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

\+ **CM (M) No.1155/2008**

% **Date of decision:8th January, 2010**

SUKHDEV RAJ ARORA (DECD.) THR. LR ….Petitioner

Through: Mr. Pradeep Gupta, Mr. Suresh Bharti & Mr. Eklavya Gupta, Advocate.

Versus

M.K. BHARGAVA ... Respondent

Through: Mr. N.S. Jain, Advocate.

CORAM :-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No

2. To be referred to the reporter or not? No

3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 227 of the Constitution of India has been preferred by the tenant challenging the order dated 6th September, 2008 of the Rent Control Tribunal dismissing the appeal of the petitioner/tenant against the order dated 13th December, 2007 of the Addl. Rent Controller, dismissing the application of the petitioner/tenant for condonation of delay in depositing the rent and allowing the application of the respondent/landlord under Section 15 (7) of the Delhi Rent Control Act, 1958 and striking off the defence of the petitioner/tenant to the petition for eviction filed by the respondent/landlord. The test to be applied by the Rent Controller in striking off the defence of a tenant for non-compliance/default in complying with of the order for deposit of rent, made under Section 15 of the Act is of whether the default/non-compliance is contumacious or not. If the default/non-compliance is found to be inadvertent and/or

unintentional and/or in spite of best efforts and intention to comply with the order, the default is not treated to be contumacious. Else, if the non-compliance shows either a deliberate attempt to deprive the landlord of rent and/or a case of negligence or showing scant regard to the order of the court, the default is held to be contumacious and the defence to be struck off.

2. In the present case, the two courts below have held non-compliance of the order by the petitioner/tenant to be contumacious. Both the courts have held the conduct of the petitioner/tenant to be negligent and willful. Such concurrent findings of the Controller and the Tribunal is not to be lightly disturbed by this court, specially when exercising jurisdiction under Article 227 of the Constitution of India. It is significant that the Rent Control Act earlier provided for the remedy of a second appeal to this court against the order of the Tribunal. However, with effect from the year 1988, the provision of second appeal to this court was deleted. Notwithstanding such legislative change, this court continues to be approached, now by way of petitions under Article 227 of the Constitution of India. Second appeal to this court under the erstwhile Section 39 of the Act used to lie on a question of law. The impact of the deletion of Section 39 is that the legislature did not intend this court to interfere with the findings of the Tribunal even on question of law. The order of the Tribunal is thus intended to attain finality. Conscious of this fact, this court in the exercise of jurisdiction under Article 227 would interfere only if the test thereof are strictly satisfied.

3. The respondent/landlord filed the petition for eviction from which this petition arises only on the ground of non-payment of rent i.e. under Section 14 (1) (a) of the Act. It was *inter alia* the case of the respondent/landlord that the petitioner/tenant was in arrears of rent w.e.f. November, 2003.

4. Section 15 (1) of the Delhi Rent Control Act, 1958 provides that where the petition is filed under Section 14 (1) (a) of the Act, as in this case, the Controller, after giving parties an opportunity of being heard, shall 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 rent were legally recovera2ble from the tenant including the period subsequent thereto up to the end of the month previous to that in which the payment or deposit is made and to continue to pay or deposit month by month by 15th of each succeeding month, a sum equivalent to the rent at that rate. No separate application under Section 15(1) is required to be filed. As per procedure followed by Rent controllers, order under Section 15 (1) of the Act is made either on the date of filing of the written statement or replication itself or immediately thereafter and definitely before the recording of the evidence begins. In the petition for eviction from which this petition arises also, replication was filed by the respondent/landlord on 11th November, 2005 and the order sheet of the Rent Controller shows that arguments were heard on the order to be made under Section 15 (1) of the Act on that date itself. The counsel for the petitioner/tenant gave his no objection for deposit of the amount w.e.f. November, 2003. The Controller accordingly directed the petitioner/tenant to pay / deposit rent w.e.f. November, 2003 at the rate of Rs.1,829.57p per month and at the rate of Rs.2,012.53p per month (i.e. after statutory increase under Section 6 (A) of the Act) w.e.f. 1st January, 2004, within one month thereof and to continue to pay / deposit further rent @ Rs.2012.53 p.m. as aforesaid.

5. Admittedly no rent was paid / deposited.

6. The respondent/landlord on or about 24th March, 2006 filed an application under Section 15(7) of the Act for striking off the defence of the petitioner/tenant for the reason of non-compliance of the order under Section 15 (1) of the Act. It was stated that no rent w.e.f. November, 2003 had been paid. The petitioner/tenant on or about 13th December, 2006 i.e. after nearly nine months of filing of application under Section 15 (7) aforesaid filed an application for condonation of delay in payment/deposit of rent and also filed a reply to the application of the landlord under Section 15 (7) of the Act. It was the stand of the petitioner/tenant that he learnt of the order dated 11th November, 2005 for the first time on 8th November, 2006 and moved an application on the same date application for depositing rent in terms of the order dated 11th November, 2005 and immediately upon the challans being cleared deposited the rent on 14th November, 2006. The case of the

petitioner/tenant is that the advocate earlier engaged by him did not inform the petitioner/tenant of the order dated 11th November, 2005; that the said advocate was also not giving specific replies in response to the queries of the petitioner/tenant and was not taking much interest in the case of the petitioner/tenant leading the petitioner/tenant to, on 4th November, 2006 change the counsel; that the new counsel inspected the file on 8th November, 2006 when the order dated 11th November, 2005 and the subsequent order dated 9th October, 2006 proceeding *ex parte* against the petitioner/tenant was discovered. It was further pleaded that the earlier counsel on enquiry had stated that he was unaware of the order dated 11th November, 2005; that on that date the earlier counsel had appeared before the controller in the morning and given no objection to the order under Section 15(1) for payment / deposit of rent w.e.f. November, 2003 but the counsel for the respondent/landlord was not available at that time and the Rent Controller kept the file pending; subsequently when the earlier counsel for the petitioner/tenant enquired about the proceedings, he was told that the case had been adjourned and was not told that order under Section 15 (1) of the Act had been made; that on the subsequent dates before the Rent Controller the lawyers were on strike and yet thereafter the date when the matter was listed was declared a holiday leading to the case being adjourned. An affidavit of the earlier counsel was also filed. The petitioner/tenant contended that he had come to know of the order on 8th November, 2006 and the deposit on 14th November, 2006 was within time.

7. The Rent Controller did not believe the aforesaid version of the petitioner/tenant. It was held that from a reading of the order dated 11th November, 2005 under Section 15 (1) of the Act it appeared to have been dictated in the court itself in the presence of the counsel and did not appear to have been dictated subsequently in the chamber as contended by the petitioner/tenant and his earlier counsel. The Controller thus held that it was unbelievable that the counsel for the petitioner/tenant was not aware of the order under Section 15 (1) of the Act. It was further held that the application under Section 15 (7) of the Act was filed by the respondent/landlord and came before the Controller on 24th March, 2006 when the presence of parties in person is recorded; the order of that date also records that the copy of the application of the respondent/landlord under

Section 15 (7) of the Act had been supplied to the petitioner/tenant and the matter was adjourned for reply and arguments on 7th October, 2006. The Controller held that in any case the petitioner/tenant on 24th March, 2006 became aware of the Order under Section 15 (1) of the Act. It was held that the petitioner/tenant has not given any reason whatsoever for the delay between 24th March, 2006 and till 14th November, 2006. The Controller thus held the reasons given in the application for condonation of delay to be false and consequently, held delay of over one year in deposit of rent to be willful and contumacious. Accordingly, the application for condonation of delay was dismissed and the application under Section 15 (7) allowed.

8. The Tribunal in appeal by the petitioner/tenant held that a party which does not come before the court with clean hands is not entitled to any relief. The Tribunal held that the sanctity of the court record has to be maintained and upon the explanation of the petitioner/tenant being found to be false, the order of the Rent Controller was upheld.

9. It would thus be seen that the courts below have given reasons for the conclusions arrived at in the orders challenged before this Court in a petition under Article 227 of the Constitution of India. The courts below have concurrently found as false, the explanation given by the petitioner/tenant of his advocate being unaware of the order under Section 15 (1) of the Act passed on 11th November, 2005. Both the courts on a reading of the order have arrived at the same conclusion i.e. that the same was dictated in the open court in the presence of the counsel for the petitioner/tenant and thus the question of the counsel for the petitioner/tenant not knowing of the order does not arise. On a reading of the order dated 11th November, 2005, it cannot be said that the reasoning given is wrong. The nature of the order is not such with respect whereto it can be said that the controller after hearing arguments of the counsel would reserve the order to be pronounced/passed in the course of the day. The respondent/landlord, in the petition for eviction had averred non-payment of rent w.e.f. November, 2003, the petitioner/tenant in his written statement thereto admitted rent to be due since then; the earlier counsel for the petitioner/tenant admits having given no-objection on 11th November, 2005 for order under Section 15(1) w.e.f. November, 2003; in the circumstances there was no occasion for deferment of

orders. Similarly, there is no satisfactory explanation of the other reason given by the courts below of the petitioner/tenant on 24th March, 2006 when the copy of the application under Section 15 (7) of the Act was supplied, having come to know of the order and of there being no explanation whatsoever on the part of the petitioner/tenant of the delay thereafter.

10. The counsel for parties were heard on 7th December, 2009 and finding no merit in the petition, the same was dismissed with reasons to follow which are recorded herein.

11. The counsel for the petitioner/tenant before this court also raised the argument only of blaming the earlier counsel for the petitioner/tenant. Reliance is placed on ***Salil Dutta Vs. T.M. & M.C. Private Ltd.*** (1993) 2 SCC 185, ***Miss Santosh Mehta Vs. Om Prakash*** (1980) 3 SCC 610, ***Rafiq Vs. Munshilal*** (1981) 2 SCC 788, ***Smt. Lachi Tewari Vs. Director of Land Records*** 1984 (Supp) SCC 431, ***Prakash Mehra Vs. K.L. Malhotra*** (1989) 3 SCC 74 in this regard.

12. There has been a shift in law in this regard also. A party/litigant is not always entitled to explain away his default by making allegations against the advocate. It is significant that when such allegations are made, the advocate against whom the allegations are made is not before the court. It is for this reason only that the courts have now taken a view that where a litigant claims to be the victim of professional misconduct / negligence of advocate engaged by him, he is also required to show as to what steps have been taken against the advocate and what is the response of the advocate thereto. This is necessary to prevent the litigant from, in concert with his advocate, causing prejudice to his opponent. Advocate is an agent of the party and the party is bound by the actions of his agent and if aggrieved by any such action of the agent, cannot be permitted to wrest the advantage which has so occasioned to the other party, without establishing its bonafidies by taking appropriate action against the advocate. It is not the case here that the petitioner/tenant has taken any action against the advocate. However, this aspect need not detain me any further since in this case the petitioner/tenant though blaming the advocate has also obtained an affidavit from the advocate that he himself was not aware of the order. Thus the petitioner/tenant and his advocate are acting in

concert with each other and what has to be seen is whether the said explanation of the advocate is plausible or not. The two courts below have not found it plausible.

13. The question of the negligence is to be judged in the entirety of the facts. The proceedings are for eviction under Delhi Rent Control Act. The said Act puts a clog on the right of the landlord to evict the tenant, even after the term for which the premises were let has expired, save on the grounds of eviction provided under Act. There has been a general feeling, also found expression in several judgments of this court and the apex court that most of the tenants do not deserve the protection from eviction provided by the Rent Act and that the said law with the passage of time has lost its utility or significance and has become otiose. A new law to substitute the old Act has been enacted but not notified. The tenants are aware that they are enjoying the tenancy premises at rates much below the market rent and only owing to such outdated legislation. Such protection is not available to tenants of newly constructed premises or of premises the rent whereof is above Rs.3,500/- p.m. The measure of negligence of the tenant is to be in this background.

14. The ground of eviction in the present case was of non-payment of rent. The petitioner/tenant rightly or wrongly did not pay/deposit the rent even in spite of a notice of demand having been issued by the respondent/landlord. The petitioner/tenant in the written statement to the petition for eviction admitted having not paid rent and also admitted having received the notice; his defence is of a doubt as to to whom the rent was payable, whether to the respondent/landlord or to the brother of the respondent/landlord. The Rent Act provides a remedy for a tenant in such doubt. Such tenant can deposit the rent in this court under Section 27. The petitioner/tenant in the present case did not deposit the rent in the court.

15. The provisions of the Rent Act as aforesaid are clear. On a petition under Section 14 (1) (a) of the Act being filed, the order under Section 15 (1) of the Act necessarily has to be made before the matter is listed for evidence. It is inconceivable that the counsel for the petitioner/tenant did not advise so to the petitioner/tenant. The fact that it was so advised is also borne out from the averment of the petitioner/tenant of having made an

offer in the written statement itself for deposit of such rent. There is no explanation whatsoever as to why the petitioner/tenant did not enquire from his advocate and as to why the advocate remained under the impression that the order had not been so made.

16. The version of the advocate for the petitioner/tenant of being not aware of the order under Section 15 (1) having been made is found false also for the reason that the matter was listed after 11th November, 2005 for the evidence of the respondent/landlord. The cause list prepared by the trial courts and put up outside the courts, lists the cases according to the category/purpose for which the case is listed. The case was listed thereafter on 12th January, 2006, 1st February, 2006, 24th March, 2006, 7th October, 2006 and 9th October, 2006. On 12th January, 2006 the respondent/landlord filed affidavit by way of his evidence. The order sheet of 12th January, 2006 records that copy of such affidavit by way of evidence had already been supplied. The case was adjourned to 1st February, 2006 for cross examination by petitioner/tenant of respondent/landlord. It is inconceivable that the counsel for the petitioner/tenant after 11th November, 2005 did not know that the case was being listed in the category of evidence of the respondent/landlord. The very listing of the case for evidence ought to have disclosed to the counsel that the order under Section 15 (1) had been made. There is no denial that copy of affidavit by way of evidence of respondent/landlord had not been supplied. Upon receipt of copy of evidence affidavit, the petitioner/tenant ought to have known that order under Section 15(1) had been passed on 11th November, 2005. There is no explanation whatsoever coming from the petitioner/tenant on the said aspect also. All this shows that the advocate has given the affidavit merely to help the client and a false explanation has been fabricated to get over the long default in payment / deposit of rent and which otherwise entitled the landlord to an order striking off defence of tenant to petition for eviction.

17. The petitioner/tenant does not dispute that he personally appeared before the Court on 24th March, 2006. However, he seeks to falsify the order of the court of that day recording that copy of application of respondent/landlord under Section 15(7) was supplied to him. The only explanation is that if copy had been supplied, why he would

not have immediately paid the rent. This is no explanation in law. The courts cannot act contrary to their own records and the order sheet of 24th March, 2006 in the own hand of the Rent Controller recording copy of application under Section 15(7) to have been supplied to petitioner/tenant in person, has to be believed. Moreover, in the application for condonation of delay filed by the new advocate and inspection of court file, though reference was made to proceedings of 24th March, 2006 but no such explanation/plea of copy of application under Section 15(7) having not been delivered was given. It was given as an after thought when attention thereto was drawn

18. I, therefore, do not find anything wrong / perverse in the reasoning of the courts below of the reason/explanation given by the petitioner/tenant for default/delay in payment of rent to be false. Once that conclusion is affirmed by this court also, the courts below have exercised the discretion vested in them correctly and the same cannot be interfered with by this court.

19. There is thus no merit in the petition. The same is dismissed with costs of Rs.15,000/- to counsel for respondent/landlord.

RAJIV SAHAI ENDLAW
(JUDGE)

January 8th, 2010
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