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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 07.04.2021

\+ **CM(M) 476/2020 & CM No.24292/2020**

SATISH PARASHAR ..... Petitioner
Through: Mr.Sanat Kumar, Sr. Adv. with
Mr.Sanjay Sharma, Adv.

versus

PREM BIHARI (SINCE DECEASED) ..... Respondent
Through: Mr.Sanjay Rohtagi, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner challenging the order dated 04.03.2020 passed by the learned Rent Control Tribunal (in short 'RCT') in appeal, being RCT No.138/2018, dismissing the appeal of the petitioner against the order dated 17.08.2018 passed by the learned Additional Rent Controller-01, Central (in short 'ARC'), dismissing the application of the petitioner seeking condonation of delay in filing of an application seeking review of the order dated 14.03.20211 passed by the learned ARC under Section 15(1) of the Delhi Rent Control Act, 1958, (hereinafter referred to as the 'Act'), and consequently allowing the application of the respondent herein under Section 15(7) of the Act.

2. The respondent had filed an eviction petition, being E.No.821/2014, against the petitioner under Section 14(1)(a) of the Act, claiming that the petitioner is a tenant with respect to property, being Middle Flat on the first floor of building no.27, Alipur Road, Civil Lines, Delhi-110054 at rate of rent of Rs.850/- per month exclusive of electricity and water charges. Paragraph 14 of the Eviction Petition asserts that the date of letting out of the tenanted premises is 16.07.1998 "on the basis of written agreement". It is important to note here itself that the Agreement dated 16.07.1998, however, gives the rent as Rs.750/- per month. In the eviction petition, the respondent claimed arrears of rent of Rs.22,950/- for the period with effect from 01.04.2008 to 30.06.2010 at the rate of Rs.850/- per month.

3. The petitioner herein filed his reply to the eviction petition, disputing the rate of rent and claiming the same to be Rs.750/- per month. On the first date of his appearance before the learned ARC, on 27.10.2010, the petitioner also tendered a demand draft of Rs.26,350/- dated 21.10.2010 to the respondent.

4. On 14.03.2011, the learned ARC passed the following order on the application filed by the respondent under Section 15(1) of the Act:

> *"14.03.2011*
> *Present: Counsel for petitioner.*
> *Counsel for respondent.*
> *Parties in person.*
> *A sum of Rs. 26,350/- has already been paid on behalf of respondent to the petitioner through Bank Draft on 27/10/2010 against receipt.*

> *Argument heard on the application U/s. 15 (1) of the DRC Act.*
>
> *The rate of rent is Rs.850/- per month which is admitted by the parties and relationship is also not denied. Hence, application U/s. 15 (1) of the DRC Act is disposed of without prejudice to the rights and contentions of the parties. Respondent to deposit the legally recoverable rent which is due till the month of March, 2011 within one month from today in the Bank Account number i.e. 0115000100442064, PNB, Civil Lines, Delhi and will continue to deposit the future rent in the aforesaid Bank Account during the pendency of the present petition. Nothing discussed hereinabove shall have any bearing upon the merits of the present case. Hence, put up for PE on 06/07/2011. Advance copy of affidavit be supplied atleast 15 days before the next date of hearing. Parties to file their list of witnesses within 15 days from today."*

5. A perusal of the above order would show that Rs.850/- per month was taken as the rent admitted by the parties.

6. It is not disputed by the respondent that the petitioner, however, continued to pay/deposit the rent at the rate of Rs.750/- per month thereafter.

7. Based on the purported default by the petitioner, on 26.09.2012, the respondent filed an application under Section 15(7) of the Act, seeking striking off of the defence of the petitioner herein. The petitioner, on the other hand, filed an application under Section 152 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'), on 16.11.2012, claiming rectification of the order dated 14.03.2011 to record that the admitted rate of rent was Rs.750/- per

month and not Rs.850/- per month as had been recorded in the order dated 14.03.2011.

8. The applications remained pending as in the meantime the respondent expired and his legal heirs were finally brought on record by the order dated 28.03.2014.

9. On 30.09.2015, after some arguments, the petitioner withdrew the application filed under Section 152 of the Code.

10. The learned senior counsel for the petitioner submits that the same was withdrawn on the legal advice that the remedy of the petitioner was not in form of an application under Section 152 of the Code, but instead in form of an application seeking review of the order dated 14.03.2011.

11. The petitioner thereafter, on 08.10.2015, filed the application seeking review of the order dated 14.03.2011. Alongwith the said application, the petitioner also filed an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing of the application seeking review.

12. The said applications were dismissed by the learned ARC by the order dated 17.08.2018, refusing to condone the delay in filing of the application seeking review. The learned ARC in his order dated 17.08.2018, observed that there was a delay of around 4 ½ years in filing of the application seeking review, which could not be explained merely by putting the blame on the previous counsel. It was further

held that even the new counsel had taken ten months to withdraw the previous application filed under Section 152 of the Code.

13. Consequent to the dismissal of the application of the petitioner under Section 5 of the Limitation Act, 1963 and the application seeking review of the order dated 14.03.2011, the application of the respondent under Section 15(7) of the Act was allowed by the learned ARC vide its order dated 17.08.2018.

14. It is relevant to note here that the learned ARC allowed the application under Section 15(7) of the Act as a mere *sequitur* to the dismissal of the application of the petitioner seeking review of the order dated 14.03.2011, without considering whether on the facts of the case, the petitioner could be held to have contumaciously not deposited the rent pursuant to the order dated 14.03.2011 of the learned ARC. Relevant extract from the order is reproduced herein below:

> *"Cogent reasons have not been disclosed in the application for condonation of delay of the long period of around 4 ½ years. In these facts and circumstances, the application under Section 5 of the Limitation Act of the respondent is dismissed.*
> *Since the application under Section 5 of the Limitation Act has been dismissed, the application of the respondent for review/modification/recall of the order dated 14.03.2011 is also dismissed.*
> *Now, the application of the petitioner under Section 15(7) of the Delhi Rent Control Act is taken up for consideration.*
> *Reply to the application has been filed.*

> *It is an admitted case of the respondent that rent has not been paid or deposited at the rate of Rs.850/- per month.*
> *Since rent has not been paid or deposited in accordance with the order dated 14.03.2011 which has attained finality, the defence of the respondent is struck out."*

15. The petitioner thereafter filed an appeal before the learned RCT, which has been dismissed by the Impugned Order dated 04.03.2020. The learned RCT has affirmed the decision of the learned ARC, refusing to condone the delay in filing of the application seeking review. The learned RCT, has also affirmed the order of the learned ARC passed under Section 15(7) of the Act, observing that in the reply of the petitioner to the application filed under Section 15(7) grounds similar to those pleaded under Section 5 of the Limitation Act, 1963 had been pleaded by the petitioner. The learned RCT further held that the petitioner has not filed any application seeking condonation of delay or default in compliance with the order under Section 15(1) of the Act nor offered to pay the balance amount of arrears of rent, which reflected bold obstinacy on the part of the petitioner in not complying with the order passed under Section 15(1) of the Act which has attained finality.

16. The learned senior counsel for the petitioner submits that the order dated 14.03.2011 clearly proceeded on an incorrect presumption that the rate of rent was admitted by the petitioner to be Rs.850/- per month. He submits that in fact, this was the bone of contention between the parties in the eviction petition and the dispute to be adjudicated between the parties. The admitted rent as far as the

petitioner is concerned was Rs.750/- per month, as was reflected in the Rent Agreement dated 16.07.1998, which is an admitted document. He further submits that as on 14.03.2011, there was no evidence before the learned ARC evidencing Rs.850/- per month to be the last-paid rent, on the basis of which alone the learned ARC could have directed the petitioner herein to pay/deposit the rent at the rate of Rs.850/- per month. He submits that this mistake was realized only when the respondent filed an application under Section 15(7) of the Act on 26.09.2012. The petitioner immediately thereafter, on 16.11.2012, filed the application under Section 152 of the Code. The petitioner was advised that the remedy of the petitioner would be in form of an application seeking review of the order and therefore, withdrew the said application on 30.09.2015, and within nine days thereafter, on 08.10.2015, filed an application seeking review of the order dated 14.03.2011. He submits that therefore, the reason for delay in filing of the application seeking review was the legal advice then received by the petitioner that the remedy would be in form of an application under Section 152 of the Code.

17. Placing reliance on the judgment of the Supreme Court in ***Rafiq & Ors. vs. Munshilal & Ors.,*** AIR 1981 SC 1400, he submits that the petitioner cannot be prejudiced for having acted on the advice received from his counsel.

18. He further submits that in any case, the petitioner could not have been held to have contumaciously not deposited the rent as directed by the learned ARC. The petitioner has been duly depositing

the rent at the rate of Rs.750/- per month and was pursuing his legal remedies seeking rectification of the order dated 14.03.2011 passed under Section 15(1) of the Act. He submits that the closure of the right to defence is a drastic measure and is to be resorted to only when the tenant is found to have acted contumaciously and in total disregard of the order passed. In this regard, he has placed reliance on the judgment of the Supreme Court in ***Miss. Santosh Mehta v. Om Prakash and Ors.,*** (1980) 3 SCC 610; and of this Court in ***Nirmal Kapoor vs. Sushila Devi Jain & Ors.,*** (1986) 10 DRJ 323.

19. On the other hand, the learned counsel for the respondent submits that the two Courts below having exercised their discretion in not condoning the delay and subsequently allowing the application of the respondent under Section 15(7) of the Act, this Court would not interfere with the same in exercise of its powers under Article 227 of the Constitution of India.

20. On merit, he submits that the order dated 14.03.2011 was passed in the presence of the petitioner as also his learned counsel. The petitioner took no steps to have the same reviewed/rectified till the respondent filed the application under Section 15(7) of the Act. The petitioner thereafter let such application remain pending for almost four years before withdrawing the same and then filed an application seeking review of the order dated 14.03.2011. He submits that in the meantime, inspite of the order dated 14.03.2011 having not been rectified/reviewed, the petitioner failed to deposit the rent at the rate of Rs.850/- per month, thereby clearly showing an intention not to

comply with the direction passed by the learned ARC. He submits that therefore, the learned ARC and the learned RCT have rightly exercised their discretion in not condoning the delay in filing of the review application by the petitioner and striking off his defence under Section 15(7) of the Act.

21. I have considered the submissions made by the learned counsels for the parties.

22. A perusal of the pleadings, that is, the eviction petition filed by the respondent and the reply thereto filed by the petitioner, clearly indicates that there is a dispute between the parties as to the rate of rent qua the tenanted premises. While the respondent claims the same to be Rs.850/- per month, the petitioner has taken a stand that it is Rs.750/- per month. It is not denied by the learned counsel for the respondent that the Rent Agreement dated 16.07.1998 relied upon by the respondent in the eviction petition, mentioned the rent as Rs.750/- per month. It is also not denied that there was no other document before the learned ARC as on 14.03.2011, which would have shown the admitted rate of rent last paid by the petitioner as Rs.850/- per month.

23. Section 15(1) of the Act reads as under:

> ***"15. When a tenant can get the benefit of protection against eviction.*** *(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."*

24. A reading of the above would show that on an application of the landlord, the Controller may make an order directing the tenant to pay to the landlord or deposit with the Controller, an amount "calculated at the rate of rent at which it was last paid" for the period for which the arrears of rent were legally recoverable from the tenant. As on 14.03.2011, therefore, the learned ARC had before him the admitted rate of rent of Rs.750/- per month as against the rate of rent of Rs.850/- as claimed by the respondent. The order dated 14.03.2011 has been reproduced hereinabove. The same records rent at the rate of Rs.850/- per month has been admitted by the petitioner. This would be clearly contrary to the record before the learned ARC and therefore, erroneous on the face of the record.

25. The respondent filed the application under Section 15(7) of the Act on 26.09.2012. It is not denied that before the returnable date on the said application, the petitioner filed an application under Section 152 of the Code, on 16.11.2012, praying that the order dated 14.03.2011 be rectified to record the admitted rate of rent as Rs.750/-

per month instead of and in place of Rs.850/- per month. It is not denied that the said application remained pending till 30.09.2015, when the same was withdrawn by the petitioner. Within nine days thereafter, the petitioner filed an application seeking review of the order dated 14.03.2011 alongwith an application seeking condonation of delay under Section 5 of the Limitation Act, 1963 in filing such application seeking review. The reasons given for the delay was the pendency of the earlier application which was claimed to have been filed on an incorrect legal advice by the previous counsel. It is not denied that in the meantime, the petitioner has been duly depositing the rent at the rate of Rs.750/- per month.

26. Keeping in view the above facts, it could not have been said that the petitioner was either not diligent in seeking rectification of the order dated 14.03.2011 passed by the learned ARC or has acted contumaciously or with obstinacy in making compliance with the said order. The petitioner was pursuing his legal remedies as had been advised to him and clearly there was no delay in pursuing the same.

27. In ***Miss. Santosh Mehta*** (supra), the Supreme Court has held that Section 15(7) of the Act is a penal provision and is discretionary in nature. It has a built-in self-restraint and is to be resorted to in only exceptional circumstances and not in a routine manner following upon a mere failure to pay rent. It is an extreme power and therefore, should be exercised where the Court finds a wilful failure, deliberate default or volitional non-performance. It is not an automatic weapon and therefore, the last resort must not be converted into the first resort.

28. In ***Kamla Devi (Smt.) vs. Vasdev, (1995) 1 SCC 356,*** the Supreme Court reiterated that it is not obligatory for the Rent Controller to strike out the defence of the tenant under Section 15(7) of the Act, if the tenant fails to make payment or deposit. It would depend upon the facts of the case and the discretion of the Controller whether such drastic order should or should not be passed.

29. It is also noted that the effect of striking off the defence under Section 15(7) of the Act is not only in form of depriving the tenant his right to defend the Eviction Petition, but would also lead to him losing the protection under Section 14(2) of the Act. Therefore, there can be no denial that such power is to be exercised sparingly and judiciously.

30. The findings of the learned ARC on the application under Section 15(7) of the Act have been quoted hereinabove. The same do not consider that the petitioner had continued to make deposit of rent in the *integerrum* at the rate of Rs.750/- per month on a regular basis. Similarly, the learned RCT also has not considered the effect of the petitioner having made such deposit on a regular basis. Clearly, the factum of such deposit reflects that the petitioner has not acted with obstinacy or in utter defiance of the order passed under Section 15(1) of the Act, as held by the learned RCT.

31. As noted hereinabove, there appears to be a mistake in the order dated 14.03.2011 passed by the learned ARC wherein Rs.850/- per month was taken as the admitted rate of rent, while this was clearly a dispute between the parties. The said order was liable to be rectified by the learned ARC.

32. Accordingly, I find that the learned ARC and the learned RCT have failed to exercise the jurisdiction which was vested in them in failing to condone the purported default of petitioner in complying with the order dated 14.03.2011 passed by the learned ARC and consequently, striking off his defence.

33. In view of the above, the Impugned Order dated 04.03.2020 is set aside.

34. At this stage, I may also note that the Eviction Petition has been pending since 2010. The learned ARC is therefore requested to expedite the hearing in the said petition and make endeavor to adjudicate on the same within a period of nine months from the date when it is next listed before it. In this endeavor, the learned ARC shall refuse any/all unwarranted requests for adjournment by either party.

35. As admittedly, the petitioner did not notice the mistake in the order dated 14.03.2011 till the time the respondent filed the application under Section 15(7) of the Act, the petitioner shall, without prejudice to his rights and contentions, clear all arrears of rent at the rate of Rs.850/- per month alongwith interest at the rate of 15% per annum thereon, in compliance with the order dated 14.03.2011, within eight weeks from today. The petitioner shall continue to pay/deposit the rent at the rate of Rs.850/- per month, as directed in the order dated 14.03.2011 in future as well.

36. The petitioner shall further pay costs of Rs.25,000/- to the respondent for the delay that has been caused in the adjudication of the Eviction Petition.

37. The present petition is allowed in the above terms.

NAVIN CHAWLA, J

APRIL 7, 2021/Arya

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