

Arun Kumar Gupta vs Rakesh Sood on 11 January, 2012

Author: Indermeet Kaur

Bench: Indermeet Kaur

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Judgment: 11.01.2012

+ CM(M) 39/2011

ARUN KUMAR GUPTA Petitioner
Through Mr. Rakesh Khanna, Sr. Adv.
with Mr. D.N. Grover, Adv.

versus

RAKESH SOOD Respondent
Through Mr. Sanjeev Sachdeva, Sr.
Advocate with Mr. Preet Pal
Singh, Ms. Pryam Mehta and
Mr. Abhimanyu Mehta, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 13.10.2010 vide which the Additional Rent Control Tribunal (ARCT) had reversed the finding of the Addition Rent Controller (ARC) in a pending eviction petition filed by the landlord-Arun Kumar Gupta under Section 14(1)(a) of the Delhi Rent Control Act (DRCA).

2. Record shows that the present eviction petition had been filed by the landlord under the aforenoted provision of law claiming non-payment of arrears of rent for three consecutive months by the tenant. It is not in dispute that the benefit of Section 14 (2)of the DRCA had already been availed of by the tenant vide order dated 27.05.1985. Legal notice sent to the tenant by the landlord is dated 30.09.2009. In this legal notice demand for arrears of rent not having been paid by the tenant for three consecutive months has been made; contention being that this amount should be payable within two months. Reply to the legal notice is dated 07.10.2009. Receipt of this reply is not in dispute. Alongwith this reply the tenant had tendered a cheque of Rs. 8,400/- i.e. cheque bearing No. 176066 dated 01.10.2009 drawn on Central Bank of India, Darya Ganj, New Delhi tendering rent with effect from 01.01.1995 up to 31.12.2009 i.e. for a period of 14 years. It is not in dispute that this cheque was sent alongwith this reply which was within one week of the demand notice. The eviction petition was filed thereafter i.e. on 18.12.2009; in this petition it has been stated that the

tenant is liable for eviction as he had sent a cheque of Rs. 8,400/- acknowledging the fact that he has been at default since 01.01.1995 to 31.12.2009. Eviction under Section 14(1)(a) of the DRCA had been prayed for.

3. ARC decreed the petition holding that the tenant is admittedly in default for three consecutive months.

4. The ARCT had vide impugned judgment reversed this finding. It was of the view that the cheque of Rs. 8,400/- tendered by the tenant within one week of the receipt of the legal notice was a valid tender of rent; as such eviction order passed by ARC was set aside.

5. On behalf of the petitioner vehement arguments have been addressed. Contention being that the deposit of rent vide the aforesigned cheque was not a valid tender and this is clear in view of the ratio of the judgment of the Apex Court reported in (2009) 7 SCC 685 titled as Sarla Goel & Ors. vs. Kishan Chand wherein court had noted that in such an eventuality where the rent is not accepted by the landlord, the requirement of Section 27 of DRCA has to be adhered to and the tenant should have deposited the rent before the Rent Controller which he had not done. Reliance has also been placed upon the judgment of the Apex Court reported in (2005) 7 SCC 211 titled as Atma Ram vs. Shakuntala Rani to substantiate the submission that the provisions of the DRCA are a strict legislation; if the tenant wants to take benefit of this legislation he must strictly follow the procedure contained therein which in this case mandates that the tenant should have deposited the rent under Section 27 of DRCA before the Rent Controller in a case where landlord has refused to accept the tender. Reliance has also been placed upon the judgment of this court reported in 2009 (109) DRJ 19 titled as Raghbir Singh vs. Sheela Wanti & Anr. to substantiate the submission that even assuming that there was a valid tender of rent for the 14 year period of Rs. 8,400/- but this tender does not contain the interest quotient which is envisaged under Section 26 of DRCA; it is thus not a valid tender; impugned order dismissing the eviction petition suffers from an infirmity; it is liable to be set aside.

6. Arguments have been countered.

7. Record has been perused. Record shows that in the legal notice there has been no demand of interest; the legal notice has made a demand of rent for three months to be paid within two months without detailing any dates. It is an admitted fact that within one week of the receipt of the legal notice Rs. 8,400/- was tendered by way of the aforesigned cheque which was at the admitted rate of rent for a period of 14 years although contention of the tenant is that the legally recoverable rent is only three years preceding the filing of the eviction petition. That apart, since there was no demand for the rent to be paid alongwith interest, the judgment of Raghbir Singh (supra) would not be applicable. In the case of Raghbir Singh (supra) the legal notice had specifically made a demand of arrears of rent specifying details of the arrears of rent alongwith interest to be paid under Section 26 of DRCA which had not been tendered. The judgment of Sarla Goel (Supra) is also inapplicable as in that case there was a tender of rent by the tenant by a money order which had been returned. In this case, the tenant had sent the rent by cheque alongwith his reply dated 07.10.2009 and till the date of the filing of the eviction petition which was in December, 2009, the tenant was wholly unaware that

this cheque has not been accepted by the landlord as the same was admittedly not informed to him. It is not the case of the landlord that any information has been sent by him to the tenant that this cheque of Rs. 8,400/- was not acceptable to him; in these circumstances, it is clear that the tenant did not know that the landlord has not accepted this rent and as such his approaching the Rent Controller under Section 27 of the DRCA did not or could not arise. It was only on the filing of the eviction petition in December, 2009 that the tenant became aware that his cheque of Rs. 8,400/- remained un-encashed; record further shows that the tenant had in fact thereafter approached the Rent Controller under Section 27 of the DRCA seeking permission of the Court to deposit the rent which permission had been granted to him by the Rent Controller vide order dated 27.04.2010 wherein he had been permitted to deposit the legally recoverable rent i.e. for a period of three years preceding the filing of the petition.

8. In AIR 97 SC 2437 titled as Mahendra Raghunathdas Gupta vs. Vishwanath Bhikaji Mogul & Ors. a question had arisen before the court as whether tender of rent by cheque is a valid tender; this was a special leave petition under the Bombay Rents, Hotel And Lodging House Rates Controls Act (57 of 1947) for a decision that; it was held to be a valid tender as payment by cheque is an ordinary incident of present day life and unless it is specifically mentioned that the payment must be in cash, a cheque payment was held to be a valid payment.

9. In these circumstances, in this factual context the tender of rent by the tenant was a valid and legal tender; impugned order thus reversing the finding of the ARC on this count suffers from no infirmity

10. Petition is without any merit; it is dismissed.

INDERMEET KAUR, J JANUARY 11, 2012 rb