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the partners other than the one signing the lease-deeds. It is not disputed that the lease-deeds have been properly executed on behalf of the firm. In this view of the matter these petitions fail and are dismissed with costs. The record be sent to the trial Court without any delay.

K.S.K.

CIVIL MISCELLANEOUS

Before H. R. Khanna, J.

TIRLOK CHAND,—Appellant.

v.

RAM KISHAN DASS,—Respondent.

Second Appeal from Order No. 82-D of 1963.

1963

July, 24th.

Delhi Rent Control Act (LIX of 1958)—Ss. 14 and 15—Petition for ejectment on ground of non-payment of rent—Tenant obtaining benefit as regards deposit of arrears of rent—Whether can obtain the same benefit over again in the same proceedings—Object of the Proviso to S. 14(2)—Benefit of S. 14(2)—Whether can be had in successive proceedings—S. 14(i) proviso—"May"—meaning of.

Held, that the proviso to sub-section (2) of section 14 of the Delhi Rent Control Act, 1958 makes it quite clear that a tenant having once availed of the benefit of the provisions of the Act, relating to the deposit of rent during the pendency of a petition for ejectment on ground of non-payment of rent in spite of notice of demand, cannot claim the benefit of those provisions over again if he makes a default in the payment of rent of those premises for three consecutive months. The object of the above proviso is to prevent on pain of eviction repeated default in payment of rent by a tenant after notice of demand has been served on him. The proviso clearly contemplates that the indulgence of sub-section (2) of section 14 of the Act can be shown only once to a tenant in respect of a premises and is not to be repeated a second time in case a tenant makes a default in the payment of rent of those premises for three consecutive months.

Held, that there is nothing in the language of the proviso to section 14(2) of the Act to restrict its operation to the same proceedings. In fact in most of the cases the proviso would come into play only in subsequent proceedings because the first proceedings for ejectment on ground of non-payment of rent are bound to come to an end on deposit of rent in accordance with sub-section (2) of section 14 read with section 15 of the Act.

Held, that though the word used in the proviso to sub-section (1) of section 14 of the Act is "may", in effect it means "must" or "shall". A number of restrictions have been placed on the right of a landlord to eject a tenant and it is only in a defined set of circumstances that ejectment is allowed. Once a landlord proves the requirements of law and brings his case within the ambit of the prescribed circumstances, the Court is bound to order ejectment.

Second Appeal from the Order of Shri Pritam Singh Pattar, Rent Control Tribunal, Delhi, dated 1st April, 1963, confirming that of Shri Sudharshan Aggarwal, Additional Rent Controller, Delhi, dated 31st January, 1963, dismissing the appeal with costs.

D. K. KAPOOR, ADVOCATE for the Petitioner.

R. S. NARULA AND J. K. SETH, ADVOCATES, for the Respondent.

JUDGMENT

KHANNA, J.—This second appeal filed by Tirlok Chand, a tenant of the shops in dispute, is directed against the order of the learned Rent Control Tribunal affirming on appeal the order of the Rent Controller directing the ejectment of the appellant from the shops in dispute. Khanna, J.

The brief facts of the present case are that the appellant is occupying the shops in dispute as a tenant of the respondent on a monthly rent of Rs. 63. The respondent filed an application on 13th

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December, 1961, under section 14 of the Delhi Rent Control Act 59 of 1958 (hereinafter referred to as the Act) for ejectment of the appellant from the shops in dispute on the ground that in spite of a notice of demand the appellant had not paid the rent amounting to Rs. 945 for the period from 1st September, 1960 till 30th November, 1961. Some other grounds of ejectment were also mentioned but we are not concerned with them now.

The appellant admitted the tenancy and the agreed rate of rent but denied his liability to be evicted. The Rent Controller ordered the ejectment of the appellant on the ground of non-payment of rent. It was also held that the appellant was not entitled to the benefit of section 14(2) read with section 15(1) of the Act because the appellant had already availed of that benefit in previous proceedings. On appeal, the order of the Rent Controller was, as already stated, affirmed by the learned Rent Control Tribunal.

At the hearing of the second appeal it has not been disputed that a previous petition was filed by the respondent for ejectment of the appellant from the premises in dispute and in those proceedings the appellant availed of the benefit of the provisions of sub-section (2) of section 14 read with sub-section (1) of section 15 of the Act by depositing the arrears of rent with the result that the aforesaid petition was dismissed. It is, however, argued by Mr. Kapur, learned counsel for the appellant, that the mere fact of the appellant having once availed of the benefit of the provisions of sub-section (2) of section 14 would not prevent his claiming the benefit of that sub-section over again in the present proceedings. The Controller, it is urged, made an error in not allowing the appellant to pay or deposit the rent in accordance with sub-section (1) of section 15 of the Act in spite of the

application of the appellant for that purpose. This contention, in my opinion, is devoid of force. Clause (a) of the proviso to sub-section (1) of section 14 of the Act provides that the Controller may order the ejectment of the tenant, who has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date of the notice of demand for arrears of rent, and reads as under:—

> "14 (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 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)."

Sub-section (2), which has a bearing on the present appeal, reads as under:—

> (2) No order for the recovery of possession of any premises shall be made on the

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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 sub-section 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."

The proviso to the above sub-section makes it clear that a tenant having once availed of the benefit of the provision relating to the deposit of rent during the pendency of a petition for ejectment on ground of non-payment of rent in spite of notice of demand cannot claim the benefit of those provisions over again if he makes a default in the payment of rent of those premises for three consecutive months. The object of the above proviso is to prevent on pain of eviction repeated default in payment of rent by a tenant after notice of demand has been served on him. The proviso, in my opinion, clearly contemplates that the indulgence of sub-section (2) of section 14 of the Act can be shown only once to a tenant in respect of a premises and is not to be repeated a second time in case a tenant makes a default in the payment of rent of those premises for three consecutive months.

Mr. Kapur then contends that the proviso covers the case of a default to be made in the course of the same proceedings and the tenant can claim the benefit of sub-section (2) repeatedly in successive proceedings. This contention is not well-founded for there is nothing in the language of the proviso to restrict its operation to the same proceedings. In case the contention of Mr. Kapur were accepted, it would be tantamount to reading

in the proviso the words "in the course of the same proceedings" in the latter part of the proviso which words in fact are not there. Apart from that, I am of the view that in most of the cases the proviso would come into play only in subsequent proceedings because the first proceedings for ejectment on ground of non-payment of rent are bound to come to an end on deposit of rent in accordance with sub-section (2) of section 14 read with section 15 of the Act.

It is next argued that there was no default made by the appellant in the payment of rent. In this respect I find that notice dated 14th September, 1961, copy of which is Exhibit P/7, was given by Mr. R. L. Kohli, Advocate, on behalf of the respondent to the appellant to pay rent of the premises in dispute from 1st September, 1960 till 31st August, 1961. This notice was received by the appellant on 15th September, 1961 as per postal acknowledgement Exhibit P. 8. No rent was admittedly paid by the appellant in accordance with the notice and the appellant in his reply Exhibit P. 9 merely stated that the rent would be paid in due course according to law. The non-payment of rent in spite of notice to the appellant clearly shows that the default was committed by him in payment of rent for more than three months.

Argument has also been advanced that Mr. R. L. Kohli was not authorised to give notice on behalf of the respondent. No plea on that score was taken in the written statement before the Controller and as such I am not prepared to entertain it in appeal. Notice, copy of which is Exhibit P. 7, clearly shows that it was on behalf of the respondent. Argument has further been advanced that the original notice did not bear the signatures of Mr. R. L. Kohli. No objection in so many words

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was taken in the written statement and as such cannot be allowed to be raised in appeal. Apart from that I find that the original notice is admittedly in possession of the appellant and he did not produce the same at the hearing of the petition before the Controller. In case it was the plea of the appellant that the original notice did not bear the signatures of Mr. Kohli, the appellant should have not only taken an express plea to that effect in the written statement, he should have also produced the notice at the hearing of the case before the Controller. The notice was the best piece of evidence to show as to whether it bore the signatures of Mr. Kohli. The appellant, who was admittedly in possession of the same, did not produce it and in the circumstances the court will be justified in presuming that had it been produced, it would have gone against the contention of the appellant. The mere fact that the main onus to prove the case was on the respondent is immaterial. The appellant by suppressing the notice, in spite of being in possession of the same, cannot be allowed to take advantage of abstract doctrine of the onus of proof. I may, in this context, refer to the observations of Tek Chand J. in a Division Bench case *Mohammad Hussain* v. *Secretary of State and others* (1), which are to the following effect:—

> "It is clear, therefore, that the documents relating to the alleged purchase of cattle either did not exist, or they have been deliberately withheld by the defendant and it is, therefore, reasonable to infer that, if produced, they would have gone against the appellant. As has been frequently pointed out by their Lordships of the Privy Council, the parties to a suit should bring before the Court their best

(1) A.I.R. 1939 Lahore 330.

evidence; and when this is not done, the Court would be justified in concluding that it would, if brought into Court, not support the case of the party omitting to produce it and that in these circumstances such party cannot be allowed to take advantage of the abstract doctrine of onus of proof".

Reference may also be made in this connection to *New India Timber Trading Company, Delhi* v. *Murari Lal and others* (2), wherein a similar view was taken. The learned counsel for the appellant has cited *Hira Lal* v. *Deputy Commissioner, Rai Bareli* (3), and *Sajjan Singh* v. *Smt. Jamuna Bala Devi and another* (4), but he can derive no benefit from those cases because the original notices in the aforesaid cases were found in fact not to have been signed on behalf of the landlord.

Lastly it is argued that even if the respondent has brought his case within the ambit of the provisions of clause (a) of the proviso to sub-section (1) of section 14, the Court should not order the ejectment of the appellant because the word used in the proviso to sub-section (1) of section 14 is "may". It is urged that the use of the word "may" indicates that it is in the discretion of the Court whether to order the ejectment even if the other requirements of the law are fulfilled. In my opinion, the above contention is not well-founded because the word "may" in the context in which it is used means "must" or "shall". The question as to whether the word "may", as used in section 12 of Bombay Rents, Hotel and Lodging House, Rates Control Act, means "must" or "shall" or whether

(2) 1956 P.L.R. 2.
(3) A.I.R. 1951 All. 483.
(4) A.I.R. 1960 All. 410.

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it is an enabling word which gives discretion, came up for decision before a Division Bench, consisting of Gajendragadkar, J., (as he then was), and Chainani, J., of Bombay High Court, in *Kurban Hussen* v. *Ratikant* (5), and it was observed that taking into consideration the scheme of the section it must be held that the said word introduces an element of obligation or compulsion and in effect means "must" or "shall". Taking into consideration the scheme of section 14 of the Delhi Rent Control Act 59 of 1958, I am of the view that though the word used in the proviso to sub-section (1) of section 14 is "may", in effect it means "must" or "shall". A number of restrictions have been placed on the right of a landlord to eject a tenant and it is only in a defined set of circumstances that ejectment is allowed. Once a landlord proves the requirements of law and brings his case within the ambit of the prescribed circumstances, the Court is bound to order ejectment. The appeal, accordingly, fails and is dismissed. Considering all facts, I leave the parties to bear their own costs of the appeal.

R.S.

FULL BENCH

Before Harbans Singh, Daya Krishan Mahajan and Prem CHAND PANDIT, *JJ.*

BALWANT KAUR,—*Petitioner.*

v.

CHIEF SETTLEMENT COMMISSIONER (LANDS),—*Respondent.*

Civil Writ No. 267 of 1961.

1963

August, 2nd

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 10, 19, 20, 24 and 33—Chief Settlement Commissioner—Whether can cancel allotment and transfer of proprietary rights after sanad *is granted.*

(5) A.I.R. 1959 Bom. 401.