

M/S Jain Motor Car Co., Delhi vs Smt. Swayam Prabha Jain & Anr on 15 February, 1996

Equivalent citations: 1996 SCC (3) 55, JT 1996 (4) 479, AIR 1996 SUPREME COURT 2951, 1996 (3) SCC 55, 1996 AIR SCW 1155, (1996) 4 JT 479 (SC), (1996) 2 SCR 663 (SC), 1996 WLC(RAJ)(UC) 163, 1996 () HRR 373, 1996 BOMRC 605, 1996 SCFBRC 13 265, 1996 (1) UJ (SC) 682, 1996 (4) JT 479, (1996) 1 RENC R 231, (1997) 1 RENCJ 558, (1996) 1 RENTLR 311, (1996) 2 SCJ 350, (1996) 2 ICC 101, (1996) 1 CURCC 209, (1996) 62 DLT 243

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:

M/S JAIN MOTOR CAR CO., DELHI

Vs.

RESPONDENT:

SMT. SWAYAM PRABHA JAIN & ANR.

DATE OF JUDGMENT: 15/02/1996

BENCH:

AHMAD SAGHIR S. (J)

BENCH:

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RAMASWAMY, K.

G.B. PATTANAIK (J)

CITATION:

1996 SCC (3) 55 JT 1996 (4) 479

1996 SCALE (2) 197

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.Saghir Ahmad,J.

These are tenant's appeals.

2. Prem Chand Jain, who is since dead and is now represented by respondent No.1, had filed a petition before the Rent Controller, Delhi, for the eviction of the appellant from the premises no.XI/4239-A, Raj Kishan, Jain Street, Municipal Ward No.XI, Darya Ganj, Delhi, on the ground of default in payment of rent and sub-letting. This petition came to be tried by the Additional Rent Controller, Delhi, who passed an order on 24th March, 1971 under Section 15(1) of the Delhi Rent Control Act, 1958 (for short, the 'Act', requiring the appellant to deposit all the arrears of rent due for the period from 1.6.1970 within one month from the date of the order and to deposit the future rent also at the rate of Rs.200/- p.m., every month by the 15th of each succeeding month after adjusting an amount of Rs 800/- which, admittedly, was received by Prem Chand Jain as part of the arrears of rent.

3. While the proceedings were pending before the Additional Rent Controller, Delhi, Sh.Prem Chand Jain made an application dated 22.3.1972 under Section 15(7) of the Act for striking out the defence to the appellant on the ground that the appellant had not deposited the rent for the month of February, 1972, by 15th March, 1972 and had instead deposited it on 30th March, 1972. This application was rejected on 24th April, 1979 and the appeal which was thereafter filed by Sh.Prem Chand Jain against this order was dismissed by the Rent Control Tribunal by order dated 19.4.73. Sh. Prem Chand Jain then filed a second appeal in the High Court which was registered as S.A.O.No.198 of 1973.

4. In the meantime, the Third Additional Rent Controller, Delhi, by his order dated 27.10.75, allowed the main petition of Sh. Prem Chand Jain for the eviction of the appellant from the premises in question on the ground that the appellant had committed default in not depositing the rent for the month of February, 1972, by 15th March, 1972 and thus the order dated 24.3.71 for regularly depositing the future monthly rent by the 15th of each succeeding month was not complied with the further finding that he, namely, the Rent Controller had no power to condone the delay or to extend the time for depositing the rent. Consequently, the appellant was held not entitled to protection under Section 14(2) of the Act and he was directed to be evicted from the premises in Question.

5. This order was challenged by the appellant before the Rent Control Tribunal before whom Sh. Prem Chand Jain also filed cross-objections on the question of sub-letting as the Additional Rent Controller had held that the appellant had not sublet any part of the premises and had thereby rejected one of the grounds on which the appellant's eviction was sought. By order dated 20.3.78, the Tribunal dismissed the appeal of the appellant as also the cross-objections filed by the landlord. The Tribunal reiterated the finding recorded by the Rent Controller that it had no power or jurisdiction to condone the delay or to extend the time for depositing the rent and the order passed under Section 15(1) had to be strictly complied with. The appellant then filed a second appeal in the High Court (S.A.O.No.125 of 1978) which was taken up for hearing along with landlords S.A.O.No.198 of 1973. The High Court by its judgment and order dated 19th August, 1982 dismissed the appellant's second appeal while landlord's S.A.O.No.198 of 1973 was allowed with the finding that the appellant had committed default in not depositing the rent for month of February, 1972 by 15th March, 1972 and was, therefore, liable to be premises in question. The High Court was also of

the opinion that the Rent Controller as also the Tribunal were not justified in refusing to strike off the defence of the appellant which was consequently struck off by it.

6. It is in these circumstances that the present appeals have been filed and have now come up for hearing which are being disposed of by this judgment.

7. Mr. Sachhar, learned Senior Counsel for the appellant contended that the interpretation placed by the Delhi High Court on the relevant statutory provisions contained in Section 15(1) and 15(7) was erroneous and contrary to the decisions of this Court and, therefore, the judgment was liable to be set aside.

8. We may examine the submission in the light of the relevant provisions of the Act providing protection against sudden eviction of tenants.

9. Section 14(1) together with its proviso provides as under :

"14. Protection of tenant against eviction. (1) 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:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a note of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882);

10. Section 14(2) provides as under

:

"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 subsection, 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."

11. Section 15(1) provides as under

:

"15. When a tenant can get the benefit of protection against eviction - (1) In every proceeding for the recovery of possession of any premises 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."

12. Section 15(7) provides as under

:

"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."

13. A perusal of the above provisions will indicate that the Act provides two opportunities to the tenant to avoid eviction. The first is contemplated by the proviso to sub-section (1) of Section 14 under which if the tenant pays to the landlord the entire amount of arrears of rent demanded from him by the landlord within two months from the date on which a notice of demand is served upon him, it would not be possible for the landlord to institute the proceedings for his eviction on the ground under section 14 of the Act. The second opportunity is provided to him after the institution of the proceedings, by Sec. 14(2) which provides that no order for the recovery of possession on the ground of default in payment of rent shall be made if the tenant has deposited or made payment of the rent in accordance with the provisions of section 15 under which the Rent Controller can call upon the tenant to pay to the landlord or to deposit in his court, within, one month from the date of the order, the arrears of rent calculated at the rate at which it was last paid for the whole of the period for which the arrears were legally recoverable from him including the period subsequent thereto and further to pay or deposit continuously, month by month, by the 15th of each succeeding month, a sum equivalent to the rent at that rate.

14. The consequence of non-deposit or non-compliance of the order made under section 15(1) is indicated in section 15(7) wherein it is provided that the Controller may order the defence of the tenant to be struck out and proceed with the hearing of the landlord's petition for eviction.

15. Apparently, the terms of Section 15(1) appear to be imperative. There was a controversy whether the Rent Controller had any jurisdiction to extend the time contemplated by Section 15(1) for the deposit of rent or its payment to the landlord. A Full Bench of the Delhi High Court in Delhi, Cloth &

General Mills Co. Ltd. vs. Hem Chand & Anr. AIR 1972 Delhi 975 (F.B.) held that the Rent Controller had no jurisdiction to condone the delay in deposit of the rent under Section 15 of the Act and it also held that once a default is committed by a tenant, his defence is liable to be struck out under Section 15(7) with no alternative but to order his eviction. This decision to the extent that the time for depositing the rent cannot be extended or the delay cannot be condoned was upheld by this Court in Hem Chand vs. Delhi Cloth & General Mills Co. Ltd. & Anr. AIR 1977 SC 1986, but it did not agree with the Full Bench on the second aspect of the matter that the default must result in the striking out of defence and passing of an order of eviction. This Court also held that to strike out or not to strike out the defence was a matter within the discretion of the Rent Controller and the decree for eviction could not ipso facto be passed merely on the ground of default in depositing the rent under Section 15(2) of the Act. The relevant observations of this Court are thus :

"Now the question that remains is whether the Rent Controller has any discretion to extend the time prescribed in Section 15(1). This Section requires the Controller after hearing the parties, to 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 the arrears of rent with a direction that they continue to pay or deposit month by month, a sum equivalent to the rent. This is a second opportunity given to the tenant to pay arrears of rent. Without the protection given under the Act the landlord can on 15 days' notice get the tenant evicted. 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 or deposit the arrears within one month under Section 15(1). Such payment of 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 the 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)."

16. A Three Judge Bench (Hon'ble V.R. Krishna Iyer, R.S. Pathak and O. Chinnappa Reddy, JJ.) of this Court in Shyamcharan Sharma vs. Dharamdas AIR 1980 SC 587 = 1980 (2) SCC 151, on a consideration of the provisions of the U.P. Accommodation Control Act (41 of 1961), which were similar to Delhi Act, laid down that since Section 13(6) vests in the court the discretion to order the striking out of the defence, it does not clothe the landlord with an automatic right to a decree for eviction nor does it visit the tenant with the penalty of a decree for eviction being straightway passed against him. It further observed as under :

"If S.13 were to be construed as mandatory and not as vesting a discretion in the Court, it might result in the situation that a tenant who has deposited the arrears of rent within the time stipulated by S.13(1) but who fails to deposit thereafter the monthly rent on a single occasion for a cause beyond his control may have his

defence struck out and be liable to summary eviction. We think that S.13 quite clearly confers a discretion, on the court, to strike out or not to strike out the defence, if default is made in deposit or payment of rent as required by S.13(1). If the court has the discretion not to strike out the defence of a tenant committing default in payment or deposit as required by S.13(1), the court surely has the further discretion to condone the default and extend the time for payment or deposit. Such a discretion is a necessary implication of the discretion not to strike out the defence. Another construction may lead, in some cases, to a perversion of the object of the Act, namely, 'the adequate protection of the tenant'. S.12 (3) entitles a tenant to claim protection against eviction on the ground specified in S.12(1)(a) if the tenant makes payment or deposit as required by S.13. On our consideration of S.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 S.12(3)."

17. Both these decisions came to be considered by this Court in *Ram Murty vs. Bhola Nath & Anr.* AIR 1984 SC 1392 = 1984 (3) SCC 111), which was a case under the Delhi Rent Control Act, 1958, and it was laid down that so far as the provisions relating to the striking out of defence contained in Section 15(7) are concerned, they are in pari materia with the provision contained in the M.P. Act and since a Three Judge Bench in *Shyamcharan's case* (supra) had already held that it was within the discretion of the Rent Controller to strike or not to strike out the defence, the Two Judge decision in *Hem Chand vs. Delhi Cloth & General Mills* AIR 1977 SC 1986 shall be treated as overruled. It was laid down as under :

"15. We must confess that the two decisions in *Hem Chand* and *Shyamcharan* (AIR 1980 SC 587) supra, are irreconcilable.

16. It would be incongruous to hold that even if the defence of the tenant is not to be struck out under S.15(7), the tenant must still be visited with the punishment of being deprived of the protection under S.14(2). In *Hem Chand's case* (AIR 1977 SC 1986) 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 straightway make an order for eviction in favour of the landlord under S.14(1)(a). The Court held that the High Court was wrong in its assumption that failure to comply with the requirements of S.15(1) vests in the landlord an 'indefeasible right' to secure an order for the eviction of the tenant under S.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 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 S.14(1), 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 S.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 S.14(2). What is of essence of S.14(2) and of S.15(6) is

whether there has been a substantial compliance with the order passed under S.15(1). The words as required by S.15(1) in these provisions must be construed in a reasonable manner. If the Rent Controller has the discretion under S.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 S.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 S.15(7) and S.14(2) in the context of S.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.

(emphasis supplied)

18. Another Three Judge Bench of this Court in a recent decision in Kamla Devi (Smt) vs. Vasdev (1995) 1 SCC 356, which was also a case under the Delhi Act, has affirmed the decisions rendered in Ram Murty's case (supra) and Shyamcharan's case (supra). The learned Judges (Hon'ble J.S. Verma, S.R. Bharucha & Suhas C.Sen) were of the opinion that the provisions of this Act were similar to the provisions of the Madhya Pradesh Act. They observed as under :

"20. On behalf of the appellant it has been contended that the principles laid down in this case should not be extended to a case governed by the provisions of Delhi Rent Control Act. We do not find any material distinction between the provisions of Section 12(1), (3) and Section 13(1) (5) and (6) of the Madhya Pradesh Act and the corresponding provisions of Section 14(1), and Section 15(1) of the Delhi Act. In fact this argument was rejected in the case of Ram Murti vs. Bhola Nath. In that case, construing the provisions of the Delhi Act, it was held that Section 15(7) conferred a discretionary power on the Rent Controller to strike out the defence of the tenant. That being the position, the Rent Controller had, by legal implication, 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 period or deposit."

(emphasis supplied) At another place, they observed as under :

"21. In coming to this conclusion reliance was placed on the decision in the case of Shyamcharan Sharma case, it was argued on behalf of the respondent that Shyamcharan Sharma case was decided under the Madhya Pradesh Accommodation Control Act, 1961 which had a different scheme altogether and had no application to a case to be decided under the provisions of the Delhi Rent Control Act. This argument was repelled by pointing out in that judgment that the scheme of the Madhya Pradesh Accommodation Control Act, 1961 was almost similar to that of the Delhi Act with regard to the claim of the landlord for eviction, of the tenant on failure to pay, rent. The only difference was that under the Madhya Pradesh Act the landlord had to bring a suit for eviction before a Civil Court under Section 12(1)(a), whereas under

the Delhi Act an application had to be made before the Rent Controller under Section 14(1)(a)."

(emphasis supplied) After noticing the similarities in the Delhi Act and the Madhya Pradesh Act, the Court finally observed as under:

"In our view, sub-section (7) of Section 15 of the Delhi Rent Control Act, 1958 gives a discretion to the Rent Controller and does not contain a mandatory provision for striking out the defence of the tenant against eviction. The Rent Controller may or may not pass an order striking out the defence. The exercise of this discretion will depend upon the facts and circumstances of each case. If the Rent Controller is of the view that in the facts of a particular case the time to make payment or deposit pursuant to an order passed under sub-section (1) of Section 15 should be extended, he may do so by passing a suitable order. Similarly, if he is not satisfied about the case made out by the tenant, he may order the defence against eviction to be struck out. But, the power to strike out the defence against eviction is discretionary and must not be mechanically exercised without any application of mind to the facts of the case."

19. Shyamcharan's case (supra) was cited before the Delhi High Court in the instant case, but it distinguished it on the ground that it was a case under the M.P. Act and was not applicable. It consequently proceeded to strike out the defence of the appellant on the ground that it had committed a default in depositing the rent for the month] of February, 1972 by the 15th of March, 1972. For doing this, it followed the decision of this Court in Hem Chand vs. Delhi Cloth & General Mills AIR 1977 SC 1986. It would be seen that even in that case this Court had observed as under:

"While we agree with the view of the 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 not struck out under Section 15(7) and without hearing 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)."

20. In view of the above discussion, the High Court was not justified in relying upon the decision of this Court in Hem Chand's case as it shall be deemed to have been overruled or, in any case, lost its efficacy as a binding decision in view of the Three Judge Bench decisions in Shyamcharan Sharma vs. Dharamdas AIR 1980 SC 587 and Kamla Devi (Smt) vs. Vasdev (1995) 1 SCC 356. The two Judge Bench in Ram Murty vs. Bhola Nath & Anr. AIR 1984 SC 1392 has already critically examined the decision of this Court in Hem Chand's case (supra) and has held it to be contrary to the three Judge Bench decision in Shyamcharan Sharma's case.

21. Applying the above principles to the instant case, it cannot but be held that the view expressed] by Rent Controller, the Rent Control Tribunal as also the High Court that the time under Section 15(1) for depositing the rent could not be extended nor could the delay be condoned was wholly erroneous. The whole approach, therefore from the beginning, was based on wrong premises. The High Court went a step further. While the Rent Controller and the Rent Control Tribunal had not struck out the defence of the appellant on the ground that 15 days' default in depositing the rent for February, 1972 was not wilful or contumacious, the High Court, on an erroneous view, struck out the defence. We have already noticed above that striking out of defence under Section 15(7) of the Act is in the discretion of the Rent Controller. Since the discretion appears to have been properly exercised by the Rent Controller as also by the Rent Control Tribunal, the High Court, in the particular circumstances of the case, was not justified in interfering with that discretion and striking out the defence of the appellant. The High Court, while considering this question, has observed as under :

"In other appeal S.A.O. no. 193 of 1973 of the landlord challenging the Judgment and order of the Tribunal dismissing his application under Section 15(7) of the Act, defence of the appellant tenant was not struck off by the Controller. In other words the tenant was allowed to defend the eviction case. He was allowed to lead evidence and take part during the trial of the eviction proceedings.

The appellant had claimed condonation for the purpose of Section 15(7) of the Action the ground that the attorney of the appellant had fallen ill and the partner of the firm Ajit Prasad had forgotten the date of deposit on account of being busy in connection with the election in which his brother was also a candidate. These facts are not sufficient to condone the delay in deposit of rent. These acts amount to negligence on the part of the appellant which is a partnership firm. The attorney had fallen ill and one partner had forgotten the date of deposit, there were other partners and other officials of the firm who ought to have taken steps to deposit within time. I am, therefore, of the view that it was not a fit case for refusing to strike off the defence of the appellant tenant under Section 15(7) of the Act. I, therefore, set aside the Judgment and order of the Tribunal and the Controller and strike off the defence of the appellant."

22. The High Court thus struck out the defence by substituting its own discretion in place of the Rent Controller and the Tribunal both of whom had held that the default by the appellant was not wilful. The main question was whether appellant was entitled to extension of time in depositing the rent or should he be evicted for not depositing the rent for only one month in time particularly when the default was not wilful or contumacious. At one time, we were inclined to remand the case to the Rent Controller so that the appellant's plea regarding extension of time in depositing the rent for the month of February, 1972 may be considered but having regard to the fact that the appellant had already pleaded those facts which have already been considered by the High Court, we feel that it would not be in the interest of justice now to remand the case as the High Court appears to be justified in coming to the conclusion that the appellant was negligent and careless as the rent could still be deposited by any other partner, if the attorney had fallen ill or one partner had forgotten the date of deposit. Any other explanation offered by the appellant would be obviously an after thought

and, therefore, as pointed out earlier, it will not serve any purpose to remand the case to the Rent Controller. The result is that the appeal has to be dismissed and is hereby dismissed but without any order as to costs allowing-three months time to the appellant to vacate the premises on failing the usual undertaking to this effect in this Court failing which the respondent-landlady will be entitled to recover possession from the appellant through police force.