

Ram Murti vs Bhola Nath And Anr. on 1 May, 1984

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Bench: A.P. Sen, M.P. Thakkar

JUDGMENT

A.P. Sen, J.

1. This appeal by special leave by the appellant Ram Murti is directed against the judgment of the Delhi High Court dated August 10, 1982 dismissing his second appeal under Section 39 and upholding the judgment and order of the Rent Control Tribunal dated August 23, 1977 affirming an appeal against the order of the Second Additional Rent Controller, Delhi dated March 8, 1976 and directing his eviction from the suit accommodation under Section 14(1)(a) of the Delhi Rent Control Act, 1958.

2. It is common ground that the parties stand in the relation of landlord and tenant. Respondent No. 1 Bhola Nath who is the landlord made an application dated December 18, 1968 claiming eviction of the appellant and respondent No. 2 Basant Lal who is his brother-in-law on the grounds mentioned in Section 14(1)(a) and (b) of the Act. It was alleged that although the appellant had taken the premises on rent from the Custodian of Evacuee Properties @ Rs. 18/- per month, he vacated the premises after respondent No. 1 acquired the same and there was a new tenancy created in his favour on March 1, 1961 on a monthly rent of Rs. 80/-. On an application made by respondent No. 1, the Additional Rent Controller by his order dated February 14, 1969 passed under Section 15(1) of the Act directed the appellant to deposit rent @ Rs. 18/-per month w.e.f. December 1, 1965 and to deposit the future rent at the same rate on the 15th day of each succeeding month. The second Additional Rent Controller by his order dated March 8, 1976 directed the eviction of the appellant on the ground specified under Section 14(1)(a) on the finding that the appellant had committed a default in not complying with the order dated February 14, 1969 passed by the predecessor under Section 15(1) and therefore it was not necessary to decide as to what was the agreed rate of rent. On the same day, the learned Additional Rent Controller dismissed an application filed by respondent No. 1 under Section 15(7) of the Act on September 17, 1975 for striking out the defence of the appellant on the ground that he had committed defaults in complying with the order of his predecessor dated February 14, 1969 which had been affirmed in appeal by the Rent Control Tribunal by its order dated March 26, 1970. He came to this conclusion on perusal of the original challans filed by the appellant that all the rents up to April 1975 had been deposited on due dates but

there was delay in depositing the rents for four months, namely, for may, June, July and August 1975 on due dates. The challans showed that the rents for the months of May and June 1975 had been deposited by him on August 14, 1975 while the rents for July and August 1975 had been deposited on September 19, 1975. Despite the delay in making deposits of the rents for these months, the learned Additional Rent Controller declined to make an order for striking out the defence under Section 15(7) of the Act on the ground that although the appellant had committed defaults in complying with the order 'made under Section 15(1), the defaults will have their legal consequences Both the appellant and respondent No. 1 again preferred appeals before the Rent Control Tribunal but the appeals were dismissed on August 23, 1977.

3 Aggrieved by the order of the Rent Control Tribunal affirming that of the learned Additional Rent Controller, the appellant preferred a second appeal before the High Court under Section 39 of the Act but the High Court declined to interfere with the order of eviction passed under Section 14(1)(a). The High Court relying upon the decision of this Court in Hem Chand v Delhi Cloth & General Mills Company Limited and Ors. held that the Rent Controller had no power to extend the time prescribed by an order under Section 15(1) which requires the tenants to deposit the arrears of rent within one month from the date of the order and future rents by the 15th day of each succeeding month.

4. It is contended by learned Counsel for the appellant placing reliance on a later decision of this Court in Shyamcharan Sharma v. Dharamdas that inasmuch as the Rent Controller has a discretion under Section 15(7) of the Act not to strikeout the defence of a tenant for committing default in making payment or deposit of the rent as required by Section 15(1), he has by necessary implication the power to condone the default in making payment or deposit of future rent falling due after the institution of the proceedings as required under Section 15(1) and also to extend the time for such payment or deposit.

5. In his reply, learned Counsel for respondent No. 1 has made a twofold submission : (1) In Hem Chand's case, supra, the Court held that when the tenant fails to make a deposit of the future rent in compliance with the order passed under Section 15(1) against him, a right to obtain an order for recovery of possession under Section 14(1)(a) accrues to the landlord and the Rent Controller has no power to condone the default of the tenant by extending the time for the payment. It is urged that the Court in Hem Chand's case, supra, interpreted the provisions of Section 15(1) in the context of Section 14(1)(a) read with Section 14(2) with which we are concerned and that the later decision in Shyamcharan's case, supra, which relates to the Madhya Pradesh Accommodation Control Act, 1961 having a different scheme altogether has no application to the present case. And (2) the tenant having committed consecutive defaults in making payment or deposit of the future rent as required under Section 15(1), the proviso to Section 14(2) is attracted.

6. In order to deal with the rival contentions, it is necessary to set out the relevant statutory provisions. Sub-section (I) of Section 14 of the Act read with the proviso thereto, provides that notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant, except on one or more of the grounds mentioned in Clauses (a) to (1),

set out in the proviso, subject to the conditions and qualifications mentioned in Sub-sections (2) to (II). Sub-section (2) qualifies the right given to the landlord to recover possession under Section 14(1)(a), and it reads :

14(2). No order for the recovery of possession of any premises shall be made on the ground specified in Clause (a) of the proviso to Sub-section (1), if the tenant makes payment or deposit as required by Section 15.

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent of those premises for three consecutive months.

When the tenant gets benefit of this protection is provided for by Section 15 which, insofar as relevant, reads as follows:

15(1). In every proceeding for the recovery of possession of any promises on the ground specified in Clause (a) of the proviso to Sub-section (1) of Section 14, the Controller shall, after giving the parties an opportunity of being heard, 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 the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate.

Sub-section (2) of Section 15 deals with the situation where if, in any proceeding, for the recovery of possession of any premises on any ground other than that referred to in Sub-section (1), the tenant contests the claim for eviction, the landlord may, at any stage of the proceeding, make an application to the Controller for an order on the tenant to pay to the landlord the amount of rent legally recoverable from the tenant and the Controller may, after giving the parties an opportunity of being heard, make an order in accordance with the provisions of the said sub-section. Sub-section (3) lays down that if, in any proceeding referred to in Sub-section (1) or Sub-section (2), there is any dispute as to the amount of rent payable by the tenant, the Controller shall, within fifteen days of the date of the first hearing of the proceeding, fix an interim rent in relation to the premises to be paid or deposited in accordance with the provisions of Sub-section (1) or Sub-section (2), as the case may be, until the standard rent in relation thereto is fixed having regard to the provisions of the Act, and the amount of arrears, if any, calculated on the basis of the standard rent shall be paid or deposited by the tenant within one month of the date on which the standard rent is fixed or such further time as the Controller may allow in this behalf. Sub-section (4) provides that if, in any proceeding referred to in Sub-section (1) or Sub-section (2), there is any dispute as to the person or persons to whom the rent is

payable, the Controller may direct the tenant to deposit with the Controller the amount payable by him under Sub-section (1) or Sub-section (2) or Sub-section (3), as the case may be, and in such a case, no person shall be entitled to withdraw the amount in deposit until the Controller decides the dispute and makes an order for payment of the same. Sub-section (5) provides that if the Controller is satisfied that any dispute referred to in Sub-section (4) has been raised by a tenant for reasons which are false or frivolous, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application. Sub-section (6) of Section 15 is relevant for our purposes, and it reads:

15 (6). IF a tenant makes payment or deposit as required by Sub-section (1) or Sub-section (3), no order shall be made for the recovery of possession on the ground of default in the payment of rent by the tenant, but the Controller may allow such costs as he may deem fit to the landlord.

Sub-section (7) provides for striking out the defence of the tenant when he fails to make payment or deposit as required by Sub-section (7) of Section 15. It runs as follows:

15(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.

7. From a conspectus of these provisions, it would be seen that the various sub-sections of Sections 14 and 15 form an integrated process seeking to strike a balance between the conflicting rights of the landlord to secure eviction of the tenant on any one or more of the grounds specified in the proviso to Sub-section (1) of Section 14 and that of the tenant for protection against such eviction except under certain circumstances. The predominant object and purpose of the legislation, as a matter of social control, is to prevent eviction of tenants and to provide for control of rents etc. One must therefore give a meaningful interpretation to the various sub-sections of Sections 14 and 15 in furtherance of the purpose and object of the legislation.

8. The right of the landlord to claim eviction of the tenant on the ground that he has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him under Section 14(1)(a) is made subject to the provisions of Section 14(2). The opening words of Section 14(2) 'No order for the recovery of possession of any premises shall be made on the ground specified in Clause (a) of the proviso to Sub-section (1) clearly subordinate the landlord's claim for eviction on the ground of default in payment of rent to the statutory protection given to the tenant under Section 14(2) against eviction on that ground on condition that he makes payment or deposit as required under Section 15. When a tenant can get the benefit of the protection under Section 14(2) is provided for in Section 15(1). Section 15(1) of the Act is in two parts. The first part requires the tenant to pay or deposit within one month of the order of the Rent Controller passed under Section 15(1) directing him to pay the arrears of rent legally recoverable from him including the period subsequent thereto upto the end of the month previous to that in which such payment or deposit is to be made. The second

part is meant to secure payment of future rent by a defaulting tenant and casts a duty on such tenant to continue to pay or deposit, month by month, by the 15th day of each succeeding month, a sum equivalent to the rent at that rate. It is obvious that a tenant who seeks protection against eviction on the ground mentioned in Section 14(1)(a) must comply with the requirements of Section 15(1). It must also be observed that Section 15(1) of the Act does not contain the words "or such further time as the Controller may allow in that behalf" as they appear in Section 15(3) and this necessarily gives rise to the vexed question whether the Rent Controller has any power to condone the default by the tenant in making payment or deposit as required by Section 15(1) or to extend the time for such payment or deposit.

9. The narrow construction placed by the Full Bench of the Delhi High Court in *Delhi Cloth & General Milk Co. Ltd. v. Hem Chand* A1R (1972) Del. 275 on the powers of the Controller contained in Section 15(7) in the context of Section 14(2) does not appeal to reason. It is not inconceivable that the tenant might fail to comply with the requirements of Section 15(1) by the date line due to circumstances beyond his control. For instance, it might not be possible for the tenant to attend the Court to make the deposit on the last day if it is suddenly declared a holiday or on account of a serious accident to himself or his employee, or while going to the treasury he is waylaid, or is stricken with sudden illness, or held up on account of riots or civil commotion, or for that matter a clerk of his lawyer entrusted with the money, instead of punctually making the deposit commits breach of trust and disappears, or some other circumstances intervene which make it impossible for him for reasons beyond his control to physically make the deposit by the due date. There is no reason why the refusal of the Rent Controller to strike out the defence of the tenant under Section 15(7) in such circumstances should not enure to the benefit of the tenant for purposes Section 14(2),

10. In *Santosh Mehta v. Om Prakash* case, it was pointed out that the provision contained in Section 15(7) was a penal provision and in terms 55 by the use of the word "may" gave to the Controller a discretionary power in the matter of striking out of the defence and that, in appropriate cases, the Controller may it use to visit upon the tenant the penalty of eviction, for failure to pay of deposit the future rent. In that case, the tenant paid the amount to the Advocate appearing for her but he betrayed her trust. In those circumstances, it was held that the Rent Controller could not have visited upon her the penal consequences of Section 15(7) and should not have struck out the defence as this drastic power was meant for use only where a recalcitrant tenant was guilty of wilful or deliberate default in payment of future rent. It logically follows that if the Rent Controller has the power not to strike out the defence of the tenant under Section 15(7) of the Act, he necessarily has by legal implication the power to done the default on the part of the tenant in making payment of deposit of the future rents.

11. In *Hem Chants* case supra, this Court partly reversed the Full Bench decision of the Delhi High Court in *Delhi Cloth & General Mills Ltd. v. Hem Ghand* holding that the default on the part of the tenant to comply with the requirements of Section 15(1) vests an indefeasible right in the landlord and is not merely procedural right and therefore the Rant Controller was bound to pass order for eviction under Section 14(1)(a) of the Act and the Rent Controller had no power to condone the default by the tenant in making payment or deposit of arrears of rent within one month of the date of the order of the Rent Controller of future rent month by month, by the 15th of each succeeding

month. The underlying fallacy lay in the wrongful assumption by the Full Bench that Section 14(2) was meant for the protection of the landlord. This Court while reversing the judgment of the Full Bench observed While we agree with the view of the Full Bench that the Controller has no power to condone the failure of the tenant to pay arrears of rent as required under Section 15(1), we are satisfied that the Full Bench fell into an error in holding that the right to obtain an order for recovery of possession accrued to the landlord. As we have set out earlier in the event of the tenant failing to comply with the order under Section 15(1) the application will have to be heard giving an opportunity to the tenant if his defence is struck out. The Full Bench is therefore in error in allowing the application of the landlord on the basis of the failure of the tenant to comply with an order under Section 15(1).

In the concluding part of the judgment, there is an observation to the effect :

The Rent Control Act protects the tenant from such eviction and gives him an opportunity to pay the arrears of rent within two months from the date of notice of demand as provided in Section 14(1)(a)... Even if he fails to pay, a further opportunity is given to the tenant to pay by deposit the arrears within one month under Section 15(1). Such payment or deposit in compliance with the order under Section 15(1) takes away the right of the landlord to claim recovery of possession on the ground of default in payment of rent. The legislature has given statutory protection to the tenant by affording him an opportunity to pay the arrears of rent within one month from the date of the order. This statutory provision cannot be modified as rights of parties depend on the compliance with an order under Section 15(1). In the circumstances, we agree with the Full Bench that the Rent Controller has no discretion to extend the time prescribed under Section 15(1) With respect, the observations in Hem Chand's case expressing the view that the Rent Controller has no power to extend the time prescribed in Section 15(1) cannot be construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under Section 14(1)(a) without anything more due to the failure on his part to comply with the requirements of Section 15(1). The question would still remain as to the course to be adopted by the Rent Controller in such a situation in the context of Section 15(7) which confers on the Rent Controller a discretion not to strike out the defence of the tenant in the event of the contingency occurring, namely, failure on the part of the tenant to meet with the requirements of Section 15(1).

12. We must mention that the scheme of the Madhya Pradesh Accommodation Control Act, 1961 is almost similar with regard to the claim of the landlord for eviction of the tenant on the ground that he has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for arrears of rent has been served on him under Section 12(1)(a) of that Act, except for the difference that under that Act the landlord has to bring a suit for eviction before a Civil Court under Section 12(1)(a) instead of an application before the Rent Controller under Section 14(1)(a) as in the Delhi Act. Further, the difference is that the Civil Court is expressly given the power under Section 13(1) in the event of a failure on the part of the tenant to pay the arrears of rent within two months from the date of the notice of demand under

Section 12(1)(a), to extend the time for deposit or payment of the arrears due on the date of the institution of the suit. Except for this difference, the scheme of the two enactments is almost the same. The relevant provision of Section 12(3) conferring protection on the tenant against eviction on the ground mentioned in Section 12(1)(a) if he makes payment or deposit as required by Section 13(1), is identical with the protection given under Section 14(2) of the Act. Likewise, Section 13(6) which creates a statutory bar against the passing of a decree for eviction on the ground mentioned in Section 12(1)(a) if a tenant makes payment or deposit as required by Section 13(1), and Section 13(7) which invests the Court with a discretion in the matter of striking out the defence of the tenant if there is failure to pay or deposit the rents under Section 13(1), are identically the same as those of Sections 15(6) and 15(7) of the Act.

13. Under the terms of Section 13(1) of the Madhya Pradesh Accommodation Control Act, a tenant in default of a suit or proceeding being instituted by the landlord on any ground referred to in Section 12 is required to deposit the arrears of rent within one month of the writ of summons on him or within such further time as the Court may allow and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month, a sum equivalent to the rent at that rate. In a series of decisions, the Madhya Pradesh High Court uniform took the view that though the Court had power to extend the time for deposit or payment of the arrears due till the institution of the suit, it had no power to extend the time for deposit or payment of future rent. The High Court was of the view that even if a tenant in default had complied with the first requirement i.e. made deposit or payment of the arrears within one month of the service of the writ of summons on him or within such further time as the Court might on an application have allowed in that behalf, it was still obligatory upon such tenant to comply with the second requirement i.e. to continue to make such deposit or payment, month by month, by the 15th of each 55 succeeding month if he wanted to claim the protection under Section 12(3). In the event of any default on his part to comply with the second requirement, the Court had no power to grant further time for making such deposit or payment in respect of which he was in default.

14. In Shyamcharan's case, supra, this Court reversed the view of the Madhya Pradesh High Court on the question as to whether the Court had the power to grant further time under Section 13(1) of the Madhya Pradesh Act for payment or deposit of future rent. It was held that if the Court has discretion under Section 13(7) not to strike out the defence of a tenant committing default in payment or deposit as required under Section 13(1), the Court surely has the further discretion to condone the default and extend the time for payment. It was observed that another construction may lead, in some cases, to a perversion of the object of the Act namely, 'the adequate protection of the tenant Section 12(3) entitles a tenant to claim protection against eviction on the ground specified in Section 12(1)(a) if the tenant makes payment or deposit as required by Section 13. On the construction of Section 13 that the Court has the power to extend the time for payment or deposit, it must follow that payment or deposit within the extended time will entitle the tenant to claim the protection of Section 12(3). In other words, it would imply that failure to comply with the second requirement of Section 13(1) would entitle the landlord straightaway to a decree for eviction under Section 12(1)(a).

15. As to the absence of an express provision for extension of time for deposit or payment of future rent, it was said : Obviously, express provision for extension of time for deposit or payment of rent falling due after the filing of the suit was not made in Section 13(1) as the consequence of non-payment was proposed to be dealt with by a separate sub-section, namely Section 13(6). Express provision had to be made for extension of time for deposit or payment of rent that had accrued prior to the filing of the suit, since that would ordinarily be at a very early stage of the suit when a written statement might not be filed and there would, therefore, be no question of striking out the defence and, so, there would be no question of Section 13(6) covering the situation.

In Shyamcharan's case, the Court did not find any justification for adopting a narrow construction of Section 12(3) and Section 13(7) read in the context of Section 13(1) and relied upon a decision of this Court in *B.C. Kame v. Nemi chand Jain* where on an application made by the tenant, time for deposit or payment was extended. It was pointed out that in that case there was default both in payment of the arrears of rent that had accrued before the filing of the suit and in payment or deposit of the monthly rent that fell due after the filing of the suit.

16. We must confess that the two decisions in *Hem Chand* and *Shyamcharan*, *supra*, are irreconcilable.

17. It would be anachronism to held that even if the defence of the tenant is not to be struck out under Section 15(7), the tenant must still be visited with the punishment of being deprived of the protection under Section 14(2). In *Hem Chand*'s case the Court went to the extent of laying down that even if the defence of the tenant is struck out under Section 15(7), the Rent Controller could not straightaway make an order for eviction in favour of the landlord under Section 14(1)(a). The Court held that the 50 High Court was wrong in its assumption that failure to comply with the requirements of Section 15(1) vests in the landlord an 'indefeasible right' to secure an order for the eviction of the tenant under Section 14(1)(a). The Court set aside the judgment of the High Court taking that view and remanded the matters to the Rent Controller observing that there 55 was still an issue to be tried. If that be so, the question at once arises "What is the issue to be tried ?". If the landlord has still to make out a case before the Rent Controller that he was entitled to an order for eviction of the tenant under Section 14(1)(a), surely the tenant has the right to participate in the proceedings and cross-examine the landlord. It must logically follow as a necessary corollary that if the defence is not to be struck out under Section 15(7) it means that the tenant has still the defences open to him under the Act. In the premises, the conclusion is irresistible that he has the right to claim protection under Section 14(2). What is of essence of Section 14(2) and of Section 15(6) is whether there has been a substantial compliance with the order passed under Section 15(1). The words "as required by Section 15(1)" in these provisions must be construed in a reasonable manner. If the Rent Controller has the discretion under Section 15(7) not to strike out the defence of the tenant, he necessarily has the power to extend the time for payment of future rent under Section 15(1) where the failure of the tenant to make such payment or deposit was due to circumstances beyond his control. The previous decision in *Hem Chand*'s case interpreting Section 15(7) and Section 14(2) in the context of Section 15(1) of the Delhi Rent Control Act, 1958, although not expressly overruled, cannot stand with the subsequent decision in *Shyamcharan*'s case interpreting the analogous provisions of the Madhya Pradesh Accommodation Control Act, 1961 as it is of a

larger Bench.

18. The further contention advanced by learned Counsel for the respondents that in a case of consecutive defaults the proviso to Section 14(2) is attracted, cannot be accepted for obvious reasons. On a plain construction, it provides that no tenant shall be entitled to the benefit under Section 14(2) if, having obtained such benefit once in respect of any premises, he again makes a default in the payment of rent for that premises for three consecutive months. On a plain construction, the proviso is attracted only in a case where the tenant has been saved from eviction in an earlier proceeding for eviction before the Rent Controller under Section 14(1)(a) of the Act i.e. the tenant must have enjoyed the benefit of Section 14(2) in a previously instituted proceeding.

19. In the premises, we cannot but reverse the view expressed by the High Court that the Rent Controller has no power to condone the default on the part of the tenant in making payment or deposit of future rent or to extend time for such payment or deposit. We are constrained to set aside its judgment and order as well as the order of the Rent Control Tribunal and that of the Rent Controller which proceed to order the eviction of the appellant under Section 14(1)(a) of the Delhi Rent Control Act, 1958 upon that basis and the matter must be remitted back to the Rent Controller for a decision afresh. The Rent Controller shall now consider the question of exercising his discretion to condone the delay in making the payment or deposits for the rents which fell due for the months of May, June, July and August, 1975 in accordance with law. He shall further consider whether the appellant has to be evicted in terms of Section 14(1)(a) keeping in view the provisions contained in Section 14(2) and Section 15(6) of the Act. He shall also determine as to whether the rent of the demises promises was Rs. 18 per month, or Rs. 80, as alleged.

20. The result therefore is that the appeal succeeds and is allowed. The judgment and order of the High Court and the order of the Rent Control Tribunal and that of the Rent Controller are set aside and the matter is remanded back to the Rent Controller for a decision afresh, with advertence to the observations made above.