

CASE NO.:
Appeal (civil) 6973-6974 of 2004

PETITIONER:
M/s. Aero Traders Pvt. Ltd.

RESPONDENT:
Ravinder Kumar Suri

DATE OF JUDGMENT: 27/10/2004

BENCH:
CJI R. C. Lahoti, G. P. Mathur & P.P. Naolekar

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P.(Civil) Nos. 2725-2726 of 2004)

G. P. MATHUR, J.

1. Leave granted.

2. These appeals, by special leave, have been preferred against the judgment and order dated 9.9.2003 of Delhi High Court by which the writ petition filed by respondent no.1, Ravinder Kumar Suri, under Article 227 of the Constitution was allowed, the order dated 22.5.2001 of the Additional Rent Control Tribunal was set aside and the order dated 19.3.2001 of the Rent Controller was restored by which the defence of the appellant was struck off. By the same order the writ petition filed by the tenant-appellant was dismissed.

3. The appellant is a tenant of a commercial premises situate in Karol Bagh, New Delhi on a rental of Rs.30/- per month. The landlord, Ravinder Kumar Suri, filed a petition for eviction of the appellant under Section 14(1)(a) of Delhi Rent Control Act, 1958 (for short "the Act") on the ground, inter alia, that the appellant was in arrears of rent. The Rent Controller passed an order under Section 15(1) of the Act on 20.12.1999 directing the appellant to deposit or pay to the landlord within one month the entire arrears of rent w.e.f. 1.6.1996 and to continue to pay the future rent by 15th of each succeeding month. The landlord (respondent no.1) moved an application under Section 15(7) of the Act for striking off the defence of the appellant (tenant) on the ground that he did not comply with the order. The appellant claimed that he had complied with the order and had sent the rent by cheques but the landlord did not encash the same. The Rent Controller held that the appellant had neither paid the rent to the landlord nor had deposited the amount in court. Accordingly, he passed an order on 19.3.2001 by which the application filed by the landlord was allowed and the defence of the appellant was struck off. The appellant preferred an appeal before the Rent Control Tribunal which was disposed of by the judgment and order dated 22.5.2001 with a direction to the appellant to deposit the whole arrears of rent along with penalty of the same amount within 30 days, failing which his defence shall stand struck off as directed by the Rent Controller. The landlord challenged the order passed by the Rent Control Tribunal by filing a writ petition under Article 227 of the Constitution before the Delhi High Court. The appellant also filed a petition for quashing of certain findings which were recorded against him by the Rent Controller. The High Court allowed the writ petition filed by the landlord, set aside the order passed by the Rent Control Tribunal and restored that of the Rent Controller. The writ petition filed by the appellant was dismissed.

4. In order to establish his case, the appellant placed on record a letter dated 3.1.2000 sent by its counsel to the landlord, wherein it was mentioned that the rent at the rate of Rs.30/- per month w.e.f. 1.6.1996 to 31.12.1999 amounting to Rs.930/- was being sent by cheque. The landlord seriously disputed the fact that any cheque was sent to him. The appellant did not lead any evidence whatsoever to establish that any cheque for Rs.930/- was in fact sent to the landlord on 3.1.2000. Even otherwise, the arrears of rent which were required to be sent were Rs.1260/- and not Rs.930/-. The appellant also placed on record another letter dated 30.6.2000, wherein it was mentioned that rent for the period 1.2.2000 to 31.12.2000 was being sent through cheque. This was also disputed by the landlord. The appellant did not lead any evidence to establish the fact that the amount as claimed in this letter was actually sent to the landlord. The direction in the order 20.12.1999 was that the appellant shall either pay or deposit the future rent by 15th of every succeeding month. Even assuming the version of the appellant to be correct, he failed to either pay or deposit the rents for the months of January to May 2000 by the 15th day of each succeeding month. On the aforesaid facts, the Rent Controller held that the order dated 20.12.1999 had not been complied with. He also noted that even by the time he had passed the order under Section 15(7) of the Act, the appellant was in arrears of rent and had not paid or deposited the rent w.e.f. 1.6.1996. He accordingly held that it was a fit case where the defence of the appellant should be struck off. The Rent Control Tribunal, in the appeal preferred by the appellant, confirmed the findings recorded by the Rent Controller regarding non-payment of rent and in fact held that the intention of the appellant was not bona fide and rather he acted in a mischievous manner and had tried to show that he had sent the rent by way of cheques. However, he held that Section 15(7) of the Act confers a discretion whether to strike off the defence or not and since this discretion had not been exercised in accordance with the basic principles of equity, justice and good conscience, the order passed by the Rent Controller required modification. He accordingly directed the appellant to deposit the whole arrears of rent along with penalty of same amount within 30 days and if the same was done, the order of the Rent Controller shall stand set aside. The High Court in the writ petition preferred by the landlord held that the appellant had shown a willful and contumacious default and had set up a palpably false plea about compliance of the order and consequently he was not entitled to any indulgence from the Court. The High Court accordingly set aside the order of the Rent Control Tribunal and restored that of the Rent Controller.

5. The provisions of Section 15(7) of the Act have been examined by a Three Judge Bench of this Court in Jain Motor Car Co. v. Swayam Prabha Jain AIR 1996 SC 2951, where, after examining the earlier decisions rendered in Hem Chand v. Delhi Cloth & General Mills Co. Ltd. AIR 1977 SC 1986, Shyamcharan Sharma v. Dharamdas AIR 1980 SC 587, Ram Murty v. Bhola Nath AIR 1984 SC 1392 and Kamla Devi v. Vasdev 1995 (1) SCC 356, it was held that the section confers a discretionary power on the Rent Controller to strike out the defence of the tenant and the said power should not be exercised mechanically without any application of mind to the facts of the case.

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 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.

8. For the reasons discussed above, the appeals are dismissed with costs, which we quantify at Rs.10,000/-.