

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT, 1958

CM(M) No. 1458/2011

DATE OF DECISION : 9th December , 2014

DHARAMVIR WALIA & ANR.Petitioners
Through: Mr. Virag Kr. Aggarwal, Adv.

VERSUS

DHANI RAM Respondent
Through: Mr. S.D.Dixit, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India impugns the concurrent judgments of the courts below; of the Rent Controller dated 20.12.2010 and the Rent Control Tribunal dated 2.12.2011; whereby the eviction petition filed by the respondent/landlord for non-payment of rent under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') was decreed and an eviction decree was passed against the petitioners/tenants. At the outset, it is required to be stated that admittedly the present default is a case of second default and if there is a second default no benefit would be available to the petitioners/tenants against eviction as per Section 14(2) of the DRC Act which provides that an eviction decree is not passed only if the case is a case of first default. Once the tenant gets benefit of Section 14(2) of the DRC Act on the first default, and thereafter there are consecutive defaults of three months in payment of rent, and a legal demand notice sent as per Section 14 (1)(a) of the DRC Act is not complied with, eviction decree has to follow.

2. The issue which was argued in the present case before this Court as also before the courts below was that whether there is compliance

of the demand notice sent under Section 14(1)(a) of the DRC Act in the situation where the rent is deposited under Section 27 of the DRC Act, but, the petition under Section 27 of the DRC Act is in fact dismissed in default and even no notice was issued to the landlord in the deposit of rent petition under Section 27 of the DRC Act.

3. Before advertng to the legal issue certain admitted aspects which are required to be noted are that an earlier eviction petition filed under Section 14 (1) (a) of the DRC Act was decided against the petitioners/tenants on 19.8.2004, the legal demand notice which was sent in this case was dated 23.11.2007, and the relevant period to be considered with respect to default in not complying with the notice is for the period from August 2005 till December 2005.

4. The case of the petitioners that the deposit of rent in a deposit of rent petition under Section 27 of the DRC Act is compliance of the demand notice sent under Section 14(1)(a) of the DRC Act although the deposit of rent petition is dismissed in default even prior to issuing of notice therein, is based upon the judgment (which is reported only as a short note) of a learned Single Judge of this Court in the case of Vidyawati & Ors. Vs. L.B.Mann & Anr. 42 (1990) DLT 15 SN. This short note reported reads as under:-

“Delhi Rent Control Act, 1958-Sections 14(1)(a) and 27-Non- payment of arrears of rent-Rent deposited in Court under Section 27 in pursuance of order of rent Controller-Notice of deposit not given to the landlord-Whether amounts to a valid tender? Yes, benefit of deposit to be given to the tenant-Tenant not liable for eviction.

Held: That if the tenant deposits the rent in court because of the order of the court it cannot be said that the benefit for this deposit cannot be given to the tenant. It is not disputed that the amount is still lying deposited in court. Since there is no clear and concurrent finding of both the courts below on ‘this point I do not think that it warrants any interference in this second appeal.

Case referred:

1. 27 (1985) DLT 460 (SC).
2. 1986 RLR 391.

Counsel for the parties:

For the Appellants: Mr.Yogeshwar Prasad, Sr. Advocate and Mr. Manbir Singh, Advocate.

For the Respondents: Mr. R.B.Gupta and Mr. Ravi Gupta, Advocates.

Important Point

Rent deposited by the tenant in court under Section 27 of the Delhi Rent Control Act, 1958 in pursuance of the order of the Rent Controller is a valid tender and the benefit of said deposit must be extended to him even if notice of deposit is not given to the landlord.”

5. Before I turn to the judgment which is relied upon on behalf of the petitioners, it is necessary to state that the Supreme Court in the case of Sarla Goel and Ors. Vs. Kishan Chand (2009) 7 SCC 658 has held that a demand notice under Section 14(1)(a) of the DRC Act does not stand satisfied on mere tender of rent to the landlord, and that it is incumbent upon the tenant, in case of refusal of receipt of rent by the landlord, for satisfying the demand notice to deposit the rent which is claimed in the demand notice, under Section 27 of the DRC Act.

6. Since we have to deal with Section 27 of the DRC Act, the said provision is required to be reproduced and the said provision reads as under:-

“27. Deposit of rent by the tenant :- (1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner:

[Provided that in cases where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to the Controller by postal money order.]

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely:-

(a) the premises for which the rent is deposited with a description sufficient for identifying the premises;

(b) the period for which the rent is deposited;

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;

(d) the reasons and circumstances for which the application for depositing the rent is made:

(e) such other particulars as may be prescribed.

(3) On such deposit of the rent being made, the Controller shall send in the prescribed manner a copy or copies of the application to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent, the Controller shall, if satisfied that the applicant is the person entitled to receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed:

Provided that no order for payment of any deposit of rent shall be made by the Controller under this sub-section without giving all persons named by the tenant in his application under sub-section (2) as claiming to be entitled to payment of such rent an opportunity of being heard and such order shall be without prejudice to the rights of such persons to receive such rent being decided by a court of competent jurisdiction.

(5) If at the time of filing the application under sub-section (4), but not after the expiry of thirty days from receiving the notice of deposit, the landlord or the person or persons claiming to be entitled to the rent complains or complain to the Controller that the statements in the tenant's application of the reasons and circumstances which led him to deposit the rent are untrue, the Controller, after giving the tenant an opportunity of being heard, may levy on the tenant a fine which may extend to an amount equal to two months' rent, if the Controller is satisfied that the said statements were materially untrue and may order that a sum out of the fine realised be paid to the landlord as compensation.

(6) The Controller may, on the complaint of the tenant and after giving an opportunity to the landlord of being heard, levy on the landlord a fine which may extend to an amount equal to two months' rent, if the Controller is satisfied that the landlord, without any reasonable cause, refused to accept rent though tendered to him within the time referred to in section 26 and may further order that a sum out of the fine realised be paid to the tenant as compensation.”

7. The provision of Section 27 of the DRC Act was made to ensure that tenants should not be prejudiced in case the landlord refuses to accept the rent and the tenant in such a case in order to avoid any issue of default of payment of rent can deposit the rent with the Rent Controller under Section 27 of the DRC Act. However, the pre-condition for deposit of rent under Section 27 of the DRC Act is that the tenant as a sine qua non has to allege and prove in a summary manner the refusal by the landlord to receive the rent. No doubt, the proceedings under Section 27 of the DRC Act are summary proceedings, but it is not the law that simply by deposit of rent under Section 27 of the DRC Act, the rent deposited has to be taken as a valid deposit, because, as per the very language of Section 27 of the DRC

Act the pre condition of deposit of rent under Section 27 of the DRC Act is that there is a refusal by the landlord to receive the rent.

8. In the present case, admittedly, the two deposit of rent petitions which were filed by the petitioners/tenants under Section 27 of the DRC Act were dismissed in default. Applications for restoration have been dismissed and an appeal filed against the judgment dismissing the petition under Section 27 of the DRC Act relevant to the three months consecutive defaults of August 2005 to December 2005 has been dismissed by the Rent Control Tribunal vide judgment dated 9.11.2012 titled as Sh. Dharamvir Walia Vs. Sh. Dhani Ram in RCT Revision No.35/2012.

9. The issue therefore requiring examination is whether if a deposit under Section 27 of the DRC Act is made in a petition the same is a valid deposit even if the deposit of rent petition is dismissed in default and which is effectively a dismissal for non-prosecution because no notices had been got issued in the deposit of rent petition to the landlords by filing of process fee for service. The obvious need not be stated and which is that the landlord will never know that the rent has been deposited in a petition under Section 27 of the DRC Act unless notice is received by the landlord of the deposit of rent petition. Also, as stated above, there is no automatic allowing of a petition under Section 27 of the DRC Act, and the tenants have to prove in a summary manner, the refusal by the landlord and which is essentially done by filing money order receipt which is refused by the landlord on tender or some other relevant evidence to show the refusal of the landlord to receive the rent.

10. I have gone through the short note judgment relied upon on behalf of the petitioners/tenants in the case of Vidyawati (supra) which has been reproduced above, and though nothing in detail can be understood from the short note, it is clear and so also held by the Rent Control Tribunal, that the deposit under Section 27 of the DRC Act in that case was made pursuant to the order of the Rent Controller ie the deposit which was made under Section 27 of the DRC Act was not with respect to a demand notice under Section 14(1)(a) of the DRC Act. The judgment in the case of Vidyawati (supra) cited on behalf of the petitioners/tenants is therefore distinguishable for this reason itself. Also it is settled law that what binds as a precedent is only the ratio of a judgment. From the short note cited on behalf of the petitioners/tenants surely what was the actual ratio of the case cannot be exhaustively culled out. A Constitution Bench of the Supreme

Court in the case of Padmasundara Rao & Ors. Vs. State of Tamil Nadu & Ors, (2002) 3 SCC 533 has held that the ratio of a case is dependent on the facts of a case and change of even a single fact can make difference to the ratio of the case. Accordingly, in my opinion the judgment in the case of Vidyawati (supra) is not applicable in the facts of the present case.

11. The following position emerges from the above:-

(i) A demand notice dated 23.11.2007 was served by the respondent/landlord upon the petitioners/tenants with respect to the default periods from August 2005 to March 2007 and from October 2007 onwards.

(ii) The issue of three consecutive months default is an issue with respect to deposit of rent under Section 27 of the DRC Act for the period of August 2005 to December 2005.

(iii) Deposit of rent petition for this period of August 2005 to December 2005 stands dismissed and even the restoration petition and the appeal against that order dismissing application seeking restoration stands dismissed.

(iv) However summary, an enquiry is still called for under Section 27 of the DRC Act so as to show refusal by the landlord to receive the rent and which refusal has to be found to exist as a sine qua non for allowing a deposit of rent under Section 27 of the DRC Act and merely by filing a petition under Section 27 of the DRC Act, there is no automatic allowing of the petition under Section 27 of the DRC Act.

12. The present is a case of second default, and, the three consecutive months default is from August 2005 to December 2005. Once there is non-compliance of the demand notice dated 23.11.2007 with respect to this period, an eviction decree will automatically follow and which has therefore rightly been passed by the courts below.

13. In view of the above, I do not find any merit in the petition and the same is therefore dismissed. No costs.

DECEMBER 09, 2014

Sd/-
VALMIKI J. MEHTA, J.