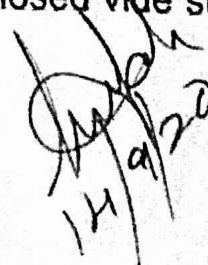
6. In the replication to the written statement filed by the petitioner, the averments made in the petition have been reiterated and reaffirmed while denying the contentions of the respondents. It is stated that petitioner was never served of the petition U/s. 27 of DRC Act as alleged by the respondents in their written statement.

7. In order to substantiate his case, the petitioner Sh. Kale Kumar has examined himself as PW-1 vide affidavit **Ex.PW-1/A** and deposed almost on the same lines as averred in the petition. He exhibited on record the site plan of the suit property as **Ex. PW-1/1**; the sale deed of suit property in favour of the petitioner as **Ex. PW-1/2**; the copy of legal notice dated 03.10.2013 as **Ex. PW-1/3**; **Ex. PW-1/4** to **Ex. PW-1/6** are the original postal receipts; **Ex. PW-1/7** to **Ex. PW-1/9** are the AD Cards and **Ex. PW-1/10** & **Ex. PW-1/11** are the certified copy of Slum permission dated 26.04.2017 and the site plan.

In his cross-examination, he has stated that he had purchased the suit property in the year 2002 and at that time, the rent of the tenanted premises was Rs.7.75 paise per month, however he denied the suggestion that rent has been paid regularly by the respondents to him. He denied the suggestion that legal notice dated 03.10.2013 was not served upon the respondents.

8. No other witness has been examined on behalf of the petitioner and petitioner's evidence was closed vide statement dated

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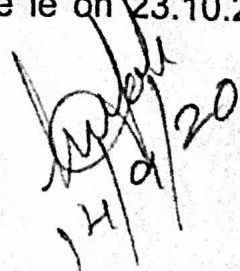
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01.05.2019.

9. In rebuttal, respondent no.2 Sh. Jitender Mittal examined himself as RW-1 and tendered his affidavit as **Ex.RW-1/A** while deposing almost on the same lines of the written statement. He proved on record the site plan exhibited as **Ex. RW-1/1; Ex. RW-1/2** (collectively) are the copies of ration card and Aadhaar Card of the respondents No. 1 & 2, passport of respondent No. 3, passbook of saving bank account of respondent No. 1 and Health Insurance Policies of respondents No. 1 & 2; **Ex. RW-1/3** (Collectively) are the copies of report cards of respondent No. 3's children namely Raghav Kapoor & Sachi Kapoor; **Mark A** is the copy of e-money order dated 23.10.2013; **Ex. RW-1/5** are the copies of challan dated 06.01.2014 & 09.01.2014 deposited in petition under section 27 of DRC Act; **Ex. RW-1/6** are the copies of tracking report and postal receipts; **Ex. RW-1/7** is the copy of postal receipt dated 05.04.2018; **Mark B** are the copies of photographs of the premises alongwith bill & **Ex. RW-1/10** are the copies of Telephone Bill & Electricity Bill and copies of Gas bill and BSES disconnection notice are **Mark C** (Collectively)

In his cross examination, he has stated that he came to know that the petitioner has purchased the suit property only when he filed the petition against them. It is further stated that he tried to tender the rent to the petitioner qua the tenanted premises when he received the legal notice from the counsel of the petitioner. He admitted that the site plan has been correctly shown in red colour in Ex. PW-1/1. It is stated that he had paid the rent within two months of receipt of the legal notice ie on 23.10.2013 vide e-

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money order, Mark A. He admitted that respondents never deposited any rent of any period qua the suit property in the bank account of the petitioner.

10. No other witness has been examined on behalf of the respondents and respondents' evidence was closed vide statement dated 03.09.19.

11. It is pertinent to mention here that the matter was fixed for final arguments by the Ld. Predecessor, however it was brought to the knowledge of the undersigned that the order u/s 15(1) of the Act has not been passed in the present matter. Thereafter, order under Section 15 (1) of D.R.C. Act was passed vide order dated 24.12.2019 and matter was again listed for final arguments.

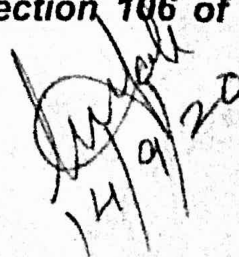
12. The undersigned has carefully perused the entire record including the written final arguments/synopsis filed on behalf of both the parties.

13. Let's discuss the law first, before appreciating the facts of the present matter.

In order to establish his case under Section 14(1) (a), the petitioner is required to prove the following ingredients :-

- (i) That there is relationship of landlord and tenant between the parties;**
- (ii) That a valid legal demand notice was duly served upon the respondent in accordance with Section 106 of Transfer of**

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Property Act, 1882;

- (iii) That there are arrears of legally recoverable rent; and**
- (iv) That the respondent has neither paid nor tendered the entire arrears of legally recoverable rent within two months of date of receipt of legal demand notice.**

14. Now, the undersigned shall discuss each of the above ingredient in detail.

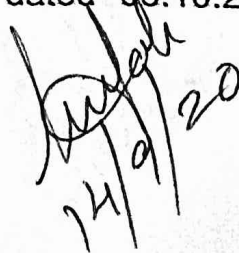
(i) Existence of relationship of landlord and tenant

In the present matter, there is no dispute regarding the existence of landlord-tenant relationship between the parties as the respondents has admitted his tenancy under the petitioner in respect of the 'tenanted premises' in the written statement filed by them and have been allegedly tendering the rent to the petitioner qua the 'tenanted premises'. The petitioner has also proved on record the sale deed in his favour for proving ownership as Ex. PW-1/2 over the suit property/'tenanted premises' Hence, there is no dispute regarding the status and the relationship of Landlord-tenants stands established between the petitioner and the respondents.

15. Now, coming to the second ingredient in detail i.e. **(ii) Service of valid legal demand notice upon the respondent/tenant.**

It is the case of the petitioner that the respondent is in arrears of rent @7.75 paise per month w.e.f. 31.08.2002 i.e. from the date of purchase of the suit premises by the petitioner, accordingly the petitioner sent a legal demand notice dated 03.10.2013 to the

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respondents through counsel to pay the said arrears of rent, as per the Law. The copy of said legal demand notice alongwith postal receipts and AD Cards have been proved on record by the petitioner as Ex. PW-1/3 to Ex. PW-1/9.

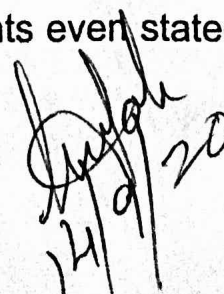
The respondents has not disputed the service of the said legal demand notice dated 03.10.2013 upon them sent by the petitioner, as they have stated to have given reply to the same and respondent no. 2 deposed specifically as RW-1, that he tried to tender the rent to the petitioner qua the tenanted premises when he received the legal notice from the counsel of the petitioner and he had paid the rent within two months of receipt of the legal notice ie on 23.10.2013 vide e-money order, Mark A.

Thus, the service of valid legal demand notice upon the respondents/tenants by the petitioner is not in dispute in the present matter, hence, the essential ingredient stands proved.

16. The third ingredient is (iii) Arrears of legally recoverable rent

It is averred by the petitioner that the respondents are in arrears of rent @ Rs.7.75 per month w.e.f. 31.08.2002 till date. The petitioner averred to send a legal demand notice dated 03.10.2013 to the respondents to pay the arrears of rent @ Rs7.75 paise per month, proved on record as Ex. PW-1/3, but the respondents did not comply with the said demand notice.

In the written statement the respondent has contended that the rent was tendered through various modes, but the petitioner refused to accept the same. Respondents even stated to have filed

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petition u/s 27 of the Act for deposition of rent due. With this background, admittedly there are/were arrears of legally recoverable rent from 31.08.2002 till date payable to the petitioner/landlord.

17. Now coming to the last and most important ingredient i.e. **(iv) The respondent has neither paid, nor tendered the entire arrears of legally recoverable rent within two months of date of receipt of legal demand notice.**

It is averred by the petitioner that the respondents are in arrears of rent @ Rs.7.75 paise per month. The petitioner sent a demand notice dated 03.10.2013 to the respondents to pay the arrears of rent @Rs. 7.75 paise per month from 31.08.2002 till date, but the respondent did not comply with the said demand notice. It is also averred that he is entitled enhance the rate of rent by 10% w.e.f. 01.11.2013 to be charged @ Rs.8.52 per month excluding the other charges . The respondent is liable to pay rent alongwith interest @ 15% per annum. The respondent is intentionally and deliberately harassing the petitioner by not making the payment.

Per contra, the respondents submitted that they have tendered rent for every month starting from 10.01.2011 within the prescribed period but there has been continuous refusal every month by the petitioner. Due to this, they were left with no option but to file DR petition/ send through other modes. The details of mode through which the rent was tendered is given as follows :-

- Rent for the period w.e.f. 10.01.2011 to 10.01.2014 was deposited in the petition U/s. 27 of DRG Act, amounting to Rs.398/-


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- Rent for the period w.e.f. 10.01.2014 to 10.01.2018 (48 months) by way of e-money order, amounting to Rs.398/-.
- Rent for the period w.e.f. January, 2015 to April, 2018 (40 months) @ Rs.9.80 p.m. (i.e. after increasing the rate of rent by 15% p.a.) by way of e-money order, amounting to Rs.392/-.
- Rent for the period w.e.f. May, 2018 to August, 2019 (16 months) @ Rs.9.80 p.m. (i.e. after increasing the rate of rent of 15% p.a.) by way of e-money order, amounting to Rs.157/-.

18. The respondent has proved on record the challan of deposit of rent in the DR petition U/s. 27 of the DRC Act, wherein the date of deposit of rent has been mentioned as 06.01.2014 which is beyond two months after service of the legal notice.

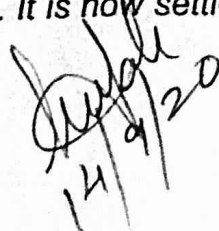
Further, reliance is placed by the Court upon Judgment in case titled as **Ram Prakash Vs. D.N. Srivastava. 126 (2006) DLT 6.** wherein it was observed by Hon'ble High Court of Delhi as follows:- “*...In my opinion, the words “neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which the notice of demand for payment of arrears has been served” in Section 14 (1) (a) of the Act would include in its ambit the interest accrued on the contractual amount as “rent” for use and occupation of the premises in question. The interest accrued on late payment under Section 26 of the Act becomes arrears of rent legally recoverable and if not paid within two months of the date of which notice of payment for arrears of rent has been served on the tenant can render the tenant liable to be eviction under Section 14 (1) (a) of the Act. For this proposition of law, I need*

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hardly go beyond a judgment of the Supreme Court in Rakesh Wadhawan and Ors. v. Jagdamba Industrial Corporation and Ors., where the Supreme Court, though appreciating the provisions of East Punjab Urban Rent Restriction Act, 1949, has, with reference to the Delhi Rent Control Act, held that interest on arrears is part of rent required to be deposited by the tenant at the first hearing. It goes without saying that even the increase of rent by ten per cent envisaged under the Delhi Rent Control Act, would be legally recoverable rent and if the increase of ten per cent, as demanded in accordance with law, has not been paid or tendered within two months of the service of notice upon the tenant, action would lie under Section 14 (1) (a) of the Act. The tenant cannot claim protection of contractual rates for use and occupation of the premises contrary to the statutory mandate which makes it obligatory upon the tenant to pay interest on delayed payment of rent as also enjoins upon him to pay a ten per cent increase in rent over the period of time. Consequently, I hold that "rent" includes in its ambit "contractual rent" together with "interest on delayed payment", if any, as also "statutory increase of rent" for the purpose of eviction under Section 14 (1) (a) of the Act". 23.

19. On the contention of respondents of tendering rent by the money orders, reliance is placed upon Judgment in case titled as Puneet Bajaj Vs. Baldev Kumar Pahwa, CM(M) 910/2008, wherein it was observed by Hon'ble High Court of Delhi as follows :-

" 6. The issue whether tendering of rent by money order was a valid tender or not is no more res integra. It is now settled law that in


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case money order is refused by the landlord or is not received for any reason whatsoever by the landlord, the next step to be taken by the tenant is to deposit the rent under Section 27 of DRC Act and mere sending of money order would not be considered as a valid tender [M.K. Mukunthan v. M. Pasupathi, 2001 RLR 537 (SC)].

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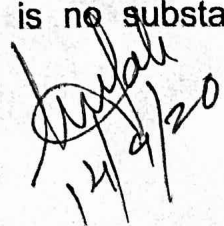
12. This amendment (in Section 26 of DRC Act) was inserted by the legislature in 1988. The amendment makes it abundantly clear that the rent is to be paid month by month and where any default occurs for payment of rent, the tenant has to pay simple interest @ 15% per annum from the date of which such payment of rent became due till the date when it is paid. Thus, the legislature made it clear that in case the rent is not tendered month by month by the tenant, the tenant incurs additional legal liability of paying interest @ 15% on the amount due for the delayed period. This additional liability has become part of the rent. A landlord can recover from the tenant only legally recoverable arrears rent and the landlord has no liberty to recover beyond what has already been agreed upon between the parties or the market rent. Where the rent is not paid by month to month, the interest over the rent, as levied by the statute, becomes part of the legally recoverable rent and it cannot be said that unless there is an amendment in Section 14 (1) (a) or Section 15, the provisions of Section 26 would not apply. The rent due would mean that the rent due as per law and where the law specifically provides that if rent is not paid for the month when it is due, it has to be paid with interest of 15% per annum, then the rent due would include the rent plus the interest over it. The tenant in this case had been

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tendering rent with a gap of six month or nine month or so and had not been tendering rent month by month. The tenant had to tender rent along with accrued interest of 15% per annum to the landlord in view of the statutory provisions of DRC Act. In the case in hand, the landlord had specifically demanded interest of 15% over the delayed rent from the tenant vide notice of demand and E-77865/16 Page /21 18 once this notice is made, non tendering of rent with interest, tantamount to non fulfillment of obligation under Section 14 (1) (a) of DRC Act. I consider that the tender made by the tenant was not in accordance with law and was not a valid tender. 11. XXX 12. In **Atma Ram v Shakuntala Rani (supra)**, the Supreme Court had categorically laid down as to what is required to be done by the tenant in case of refusal and observed as under: "19. It will thus appear that this Court has consistently taken the views that in Rent Control Legislations if the tenant wishes to take advantage of the beneficial provisions of the Act, he must strictly comply with the requirements of the Act. If any condition precedent is to be fulfilled before the benefit can be claimed, he must strictly comply with that condition. If he fails to do so he cannot take advantage of the benefit conferred by such a provision."

20. Therefore, as per above case laws, interest @ 15% per annum on the delayed payment of rent is a legally recoverable part of the rent. Further, a petition filed U/s 27 of DRC Act without paying the interest on the delayed payment will not amount to due payment of rent and the DR petitions are without prejudice to rights and contentions of the parties. Hence, there is no substance in the

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arguments of the respondent qua valid tender/deposit of rent.

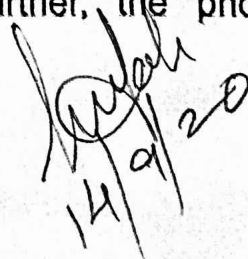
21. In view of the evidence in this regard and legal position, the Court is of the considered opinion that the petitioner has successfully proved that the respondents are still in arrears of legally recoverable rent for the period w.e.f. August, 2002 to till date. It is admitted case of the petitioner that the rent was @7.75 paise p.m. w.e.f. 31.08.2002 & thereafter the rent has increased from 01.11.2013 to @ Rs.8.52 p.m. excluding other charges and the respondents have not disputed the said rate of rent of the 'tenanted premises'. Hence, the last ingredient also stands established by the petitioner.

22. In view of the discussion herein above, the petitioner has been able to prove on the record that the respondents have neither tendered, nor paid the arrears of legally recoverable rent on receipt of legal demand notice. Therefore, the petitioner has been able to make out a case U/s 14 (1) (a) of DRC Act. Ordered accordingly.

Respondents are directed to clear all arrears of rent @ Rs.7.75 paise per month excluding other charges w.e.f. 31.08.2002 and thereafter deposit the rent as per increased rate of rent w.e.f. 01.11.2013 to till date @ Rs.8.52 paise p.m. excluding other charges along with interest @ 15% per annum within one month from today.

23. Issue court notice to the respondents who shall be served with the copy of this judgment. The Process Server is directed to serve the respondents by way of affixation, in case of refusal/non availability/lock on the premises. Further, the photographs of

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affixation be obtained at the expenses of the petitioner, which be filed in the court along with the report by the Process Server.

24. Nazir is directed to maintain miscellaneous file for consideration of benefit U/s 14 (2) of DRC Act, for 10.11.2020. Nazir to report regarding compliance of order U/s 15 (1) of DRC Act. Parties are also directed to file statement of accounts regarding deposit of arrears of rent. The question whether respondent is entitled to benefit U/s 14 (2) of DRC Act or not be considered on 10.11.2020. A copy of this judgment be placed in the miscellaneous file. No order as to costs.

File be consigned to Record Room.

Announced through
Video conferencing
On 14.09.2020.


(SHEFALI BARNALA TANDON)
Administrative Civil Judge-cum-
Additional Rent Controller (Central)
Delhi

(This judgment contains 16 pages in total)