Dina Nath (D) By Lrs. & Anr vs Subhash Chand Saini & Ors on 16 April, 2014

Author: T.S. Thakur

Bench: T.S. Thakur, Jagdish Singh Khehar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4563 OF 2014
(Arising out of S.L.P (C) No.26941 of 2011)

Dina Nath (D) by Lrs. & Anr. …Appellants

Versus

Subhash Chand Saini & Ors. …Respondents

J U D G M E N T

T.S. Thakur, J.

1. Leave granted.

2. I have had the privilege of going through the elaborate Order proposed by my Esteemed Brother J.S. Khehar, J. While I entirely agree with the view that the power to strike out the defence vested in the Court under Section 15 (7) of the Delhi Rent Control Act is discretionary and ought to be exercised only when the tenant deliberately, contumaciously or negligently fails to deposit the rent due from him, I have, however, not been able to persuade myself to hold that such deliberate, neglect or contumacious failure has been established against the petitioner-tenant in the instant case so as to justify the exceptional step of the Court striking out his defence at the threshold.

3. The facts giving rise to the controversy have been set out at great length in the judgment of my Erudite Brother. I, therefore, do not consider it necessary to recapitulate the same over again except to the extent it may be necessary in the course of this judgment to do so. Before adverting to the factual matrix relevant to the question of striking out the tenant's defence, we need to remind ourselves of the spirit underlying the Rent Control Legislations in general and Delhi Rent Control Act, 1958 in particular. The historical perspective in which these legislations came about has been traced in several decisions of this Court. Nagindas Ramdas v. Dalpatram Ichharam @ Brijram and

Ors. (1974) 1 SCC 242 is one such decision in which this Court traced the historical compulsions that led to the enactment of the rent laws in this country. The broad policy underlying these laws including the Delhi Rent Control Act, observed this Court, was to protect the tenants against unreasonable demands of the landlords as to rents, evictions and repairs. The following passage is an apposite reminder of the times that saw the enactment of these laws and the purpose underlying the same:

> "...The strain of the last World War, Industrial Revolution, the large-scale exodus of the working people to urban areas and the social and political changes brought in their wake social problems of considerable magnitude and complexity and their concomitant evils. The country was faced with spiralling inflation, soaring cost of living, increasing urban population and scarcity of accommodation. Rack renting and large scale eviction of tenants under the guise of the ordinary law, exacerbated those conditions making the economic life of the community unstable and insecure. To tackle these problems and curb these evils, the Legislatures of the States in India enacted Rent Control legislations...
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> ...The language of the preambles of the Delhi Rent Act and Madras Rent Act is strikingly similar. The broad policy and purpose as indicated in their preambles is, substantially the same viz., "to protect tenants against their landlords in respect of the rents, evictions and repairs". With the same beneficent end in view, all the three Acts interfere with contractual tenancies and make provisions for fixation of fair and standard rents, or protection against eviction of tenants not only during the continuance of their contractual tenure but also after its determination. Indeed, the neologism "statutory tenant" has come into existence because of this protective policy which is common to all enactments of this kind..." (emphasis supplied)

4. The above decision was followed in D.C. Bhatia and Ors. v. Union of India and Anr. (1995) 1 SCC 104 in which this Court referred to the challenge mounted against such rent laws and the restrictions placed by the same upon the rights of the landlord to seek eviction of their tenants. This Court while upholding the constitutional vires of The Delhi Rent Control Act, 1958 restricted the eviction of tenants except on the special grounds stated in the statute. Reference may also be made to Ashoka Marketing Ltd. and Anr. v. Punjab National Bank and Ors. (1990) 4 SCC 406 where the Delhi Rent Act once again fell for consideration before a Constitution Bench of this Court. Relying upon the Statement of Objects and Reasons of the enactment, this Court held that the purpose of the Act, inter alia, was 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:
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> (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
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> (c) to give tenants a larger measure of protection against eviction.

This indicates that the object underlying the Rent Control Act is to make 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…" (empahasis supplied)

5. The Delhi Rent Control Act though originally drafted with the highly pro-tenant objective has been amended in the years 1960, 1963, 1976, 1984, 1988 and 1995. The Delhi Rent (Repeal) Bill, 2013 is currently pending before the Parliament which aims at safeguarding the interests of landlords. Significantly, the 1988 Amendment limited the application of the Delhi Rent Control Act to only such premises as were let out for a rent of less than Rs.3500/- per month. In D.C. Bhatia's case (supra) this Court observed that the object of the Amending Act was quite different from the objects of the Parent Act and that the Amending Act was an attempt to rationalize the Rent Control Act by restoring the balance between the interests of the landlords and tenants. The Court said:

> "…As a result of these legislations a host of problems have cropped up. These problems have been stated in the various Committee Reports set out earlier in the judgment. Representations were also made by the landlords highlighting these problems. In order to tackle the problems created by the Rent Act, the Delhi Rent Control Act was amended in 1988 by Delhi Rent Control Amending Act, 1988 (Act 57 of 1988).
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> …The objects of the Amending Act are quite different from the objects of the parent Act. One of the objects of Amending Act was to rationalise the Rent Control Law by bringing about a balance between the interest of landlords and tenants. The object was not merely to protect the weaker section of the community. In fact, the representations made by the landlords' association and the reports of various Committees indicated, the laws were being very often abused by the rich tenants against poor or middle class landlords. The Rent Act had brought to a halt house-building activity for letting out. Many people with accommodation to spare did not let out such accommodation for the fear of losing the accommodation altogether. As a result of all these, there was acute shortage of accommodation which caused hardship to the rich and the poor alike. In the light of this experience, the Amending Act of 1988 was passed.

> ...In order to strike a balance between the interests of the landlords and also the tenants and for giving a boost to house building activity, the Legislature in its wisdom has decided to restrict the protection of the Rent Act only to those premises for which rent is payable upto the sum of Rs. 3,500/- per month and has decided not to extend this statutory protection to the premises constructed on or after the date of coming into operation of the Amending Act for a period of ten years. This is a matter of legislative policy. The Legislature could have repealed the Rent Act altogether. It can also repeal it step by step. It has decided to confine the statutory protection to the existing tenancies whose monthly rent did not exceed Rs. 3,500/- ." (emphasis supplied)

6. Having said that, we must refer to the decision of this Court in M/s Rahabhar Productions Pvt. Ltd. v. Rajendra K. Tandon (1998) 4 SCC 49, where this Court held that while the provisions of the rent law must be construed harmoniously so as to balance the rights and obligations of the tenant and the landlord, Courts cannot be unmindful of the fact that the legislative object of the law continues to be to curb the tendency of the landlords to evict the tenants on one pretext or the other so that the former can rent out the premises at a higher rate of rent. This Court observed:

> "...The Act which was brought on the Statute book in 1958 is a composite legislation in the sense that while providing protection to the tenants who, under common law, including Transfer of Property Act, could be evicted from the premises let out to them, at any time by the landlord on the termination of their tenancy, it restricts the right of the landlords to evict the tenants at their will. The Act is thus beneficial as also restrictive in nature. The Courts are, therefore, under a legal compulsion to harmoniously read the provisions of the Act so as to balance the rights of the landlord and the obligations of the tenant towards each other keeping in mind that one of the objects of the legislature while enacting the Act was to curb the tendency of the greedy landlords to throw out the tenants, paying lower rent, in the name of personal occupation and rent out the premises at the market rate..." (emphasis supplied)

7. There is thus no gainsaying that while legislative intervention has tried to moderate the law with a view to restoring the balance between the rights and obligations of the landlords on the one hand and the tenants on the other, the spirit and purpose underlying the rent legislation continues to be to protect the tenants against arbitrary and unfair demands for eviction or enhancement of rents. The pendulum has undoubtedly swung in favour of the landlords not only by reason of these amendments to the rent legislation which were perceived to be halting house-building activity and leading to a visible reluctance among the owners to let out the available accommodation for fear of losing the same altogether. Judicial pronouncements have also liberalized the approach to be adopted qua the landlord's prayer for eviction when such eviction is sought on the ground of bonafide personal need of the landlord. Decisions of this Court in Mst. Bega Begum and Ors. v. Abdul Ahad Khan (Dead) by LRs. and Ors. (1979) 1 SCC 273, M/s Central Tobacoo Co. Bangalore v. Chandra Pakash 1969 (2) UJ 432 and Phiroze Bamanji Desai v. Chandrakant N. Patel and Ors. 1974 (1) SCC 661, interpreted the Rent Control legislation rather narrowly placing a relatively heavier burden on the landlords in cases where vacation of the tenants was sought on the ground of bona

fide personal requirement of the former. Recent decisions have made a significant departure from that approach. In Mohd. Ayub and Anr. v. Mukesh Chand (2012) 2 SCC 155 this Court observed that the landlord's requirement need not be one of dire necessity. So long as the need was bona fide, the mere affluence of the landlord would not be a ground to reject his application for eviction. To the same effect is the decision of this Court in Bhimanagouda Basanagouda Patil v. Mohd. Gudusaheb (2003) 3 SCC 101.

8. The noticeable shift in the approach adopted towards eviction matters based on personal bona fide requirement does not, however, necessarily cascade into a similar approach towards grounds other than personal requirement, especially where the default in the payment of rent is set up as a ground for eviction. In such cases, the Courts will have to adopt a relatively liberal approach towards the tenant. Just because there is a default in payment of rent may not necessarily result in an order of eviction unless the statute clearly or unequivocally so mandates.

9. In the case at hand, Section 15(7) of the Delhi Rent Control Act leaves wide discretion with the Trial Court whether or not to strike out the defence of the tenant even where a default is proved. Exercise of that discretion in turn depends upon whether or not the default in payment of rent is seen by the Courts to be deliberate or contumacious in nature. That is because Section 15(7) of the Delhi Rent Control Act cannot be so interpreted as to negate or frustrate the spirit of the legislation which aims at granting protection to the tenants from eviction. The provision must be so construed as to promote the object underlying the Act. To the same effect are the pronouncements of this Court in which this Court has considered striking off the defence of the tenant to be an "exceptional step" warranted only when the tenant's conduct is seen to be negligent, deliberate or contumacious.

10. In Miss Santosh Mehta v. Om Prakash and Ors. (1980) 3 SCC 610 while interpreting Section 15 (7) of the Delhi Rent Control Act Krishna Iyer J. held that the power to strike out the party's defence is an exceptional step and is 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. One can do no better than to reproduce the passage in which this Court indicated the correct approach to be adopted in such matters. This Court said:

> "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 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 esteem following upon a mere failure to pay rent. First of all, there must be a failure to pay rent which, in the context, indicates willful 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 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.
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> 4...The effect of striking out of the defence under s. 15(7) is that the tenant is deprived of the protection given by s. 14 and, therefore, the powers under s. 15(7) of the Act must be exercised with due circumspection." (emphasis supplied)

11. Subsequent decisions rendered on the subject have not, in my opinion, in the least bit diluted leave alone digressed from the above principles that governs the exercise of power under Section 15(7). Even later decision of this Court in Miss Santosh Mehta's case (supra) also recognises that mere failure to pay rent is not enough to justify an order striking out the defence. It is only wilful failure, deliberate default or volitional non-performance that can call for the exercise of that extraordinary power vested in the Court. More importantly, the plenitude of the discretionary power of the Court under Section 15 (7) was held to be vesting a wise discretion and not an automatic weapon to be used against the tenant. The power to strike out the defence is available only to overcome intransigence, especially when the power is penal in nature, the exercise whereof would deprive the tenant of the protection available to him under Section 14. The same must, therefore, be exercised with due care and circumspection.

12. Even in Smt. Kamla Devi v. Shri Vasudev (1995) 1 SCC 356 this Court reiterated 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. The exercise of that discretion obviously depends upon the facts and circumstances of each case. The decision in M/s Jain Motor Car Co., Delhi v. Smt. Swayam Prabha Jain & Anr. (1996) 3 SCC 55 does not disturb the legal parameters regulating the exercise of the power but deals more with the facts and circumstances of that case in which the power was found to have been rightly exercised.

13. Coming then to the case at hand there are three distinct aspects from which the question of default in payment of rent has to be viewed. The first and foremost is whether the arrears which the Court determined and directed the petitioner to pay were paid. The answer to that question is in the affirmative. The Trial Court passed an order dated 21-04-2008 under Section 15(1) of the Delhi Rent Control Act, 1958 directing the petitioner 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 English calendar month. It is not in dispute that the petitioner complied with the order regarding deposit of arrears in the right earnest inasmuch as on 21st April, 2008, the date on which order under Section 15(1) was passed. He paid to respondent No.1 the entire amount in cash representing arrears of rent from 1st November, 2007 to April, 2008.

14. The second aspect is that over and above the amount directed to be deposited, the petitioner paid an amount equivalent to ten months rent, although there was neither any legal obligation cast upon him to do so nor was any direction issued by the Trial Court for making any such payment. It is also

common ground that though the excess amount paid by the petitioner did not represent any admitted liability, the excess amount received was neither adjusted against future rent nor was it refunded to him. It is significant to note that although the respondent-landlord had claimed arrears even for the period beginning from 1st January, 2007 to October, 2007, the Trial Court had excluded that period from its order as the liability for that period was disputed on account of the specific case set up by the petitioner that rent for the said period stood paid. Adjustment of the excess amount paid to the respondent-landlord towards the future rent for the period commencing from 1st May, 2008 was the only legal option. Payment of the said excess amount having been acknowledged by the landlord, the same must in the absence of a direction from the Court be deemed to have been received and held by the landlord for the benefit of the tenant. Adjustment of any such excess amount against future liability was in that view the only possible and legally valid method of appropriation of that amount. Viewed thus, the amount paid by the petitioner on 21st April, 2008 covered the entire period upto February, 2009.

15. The third aspect is that between the date of the order dated 21st April, 2008 under Section 15(1) of the Act till February, 2009 the petitioner had made further payments of rent. One of these payments was made on 27th June, 2008 while the second payment was made on 17th December, 2008. These payments represented rent for a period of six months. This means that the petitioner had paid advance rent upto 31st August, 2009. Not only that, the petitioner had made two further deposits, one on 1st May, 2009 and the second on 5th May, 2009. These payments when taken into consideration cleared the entire rent liability of the petitioner for a period of one year and nine months commencing from 1st September, 2009 onwards. If that be so the petitioner was not in default on the date of the order passed by the Trial Court striking out his defence and for a considerable period beyond that. The petitioner has in the special leave petition referred to certain subsequent payments also but we consider it unnecessary to go into those details. What is important is that as on the date of the order passed by the Trial Court on 21st April, 2008 itself the entire arrears directed to be deposited by the petitioner stood paid by him and so also on the date of the order passed by the Trial Court striking out his defence, rent for the entire intervening period and even beyond had been paid. These payments may require reconciliation, calculations and suitable adjustments against the months for which rent was payable but what cannot be disputed is that the amount which the petitioner was called upon to pay and which he has, pursuant to the direction of the Trial Court, paid or deposited has been at all relevant points of time in excess of what was payable to the landlord. The charge of contumacious failure and deliberate default in making the payment levelled against the tenant is, therefore, not well-founded. The petitioner on the contrary was at all points of time keen to pay the amount of rent in excess of what was lawfully due. This may have been partly because of the consequences that flow from non-payment and partly because the amount of contractual rent is, by the current standard of market rent, very meagre. The withholding of such a meagre amount was a risk that no prudent tenant protected under the Rent Control law of the land could take nor was it a case where by withholding the kind of amount which was due towards rent would have in any manner benefitted the tenant, just as the same would not have deprived the landlord of any major financial income from the property let out by him. It is true that just because the amount payable for the premises is low and payment or non- payment thereof makes little difference to either the tenant or the landlord, is no reason for the tenant not paying the rent as and when due. The question, however, is not whether the denial of the amount would have

caused any major prejudice to the landlord or put the tenant under any financial burden. The question is whether the tenant was guilty of contumacious conduct in withholding such payment. While answering that question, the amount of rent payable for the premises may be a factor which cannot be totally brushed aside. Suffice it to say that the facts and circumstances of the case at hand do not, in my opinion, suggest any negligence, defiance or contumacious non-payment of the amount due to the landlord to warrant the taking of that "exceptional step" which is bound to render the tenant defenceless in his contest against the landlord.

16. It is noteworthy that in the course of hearing before us, learned counsel for the petitioner-tenant had offered to raise rent by ten times of the current amount and pay the same in advance for a period of five years to show his bona fides. From the point of view of the landlords this may be seen as a damage control desperate bid to avoid eviction by winning the sympathy of the Court but from the point of view of the tenant it only shows that the tenant does not grudge the landlord getting what is legitimately due to him. The cumulative effect of all these circumstances, in my view, entitles the tenant to an opportunity to contest the suit for eviction. It is a different matter that the contest may eventually result in his eviction but there is no need to prejudge the matter on merits nor any valid reason to deprive the tenant-petitioner the bare minimum opportunity to contest the eviction petition on merits.

17. In the result, I allow this appeal, set aside the order passed by the Courts below and dismiss the petition filed by the respondent-landlords under Section 15(7) of the Delhi Rent Control Act leaving it open to the petitioner to make good his offer by enhancing the rent voluntarily by ten times the current rent and depositing the future rent for a period of five years, as offered by him, in advance. The parties are left to bear their own costs.

……..J. (T.S. Thakur) New Delhi April 16, 2014 "REPORTABLE" IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 4563 OF 2014 (ARISING OUT OF S.L.P. (C) No. 26941 OF 2011) Dina Nath (D) By Lrs. & Anr. .... Appellants Versus Subhash Chand Saini & Ors. .... Respondents J U D G M E N T Jagdish Singh Khehar, J.

1. Leave granted.

2. It is not a matter of dispute that the appellants rented a shop bearing no. 1445-A, Dariba Kalan, Delhi, wherein the monthly payable rent is Rs. 66/-. The 25 respondents jointly own the abovementioned tenanted premises. The rent for the shop is paid to respondent no. 1, who holds a power of attorney to collect rent (on behalf of the respondents). In November 2007, the respondents filed an eviction petition under Section 14 (1) (a) (b) (c) and (j) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Rent Act") seeking repossession of the rented premises, for a variety of reasons. It was, inter alia, alleged, that the appellants had neither paid nor tendered rent with effect from January, 2007, despite the service of a demand notice, requiring the tenants to pay arrears of rent. It was also asserted, that the appellants had sublet the tenanted premises to his son. In this behalf, it was alleged that the appellant's son was using the shop for running a "halwai" (traditional Indian sweetmeat maker) business. The shop was originally let out for selling cold drinks, biscuits etc. On the issue of usage, it was pointed out, that since the shop was now being used

for running "halwai" business, the appellants were using LPG cylinders in the rented premises. This, according to the respondents, had damaged the old construction. Additionally it was alleged, that the appellants had also raised illegal constructions, and had thereby altered the structure of the rented shop. In this behalf it was asserted, that the appellants had lowered the floor of the premises (by approximately 3 feet below the plinth level) by excavating and dismantling the flooring. It was also alleged, that a 'chabutra' (a covered sitting platform) measuring about 4.5 feet and a 'chhajja' (over hanging cover) measuring 7.8 feet, had also been constructed unauthorizedly by the appellants. It was also asserted, that the appellants had demolished the side pillars of the constructed portion of the rented premises, and had also removed both the side walls on which the entire roof, and upper storeys were resting. It was also alleged, that the appellants had demolished the front door wall, and had installed a loft in the shop. Likewise, the appellants were alleged to have demolished the back wall of the shop to increase the length of the tenanted premises.

3. The appellants entered appearance before the Rent Controller and contested the eviction petition. For the said purpose, the appellants filed a written statement on 7.2.2008, denying and disputing all the allegations made by the respondents in the eviction petition.

4. Since one of the grounds on which the eviction of the appellants was sought, was on account of non-payment of rent with effect from January, 2007; the Rent Controller passed an order dated 21.4.2008 under Section 15(1) of the Rent Act, requiring the appellants to deposit the undisputed arrears of rent, and to pay future rent. The aforesaid order of the Rent Controller is being extracted hereunder :-

> "E-931/2007 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" A perusal of the order dated 21.4.2008 reveals, that the Rent Controller having taken into consideration, the assertion made in the written statement, that the appellants have already paid rent from 1.1.2007 up to October 2007, directed the appellants to pay rent only with effect from 1.11.2007. The arrears were ordered to be paid within 30 days (of 21.4.2008). Future rent was ordered to be paid every month (i.e., "month by month") before the 15th day of each succeeding English calendar month.

5. On account of the non-compliance of the order dated 21.4.2008, the respondents filed an application under Section 15(7) of the Rent Act on 28.4.2009, praying for striking out the defence of

the appellants. The appellants filed a reply to the aforesaid application on 17.8.2009. Before filing the aforesaid reply, on 1.5.2009 i.e., on the very day the appellants came to know of the filing of the application under Section 15(7) of the Rent Act, the appellants deposited rent before the Rent Controller, for the period from November, 2009 to July, 2010. In making the aforesaid deposit, the appellants had mistakenly mentioned that the rent was being deposited from November, 2009, although they ought to have deposited rent from November, 2008. Immediately on realizing the aforesaid mistake, the appellants again deposited rent before the Rent Controller for the period from November, 2008 to October 2009 on 5.5.2009.

6. For an effective determination of the controversy before us, it is essential to extract herein the factual position indicated by the appellants in their reply dated 17.8.2009 (to the application filed by the respondents under Section 15(7) of the Rent Act). Accordingly, paragraphs 3, 4 and 6 of the abovementioned reply, are being reproduced hereunder :-

> "3. Para 3 of the application in so far it states about contents of the written statement is a matter of record. However, it is specifically denied that the respondent has made any false statement or furnished a false information before this Hon'ble Court. In fact the rent was paid from January 2007 to October 2007 to the petitioner No.1 but he deliberately did not issue any rent receipt and because the respondent had no proof about the payment of rent in writing, to avoid any kind of controversy, the rent for the period with effect from January 2007 onwards was paid by respondent No.1 to petitioner No.1 vide receipt dated 21.4.2008.
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> 4. Para 4 of the application is admitted. It would not be out of place to mention that the Petitioner No.1 used to collect rent from the respondent No.1 not every month but after 3 months or 6 months or years time. The respondent No.1, at the time when the order u/s.

15(1) of DRC Act was passed, was not present in the Court. However, passing of the order was duly communicated through the clerk of the counsel to the respondent No.1. In the evening of 21.4.2008 the petitioner No.1 personally went to the respondent No.1 and collected the rent from him with effect from 1.1.2007 to 30.4.2008. He did not adjust the rent already paid and has already submitted the rate of rent being too meager and the respondent No.1 was not interested to enter into any controversy, the rent for the period with effect from 1.1.2007 to 30.4.2008 was paid by the respondent No.1 to the petitioner No.1 against Receipt No. 21 dated 21.4.2008 which also included the house tax for the years 2007-2008 and 2008-2009. The petitioner No.1 also stated to the respondent No. 1 that he may not deposit rent in the court as he will directly receive the rent from him by issuing receipts. The respondent No.1 being an old and aged person, not knowing the intricacies of law and also the repercussions of non-deposit of rent every month believed the petitioner No.1 in good faith. Though on 21.4.2008 the respondent No. 1 offered to pay advance rent for a years time yet the petitioner No.1 refused to accept the same. It was, however, a fault on the part of respondent No.1 for not depositing the rent in the court. After 21.4.2008 the petitioner No.1 again collected the rent for the month of May 2008 in the end of May 2008 but issued the receipt subsequently which was dated 27.6.2008. Thereafter despite request of the respondent No.1 the

petitioner No.1 procrastinated the acceptance of rent and finally in the month of October 2008 he accepted the rent for the period with effect from 1.6.2008 to 31.10.2008 and again he did not issue a rent receipt. The rent receipt was later on issued in the month of December 2008 when the respondent No.1 asked for the same, number of times. After October 2008 the petitioner No. 1 did not accept the rent from the respondent No.2 because due to his illness the respondent No.1 was not coming to the shop for some time. It was only because of serious illness of respondent No.1, due to which the counsel could not be contacted by him so as to deposit the rent in the court. On 28.4.2009 the petitioner No.1 taking advantage of the situation has filed the present application.

xxx xxx xxx

6. Para 6 of the application is not admitted as such and hence denied. As already submitted herein above the rent till the month of March 2008 was paid in October 2008 itself but the petitioner No.1 deliberately issued receipt in the month of December 2008 and now for his own deliberate attempt and the ignorance of respondent No.1 the petitioner No.1 is trying to take advantage. There has never been a deliberate attempt on the part of respondent No.1 of noncompliance of the orders passed by this Hon'ble Court but it was only account of misrepresentation of petitioner No.1, non-intentional violation occurred." (emphasis is mine)

7. By an order dated 14.9.2009 the Rent Controller allowed the application filed by the respondents under Section 15(7) of the Rent Act, and thereby, struck off the defence of the appellants in the pending eviction petition. Dissatisfied with the order passed by the Rent Controller, the appellants approached the Rent Control Tribunal. By an order dated 24.5.2010, the Rent Control Tribunal dismissed the appeal preferred by the appellants. Dissatisfied, the appellants approached the High Court of Delhi (hereinafter referred to as "the High Court") by filing a petition under Article 227 of the Constitution of India, wherein, the appellants assailed the order passed by the Rent Controller dated 14.9.2009, as well as, the order of the Rent Control Tribunal dated 24.5.2010. The High Court dismissed the petition filed under Article 227 on 10.5.2011. It is, therefore, that the appellants approached this Court, by filing a Petition for Special Leave to Appeal (C) no. 26941 of 2011, wherein we have now granted leave.

8. The question for this Court's consideration is, whether it was just and appropriate for the succeeding courts (the Rent Controller, Rent Control Tribunal and the High Court) to have accepted the prayer made by the respondents, for striking out the defence of the appellants, in the eviction proceedings. For determining the issue in hand, it is essential to extract herein Section 15 of the Rent Act. The same is being reproduced hereunder :-

> "15. When a tenant can get the benefit of protection against eviction.
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> 1) In every proceeding of 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.

2) 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.

3) 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 this 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.

4) 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.

5) 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.

6) If a tenant makes payment or deposit as required by sub-section (1) or subsection (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.

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."

9. It is not a matter of dispute, that the Rent Controller had passed an order dated 21.4.2008 under Section 15(1) of the Rent Act. By the above order, the Rent Controller had required the appellants to pay arrears of rent to the respondents from October 2007 upto date, within 30 days (i.e., by 21st of May, 2008). The appellants were required to pay future rent at the rate of Rs. 66/- per month, "month by month", by the 15th day of each succeeding English calendar month. Even though I will deal with the actual details of the delay in payment of future rent, "month by month", it is clear from the acknowledged factual position disclosed by the appellants in their reply dated 17.8.2009, that there was delay in doing so. Despite this acknowledged position, the issue that arises for consideration is, whether the said delay would be sufficient by itself, in terms of the mandate contained under Section 15(7) of the Rent Act, to strike out the defence of the appellants. Insofar as the instant issue is concerned reference may be made to the provision itself (Section 15(7) of the Rent Act), which clearly uses the word "may" with reference to striking out the defence of a tenant. The use of the word "may" postulates, that a discretion is vested with the Rent Controller to strike out (or not to strike out) the defence of a tenant, who has committed breach of an order passed under Section 15(1) of the Rent Act. It is therefore apparent, that despite non-compliance by a tenant, of directions issued under Section 15(1) of the Rent Act, there would be situations wherein the defence of a tenant would not be struck off. The issue in hand is no longer res integra. This Court has had various occasions to interpret Section 15(7) of the Rent Act, wherein it has laid down the parameters to be taken into consideration, while passing an order for striking out the defence of the tenant (under Section 15(7) of the Rent Act). I have endeavoured to examine a few of those judgments, in the following paragraph.

10.1. The power of the Rent Controller under Section 15(7) of the Rent Act to strike out a tenant's defence in an eviction petition on her failure to deposit rent, came to be examined by this Court in Miss Santosh Mehta Vs. Om Prakash and Others, (1980) 3 SCC 610. In the aforesaid judgment, this Court held 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 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. There is no indication whatsoever in the Act to show that the exercise of the power of striking out of the defence under Section 15(7) was imperative whenever the tenant failed to deposit or pay any amount as required by Section 15. The provisions contained in Section 15(7) of the Act are directory and not mandatory. It cannot be disputed that Section 15(7) is a penal provision and gives to the Controller discretionary power in the matter of striking out of the defence, and that in appropriate cases, the Controller may refuse to visit upon the tenant the penalty of non-payment or non-deposit. 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." (emphasis is mine) 10.2. On the issue in hand, reference may also be made to the judgment of this Court in Kamla Devi Vs. Vasdev, (1995) 1 SCC 356. In the instant judgment, this Court opined that sub-section (7) of Section 15 of the Rent Act allows a discretion to the Rent Controller, to strike out the tenant's defence, in case of non-compliance of direction to deposit rent. It was clearly opined, that Section 15(7) of the Rent Act did not postulate a mandatory provision for striking out the defence of the tenant, on account of failure to make payment or deposit pursuant to an order passed by the Rent Controller under Section 15(1) of the Rent Act. While so holding, this Court observed as under:-

"17. We are unable to uphold this contention. In our view, it is not obligatory for the Rent Controller to strike out the defence of the tenant under Section 15(7) of the Delhi Act, if the tenant fails to make payment or deposit as directed by an order passed under Section 15(1). The language of Sub-section (7) of Section 15 is that 'the Controller may order the defence against eviction to be struck out'. That clearly means, the Controller, in a given case, may not pass such an order. It must depend upon the facts of the case and the discretion of the Controller whether such a drastic order should or should not be passed.

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22. The unreasonableness of the construction suggested by the appellant, is well illustrated by the case of Santosh Mehta v. Om Prakash and Anr: (1980) 3 SCR 325 . In that case, the tenant was a working woman, who had engaged an advocate to represent her in a dispute with the landlord. She duly paid all the arrears of rent by cheque or in cash to her advocate, who failed to deposit the amount or to pay to the landlord, as directed by the Rent Controller. On an application made by the landlord, the Rent Controller struck out the defence of the tenant under Section 15(7) of the Delhi Rent Control Act. A Bench of two Judges of this Court held that the exercise of power of striking out the defence under Section 15(7) was not imperative whenever the tenant failed to deposit or pay any amount as required by Section 15. The provisions contained in Section 15(7) of the Act were directory and not mandatory.

> Section 15(7) was a penal provision and gave the Rent Controller discretionary power in the matter of striking out of the defence. It was ultimately held that the order of the Rent Controller striking out the defence of the tenant in the facts of that case was improper. The consequential order of eviction was set aside.
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> 23. We are unable to uphold the contention of the appellant that the case of Ram Murti v. Bhola Nath and Anr.: (AIR (1984) SC 1392), was wrongly decided and reliance was wrongly placed in that case on the decision of a Bench of three Judges of this Court in the case of Shyamcharan Sharma v. Dharamdas : (1980) 2 SCR 334. 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." (emphasis is mine) 10.3. On the issue in hand, reference was also made to the decision rendered by this Court in Jain Motor Car Co., Delhi Vs. Swayam Prabha Jain, (1996) 3 SCC 55. Therein, this Court examined a case where a single default had been committed by the tenant. The tenant had not deposited rent for the month of February 1972. On the issue of striking out the defence of the tenant under Section 15(7) of the Rent Act, this Court held as under:-

> "21. Applying the above principles to the instant case, it cannot but be held that the view expressed by the 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 corneous 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 :
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> 'In the 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,

the 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 Act on 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 the rent 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 the 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 filing 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." (emphasis is mine) A perusal of the above conclusions, recorded in Jain Motor Co., Delhi's case (supra) reveals, that even a single willful default, could be sufficient in striking out a tenant's defence.

10.4. The interpretation with reference to striking out the defence of a tenant under Section 15(7) of the Rent Act, also came up for consideration before this Court in Aero Traders (P) Ltd. Vs. Ravinder Kumar Suri, (2004) 8 SCC 307, wherein, this Court opined as under:-

> "6. The question which, therefore, requires consideration is whether the appellant has made out any ground for exercising discretion in his favour of not striking out his defence. According to Black's Law Dictionary "judicial discretion" means the exercise of judgment by a judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate. (See 27 Corpus Juris Secundum page
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> 289). When it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice and not according to private opinion; according to law and not humour. It only gives certain latitude or liberty accorded by statute or rules, to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him.

7. In the present case, the finding of the Rent Controller and also of the Rent Control Tribunal is that the appellant set up a totally false plea of his having sent the rent through cheques to the landlord. Apart from pleading that he had sent the amount through cheques, he pleaded no other fact which could be taken into consideration by the Rent Controller for exercising discretion in his favour. It may be noted that the premises are commercial and are situate in Karol Bagh, which is a prime business area of Delhi and the rent is a paltry sum of Rs. 30/- per month. But the appellant did not pay even this small amount of rent, which is virtually a pittance, and has remained in arrears for a long period of time. There is absolutely no ground on which any discretion could be exercised in his favour. The High Court was, therefore, perfectly justified in setting aside the order passed by the Rent Control Tribunal and restoring that of the Rent Controller." (emphasis is mine) 10.5. Last of all reference may be made to the recent decision of this Court in Amrit Lal Vs. Shiv Narain Gupta, (2010) 15 SCC 510. In the instant case the Rent Controller in exercise of the discretion vested in him under Section 15(7) of the Rent Act, had struck off the defence of the tenant. The Appellate Authority, however, reversed the judgment of the Rent Controller. Thereupon, the matter came up for consideration before the High Court under Article 227 of the Constitution of India. The High Court set aside the order passed by the Appellate Authority. The tenant thereupon approached this Court, assailing the order of striking off his defence. While adjudicating upon the controversy, this Court held as under:-

> "11. So far as the order striking out the defence of the tenant is concerned, it is clear that as far back as on 27.10.1983, the trial court has passed a judicial order under Section 15(1) of the Act, directing the tenant to deposit the rent month by month. Instead, the tenant defaulted in making the deposits for a period of about three-and-a-half years. The learned counsel for the appellant submitted that striking out

> defence against eviction is an order which entails serious consequences on the tenant and ordinarily the defence should not be struck off unless the default is contumacious or deliberate. Sub-section (7) of Section 15 confers a discretion on the Controller who may order the defence against eviction to be struck out and proceed with the hearing of the application if a tenant fails to make payment or deposit, as required by Section 15. In the present case, the tenant stopped making deposits from the month of October 1992. For the period between October 1992 to March 1993, it can be understood that the tenant believing that there was a compromise, did not make the deposit but the factum of compromise was disowned by the landlord on 23-3-1993. If the tenant believed bona fide that there was a compromise, then, he should have acted accordingly and paid or tendered the rent to the landlord @ Rs.500 per month which was agreed upon between the parties on his own saying. If the landlord was disputing compromise, then the tenant should have tendered or deposited the rent before the Controller. There is a complete silence on the part of the tenant in paying or tendering the rent for the period for which he has defaulted. In such circumstances, the default in payment of rent cannot be said to be bona fide. The proceedings before the Controller have unfortunately remained pending for a long time, almost 20 years by this time.
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> 12. In the facts and circumstances of this case, it cannot be said that the High Court did not have jurisdiction or exceeded in exercise of jurisdiction in entertaining the petition under Article 227 of the Constitution and setting aside the order of the Appellate Authority and restoring that of the trial court." (emphasis is mine)

11. It is apparent, that this Court has clearly opined, that the power vested under Section 15(7) of the Rent Act to strike off the defence of a tenant, is discretionary and not mandatory. It is therefore imperative to understand, that every violation in implementation of the direction(s) issued by a Rent Controller under Section 15(1) of the Rent Act, will not ipso facto lead to the striking out the defence of a tenant. A Rent Controller must exercise his discretion, keeping in mind the nature of the non-compliance. If the non-compliance is not serious, or is based on good reason, a Rent Controller would not strike off the defence of the tenant. Only when the non-compliance of the order passed by the Rent Controller under Section 15(1) of the Rent Act, depicts irrational disregard to the order, or when the non-compliance is repeated, or when no justification has been expressed for the same, or for such other similar reason(s), the discretion vested in Section 15(7) of the Rent Act, would entitle the Rent Controller to strike off the defence of a tenant. In a given case even a single default depicting willful, contumacious, or negligent and careless behaviour, could lead to the striking out of a tenant's defence. It is therefore apparent, that judicial discretion exercised in such a matter must be tempered with self-restraint, keeping in mind, that striking out a tenant's defence is an exceptionally harsh step, which ought not be taken in a routine and casual manner. The Court must carefully evaluate the facts of the given case, before exercising its discretion.

12. The question which arises for adjudication in the present controversy is, whether the Rent Controller, the Rent Control Tribunal and the High Court, were justified in the facts and circumstances of the instant case, in ordering (or upholding) the striking out the defence of the

appellants herein. Herein, the order dated 21.4.2008 passed by the Rent Controller under Section 15(1) of the Rent Act, required the payment of arrears of rent claimed by the respondents (with effect from 1.11.2007 upto date, at the rate of Rs.66/- per month), within 30 days (i.e., by 21.5.2008). The above order also directed the appellants to pay future rent at the rate of Rs.66/- per month, "month by month", by the 15th day of each succeeding English calendar month. It is not a matter of dispute, that arrears of rent though directed to be paid from 1.11.2007 were actually paid with effect from 1.1.2007, on 21.4.2008 itself. The appellants-tenants therefore, voluntarily paid ten months rent in excess of the directions contained in the order dated 21.4.2008. In making the aforesaid payment, the appellants had exercised their discretion of caution, and had deposited arrears of rent with effect from 1.1.2007, as claimed by the respondents. The aforesaid discretion was exercised in the manner aforementioned (as is disclosed in the reply filed by the appellants, dated 17.8.2009) keeping in mind the fact, that the respondents had not issued receipts to the appellants, despite their having been paid rent from 1.1.2007 upto 30.10.2007. And therefore, they would not be able to establish the above position, through evidence. It was only as a matter of prudence, foresight and precaution, that the appellants-tenants had tendered rent from 1.1.2007 even though the Rent Controller's order required the appellants to pay arrears from 1.11.2007.

13. Having therefore discharged the liability of paying of arrears of rent, the next step in implementing the order dated 21.4.2008 was with reference to the payment of future rent. By the order dated 21.4.2008, the Rent Controller had directed the appellants to deposit future rent at the rate of Rs.66/- per month, "month by month", before the 15th day of each succeeding English calendar month. The Rent Controller had definitely and precisely, fixed the date by which rent for each succeeding month had to be tendered by the appellants-tenants. It was on account of the alleged non- payment of the future rent, in compliance with the directions contained in the Rent Controller's order dated 21.4.2008, that the respondents filed an application under Section 15(7) of the Rent Act, on 28.4.2009. The relevant period which falls for consideration, while determining the default/failure/lapse relating to the non-payment of future rent, is from 1.5.2008 to 31.3.2009. From the pleadings before us, and the written reply filed by the appellants dated 17.8.2009 (to the application filed by the respondents under Section 15(7) of the Rent Act), the factual position, can be summarized as follows:-

|S. No. |Month for which |Last date of |Actual date of|Whether rent paid| | |rent payable |payment as |payment of |on time or in | | | |per order |rent for the |default of order | | | |dated |relevant month|dated 21.4.2008 | | | |21.4.2008 | | | |1. |May 2008 |15.06.2008 |27.06.2008 |Payment in | | | | | |default of order | |2. |June 2008 |15.07.2008 |17.12.2008 |Payment in | | | | | |default of order | |3. |July 2008 |15.08.2008 |17.12.2008 |Payment in | | | | | |default of order | |4. |August 2008 |15.09.2008 |17.12.2008 |Payment in | | | | | |default of order | |5. |September 2008 |15.10.2008 |17.12.2008 |Payment in | | | | | |default of order | |6. |October 2008 |15.11.2008 |17.12.2008 |Payment in | | | | | |default of order | |7. |November 2008 |15.12.2008 |05.05.2009 |Payment in | | | | | |default of order | |8. |December 2008 |15.01.2008 |05.05.2009 |Payment in | | | | | |default of order | |9. |January 2009 |15.02.2009 |05.05.2009 |Payment in | | | | | |default of order | |10. |February 2009 |15.03.2009 |05.05.2009 |Payment in | | | | | |default of order | |11. |March 2009

|15.04.2009 |05.05.2009 |Payment in | | | | |default of order | Based on the factual position extracted hereinabove, I shall endeavour to examine whether the discretion exercised by the courts below in striking out the defence of the appellants is sustainable in law.

14. First and foremost, it is essential to deal with the plea canvassed at the hands of the appellants, namely, that on some occasions whilst the rent was tendered on an earlier date, the receipt for the same was issued by the respondents on a later date. The submission advanced was, that it was imperative while adjudicating the present controversy, to take into consideration the actual date of tender of rent, mentioned by the appellants-tenants in their written reply, and not the date indicated in the receipts acknowledging the payment of rent. The courts below had rejected the instant plea canvassed at the hands of the appellant. I am satisfied, that the rejection of the plea by the courts below, was fully justified. In this behalf it may be noted, that the respondents had sought eviction of the appellants on account of non-payment of rent, with effect from 1.1.2007. The reply of the appellants to the aforesaid assertion was, that they had actually paid rent upto 31.10.2007, and were in arrears only with effect from 1.11.2007. Despite the aforesaid assertion, the appellants in the exercise of prudence, foresight and precaution, and as a matter of abundant caution, had tendered arrears of rent (in furtherance of the order dated 21.4.2008 passed under Section 15(1) of the Rent Act by the Rent Controller), from 1.1.2007 to 30.4.2008, even though the appellants-

tenants had been directed to deposit arrears only from 1.11.2007. The appellants have clearly expressed, that the respondents had claimed rent even for the period (1.1.2007 to 31.10.2007) for which it had already been paid. Therefore, the appellants-tenants tendered ten months rent twice over, because of the fact that the respondents had not issued receipts despite the payment of rent. In the above view of the matter, it is impossible to assume, that the appellants would continue to repose faith and trust in the respondents, and unmindful of the consequences, continue to tender rent, without obtaining a receipt at the time of tendering rent. Therefore the contention, that the appellants had tendered rent for the period from June 2008 to October 2008, for which a receipt was issued only on 17.12.2008, cannot be accepted. For all intents and purposes it has to be assumed, that rent receipts were issued to the appellants simultaneously with the payment thereof. It is in the above view of the matter, that the chart depicting the payment of rent, in terms of the order passed by the Rent Controller on 21.4.2008, is based on the date of issue of receipts by the respondents.

15. Before venturing to examine the controversy on its merit, it is necessary to formulate four essential components of consideration, in respect of the controversy in hand. These, in my view, have necessarily and mandatorily to be kept in mind while dealing with, striking out the defence of a tenant, contemplated under Section 15(7) of the Rent Act. The mandatory components are expressed hereunder:-

(i) Undoubtedly, the provisions of the Rent Act are aimed at protecting tenants, against unreasonable demands of landlords as to rents, evictions and repairs. The spirit and purpose underlying the Rent Act, is aimed at protecting tenants against arbitrary and unfair demands of eviction.

Whilst protecting tenants, the legislature has also incorporated certain provisions, including Section 15(7) of the Rent Act, for curbing abuse of the legal process, by tenants. Section 15(7) of the Rent Act is aimed at enforcing tenants to make deposits or payments of rent (both arrears and future) in compliance with directions issued by Rent Controllers. Section 15(7) of the Rent Act, vests a discretion with Rent Controllers, to strike out the defence of tenants, who fail to make payments or deposits contemplated under Sections 15 (1) and/or (3) of the Rent Act. The landlord has no role in the matter. It is the inaction of the tenant itself, which would prompt a Rent Controller, to strike out the tenants' defence. Such action is permissible, if it is found that the non-deposit (in compliance with a Rent Controller's directions) was conscious or willful, and without any reasonable justification. There is no question of any liberal approach towards a tenant, who fails to comply with directions issued by the Rent Controller under Sections 15(1) and/or (3) of the Rent Act. For, it is out of the tenant's own actions, that the consequences arise.

(ii) The relevant date for determining the disobedience of the tenant is singularly, exclusively and solely referable, to the mandate of the schedule of payment, contained in the order passed by the Rent Controller. This is clearly apparent from the use of the words "if a tenant fails to make payment or deposit as required ...". Neither the date of moving an application under Section 15(7) is of relevance, nor the date on which the Rent Controller passes an order striking out the defence of a tenant is germane/apposite for the instant consideration. For that matter, any other date, besides the schedule of payment contemplated in the Rent Controller's order, would be totally irrelevant, for the purpose of a determination under Section 15(7) of the Rent Act. (iii) The deposits and payments, required to be made by a tenant under Sections 15(1) and/or (3) of the Rent Act, are attributable exclusively for the purpose expressed by the tenant. Therefore, if a payment is made by a tenant towards arrears of rent, the same cannot be assigned, or attributed, or credited, towards future rent. Likewise, the vice versa. Therefore, payment or deposit made by a tenant would have reference only to such purpose, as is ascribed by the tenant, in exercise of his independent discretion, at the time of making the deposit. (iv) Acts of the tenant to make up deficiencies by making deposits, beyond the date/time contemplated by the Rent Controller, could be treated as an acceptable payment/deposit, if there is adequate and acceptable explanation for the delayed deposit. And not otherwise. For the above reason, subsequent acts of magnanimity shown by a tenant, to pay more than what was required by the Rent Controller (for that matter, many folds more, as in the present case), would likewise be irrelevant.

16. Whether or not, the courts below exercised their discretion justifiably, in striking out the defence of the appellants under Section 15(7) of the Rent Act, is being examined hereinafter, keeping in mind the above parameters. Future rent was payable in terms of the order dated 21.4.2008, from the month of May, 2008. The same was payable, "month by month", before the 15th day of each succeeding English Calendar month. Only twelve intervening months had lapsed in terms of the order dated 21.4.2008, when the application under Section 15(7) was filed by the

respondents-landlords, on 28.4.2009. It is apparent from the above chart (see paragraph 13 above), that the appellants did not comply with the order dated 21.4.2008, for making payments towards future rent, even for a single month, before the application under Section 15(7) of the Rent Act was filed, by the respondents-landlords on 28.4.2009. The facts expressed in the pleadings reveal, firstly, that the appellants-tenants did not deposit any rent before the Rent Controller. Secondly, that they did not even voluntarily tender rent by themselves to the respondents. Thirdly, that respondent no.1-Subhash Chand Saini, representing the respondents-landlords had himself approached the appellants, during the period under reference, for collecting rent. Therefore deposit/payment of rent was never unilaterally made by the appellants-tenants. Payments towards future rent were made, only on the asking of the respondents-landlords. These facts, certainly demonstrate a foolhardy attitude, on the part of the appellants, in the matter of payment of future rent. In view of the parameters expressed in paragraph 15 above, the relevant date for determining the delinquency of the tenant (while passing an order under Section 15(7) of the Rent Act), is referable only to the schedule of payment mandated in the Rent Controller's order dated 21.4.2008. For the month of May, 2008, the direction was to pay rent by 15.6.2008; for the month of June, 2008, the payment had to be made by 15.7.2008; for July, 2008, payment had to be made by 15.8.2008 ....., so on and so forth, and finally, for the month of March, 2009, the payment had to be made by 15.4.2009. Payments made for a particular month on a date later than the one contemplated in the order of the Rent Controller dated 21.4.2008, is liable to be treated as a payment in violation of Rent Controller's order. Not once, was rent paid by the stipulated date. The appellants were to pay only Rs.66 per month, for a shop located in a commercial area of Delhi, and, there was a continued default in making even this meager payment, "month by month". Fourthly, no acceptable excuse has been tendered, for the delayed payment, pertaining to any of the twelve months under reference. There is therefore no doubt about the fact, that the appellants treated the directions of the Rent Controller dated 21.4.2008, with absolute casualness. There is an unequivocal inference of a clear disregard to the directions issued by the Rent Controller. The facts of this case depict a recalcitrant, as well as, a negligent and careless behaviour, at the hands of the appellants. This is not a case of a single lapse, but of persistent repeated and unrelenting default in the payment of future rent, for all the months intervening the date when the order under Section 15(1) of the Rent Act was passed, and the date when the application under Section 15(7) was filed by the respondents-landlords. It is not possible to condone such indifference, insensitivity, disinterest and apathy to judicial directions. Judicial discretion in such a matter, taking into consideration the defaults committed by the appellants-tenants, in my view, was legitimately exercised by the Courts below, by striking out the defence of the appellants-tenants.

17. Furthermore, in my view, payment voluntarily made by the tenant on 21.4.2008 towards arrears of rent, cannot be attributable or assignable or creditable, towards future rent. The said payment was made, in exercise of free discretion, towards arrears of rent. It shall be deemed to be a deposit by the tenant for that purpose, and for no other purpose. The respondents-landlords filed an application under Section 15(7) of the Rent Act on 28.4.2009 praying for striking out the defence of the appellants- tenants for non-compliance of the order of the Rent Controller dated 21.4.2008. Payments made by the appellants-tenants, for future rent payable upto 15.4.2009 (for the month of March, 2009), after the date of filing of the application (on 29.4.2009), in my considered view, are not relevant, for determining the issue in hand. The date on which the Rent Controller passed the

order striking out the defence of the appellants- tenants, i.e. 14.9.2009, has absolutely no nexus to the consideration contemplated in Section 15(7) of the Rent Act. The offer made by the appellants-tenants to raise the rent by ten times of the current amount, and to pay the same in advance for a period of five years, is nothing but an act of frustration, and is only aimed to prejudice the Court's mind. Section 15(7) of the Rent Act does not contemplate condonation of payments made in violation of the directions issued by the Rent Controller, by subsequent payments, even where the tenant accepts to make a voluntary payment, many folds more than what is due to the landlord. The only exception is when there is a reasonable explanation for delayed payment. Unfortunately, there is no such explanation on behalf of the tenant, in this case. In my considered view, therefore, the action of the appellants- tenants in not complying with the schedule of payment expressed in Rent Controller's order dated 21.4.2008 (for paying future rent), consecutively and repeatedly for 12 months, is nothing but a contumacious failure to comply with the directions of the Rent Controller.

18. The instant controversy actually demonstrates how a tenant has effectively frustrated the legislative intent contemplated in Section 15(7) of the Rent Act. The legislative purpose was, to curb tendencies of tenants, from abusing the legal process. As already noticed hereinabove, the respondents-landlords filed an eviction petition in November, 2007. Based on the non-compliance of the directions issued by the Rent Controller (on 21.4.2008), the respondents-landlords moved an application on 28.4.2009, praying for striking out the defence of the appellants-tenants. After the appellants-tenants filed their reply on 17.8.2009, the Rent Controller allowed the above application, and struck off the defence of the appellants-tenants, by an order dated 14.9.2009. The order of the Rent Controller dated 14.9.2009 was assailed by the appellants-tenants before the Rent Control Tribunal. The prayer made by the appellants-tenants was rejected by the above Tribunal on 21.4.2010. The appellants-tenants then approached the High Court by filing a petition under Article 227 of the Constitution of India. The High Court dismissed the petition on 10.5.2011. The said order was assailed by filing a Petition for Special Leave to Appeal. The matter has been pending disposal in this Court ever since. The appellants-tenants, despite their contumacious disobedience, of the directions contained in the order of the Rent Controller dated 14.9.2009, have frustrated the process of law successfully, for about five years (from 28.4.2009, i.e., the date on which the application under Section 15(7) of the Rent Act was filed, till the disposal of the present Civil Appeal). The tenants have achieved, what the legislation aimed to avoid.

19. In the above view of the matter, I am of the considered view, that the order passed by the Rent Controller dated 14.9.2009, which was upheld by the Rent Control Tribunal (on 24.5.2010) and the High Court (vide order dated 10.5.2011) calls for no interference whatsoever.

20. For the reasons recorded hereinabove the appeal fails and is accordingly dismissed.

.....J. (Jagdish Singh Khehar) New Delhi;

April 16, 2014.