

CASE NO.:
Appeal (civil) 3199 of 2002

PETITIONER:
GOPI CHAND GUPTA (DEAD) BY LRS.

Vs.

RESPONDENT:
M/S. JAIN PLASTIC INDUSTRY.

DATE OF JUDGMENT: 30/04/2002

BENCH:
N. Santosh Hegde & Doraiswamy Raju

JUDGMENT:

SANTOSH HEGDE, J.

Leave granted.

The appellant-landlord has preferred this appeal against the judgment and order of the High Court of Delhi in S.A.O.No.9 of 2000 dated 15th of May, 2000 whereby the High Court allowed the appeal filed by the respondent-tenant against the order of eviction made by the Additional Rent Controller, Delhi as confirmed by the Rent Control Tribunal, Delhi.

The Additional Rent Controller by her order dated 8.9.1998 allowed a petition filed by the landlord under Section 14(1)(a) of the Delhi Rent Control Act (the 'Act') in regard to the schedule premises on the ground that the respondent-tenant has neither paid nor tendered the legally recoverable rent within two months of the date on which a notice of demand for the arrears of rent has been served on the tenant. The defence of the tenant that there was no arrears was not accepted by the Rent Controller, as also the contention put forth by the tenant that he had legally tendered whatever rent that was payable by way of a cheque dated 4.1.1979.

The appeal filed by the tenant against the said order of the Rent Control Court came to be dismissed by the Rent Control Tribunal as per its order dated 17th of November, 1999 which also rejected the contention of the tenant that he had validly tendered the rent.

However, the High Court by the impugned order came to the conclusion that the tenant having sent the cheque towards the rent due by him by registered post to the landlord has fulfilled his legal obligation of tendering the rent even though the said cheque was not delivered because the moment the tenant posted the said cheque it goes out of his control and the responsibility to deliver the cheque was that of the postal authorities. The High Court also held the fact that the landlord was not available at Calcutta at the time of delivery cannot be held against the appellant who did what

was necessary to tender the rent.

On behalf of the landlord, Shri Jaspal Singh, learned senior counsel contended that it was never the practice of the tenant to send the rent by cheque and this practice was adopted by the tenant only to get over the default committed by him. He contended that, as a matter of fact, in the normal course, the rent was being paid to the agent of the landlord. He also contended that the address of the landlord given in the postal envelope was incomplete which was deliberately done to make out a case of having tendered the rent without there being any intention to see that the rent cheque is actually delivered. He also contended that the Rent Control Tribunal has taken into consideration the conduct of the tenant and the fact that he did not deposit the rent under Section 27 of the Act after the cheque was returned back to him, hence, to come to the conclusion that the tenant had no intention of paying the arrears of rent. It was the argument of the learned counsel that in such circumstances, the High Court ought not to have merely relied upon the fact that the tenant had posted the cheque, which according to the counsel, would not amount to valid tender.

On behalf of the respondent-tenant, Shri S.K.Bagga, learned senior counsel contended that the High Court was justified in coming to the conclusion that the rent in question was legally tendered. He contended that the landlord's permanent address was in Calcutta and he had posted the cheque to the last known address of the landlord, therefore, the tenant on his part had done whatever necessary to make a legal tender of the rent. He also contended that non availability of the landlord at the time of delivery could not be the ground to hold that the tender was not legal. His further contention was that as per the statement of accounts which was filed in this Court there was an advance still available with the landlord and there was no arrears which could cause a default on the part of the tenant. Having considered the argument of the parties and the provision of law applicable, we are of the opinion that the High Court fell in error in coming to the conclusion that the mere posting of a cheque without there being any material to show that the said posting of the cheque was with an intention of clearing the arrears of rent, would suffice to hold that the tenant had fulfilled his legal obligation of tendering the rent. This Court in the case of M.K.Mukunthan vs. M.Pasupathi (2001 (6) SCC 13) has held that mere fact that the tenant had sent a cheque towards the rent by post would not by itself suffice to hold that the tender in question was legal. In the said judgment, this Court held that the Court will have to take surrounding circumstances to find out whether such postage of cheque was genuine and with an intention of paying the rent due. In the said case, taking into consideration the facts and circumstances of the case, this Court had held the fact that the tenant had posted the cheque to the landlord which was returned back to the tenant with an endorsement "addressee not found" by itself was not sufficient to hold the tender legal because of the fact that the posting of cheque to the landlord was not in the normal course.

Applying the principles laid down in the above case to the facts of the case in hand, we notice that the Rent Control Court as also the Appellate Tribunal had taken into consideration the fact that there was no agreement between the parties nor was there any practice to tender the rent by

way of cheque or at any time earlier the rent was sent by post. The tenant had never earlier tendered the rent by way of cheque, on the contrary, the rent was either being paid in cash or by way of pay order or demand draft. The said fora had also taken into consideration the fact that if at all the tenant had any intention of clearing the rental dues, he could have deposited the same under Section 27 of the Act which was not done. Thus taking into consideration the overall facts and the conduct of the tenant, the Rent Control Court and the Appellate Tribunal had come to the conclusion that the tender was not a legal tender. In such circumstances, in our opinion, the High Court was in error in merely accepting the fact that the tenant had posted the cheque towards the arrears of rent and holding such issuance of a cheque by itself would amount to a legal tender.

In our opinion also, the tender made by the respondent-tenant in this case does not show that the same was done with an intention of clearing the rental due, but on the contrary, we are satisfied that it was only an attempt to create a piece of evidence to show that he had actually tendered the rent as contemplated by law. For the said reason, we are of the opinion that the tender of rent made by the respondent-tenant in this case by posting the cheque to the address of the landlord at Calcutta would not amount to a legal tender in view of the facts and circumstances of this case.

Shri Bagga then contended that, as a matter of fact, there was a substantial advance with the landlord which if taken into account would cover all the rent allegedly due from the tenant. In support of which he had filed certain statement of account in this Court. This statement of Shri Bagga is disputed by Shri Jaspal Singh learned senior counsel for the appellant who contended that this issue has been decided by the Rent Control Court against the tenant and in an appeal the tenant did not make this as an issue before the Appellate Tribunal, nor has the High Court gone into this issue. Therefore, the tenant should not be permitted to raise this contention. We, however, feel since this issue has not been dealt with by the High Court the tenant should be given an opportunity of satisfying the Court that he, in fact, was not in default. Therefore, we think it appropriate that this matter be remanded back to the High Court to decide the limited question whether there was any arrears of rent as on the date when the petition for eviction was filed under Section 14(1)(a) of the Act. While considering this question the High Court will also take into consideration the fact that the Rent Control Tribunal had decided this question against the tenant and from the order of the Appellate Tribunal it does not look as if this question has been raised before it. We notice that the original eviction petition has been pending for a considerable length of time. Therefore, we request the High Court to dispose of this matter after remand as early as possible.

For the reasons stated above, this appeal is allowed. The impugned judgment is set aside and the matter is remanded back to the High Court for disposal in accordance with law, bearing in mind, the observations made in this case.

.J.
(N.Santosh Hegde)

April 30, 2002.

.J.

(Doraiswamy Raju)

JUDIS