REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 4563 OF 2014

DINA NATH (D) BY LRS & ANR. ....APPELLANT(S)

VERSUS

SUBHASH CHAND SAINI & ORS. ....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. The instant appeal has been filed against the judgment and order dated 10th May, 2011 passed by the High Court of Delhi in Civil Miscellaneous (M) No. 44 of 2011 at the instance of the appellants (tenants) under Article 227 of the Constitution of India upholding orders of the Rent Controller striking out defence of the appellants on account of alleged failure to pay the rent.

2. The matter earlier was heard by a two Judge Bench of this Court

and there was a unanimity on the principles of law that the power to strike out the defence vested in the Rent Controller under Section 15(7) of the Delhi Rent Control Act, 1958 (hereinafter being referred to as the "Act, 1958") is discretionary and not mandatory and it is imperative that every violation in implementation of the directions of the Rent Controller under Section 15(1) of the Act, 1958 *ipso facto* leave to the striking out of the defence of the tenant and it ought to be exercised only when the tenant deliberately, contumaciously or negligently fails to deposit the rent due from him but there was a divergence of opinion on the facts of the instant case and for that reason the matter has been placed before us.

3. The facts in brief which may be relevant for the present purpose and culled out from the record are that the appellants-tenants rented a shop bearing no. 1445-A, Dariba Kalan, Delhi on a monthly rent of Rs. 66/-. The respondents-plaintiffs jointly own the above-mentioned demised premises. The rent for the shop is to be paid to respondent no. 1, who holds a power of attorney, to collect rent on behalf of the respondents. In November, 2007, the respondents (landlord) filed an eviction petition under Section 14(1)(a)(b)(c) and (j) of the Act, 1958 seeking decree for recovery of possession of the rented premises on the

manifold reasons. We are not dilating on the grounds of eviction of the demised premises at this stage since that is the subject matter to be examined by the Rent Controller where the eviction petition is pending adjudication.

4. The appellants filed their written statement on 7th February, 2008 disputing the allegations made by the respondents in the eviction petition. Since one of the ground on which eviction was prayed for by the respondents was non-payment of rent in which the order under Section 15(1) of the Act, 1958 came to be passed on 21st April, 2008. It will be appropriate to quote the order dated 21st April, 2008 *ad infra*:-

"RENT CONTROL TRIBUNAL - DELHI

E-931/07
21.04.08

Arguments heard u/s 15(1) of DRC Act. The rate of rent and the relationship is not in dispute between the parties though the petitioner claims the arrears w.e.f. 01.01.2007 and the respondent states that he has paid rent upto October, 2007.

Since the orders u/s 15(1) of DRC Act are to be passed on the admitted facts, the respondent is directed to pay or deposit the arrears of rent w.e.f. 01.11.2007 till date @ Rs. 66/-pm within 30 days from today and further continue to pay or deposit the future rent at the said rate month by month before 15th of each succeeding English Calendar month.

SD/-
ARC/DELHI/21.04.2008"

5. In terms of the order under Section 15(1) of Act, 1958, the appellants-tenants have to pay or deposit the arrears of rent w.e.f. 1st November, 2007 till date @ Rs. 66/- p.m. within 30 days from 1st November, 2007 and further continue to pay or deposit the future rent at the said rate month by month before 15th of each succeeding English Calendar month.

6. On account of non-compliance of the order dated 21st April, 2008 as alleged, the respondents filed an application under Section 15(7) of the Act, 1958 on 28th April, 2009 praying for striking out the defence of the appellants.

7. The appellants filed their written response to the aforesaid application and it was specifically stated in paragraphs 3 & 4 that along with the arrears due from 1st November, 2007, in addition the advance rent of ten months was deposited and on adjustment of the advance rent deposited on 21st April, 2008, the monthly rent which was deposited at a later point of time practically paid in advance and there was no default committed of the order dated 21st April, 2008.

8. Taking note of the rival claims of the parties, the Rent Controller vide its Order dated 14th September, 2009 allowed the application filed by the respondents-landlord under Section 15(7) of the Act, 1958 and struck off the defence of the appellants in the pending evicting petition. Dissatisfied with the order passed by the Rent Controller, the appellants approached the Rent Control Tribunal. By an order dated 24th May, 2010, the Rent Control Tribunal dismissed the appeal and being dissatisfied, the appellants further approached the High Court invoking Article 227 of the Constitution of India and that came to be dismissed vide judgment and order dated 10th May, 2011 which is under challenge before us in the instant civil appeal.

9. The moot question arises for consideration is whether the power vested with the Rent Controller under Section 15(7) of the Act, 1958 is discretionary and has been judiciously exercised in the facts of the instant case in striking out the defence of the appellants(tenants) in the eviction proceedings.

10. Before adverting to the factual matrix relevant to the question of striking out the tenant's defence, it will be apposite for us to take note of the scheme of the Act, 1958.

11. The statement of objects and reasons of the Act, 1958 fell for consideration before the Constitution Bench of this Court in **Ashoka Marketing Ltd. and Anr. Vs. Punjab National Bank and Ors.**[1], wherein this Court held that the purpose of the Act, inter alia, is to give the tenants a larger measure of protection against eviction. This Court observed:

> "...The Statement of objects and reasons for the enactment of the Rent Control Act, indicates that it has been enacted with a view :
>
> (a) to devise a suitable machinery for expeditious adjudication of proceedings between landlords and tenants;
>
> (b) to provide for the determination of the standard rent payable by tenants of the various categories of premises which should be fair to the tenants, and at the same time, provide incentive for keeping the existing houses in good repairs, and for further investment in house construction; and
>
> (c) to give tenants a larger measure of protection against eviction.
>
> This indicates that the object underlying the Rent Control Act is to make a provision for expeditious adjudication of disputes between landlords and tenants, determination of standard rent payable by tenants and giving protection against eviction to tenants. The premises belonging to the Government are excluded from the ambit of the Rent Control Act which means that the Act has been enacted primarily to regulate the private relationship between landlords and tenants with a view to confer certain benefits on the tenants and at the same time to balance the interest of the landlords by providing for expeditious adjudication of proceedings between landlords and tenant..."

1 1990 (4) SCC 406

(emphasis supplied)

12. Prior to the enactment of Act, 1958, the matter pertaining to rent and eviction in the State of Delhi was governed by The Delhi and Ajmer Rent Control Act, 1952(hereinafter being referred to as the "Act, 1952"). Apart from the ground of eviction provided under Section 13 of the Act, 1952 which is corresponding to the grounds for protection of a tenant against eviction has been enumerated under Section 14 of the Act, 1958. The corresponding provision of Section 13(5) of Act, 1952 has been provided under Section 15(7) with certain modifications under Act, 1958.

13. One of the significant modification is that while under Section 13(5) of the Act, 1952, the application by the landlord had to be "for an order on the tenant-defendant to deposit month by month rent at a rate at which it was last paid" in all suits for ejectments. Section 15 of the Act, 1958 makes a distinction between cases where the recovery of possession is sought on, the grounds of arrears of rent having been left unpaid within two months of the service of notice of demand and other ejectment proceedings. In the first class of cases, the Controller can make an order for payment of rent at the rate at which it was last

paid while in the other class of cases the Controller may make an order for payment at the rate at which it was legally recoverable.

14. The other notable difference is that under Section 13(5) of the Act, 1952, failure of the tenant to deposit the arrears of rent within 15 days of the date of the order or to deposit the rent for any month by the 15th of the next following month made it incumbent on the Court to strike out the defence against ejectment. The language was that on the failure of the tenant to deposit the rent, in terms of the mandate of law, "the Court shall order the defence against ejectment to be struck off". In the Act 1958, Section 15(7) deals with the matter in case of failure of the tenant to make the payment for deposit as required by the Act. The Rent Controller has a discretion to consider the facts and circumstances of each case and exercise his discretion judiciously in accordance with law. It will be appropriate to notice Section 13(5) of Act, 1952 and Section 15(7) of Act, 1958, which are as under:-

THE DELHI AND AJMER RENT CONTROL ACT, 1952

"13 - Protection of a tenant against eviction

(5) If the tenant contests the suit as regards the claim for ejectment, the plaintiff-landlord may make an application at any stage of the suit for an order on the tenant-defendant to deposit month by month rent at a rate at which it was last paid and also the arrears of rent, if any, and the court, after giving an opportunity to the parties to be heard, may make

an order for the deposit of rent at such rate month by month as it thinks fit and the arrears of rent, if any, and on the failure of the tenant to deposit the arrears of rent within fifteen days of the date of the order or to deposit the rent at such rate for any month by the 15th of the next following month, the court **shall** order the defence against ejectment to be struck out and the tenant to be placed in the same position as if he had not defended the claim to ejectment; and the landlord may withdraw the amount of money in deposit without prejudice to his claim to any decree or order for recovery of possession of the premises."

DELHI RENT CONTROL ACT, 1958

"Section 15 - When a tenant can get the benefit of protection against eviction

(7) If a tenant fails to make payment or deposit as required by this section, the Controller **may** order the defence against eviction to be struck out and proceed with the hearing of the application."

(emphasis supplied)

15. The change of the words from "The Court **shall** order the defence against ejectment to be struck out" to the words "the Controller **may** order the defence against eviction to be struck out" is a deliberate modification in law in favour of the tenant. Under the Act 1952, the Court had no option but to strike out the defence if the failure to pay or deposit the rent is proved; under the Act, 1958, the Controller who takes the place of the Court has a discretion in the matter, so that in proper cases, even if there is a default in making the payment of rent, but if he is satisfied on the basis of the material on record in exercise of judicial discretion, may refuse to strike out the defence in the given

facts & circumstances of the case.

16. Broadly speaking, the perusal of Act, 1952 with Act, 1958 shows primarily the following changes:-

(i) Section 13(5) of the Act, 1952 was meant to safeguard the interest of the landlord only. Section 15(1) of the Act, 1958 is meant primarily by way of benefit to the tenant who gets another opportunity to avoid his eviction by complying with the order passed under Section 15(1). The tenant also by complying with the order passed under Section 15(1) avoids the consequence of his default of payment or tender before filing of the petition.

(ii) Under Section 13(5) of the Act 1952, in case of default, the Court was bound to strike out the defence whereas under Section 15(7) of the Act 1958, in case of default in compliance with the order passed under Section 15(1) or Section 15(2), the Controller has a discretion to strike out the defence and it is always open to be examined on the facts and circumstances of each case.

(iii) Under the Act, 1958 by complying with the order under Section 15(1), the tenant can defeat the eviction application, whereas under the Act 1952, the tenant did not have this advantage even if he complied with the order under Section 13(5) of the Act 1952.

17. The inevitable result on comparison of Section 13(5) of the Act, 1952 and Section 15(7) of Act, 1958 be that the Court would not be bound to strike out the defence against ejectment in case of default in payment of rent in compliance to the order passed under Section 15(1) of the Act, 1958 and it is always open to the Controller to examine the

facts of each case while exercising its discretion which obviously has to be judicious in approach and with circumspection.

18. While interpreting Section 15(7) of Act 1958, V.R. Krishna Iyer, J. in ***Miss. Santosh Mehta Vs. Om Prakash and Ors.***[2] held that the power to strike out a party's defence is an exceptional step and has only to be exercised where a "mood of defiance" and "gross negligence" on the part of the tenant is detected. This Court warned against the landlord using Section 15(7) as a "booby trap" to get the tenant evicted. It would be better to reproduce the passage which indicate the approach which has to be adopted in such matters by the Court. The relevant paras 3 & 4 are as under:-

> "3. We must adopt a socially informed perspective while construing the provisions and then it will be plain that the Controller is armed with a facultative power. He may, or may not strike out the tenant's defence. A judicial discretion has built-in-self-restraint, has the scheme of the statute in mind, cannot ignore the conspectus of circumstances which are present in the case and has the brooding thought playing on the power that, in a court, striking out a party's defence is an exceptional step, not a routine visitation of a punitive extreme following upon a mere failure to pay rent. First of all, there must be a failure to pay rent which, in the context, indicates wilful failure, deliberate default or volitional non-performance. Secondly, the section provides no automatic weapon but prescribes a wise discretion, inscribes no mechanical consequence but invests a power to overcome intransigence. Thus, if a tenant fails or refuses to pay or deposit rent and the court discerns a mood of defiance or gross neglect, the tenant may forfeit his right to be heard in defence. The last resort cannot be converted into the first

2 1980(3) SCC 610

> resort; a punitive direction of court cannot be used as a booby trap to get the tenant out. Once this teleological interpretation dawns, the mist of misconception about matter-of-course invocation of the power to strike out will vanish. Farewell to the realities of a given case is playing truant with the duty underlying the power.
>
> 4. .....The effect of striking out of the defence under Section 15(7) is that the tenant is deprived of the protection given by Section 14 and, therefore, the powers under Section 15(7) of the Act must be exercised with due circumspection."

19. Subsequent decisions rendered on the subject also recognises that mere failure to pay rent on the part of the tenant is not enough to justify an order striking out the defence. It is only a wilful failure or deliberate default or volitional of non-performance that can call for the exercise of the extraordinary power vested in the Court. More importantly, the plentitude of the discretionary power of the Court under Section 15(7) of the Act, 1958 is with the Rent Controller whether or not to strike out the defence, needless to say that the effect of striking out the defence under Section 15(7) of Act, 1958 is that the tenant be deprived of the protection available to him under Section 14 and it is imperative that such power vested with the Rent Controller under Section 15(7) of the Act, 1958 must be exercised with due care and circumspection.

20. In ***Smt. Kamla Devi Vs. Shri Vasudev***[3], this Court reiterated

3 1995(1) SCC 356

that the power to strike out the defence simply vested the Rent Controller with the discretion to do so. It was not mandatory for the Rent Controller to strike out the defence simply because a default had occurred. It is imperative that exercise of discretion vested with the authority obviously depends upon the facts and circumstances of each case and is not open to be exercised under the rule of thumb.

21. The later decision in ***M/s. Jain Motor Car Co., Delhi Vs. Smt. Swayam Prabha Jain & Anr.***[4] does not disturb the legal parameters regulating the exercise of the power but deals more on the facts and circumstances of that case in which the power was found to have been rightly exercised.

22. The interpretation with reference to striking out the defence of a tenant under Section 15(7) of the Act, 1958 later came up for consideration before this Court in ***Aero Traders (P) Ltd. Vs. Ravinder Kumar Suri***[5].

23. Reference may be made to a later decision of this Court in ***Amrit***

4 1996(3) SCC 55
5 2004(8) SCC 307

Lal* Vs. *Shiv Narain Gupta[6] wherein it was held that sub-section (7) of Section 15 of the Act, 1958 confers a discretion with the Rent Controller who may order the defence against eviction to be struck off and proceed with the hearing of the application if a tenant fails to make payment or deposit, as required under Section 15 of Act, 1958. It has been further held that every violation under Section 15(1) of the Act, 1958 will not ipso facto lead to the striking out the defence of a tenant. The discretion vested with the Controller under Section 15(7) of Act, 1958 has to be exercised judiciously and if the non-compliance of the order under Section 15(1) of the Act, 1958 depicts irrational disregard to the order, or when the non-compliance is repeated, or when no reasonable justification is tendered, or for such other similar reasons, wilful, contumacious, or negligent and careless behaviour, could lead to the striking out of a tenant's defence.

24. It clearly emerges from the exposition of law that power vested under Section 15(7) of the Act, 1958 is discretionary and not mandatory and depends on contumacious or deliberate default and must be construed harmoniously so as to balance the rights and obligations of the tenant and the landlord and the power under Section 15(7) of Act, 1958 being an exception to be exercised with due

6 2010(15) SCC 510

care and circumspection.

25. Coming to the case on hand, there are distinct aspects from which the question of default in payment of rent has to be viewed. In the first instance, the question is whether the arrears which the Court determined and directed the appellant to pay were paid. The answer indeed is in the affirmative. The Rent Controller passed an order dated 21st April, 2008 directing the appellants to deposit arrears of rent from 1st November, 2007 to April, 2008 and to continue to pay future rent @ Rs. 66/- p.m. by the 15th of each succeeding month. It is not in dispute that the appellants had complied with the order of deposit of arrears on 21st April, 2008. In fact, they paid ten months advance rent in addition to arrears from November, 2007 to April, 2008 in compliance of the order dated 21st April, 2008.

26. The second limb which in fact has been missed at all the three stages is that in addition to the arrears of rent i.e. from November, 2007 to April, 2008, the appellants paid an amount equivalent to ten months' advance rent, although there was neither any legal obligation to do so nor was any direction issued by the Rent Controller for making such payment. It is not disputed that the additional rent paid

by the appellants of ten months advance rent did not represent any admitted liability, and the fact is that the additional rent of ten months which was paid by the appellants over the period from 1st November, 2007 to April, 2008 was neither adjusted against future rent nor was it refunded to the appellants.

27. It may be relevant to note that although the respondents-landlord have claimed arrears for the period 1st January 2007 to October 2007, but that was disputed by the appellants as it revealed from the order dated 21st April, 2008, but as we are examining the question regarding striking of defence because of non-compliance of the order passed by the Rent Controller in exercise of his power under Section 15(1) of Act, 1958, the arrear in terms of order dated 21st April, 2008 was to be paid from November, 2007 to April, 2008 and additional rent of ten months paid on 21st April, 2008 was indeed to be adjusted by the respondents towards future rent for the period commencing from 1st May, 2008 and it was the only legal option and having that excess amount being acknowledged by the respondents-landlord, the same must have been, in absence of a direction from the Court, be deemed to have been received and held by the respondents-landlord for the benefit of the appellants-tenants and adjustment of

such excess amount against future liability in that view is the only possible and legally valid method of appropriation of that amount. Viewed thus, the amount paid by the appellants on 21st April, 2008 covered the period of future rent commencing from May 2008 to February, 2009(ten months).

28. The further limb of the factual matrix is also indisputed from the record that after adjustment of the rent paid upto February, 2009, the monthly rent deposited on 27th June, 2008 of one month and 17th December, 2008 for five months will cover the period till 31st August, 2009. That means, the appellants have paid advance rent upto 31st August, 2009. Not only that, the further two deposits made by them, first on 1st May, 2009 and second on 5th May, 2009, if these payments would have been taken into consideration, the appellants discharged the entire rent liability commencing from 1st September, 2009. The rent which was paid/deposited by the appellants on 21st April, 2008 followed with 27th June, 2008, 17th December, 2008, 1st May, 2009 and 5th May, 2009 is not in dispute and that covers the rent for a period of one year and nine months commencing from 1st September, 2009.

29. It clearly manifests from record that on the date of the order

passed by the Rent Controller dated 21st April, 2008 itself, the entire arrears as directed to be deposited by the appellants stood paid and also on the date of the order passed by the Rent Controller striking out his defence, rent for the entire intervening period and even beyond had been paid and what it appears is that suitable reconciliation and adjustments were required to be made against the months for which rent was payable but what cannot be disputed is that the amount which the appellants were called upon to pay and what they have, pursuant to the directions of the Rent Controller was paid/deposited at all relevant point of time in excess of what was payable to the landlord. In the given circumstances, the charge of contumacious failure and deliberate default in making payment levelled against the appellants-tenants is, therefore, ill founded.

30. The question is whether the tenants were guilty of contumacious conduct in withholding such payment. While answering that question, the amount of rent payable for the demised premises may be a factor which cannot be brushed aside, but the facts and circumstances of the case on hand, do not suggest any negligence, defiance or contumacious non-payment of the amount payable to the landlord to warrant the taking of that "exceptional step" which is

bound to render the tenant defenceless in his contest against the respondents-landlord.

31. In our opinion, the decision of the Rent Controller and confirmed by the Single Judge of the High Court of Delhi under the impugned judgment upholding the decision of striking out of the defence of the appellants which certainly entails adverse consequences in depriving of taking their defence and to contest the eviction application filed by the respondents-landlord has not been exercised judiciously and with circumspection and for the aforesaid reasons, the impugned judgment is unsustainable and deserves to be set aside.

32. It appears that the eviction application was filed by the respondents in the year 2007 and almost 12 years have rolled by and the matter could not be proceeded because of the pendency of the proceedings in this Court, we consider it appropriate to observe that the Rent Controller/Competent Authority may proceed with the matter and decide the pending eviction application expeditiously on merits but in no case later than one year in accordance with law.

33. In the result, the appeal succeeds and the impugned judgment of the High Court of Delhi dated 10th May, 2011 confirming order of the

Rent Controller/Tribunal are hereby set aside with the observations supra. No costs.

34. Pending application(s), if any, stand disposed of.

.....J.
(ARUN MISHRA)

.....J.
(M.R. SHAH)

.....J.
(AJAY RASTOGI)

NEW DELHI
SEPTEMBER 24, 2019