

Kamla Devi vs Vasdev on 14 December, 1994

Equivalent citations: 1995 AIR 985, 1995 SCC (1) 356

Author: S.C. Sen

Bench: S.C. Sen, Jagdish Saran Verma, S.P Bharucha

PETITIONER:

KAMLA DEVI

Vs.

RESPONDENT:

VASDEV

DATE OF JUDGMENT 14/12/1994

BENCH:

SEN, S.C. (J)

BENCH:

SEN, S.C. (J)

VERMA, JAGDISH SARAN (J)

BHARUCHA S.P. (J)

CITATION:

1995 AIR 985

1995 SCC (1) 356

JT 1995 (1) 142

1994 SCALE (5) 295

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by SEN, J.- Leave granted.

2.This appeal is against an order passed by the Delhi High Court on 5-9-1989, declining to interfere with an order passed by the Rent Control Tribunal dated 30-5-1989.

3.The appellant, Smt Kamla Devi, is the owner of Shop No. 408, Pandit Lila Ram Market, Masjid Moth, New Delhi. The shop was let out to the respondent, The respondent defaulted in payment of rent. The appellant sent a demand notice on 18-5-1981 upon the respondent for recovery of arrears

of rent. The respondent neither paid nor tendered the arrears of rent within the period of two months after the service of the demand notice. On or about 2-8-1982, the appellant filed an eviction petition under clause (a) of subsection (1) of Section 14 of the Delhi Rent Control Act, 1958. It was admitted in the written statement that rent was due from 1-1-1980. On 27-1-1984 the Additional Rent Controller, Delhi, passed an order to the following effect:

"I direct the respondent to pay or deposit the entire arrears of rent @ Rs 50 w.e.f. 1-1-1980 within one month of the passing of this order and continue to pay or deposit the subsequent rent month by month the 15th of each succeeding month. Case to come up for parties' evidence on 18-3-1984."

4. Thereafter the respondent paid a sum of Rs 500 to the appellant promising to pay the arrears before expiry of the period stipulated in the order. The respondent, however, did not pay the arrears as promised. On 11-4-1984 the appellant filed an application under sub-section (7) of Section 15 of the Delhi Rent Control Act, 1958 for striking out the defence and to proceed with the hearing of the application on the ground that the tenant had failed to make payment or any deposit of the arrears of rent.

5. The Additional Rent Controller passed the following order:

"Since the respondent failed to comply the order dated 27-1-1984 under Section 15(1), he was not entitled to benefit under Section 14(2) of the Act and as such he was liable to suffer straight eviction order. Accordingly, an eviction order is passed in favour of the petitioner and against the respondent in respect of shop bearing No. 408, situated at Lila Ram Market, Masjid Moth, New Delhi, as shown red in the site plan, Ex. RW 1/2."

6. On appeal, the Tribunal remanded the case back to the Rent Controller to consider whether the delay in deposit of arrears of rent amounting to Rs 2150 is liable to be condoned or not before deciding whether the appellant deserves to get the benefit of Section 14(2) or has rendered himself liable to be evicted.

7. On remand, the Additional Rent Controller held, inter alia, that there was some compromise between the parties. In any case, the delay in depositing Rs 2150 could not be termed as wilful, deliberate and contumacious non-compliance of order under Section 15(1) passed on 27-1-1984. The landlord was entitled at the most to some compensation. In the premises, the Additional Rent Controller condoned the delay in depositing Rs 2150 by the tenant. It was held that the respondent was entitled to get the benefit of the provisions of Section 14(2) of the Act.

8. Kamla Devi, appealed to the Tribunal. The only ground urged before the Tribunal was that there was no reason for condonation of the delay and the Additional Rent Controller should have struck out the defence of the respondent. The Tribunal held after review of the facts that the order of striking out the defence was uncalled for. The tenant was rightly given the benefit of Section 14(2) of the Act, it being a case of first default.

9. Kamla Devi made a further appeal to the High Court which was dismissed.

10. Kamla Devi has now come up to this Court. It has been contended on her behalf that in view of the fact that the respondent neither took any step to deposit arrears of rent nor for extension of time within one month of the order of the Rent Controller under Section 15(1) of the Act, the Rent Controller did not have any discretionary power to condone the delay under Section 15(7) of the Delhi Rent Control Act. It was obligatory for the tenant to deposit the arrears of rent within one month from the date of passing of the order of the Rent Controller. It was contended that the provisions of Section 14(1)(a), Section 15(1) and Section 15(7) of the Delhi Rent Control Act have been misconstrued and misunderstood.

11. Before examining the contentions made on behalf of the appellant, it is necessary to set out the relevant provisions of the Delhi Rent Control Act:

" 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 notice 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);

* * * (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.

* * *

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 subsection (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.

(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."

12. The scheme of the Act appears to be that a tenant cannot be evicted except on any one of the grounds set out in clauses (a) to (1) of Section 14(1). If a tenant is a defaulter in payment of rent, even then an order for recovery of possession of the tenanted premises shall not be made straightaway. The requirement of Section 15(1) is that the Controller will make the order directing the defaulting tenant to pay to the landlord or deposit with the Controller within one month of the date of the order, the amount of rent in arrear and continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate. If the tenant, even after this order under Section 15(1), fails to carry out the direction of the Controller, the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application.

13. It has been contended on behalf of the appellant that once there is a failure on the part of the tenant to carry out the direction given by the Controller under Section 15(1) of the Act, the tenant is not entitled to any further opportunity to pay in terms of the order passed under Section 15(1) and the landlord is entitled straightaway to an order for striking out the defence of the tenant and consequently an order for eviction of the tenant.

14. In support of this contention our attention was drawn to a number of cases which have dealt with this aspect of the matter. In the case of *Hem Chand v. Delhi Cloth & General Mills Co. Ltd.*¹ the landlord filed an application for eviction of the tenant under Section 14 of the Delhi Rent Control Act on the grounds of non-payment of rent and also unauthorised sub-letting. The Additional Rent Controller on receipt of the application of the landlord passed an order under Section 15(1) of the Delhi Rent Control Act, directing the tenant to deposit the arrears of rent within a month and thereafter deposit an amount equivalent to the rent month by month. There was an assurance on the part of the tenant to comply with the direction fully. The landlord made an application under Section 15(7) of the Act and prayed that the defence of the appellant against eviction be struck out. The tenant, thereafter, deposited the entire amount of rent due up to date. On 15-10-1965 the Additional Rent Controller struck out the defence of the tenant stating that on the date of the order there were arrears of rent. The Additional Rent Controller also passed an order of eviction on the ground of sub-letting. He, however, declined to pass any order for eviction on the ground of nonpayment of rent, because the tenant had already deposited the arrears of rent on the date when the defence was struck out. On appeal, the Rent Control Tribunal decided that the defence should

not have been struck in the facts of that case and remanded the case for reconsideration on the point of Subletting. The landlord appealed to Delhi High Court. The case was referred to a Full Bench. The Full Bench held that when a tenant defaulted in making deposit or payment under Section 15 of the Act, the Rent Controller was bound to pass an order for recovery of the possession and could not refuse the landlord's prayer for eviction. It was further held that the Rent Controller 1 (1977) 3 SCC 483 had no right to condone the delay, if any, in making payment according to the requirements of Section 15(1) of the Act.

15. On further appeal, it was held by a Bench of two Judges of this Court: (SCC pp. 488-489, para 8) "While we agree with the view of the Full Bench that the Controller has no power to condone the failure of the tenant to pay arrears of rent as required under Section 15(1), we are satisfied that the Full Bench fell into an error in holding that the right to obtain an order for recovery of possession accrued to the landlord. As we have set out earlier in the event of the tenant failing to comply with the order under Section 15(1) the application will have to be heard giving an opportunity to the tenant if his defence is 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)."

16. On behalf of the appellant it has been contended that this is a clear authority for the proposition that under the provisions of the Delhi Rent Control Act, the Rent Controller has no power to condone the failure of the tenant to pay arrears of rent as required under Section 15(1) of the Delhi Rent Control Act. The judgment in the case of Ram Murti v. Bhola Nath² which took a contrary view, was wrongly decided by another Bench of two Judges. In that case, reliance was wrongly placed on the judgment in the case of Shyamcharan Sharma v. Dharamdas³ in which the provisions of the Madhya Pradesh Accommodation Control Act, 1961 fell for consideration.

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.

18. The position in law, in the event of a tenant's failure to comply with an order under Section 15(1) of the Delhi Rent Control Act or similar provisions of other Rent Acts, has been examined in several other decisions of this Court. It is true that the case of Shyamcharan Sharma v. Dharamdas³ was decided under the provisions of Madhya Pradesh Accommodation Control Act, 1961 but the provisions of that Act relating to eviction of tenants were similar to the corresponding provisions of Delhi Rent Control Act. The relevant provisions of Madhya Pradesh Act are:

"12. Restriction on eviction of tenants.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit 2 (1984) 3 SCC 111 3 (1980) 2 SCC 151 shall be filed in any Civil Court against a tenant for his eviction from any

accommodation except 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 notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner * * * (3) No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (1), if the tenant makes payment or deposit as required by Section 13:

13. When tenant can get benefit of protection against eviction.- (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of writ of summons on him or within such further time as the Court may, on an application made to it, allow in this behalf, deposit in the Court or pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

* * * (5) If a tenant makes deposit or payment as required by sub-section (1), or sub-section (2) no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.

(6) If a tenant fails to deposit or pay any amount as required by this section, the Court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit."

19. In Shyamcharan Sharma case³ a Bench of three Judges of this Court held: (SCC p.

154, para 4) "We think that Section 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 Section 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 Section 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."

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), (2) and Section 15(1), (7) of the Delhi Act. In fact this argument was rejected in the case of Ram Murti v. Bhola Nath². 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. It was held: (SCC pp. 118-119, para 11) "With respect, the observations in Hem Chand case¹ expressing the view that the Rent Controller has no power to extend the time prescribed in Section 15(1) cannot be construed to mean that he is under a statutory obligation to pass an order for eviction of the tenant under Section 14(1)(a) without anything more due to the failure on his part to comply with the requirements of Section 15(1). The question would still remain as to the course to be adopted by the Rent Controller in such a situation in the context of Section 15(7) which confers on the Rent Controller a discretion not to strike out the defence of the tenant 'In the event of the contingency occurring, namely, failure on the part of the tenant to meet with the requirements of Section 15(1)."

21. In coming to this conclusion reliance was placed on the decision in the case of Shyamcharan Sharma case³. It was argued on behalf of the respondent that Shyamcharan Sharma case³ 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).

22. The unreasonableness of the construction suggested by the appellant is well illustrated by the case of Santosh Mehta v. Om Prakash⁴. 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 4 (1980) 3 SCC 610 : (1980) 3 SCR 325 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.

23. We are unable to uphold the contention of the appellant that the case of Ram Murti v. Bhola Nath² 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. Dharamdas³. 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.

24. In that view of the matter, this appeal fails and is dismissed. Each party will bear its own costs.