

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM (M) No.981/2007

% **Date of decision: 17<sup>th</sup> February, 2010**

**MOHD. SAIED**

**..... Petitioner**

Through: Mr. Rajinder Dutt with Ms. Shobhana Oberoi, Advocates.

Versus

**M/S MODEL PRESS (P) LTD**

**..... Respondent**

Through: Mr. Rajiv Bahl, Advocate.

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**RAJIV SAHAI ENDLAW, J.**

1. This petition under Article 227 of the Constitution of India has been preferred by the tenant with respect to the order dated 23<sup>rd</sup> January, 2007 of the Addl. Rent Control Tribunal (hereinafter called Tribunal) allowing the appeal of the respondent/landlord and setting aside the order of the Addl. Rent Controller (hereinafter called Controller) and allowing the petition for eviction filed by the respondent/landlord against the petitioner/tenant under

Section 14 (1) (a) (non payment of rent) of the Delhi Rent Control Act, 1958.

2. The parties were/are not at issue as to the relationship of landlord and tenant, the rate of rent or the period for which the rent was unpaid. The petitioner is a tenant under the respondent at a rent of Rs.1,413.50p p.m. The rent was not paid w.e.f. 1<sup>st</sup> April, 1998. It appears that the petitioner/tenant in August, 1999 instituted a petition before the Controller under Section 45 of the Act alleging that the respondent/landlord had deprived the petitioner/tenant from the use of latrine which formed part of the tenancy premises and claiming suspension of rent on that account. The respondent/landlord got issued a notice dated 8<sup>th</sup> December, 1999 of demand of rent and without which the petition for eviction on the ground of non-payment of rent could not have been filed. Section 14 (1) (a) requires the tenant to, in response to the said notice, within two months pay the rent; else the tenant becomes liable for eviction.

3. The petitioner/tenant in the present case, well within two months, under cover of a reply dated 21<sup>st</sup> December, 1999 sent a cheque towards rent from 1<sup>st</sup> April, 1998 to 31<sup>st</sup> December, 1999. It was also mentioned in the said reply dated 21<sup>st</sup> December, 1999 that the said cheque was being sent without prejudice to the rights of the petitioner/tenant. Though it was also mentioned in the said reply dated 21<sup>st</sup> December, 1999 that the petitioner/tenant had earlier also under cover of a letter dated 26<sup>th</sup> November, 1999 sent a cheque for rent (and which fact was controverted by the respondent/landlord) but in view of a cheque for rent having also been

admittedly sent under cover of the said reply, we need not concern ourselves with whether the letter dated 26<sup>th</sup> November, 1999 with a cheque for rent was sent or not. However in the said reply dated 21<sup>st</sup> December, 1999 it was *inter alia* stated that the cheque was being sent to avoid the ejection petition on the ground of non-payment of rent and subject to the decision on suspension of rent in the petition already filed as aforesaid under Section 45 of the Act.

4. The respondent/landlord immediately responded vide its lawyer's letter dated 4<sup>th</sup> January, 2000. It denied that the petitioner/tenant was entitled to suspension of rent. It was further stated that the tender of rent vide cheque aforesaid could not be accepted, being a conditional tender though expressing that the respondent/landlord was willing to accept the rent if tendered unconditionally. A further response dated 18<sup>th</sup> January, 2000 was sent by the petitioner/tenant thereto stating that since the cheque had been sent back, the petitioner/tenant will have no option but to deposit the rent in the court.

5. The petitioner/tenant thereafter on or about 27<sup>th</sup> January, 2000 i.e. within two months of the notice of demand (*supra*), filed a petition under Section 27 of the Act before the Controller depositing the rent. It appears that the respondent/landlord did not file any objections to the said petition under Section 27 of the Act and which was allowed. The respondent/landlord however on 27<sup>th</sup> April, 2000 filed the petition for eviction against the petitioner/tenant and from which this petition under consideration has arisen.

6. On the aforesaid undisputed fact, the Controller in the order dated 13<sup>th</sup> December, 2005 held, that the plea of the petitioner/tenant of suspension of rent by filing a petition under Section 45 of the Act had been negated by dismissal of the petition under Section 45 of the Act on 7<sup>th</sup> February, 2005. Otherwise, the Controller held that the stand of the respondent/landlord in refusing to receive the cheque for rent was not justified. The Controller also held that the petitioner/tenant had within two months of the notice also deposited the rent with the Controller under Section 27 of the Act and which petition had been allowed and which was also a valid tender of rent. The notice of demand dated 8<sup>th</sup> December, 1999 was held to have stood discharged on deposit of rent under Section 27 of the Act and thus the petitioner/tenant was not found to be in default of payment of rent and the petition for eviction dismissed.

7. Aggrieved from the order of dismissal of petition for eviction, the respondent/landlord preferred an appeal to the Tribunal and which as aforesaid has been allowed vide order impugned in this petition. The Tribunal has held that the petitioner/tenant in response to the notice of demand did not tender the arrears of rent unconditionally; that even upon being called upon to tender the rent unconditionally, the tenant failed to do so. In so far as the deposit by the tenant under Section 27 of the Act is concerned, the Tribunal held the same to be not a valid tender for the reason of the same being not accompanied with deposit of interest under Section 26 of the Act on the arrears of rent. The Tribunal thus held the petitioner/tenant to be in default of payment of rent and allowed the petition for eviction and remanded the matter to the Addl. Rent Controller to determine whether the

petitioner/tenant had complied with the interim order under Section 15 (1) of the Act or not.

8. This Court while issuing notice of this petition, vide order dated 31<sup>st</sup> August, 2007, and which continues to be in force, stayed further proceedings before the Addl. Rent Controller.

9. Section 39 of the Act as it stood prior to the amendment of the Act w.e.f. 1<sup>st</sup> December, 1988 provided for a second appeal on a question of law to this Court from the order of the Tribunal. The said provision now does not exist. However, the order of the Tribunal remains subject to scrutiny under Article 227 of the Constitution of India. Having examined the matter from the said perspective, I am still of the opinion that the Tribunal in the present case has misconstrued the provisions of the Act and done gross injustice to the petitioner/tenant.

10. I will take up the aspect of non-payment of interest by the petitioner/tenant first and on which ground the Tribunal has held the deposit under Section 27 of the Act to be invalid. The counsel for the respondent/landlord has referred to the judgment of a single judge of this Court in ***Prof. Ram Prakash Vs. D.N. Srivastava*** 2006 II AD (Delhi) 182 holding that interest on arrears of rent is part of rent. Vide amendment to the Act w.e.f. 1<sup>st</sup> December, 1988, Section 26 was amended and while imposing an obligation on the tenant to pay rent within the time fixed by the contract or in the absence of such contract by the 15<sup>th</sup> day of the succeeding month for which it is payable, it was further provided that where any default occurs in the payment of rent, the tenant shall be liable to pay simple interest at the

rate of 15% per annum from the date on which such payment of rent is due, to the date on which it is paid. However even if such interest is to be treated as part of rent, non-payment thereof would become actionable only on the same being demanded and remaining unpaid for two months.

11. I find no discussion in the order of the Controller on the aspect of interest. This led me to peruse the notice of demand and the petition for eviction. I do not find any demand in the notice of demand dated 8<sup>th</sup> December, 1999 for such interest and also do not find any mention of interest therein. On the contrary, the petitioner/tenant was specifically called upon to pay “the entire arrears of rent due..... w.e.f. 1<sup>st</sup> of April, 1998 at the rate of Rs.1,413.50p per month”. Thus it is not as if, “arrears of rent as may be due” were claimed and which could have been held to include interest as part of the rent. There was a specific demand for arrears at the rate of Rs.1,413.50p per month only. The said demand was admittedly complied with. Not only so, the respondent/landlord while on 4<sup>th</sup> January, 2000 returning the cheque for arrears of rent sent along with the reply dated 21<sup>st</sup> December, 1999, did not say that the same was being returned for not being a complete tender of the rent due or for not including the interest. No such plea was taken in the petition for eviction also and it appears, not even urged before the Controller. That is why there is no mention thereto in the order of the Controller.

12. There is another aspect of the matter also. The cheque which was sent by the petitioner/tenant under cover of its reply dated 21<sup>st</sup> December, 1999 was for rent from 1<sup>st</sup> April, 1998 to 31<sup>st</sup> December, 1999 i.e. for

Rs.29,683.50p. The notice of demand as aforesaid was sent on 8<sup>th</sup> December, 1999. No agreement of the date for payment of rent has been shown. In the absence thereof, as per Section 26(1) of the Act the rent is payable by the 15<sup>th</sup> day of the succeeding month. Thus as on 8<sup>th</sup> December, 1999 the rent was not due for the month of December, 1999 and was due till the month of November, 1999 only and which would have been in the sum of Rs. 28,270/- only. The cheque sent by the petitioner/tenant was thus in any case in excess of the rent demanded and due and there is nothing to show that the said excess amount was less than the interest which had become due on the arrears of rent.

13. The respondent/landlord appears to have raised the aspect of interest for the first time in the memorandum of appeal before the Tribunal. The Tribunal failed to notice that the aspect had not been urged before the Controller. The appeal before the Tribunal now lies only on a question of law. The Tribunal could not have ordinarily allowed the new aspect of interest without any basis therefor being laid in the court of the Controller.

14. I also find the reasoning of the Tribunal of the deposit of rent under Section 27 of the Act by the petitioner/tenant being not valid for the reason of being not inclusive of interest to be erroneous. The proceedings under Section 27 of the Act had attained finality upon the respondent/landlord not filing any objections therein and the deposit being accepted. The Controller in a proceeding under Section 14 (1) (a) of the Act could not have gone into the aspect of validity of the deposit made under Section 27 of the Act. If the landlord had any objection to the said deposit, the landlord ought to have

raised the same in that proceeding only. Even if, owing to the summary nature of proceeding under Section 27 of the Act, the objection of the landlord could not have been adjudicated therein, at least the tenant would have been put to notice of the same.

15. The other reasoning which prevailed with the Tribunal, of the tender of rent by the petitioner/tenant under cover of reply dated 21<sup>st</sup> December, 1999 being conditional and thus not proper is also not found to be correct. A perusal of the reply dated 21<sup>st</sup> December, 1999 does not disclose so. It cannot be lost sight of that the petitioner/tenant had in August, 1999 already filed a petition under Section 45 of the Act claiming suspension of rent. The petitioner/tenant was fully justified in referring to the said petition and tendering the rent subject to the decision thereof. The claim of the petitioner/tenant of suspension of rent was under adjudication at that point of time and was negated only on 7<sup>th</sup> February, 2005. Nothing wrong can be found in the reply dated 21<sup>st</sup> December, 1999 stating that the tender was being made subject to his rights in the pending proceedings. The respondent/landlord cannot by issuing the notice of demand make a pending legal proceeding infructuous. Had the petitioner/tenant in the reply dated 21<sup>st</sup> December, 1999 not taken a stand that the tender of rent was without prejudice to the pleas in the petition under Section 45 of the Act already pending, the landlord would have immediately applied for summary dismissal of the Section 45 proceedings owing to the petitioner/tenant having unequivocally paid the rent and thereby having waived the claim for suspension thereof. On the contrary, the petitioner/tenant in the reply dated 21<sup>st</sup> December, 1999 expressly stated that the tender was being made to



avoid a petition for eviction on the ground of non-payment of rent being filed.

16. Non-payment of rent has been made a ground of eviction to prevent a tenant from occupying the premises, eviction wherefrom is protected, without paying the rent. The purport of the said provision is not to deprive the petitioner/tenant of having adjudicated from a court of law his claims for suspension of rent. Merely because rent is tendered saving such rights in the pending proceedings does not make the payment/tender to be a conditional one so as to justify the respondent/landlord in refusing the same and treating it as an invalid tender. The order of the Tribunal thus cannot be justified on any account and is liable to be set aside and the order of the Controller restored.

17. The counsel for the respondent has also relied on *Kuldeep Singh Vs. Ganpat Lal* AIR 1996 SC 729 (also referred to by the Tribunal), *Sarla Goel Vs. Kishan Chand* (2009) 7 SCC 658, *E. Palanisamy Vs. Palanisamy* (2003) 1 SCC 123, *Rakesh Wadhawan Vs. Jagdamba Industrial Corporation* (2002) 5 SCC 440 & *Ram Saran Vs. Misrilal* 1984 Rajdhani Law Reporter 149 but none of which are found relevant in the light of the view herein above taken. Suffice, it is to state that even independently viewed, the deposit made by the tenant in the present case under Section 27 of the Act is found to be valid. The respondent/landlord had vide its lawyer's letter dated 4<sup>th</sup> January, 2000 refused to accept the cheque for rent tendered under cover of reply dated 21<sup>st</sup> December, 1999 and the tenant, to avoid

default was left with no option but to deposit the rent under Section 27 of the Act.

18. The petition accordingly succeeds, the order of the Tribunal is set aside and the order of the Addl. Rent Controller is restored. The petition for eviction filed by the respondent/landlord thus accordingly stands dismissed. However, the parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**February 17, 2010**

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