PETITIONER:
SANTOSH MEHTA

Vs.

RESPONDENT:
OM PRAKASH AND ANR.

DATE OF JUDGMENT02/04/1980

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
SEN, A.P. (J)

CITATION:
1980 AIR 1664 1980 SCR (3) 325
1980 SCC (3) 610
CITATOR INFO :
R 1983 SC1010 (15)
RF 1984 SC1392 (9)

ACT:
Delhi Rent Control Act, 1958, Sections 15(7) scope of Striking of defence for non-payment of arrears of rent, Court's duty.
Delhi Rent Control Act, 1958-Appeal against order striking out defence-Correct section applicable is section 38 and not section 25B, of the Delhi Rent Control Act.

HEADNOTE:
The appellant tenant, a working woman engaged an advocate to appear on her behalf and take proper steps to protect her interests, as she had a difficulty in appearing in Court for every hearing. She paid all the arrears of rent by cheque or in cash to her advocate who failed either to deposit the Court or to pay to the landlord. The Rent Controller refused to look into this and struck off her defence under section 15(7) of the Delhi Rent Control Act, 1958. The appeal was dismissed as not maintainable in view of section 25B of tho Act. Hence the appeal by special leave.
Allowing the appeal, the Court.
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HELD :1. Rent Control laws are basically designed to protect tenants because scarcity of accommodation is a nightmare for those who own none and, if evicted, will be helpless. Even so, the legislature has provided some grounds for eviction, and the Delhi law contains an extreme provision for striking out together the defence of the tenant which means that even if he has excellent pleas to negative the landlord's claim the Court will not hear him. Obviously, this is a harsh extreme and having regard to the benign scheme of the legislation this drastic power is meant for use in grossly recalcitrant situations where a tenant is guilty of disregard in paying rent. That is why a discretion vested, not a mandate imposed in Section 15(7) of the Delhi Rent Control Act. [327 C-D]
2. If a socially informed perspective is adopted while construing the provision of Section 15(7), then it will be plain that the Controller is armed with 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 6 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 failure to pay rent which, in the content, 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. A last resort cannot be converted into tho first resort a punitive direction of court
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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. [327 F-H, 328 A-B]

3. The exercise of the power of striking out of the defence under section 15(7) is not imperative whenever the tenant fails to deposit or pay any amount as required by section 15. The provisions contained in s. 15(7) of the Act are directory and not mandatory. It cannot be disputed that s.15(7) is a penal provision and given 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 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. Section 15(7) of the Act is not couched in mandatory language. It uses the word "may". The difference in the language of Section 15(7) with that of Section 13(5) of the repealed Act is significant and indicates that in the present Act there is a deliberate modification of law in favour of the tenant. Under Section 15(7) of the Act, it is in the liberal discretion of the Rent Controller, whether or not to strike out the defence. The Court should be aware of the milieu before exercise of this extreme power. [328 B-D, 329 A-B]

In the instant case, the tenant did all she could by paying to the advocate the sums regularly but the latter betrayed her and perhaps helped himself. To trust one's advocate is not to sin deliberately. She was innocent but her advocate was innocent. No party can be punished because her advocate behaved unprofessionally. The Rent Controller should have controlled himself by a plain look at the eloquent facts and not let down the helpless woman who in good faith believed in the basic ethic of a noble profession. She did not fail to pay or deposit and, in any view, no case for punitive exercise of discretion has been made out. The conclusion necessarily follows that the striking out of the defence was not legal and the appellant should have been given an opportunity to contest the claim of the landlord for her eviction. A sensitized judicial appreciation was missing and unfortunately, the High Court did not closely look at this facet of the issue. [329E-H]

V. K. Varma v. Radhey Shyam, A.I.R. 1964 S.C. 1370, referred to.

4. An order striking out the defence is appealable under s.38. So this order is appealable. The reliance on s. 25B(8) to negative an appeal is inept because this is not an order under that special section but one under s. 15. Moreover, s.25B(10) preserves the procedure except to the extent contra-indicated in s.25B. Negation of a right of appeal follows from s.25B(8) only if the order for recovery is made 'in accordance with the procedure specified in this Section' (i.e. 25B). Here the dispossession was not ordered under the special provision in s.25B but under s.15. Nor can the theory of merger salvage the order because the legality of the eviction order depends on the legality of the order under s.15(7). Once that order is found illegal what follows upon that cannot be sustained. [330 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1445 of 1979.

Appeal by Special Leave from the Judgment and order dated 17th October, 1978 of the Delhi High Court in Revision Petition No. 689 of 1978.

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Mrs. Shyamala Pappu, P. H. Parekh, Rain Karanjawala and Miss Vineeta Caprihan for the Appellant.

B.D. Sharma, for the Respondents.

The following Judgment of the Court was delivered by

KRISHNA IYER, J.-A short but interesting point affecting the validity and propriety of an order under s. 15(7) of the Delhi Rent Control Act, 1958 (for short, the Act), has been raised by counsel for the appellant. The decision of this question is of importance and we regard it as necessary to clarify the position so that the error committed by the trial judge may not be repeated.

Rent Control laws are basically designed to protect tenants because scarcity of accommodation is a nightmare for those who own none and if evicted, will be helpless. Even so, the legislature has provided some grounds for eviction, and the Delhi law contains an extreme provision for striking out altogether the defence of the tenant which means that even if he has excellent pleas to negative the landlord's claim the court will not hear him. Obviously, this is a harsh extreme and having regard to the benign scheme of the legislation this drastic power is meant for use in grossly recalcitrant situations where a tenant is guilty of disregard in paying rent. That is why a discretion is vested, not a mandate imposed. Section 15(7) reads thus:

> "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."

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
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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 under. J lying the power.

There is no indication whatsoever in the Act to show that the exercise of the power of striking out of the defence under s. 15(7) was imperative whenever the tenant failed to deposit or pay any amount as required by s. 15. The provisions contained in s. 15(7) of the Act are directory and not mandatory. It cannot be disputed that s. 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 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.

It will be noted that s. 15(7) of tho Act is not couched in mandatory language. It uses the word 'may'. The difference in the language of s. 15(7) with that of s. 13(5) of the repealed Act is significant and indicates that in the present Act there is a deliberate modification of law in favour of the tenant. In this connection, it would be pertinent to refer to the observations of the Court in V. K Verma v. Radhey Shyam.(1) In that case, the Court compared s. 13(5) of the Delhi Rent Control Act, 1952 which laid down that on the failure of a tenant to deposit the arrears of rent within the prescribed time, "the ' court shall order the defence against ejectment to be struck out." with s. 15(7) of the Delhi Rent Control Act, 1958 which substitutes 'may' and observed:

> "The change of the words from "The Court shall order the defence against ejectment to be struck out" to the words "the Controller may order the defence against eviction to be struck out" is clearly deliberate modification in law in favour of the tenant. Under the old Act the Court had no option but to strike out the defence if the failure to pay or deposit the rent is proved; under the new Act the Controller who takes the place of the Court has a discretion in the matter, so that that in proper cases he may refuse to strike out the defence."

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These observations leave no doubt that under s. 15(7) of the Act, it is in the liberal discretion of the Rent Controller whether or not to strike out the defence.

We stress the need for the Court to be aware of the milieu before exercise of this extreme power because the present case is illustrative of its erroneous use.

The facts in this case cry for intervention, if one may say so. The appellant is a working woman who has to get to

office and be there between 9.00 a.m. to 5.00 p.m. Naturally, she has a difficulty in appearing in court for every hearing and so she prudently engaged an advocate to appear on her behalf and take proper steps to protect her interests. It is common ground that all the arrears of rent had been paid by her by cheque or in cash to her advocate. It also transpires that the amounts received by cheque or in cash by the advocate were not deposited in court or paid to the landlord. It is further seen that when the tenant found that the amounts were not paid to the landlord by her advocate, she made a complaint to the Bar Council of Delhi and the matter is pending inquiry. From these circumstances, we are inclined to conclude-indeed, that is the only reasonable conclusion in the circumstances-that the tenant has not failed to pay and, in any case, the exercise of judicial discretion must persuade the court not to strike out the defence of the tenant but give her fresh opportunity to make deposit of the entire arrears due. In the present case the deposit has eventually been made in this Court when it directed such deposit to be made.

The tenant did all she could by paying to the advocate the sums regularly but the latter betrayed her and perhaps helped himself. To trust one's advocate is not to sin deliberately. She was innocent but her advocate was innocent. No party can be punished because her advocate behaved unprofessionally. The Rent Controller should have controlled himself by a plain look at the eloquent facts and not let down the helpless woman who in good faith believed in the basic ethic of a noble profession. She did not fail to pay or deposit and, in any view, no case for punitive exercise of discretion has been made out. The conclusion necessarily follows that the striking out of the defence was not legal and the appellant should have been given an opportunity to contest the claim of the landlord for her eviction. A sensitized judicial appreciation was missing and, unfortunately, the High Court did not closely look at this facet of the issue. On the other hand, the appeal was dismissed as not maintainable in view of s. 25B.

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An order striking out the defence is appealable under s. 38. So this order is appealable. The reliance on s. 25B(8) to negative an appeal is inept because this is not an order under that special section but one under s. 15. Moreover, s. 25B(10)preserves the procedure except to the extent contra-indicated in s. 25B. Negation of the right of appeal follows from s. 25B(8) only if the order for recovery is made 'in accordance with the procedure specified in this section' (i.e. 25B). Here the dispossession was not ordered under the special provision in s. 25B but under s. 15. Nor can the theory of merger salvage ' the order because the legality of the eviction order depends on the legality of the order under s. 15(7). Once that order is found illegal what follows upon that cannot be sustained.

In the view we take of the effect of s. 15(7) we allow the appeal in exercise of our jurisdiction under Article 136 and direct the case to go back to the Rent Controller. Having regard to the fact that the landlord has not been able to make out his case of bona fide requirement for long because of the pendency of these proceedings, we direct the Rent Controller to dispose of the petition for eviction expeditiously and, as far, as possible, within four months from today.

Any further arrears, if accrued, will be paid under the directions of the Rent Controller on or before a date fixed by him. The order for eviction passed in this case after

striking out the defence must fail 13: in view of our holding that the order striking out the defence itself is , illegal. Necessarily, the orders of the Rent Controller and of their High Court must be and are hereby set aside. The parties will appear before the Rent Controller on 16th April, 1980. There will be no order as to costs.

S.R. Appeal allowed.

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