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

*Date of Decision: 04.03.2021*

+ **CM(M) 15/2021 & CMs 584/2021, 586/2021**

PERMANAND VIJAY KUMAR ..... Petitioner  
Through Mr.Harish Malhotra, Sr. Adv.  
with Mr.Sandeep Vishnu, Adv.

versus

SMT. SAVITRI DEVI & ORS. .... Respondents  
Through Mr.Sudhir Nandrajog, Sr. Adv.  
with Mr.P.K.Rawal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioner being aggrieved of the order dated 21.09.2020 passed by the learned Rent Control Tribunal (Central) in Appeal, being RCT No.85/2019, dismissing the appeal of the petitioner herein in challenge to the order dated 04.05.2019 of the learned Rent Controller and affirming the order passed by the learned Rent Controller under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC), allowing the eviction petition of the respondent, being E-No.80318/2016 titled *Kunj Bihari Lal Kapoor vs. M/s Permanand Vijay Kumar*, under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'Act').

3. To appreciate the dispute between the parties, it would be necessary to take note of certain facts.

4. The petitioner is a tenant of the respondent with respect to two shops and one godown on the backside of the ground floor of the property bearing No.488, Bartan Market, Sadar Bazar, Delhi-110006 (hereinafter referred to as 'subject premises').

5. The respondents, alleging that the rate of rent with respect to the subject premises was Rs.1,020/- per month which had neither been paid nor tendered by the petitioner herein with effect from 01.08.2005, issued a legal notice dated 19.11.2005 demanding the said rent from the petitioner.

6. It is not disputed by the respondents that the petitioner sent a reply dated 26.11.2005 to the above legal notice *inter alia* claiming that the rent of the property, in fact, had been increased to Rs.2,040/- per month with effect from 01.01.2005. The petitioner further stated in the reply that the rent is being paid quarterly and the receipts have also been issued on a quarterly basis. It was stated in the reply that the rent up to 31.08.2005 already stands paid and the rent for the months of September, October and November, 2005 was liable to be paid on 30.11.2005.

7. The petitioner claims to have enclosed with the reply to the legal notice, a cheque for three month's rent amounting to Rs.6,120/- and another cheque for Rs.2,040/- being rent for December, 2005. I may note herein itself that the respondent denies receipt of these cheques.

8. The petitioner obtained the permission under the Slum Areas (Improvement and Clearance) Act, 1956 to file the eviction petition and thereafter filed the eviction petition in question sometime in November, 2009. *Inter-alia* following averments were made by the respondent in its eviction petition:

|         |  |  |
|---------|--|--|
| “11.    | <i>Monthly rent together with details of house-tax, electricity, water and other charges paid by the tenant.</i>   | <i>Rs.2040/- exclusive of electricity charges.</i>   |
| xxx xxx |  |  |
| 19.     | <i>(b) Whether notice required has been given and if so, particulars thereof (copies of such notice and tenant’s reply if any, should be furnished).</i> | <i><u>Notice dated 19.11.2005 was sent to the respondent, which was duly served upon the respondent.</u></i> |

*“2.....The tenancy is according to English Calendar month commencing from 1<sup>st</sup> day of each English Calendar month, commencing from 1<sup>st</sup> day of each English Month and ending on the last day of the same English Calendar month. The tenant/respondent has neither paid nor tendered the entire arrears of rent w.e.f. 1.8.2005 inspite of repeated requests and demands and also inspite of service of the legal notice of demand dt. 19.11.2005 which notice was duly served upon the respondent and after the receipt of the said legal demand notice, a false and frivolous reply was sent by the respondent. Even after the receipt of the demand notice dt 19.1 2005 or otherwise, the respondent neither paid **nor tendered** the entire arrears of rent w.e.f. 1.8.2005 at the rate of Rs.2040/- per month. Hence, the petition is on ground of non-payment of rent.*

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*“5. That it is worth-while to mention here that the respondent is not paying the rent month by month, which is mandatory on*

*the part of the respondent that the respondent should pay the rent month by month on or before 15<sup>th</sup> day of each English Calendar month; failing which they are liable to pay the interest at the rate of 15% per annum. The respondent failed to pay or tender the entire arrears of rent due inspite of the repeated requests and demands of the petitioner w.e.f. 1.8.2005 and also inspite of the service of the legal demand notice dated 19.11.2005, which notice was duly served upon the respondent. The respondent was also called upon to pay the entire arrears of rent at the rate of Rs.2040/- per month alongwith interest at the rate of 18% per-annum;*

6. *That the Petitioner has already terminated/determined the tenancy of the respondent and the contractual tenancy of the respondent has been terminated/determined by virtue of a legal notice dated 19.11.2005 in this regard and the said notice was duly served upon the respondent but inspite of the receipt of the said legal notice, the respondent has failed to comply with it. Rather, the respondent has chosen to send a false and frivolous reply to the said legal notice vide reply notice dated 26.11.2005.”*

*(Emphasis supplied)*

9. A reading of the above averments in the Eviction Petition would show that though the respondent had made an oblique reference to the reply to the legal notice received from the petitioner, there was no submission made with respect to the receipt or non-receipt of the cheques that were clearly stated to have been enclosed with the reply.

10. The petitioner herein, by its reply to the petition, alleged as under:

*“6. That the petitioner is guilty of making false statement in as much as it has been falsely alleged by the petitioner that the respondent has failed to pay the rent inspite of service of legal notice dated 19.11.2005, whereas, the fact remains that*

*immediately upon receiving the said notice, the respondent through its advocate sent two cheques and that too for more than the amount demanded qua arrears of rent along with its reply dated 26.11.2005 and clarified the true position. It is submitted that when no ground of eviction was available to the petitioner, the petitioner sent a false and frivolous notice dated 19.11.2005 alleging nonpayment of rent and subletting, assigning or otherwise parting with possession of the tenanted premises to alleged sub tenants. It is submitted that the respondent has always been paying rent regularly and no subletting ever created by it and as such both the grounds raised/taken by the petitioner were false and did not have any iota of truth, therefore the respondent sent a reply dated 26<sup>th</sup> November, 2005 inter alia stating the true facts. As stated hereinabove, the respondent dealt with each and every allegation whereby it was in respect of the payment of rent or the creation of alleged sub tenancy. In its reply the respondent duly clarified that the respondent is in exclusive possession of the premises and has been carrying on its business from the said premises right from the inception of the tenancy, hence the present petition is liable to be dismissed.”*

11. In the written statement filed by the petitioner, it was further stated that the rent has always been collected by the respondents quarterly and receipts were issued by the respondents for the same.

12. In the replication filed by the respondents, the respondents gave the following reply to the contents of paragraph 6 of the written statement which has been reproduced hereinabove:-

*“6. That the contents of para 6 of the preliminary objections of the written statement are wrong and denied as stated. It is denied that the petitioner is guilty of making false statement or that it has been falsely alleged by the petitioner that the respondent has failed to pay the rent inspite service of legal notice dt. 19.11.2005 or that the facts remain that immediately upon receiving the said notice, the respondent through its*

*Advocate sent two cheques or that too for more than the amount demanded qua arrears of rent alongwith its reply dt. 26.11.2005 or clarified the true position as alleged. It is denied that the petitioner sent a false or frivolous notice dt. 19.11.2005 alleging non-payment of rent or sub-letting, assigning or otherwise parting with possession of the tenanted premises to sub-tenants as alleged. It is denied that the respondent has always been paying rent regularly or no sub-letting ever created by it or that both the grounds raised/taken by the petitioner were false or did not have any iota of truth as alleged. It is denied that the respondent dealt with each and every allegation whereby it was in respect of the payment of rent or the creation of alleged sub-tenancy as alleged. It is denied that in its reply, the respondent duly clarified that the respondent is in exclusive possession of the premises or has been carrying on its business from the said premises right from the inception of the tenancy or that the present petition is liable to be dismissed.”*

13. Therefore, there was only a vague denial on part of the respondents to the assertion of the petitioner that two cheques for rent had been enclosed alongwith the reply to the legal notice. The assertion of the petitioner herein that the rent was paid on quarterly basis also remained not denied by the respondents.

14. During the pendency of the above petition, the respondents then filed an application under Order XII Rule 6 of the CPC, which was allowed by the learned Rent Controller by his order dated 04.05.2019, *inter alia* observing as under:

*“After hearing the arguments and going through the record, I find that as such relationship of landlord and tenant between the parties is not disputed. Further, non-encashment of cheque pertaining to arrears of rent by petitioner, as claimed by respondent, at best amounted to refusal of acceptance of rent,*

*allegedly tendered by respondent. Once, respondent found that petitioner had not encashed the cheque pertaining to arrears of rent, then, it should have put him on guard. In such situation, respondent should have moved the Court by depositing rent U/Sec. 27 DRC Act. Respondent did not do so. The net result is that, as per record, respondent despite receiving legal notice dated 19.11.2005, failed to tender or deposit the rent as per law. In addition to aforesaid reasoning, I find that copies of cheques as referred in the reply of respondent dated 26.11.2005, are not enclosed by respondent with Written Statement. So, except the claims of respondent regarding issuance of cheques in reply dated 26.11.2005, there is no documentary proof regarding those claims, in support thereof. In such circumstances, I find that there remained bald claim of respondent regarding issuance of cheque for clearance of arrears of rent which as such, does not solve the purpose in hand. As such, in the wake of aforesaid appreciation, ingredients of Section 14(1)(a) of DRC Act, are met with. Therefore, eviction petition U/Sec. 14(1)(a) DRC Act, stands allowed.”*

15. A reading of the above observations would clearly show that the learned Rent Controller has been pleased to disbelieve the stand of the petitioner herein that the rent for the months demanded by the respondents was tendered by the petitioner by cheques along with its reply dated 26.11.2005 to the legal notice dated 19.11.2005.

16. In my opinion, the fact whether the cheques were duly enclosed along with the reply dated 26.11.2005 of the petitioner was a disputed question of fact which can be adjudicated only upon the parties leading their evidence on that issue. There was no admission on

behalf of the petitioner on the basis of which an order under Order XII Rule 6 of the Code could have been passed by the learned Rent Controller disbelieving the case of the petitioner of having enclosed the two cheques along with the reply to the legal notice.

17. The learned Rent Controller has further held that the petitioner, once it found the respondents to have not encashed the cheques, having not moved the Court for depositing the rent under Section 27 of the Delhi Rent Control Act, 1958, failed to tender or deposit the rent as per law, making it liable for eviction under Section 14(1)(a) of the Act. It is this finding which came to be accepted even by the learned Rent Control Tribunal in its Impugned Order dated 21.09.2020, with the following observations:

*“19. Falling back to the present case, what is to be seen is as to whether taking the rival pleadings in entirety, any issue arises which must be taken through full dress trial. The admitted position in the present case is that the rent demand notice dated 19.11.2005 was duly served on the appellant; that according to the appellant, alongwith reply dated 26.11.2005 he also sent two cheques towards arrears of rent, which were not encashed by the predecessor of the present respondents; that according to the predecessor of the present respondents, no rent cheques or reply was received by him; and that within two months of receipt of rent demand notice the appellant did not deposit rent before the Rent Controller under Section 27 of the Delhi Rent Control Act or even thereafter, within two months of reply dated 26.11.2005.*

*20. In that regard, the legal position, as described above, is well settled that where the landlord refuses to accept rent, it is the bounden duty of the tenant to deposit the rent under Section 27 of the Delhi Rent Control Act within two months of such*



*refusal, as stipulated by Section 14(1)(a) of the Act. In the present case, even if the stand of the appellant is believed that along with reply dated 26.11.2005 he had also sent two rent cheques, it cannot be denied that at most, by 30.11.2005 appellant would have come to know from his bank statement that the alleged rent cheques had not been got encashed. That being so, the appellant ought to have deposited rent under Section 27 of the Delhi Rent Control Act within two months thereafter. But admittedly, the rent was deposited by the appellant under section 27 of the Act much later on 13.09.2006.*

21. *Going a step deeper, for the sake of arguments even it is accepted that the predecessor of the present respondents had six months validity period of the rent cheques and could have got the same encashed till the month of May 2006, the deposit of rent under Section 27 of the Act ought to have been prior to 01.08.2006, but the rent deposit was done under Section 27 of the Act on 13.09.2006. Then also, having not been within two months, it was not a valid deposit of rent as stipulated by Section 14(1)(a) of the Delhi Rent Control Act.*

20. *Going by the above factual and legal matrix, there is no issue on which evidence is required to be led through full dress trial. That being so, in my considered view it was certainly a fit case to write judgment in favour of landlord/predecessor of the present respondents on admissions.”*

18. The question, therefore, that arises for consideration in the present petition is as to whether, on the tenant failing to deposit the rent under Section 27 of the Act on deemed refusal of the landlord to accept the tendered rent, the tenant becomes liable for eviction under Section 14 (1)(a) of the Act.

19. The learned senior counsel appearing for the petitioner submits that where, in response to the legal notice sent by the landlord, the tenant “tendered the whole of the arrears of the rent legally

recoverable from him within two months”, the eviction petition under Section 14(1)(a) of the Act is liable to be dismissed. For the purposes of Section 14(1)(a) of the Act, in case of any deemed refusal of the landlord to accept arrears of rent, the tenant is under no further obligation to make such deposit under Section 27 of the Act.

20. He further submits that even otherwise, in the facts of the present case, eviction under Order XII Rule 6 of the Code could not have been passed as there were various disputed questions of fact, including whether the rent was payable quarterly or on a monthly basis, to be adjudicated by the learned Tribunal. He submits that if the plea of the petitioner herein is to be accepted that the rent was payable on a quarterly basis, in fact and as a consequence thereof, on the date of the legal notice, there was no rent due or payable by the petitioner and the petition under Section 14(1)(a) of the Act itself was not maintainable.

21. On the other hand, the learned senior counsel appearing for the respondents, placing reliance on the judgment of the Supreme Court in *Sarla Goel & Ors. vs. Kishan Chand*, (2009) 7 SCC 658 and of this Court in *Abid vs. Kausar Parveen*, 2015 (1) RCR (Rent) 522, submits that it is no longer *res integra* that in case the landlord refuses to accept the rent tendered by the tenant, the tenant must take recourse to Section 27 of the Act and deposit the rent before the learned Controller. The provisions of Section 27 of the Act are mandatory in nature and on the failure of the tenant to take recourse to the same, the tenant would not be entitled to any protection, and decree under Section 14(1)(a) of the Act is liable to be passed against him. He

submits that in the present case, as admitted, the petitioner had not deposited the rent with the learned Rent Controller under Section 27 of the Act. The eviction petition was, therefore, entitled to be decreed and has been rightly decreed under Order XII Rule 6 of the Code.

22. Before considering the above submissions of the learned senior counsels for the parties, I may herein note that the learned Rent Control Tribunal in its Impugned Order has also observed that there was a delay in making deposit of the rent under Section 27 of the Act by the petitioner. In fact, it is now admitted that the rent for the months in dispute had not been deposited by the petitioner under Section 27 of the Act at all. Therefore, this Court has to determine as to whether, inspite of the tender of the rent by the petitioner (which is disputed by the respondents), the petitioner was under an obligation to deposit the rent under Section 27 of the Act, and having failed to do so, the eviction petition under Section 14(1)(a) of the Act filed by the respondents is liable to be decreed on the basis of purported admission and under Order XII Rule 6 of the Code.

23. To answer the above, reference may first be had to the provisions of the Act.

24. Section 14(1)(a) of the Act is reproduced hereinbelow:

***“14. Protection of tenant against eviction. (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 possession 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.”*

*(Emphasis supplied)*

25. A reading of the above provision would show that the learned Controller, may, on an application made to him by the landlord, make an order for recovery of possession of the tenanted premises where 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 arrears of rent has been served on him by the landlord in the manner provided under Section 106 of the Transfer of Property Act, 1882. Therefore, an order of eviction cannot be passed against a tenant where the tenant pays or tenders the whole of the arrears of rent legally recoverable from him to the landlord within two months of the receipt of the notice of demand from the landlord. The operative words being ‘paid nor tendered’.

26. Section 14(2) of the Act provides a protection to the tenant against eviction under Section 14(1)(a) and reads as under:

*“(2) No order for the recovery of possession of any premises shall be made on the 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.”*

*(Emphasis supplied)*

27. A reading of the above provision would show that even where the tenant has failed to pay or tender the legally recoverable rent to the landlord within two months of the receipt of the notice, an order of eviction will not be passed against the tenant in case the tenant ‘makes payment or deposit’ as required by Section 15 of the Act. The operative words herein are ‘payment or deposit’.

28. Proviso to Section 14(2) of the Act denies protection to the tenant who, having availed of protection under Section 14(2) of the Act once, makes a default again ‘in the payment of rent’ of the subject premises for three consecutive months. The operative words in the proviso are ‘payment of rent’.

29. 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 fifteen of each succeeding month, a sum equivalent to the rent at that rate.”*

*(Emphasis supplied)*

30. Section 15(1) of the Act empowers the Controller to make an order directing the tenant to pay to the landlord or deposit with the Controller, the rent legally recoverable from the tenant and to continue to pay or deposit, month by month, such rent by the fifteenth day of each succeeding month. The operative words again being ‘pay or deposit’.

31. Clearly, therefore, the legislature has drawn a distinction between the main provision that is Section 14(1)(a) and the provisions in relation to such eviction proceedings as contained in Sections 14(2) and 15(1) of the Act. As a ground for eviction, the tenant can be evicted only where the tenant has neither ‘paid nor tendered’ the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for arrears is served on him. Once the tenant has so defaulted, in case he makes the payment or deposit of the rent as required of him under Section 15 of the Act, the tenant, in terms of Section 14(2) of the Act, will be entitled to the protection against eviction, but only once. In case the tenant having availed of such protection once, again defaults in making payment of the rent for the subject premises for three consecutive months thereafter, the tenant is no longer entitled to any protection under the Act and will be liable to be evicted under Section 14(1)(a) of the Act. For purposes of Section 14(2), unlike Section

14(1)(a), mere tender of rent by the tenant would not suffice; there has to be actual payment or deposit of rent.

32. As far back as in *Damadilal & Ors. v. Parashram & Ors.* (1976) 4 SCC 855, the Supreme Court has held that tender of rent by cheque amounts to a valid discharge of the obligation to pay rent. It has held as under:

*“13. On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well-established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted. The question however still remains whether in the absence of an agreement between the parties, the tender of rent by cheque amounts to a valid discharge of the obligation. Earlier, we have extracted a passage from the High Court's Judgment on this aspect of the case. We agree with the view taken by the High Court on the point. Rent is payable in the same manner as any other debt and the debtor has to pay his creditor in cash or other legal tender, but there can be no dispute that the mode of payment can be altered by agreement. In the contemporary society it "is reasonable to suppose such agreement as implied unless the circumstances of a case indicate otherwise. In the circumstance of this case, the High Court, in our opinion, rightly held that the cheque sent to the plaintiffs amounted to valid tender of rent. The second contention urged on behalf of the appellants must also be rejected.”*

33. Reference in this regard may also be had to the judgment of the Supreme Court in *Mahendra Raghunathdas Gupta v. Vishwanath Bhikaji Mogul & Ors.*, (1997) 5 SCC 329.

34. I may also, however, refer to the judgment of the Supreme Court in *Gopi Chand Gupta (Dead) by LRs v. Jain Plastic Industry*, (2002) 5 SCC 274, wherein, on the facts of that case, the Supreme Court held that sending of a cheque by the tenant was not a valid tender. In the said case, the Supreme Court found that there was no agreement between the parties nor was there any practice to tender the rent by way of cheque nor at any time earlier the rent was sent by post. The said judgment is therefore, clearly distinguishable as in the present case, the tenant/petitioner has been tendering rent by way of cheque even in the past. In any case, the fact of such practice can be determined only after evidence is taken; a judgment under Order XII Rule 6 of the CPC could not have been passed on the basis of any purported admission in this regard.

35. It is true that on the refusal of the landlord to accept the rent tendered, the tenant is under an obligation to deposit the same under Section 27 of the Act and having failed to do so would be treated as being in default of payment of rent, however, such default has to be considered as on the date of giving of notice by the landlord. On such default, the tenant will have a period of two months within which he can rectify such default by paying or tendering the whole of the amount of rent. The landlord cannot issue a notice of demand for rent which is otherwise not recoverable by him; refuse to accept the rent thereafter tendered by the tenant; and then proceed to file a petition



under Section 14(1)(a) of the Act claiming default of the tenant in paying or tendering such rent. The cause of action for filing of the petition under section 14(1)(a) of the Act arises only where the tenant fails to pay or tender the legally recoverable rent to the landlord within two months of the receipt of the notice of demand. In case such tender is made, the cause of action no longer survives and the petition under Section 14(1)(a) of the Act itself would not be maintainable. Therefore, the question before the learned Trial Court would be as to whether the conditions of Section 14(1)(a) of the Act were at all made out by the landlord/respondents herein on the facts of the present case. In case it is found that on the date of the notice, there was, in fact, no default on part of the petitioner in payment of the rent as no rent legally recoverable from him was due or that the rent was duly tendered to the landlord, the question of moving to the stage of Section 14(2) of the Act would not at all arise and the eviction petition would be liable to be dismissed as being without any valid cause of action.

36. In *Prakash Mehra v. K.L. Malhotra*, (1989) 3 SCC 74, the Supreme Court held that the arrears of rent envisaged by Section 14(1)(a) of the Act are the arrears demanded by the notice for payment as arrears of rent. The arrears due cannot be extended to rent which has fallen due after service of the notice of demand.

37. This clearly shows that the cause of action for filing of the petition has to be considered in relation to the notice of demand. Once the rent has been tendered, the notice demanding arrears will stand satisfied and the eviction petition cannot be based on the allegation

that on a deemed refusal of the landlord to accept such tender of rent, the tenant has not deposited the same under Section 27 of the Act. For this purpose, the landlord must serve another demand notice to the tenant.

38. In *Krishan Lal v. K.M. Sharma*, 62(1996) DLT 411, this Court has held that the tenant must be allowed to prove that the arrears of rent were duly sent to the landlord but was not accepted by the landlord as otherwise it will be very easy for the landlord to find an excuse to refuse the tender and wait for the requisite period to pass and then claim eviction on the basis of non-tender of arrears of rent. This is what seems to have happened in the present case; at least this is what is alleged by the petitioner and needs to be determined on trial.

39. In *Sarla Goel* (supra), the Supreme Court was considering the case of the second default by the tenant therein which clearly puts the onus on the tenant not only to tender but to actually pay or deposit the arrears of rent. Considering the scheme of the Act and the requirement of Section 14(2) of the Act requiring the payment of rent, the Supreme Court held as under:

*"10. Mr.Gandhi, learned Counsel appearing on behalf of the respondent, however, refuted the submission made by the learned Counsel for the appellants. He has drawn our attention to Section 27 of the Act and submits that Section 27 cannot be said to be mandatory in nature and only an obligation has been created on the tenant either to pay the rent or tender or to deposit the same with the Rent Controller. In the present case, admittedly, tenant had tendered the rent to the landlord but he had refused to*

*accept the same. After such refusal, it would be open to the tenant to deposit the same in the office of the Rent Controller but even if he does not do so, non deposit of the rent after such refusal cannot be said to be mandatory in nature which entails eviction of the tenant on the ground that he has committed second default and, therefore, he is liable to be evicted. It was further argued by the learned Counsel for the respondent/tenant that in view of the word "may" used in Section 27 of the Act and the Act being a beneficial legislation for the tenant, it can never be said that the intention of the Legislature to use the word "may" was to mean that "may" must be construed as "shall".*

**11.** *We are unable to accept this submission of the learned Counsel for the tenant/respondent for the following reasons:*

*It is true that in Section 27 of the Act, it has been provided that the tenant may deposit rent when such rent was not accepted or refused or no receipt was granted by the landlord or there was bonafide doubt as to the person or the persons to whom the rent was payable, the tenant may deposit such rent with the Rent Controller in the prescribed manner.*

**12.** *Chapter III deals with Control of Eviction of Tenants. Section 14 gives a specific right to the tenants to resist evictions. Sub-section (2) of Section 14 of the Act provides that no order for recovery of possession of any premises shall be made on the grounds specified in Class A of the proviso to Sub-section (1) if the tenant makes payment or deposit the rent as required by Section.*

**13.** *An overall reading of Chapter III of the Act would clearly show that an additional protection has been given*

by the Legislature to the tenant who has committed default in payment of rent for which he is liable to be evicted under Section 14(1)(a) of the Act. Section 14(1)(a) of the Act clearly provides that when the tenant has neither paid nor tendered whole of the arrears of the rent legally recoverable from him within two months from the date of which a notice of payment of 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. A plain reading of Sub-section (2) of Section 14 makes it clear that a tenant is protected from eviction if he makes payment or deposits the rent as required by Section 15. Section 15 deals with cases when a tenant can get the benefit of protection against eviction.

**14.** Accordingly, Section 14(1)(a) is a ground for eviction of a tenant for default in payment of rent. In spite of that, protection has been given under Section 15 of the Act to the tenant to avail of the protection given by the Legislature by depositing rent in the manner indicated in Section 15 of the Act. However, proviso to Section 14(2) of the Act takes away the right of a tenant of the benefit of Sub-section (2) of Section 14 if the tenant having obtained such benefit once in respect of any premises and makes a further default in payment of rent of those premises for three consecutive months. Therefore, it has been made clear that when the tenant makes a second default, no protection can be given to the tenant from eviction.

**15.** Chapter IV, however, deals with Deposit of Rent. Section 26 of the Act provides that if the rent is paid it is the obligation of the landlord to grant receipt for the rent paid to him. In default of payment of rent within the time specified therein, the tenant is also liable to pay simple

*interest at the rate of 15% per annum from the date on which such payment of rent is due to the date on which it is paid. The proviso to Section 26(2) of the Act makes it clear that it shall be open to the tenant to remit the rent to his landlord by postal money order. Sub-section (3) of Section 26 also makes the provision that if the landlord or his authorized agent refuses or neglects to deliver to the tenant a receipt referred to in Sub-section (2), the Controller may, on an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorized agent, by order direct the landlord or his authorized agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid. From a reading of Sub-section (3) of Section 26 of the Act, it is clear that the tenant has been given further protection to get the rent receipt from the landlord and in the event the landlord refuses to grant such receipt, the procedure has been clearly made by the Legislature for the purpose of getting the receipt under the Act and at the same time the landlord can be imposed to pay damages not exceeding double the amount paid by the tenant and the costs of the application and to obtain a certificate from the landlord in respect of the rent paid. Now we come to the most important provision regarding the procedure under the Act to pay or deposit or tender rent to the landlord, if he refuses to grant any receipt in respect of the payment already made to him. As quoted herein earlier, Section 27 deals with deposit of rent by the tenant. It clearly says that where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 26 or refuses or neglects to deliver a receipt*

*referred to therein or where there is a bona fide doubt as the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner. When the words "bona fide doubt" has been added to Section 27, the tenant may remit such rent to the Controller by postal money order. From a conjoint reading of this provision referred to herein above and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the Legislature how the rent can be deposited if it was refused to have been received or to grant receipt for the same. If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. It is well settled that whether the word "may" shall be used as "shall", would depend upon the intention of the Legislature. It is not to be taken that once the word "may" is used by the Legislature in Section 27 of the Act, would not mean that the intention of the Legislature was only to show that the provisions under Section 27 of the Act was directory but not mandatory.*

**16.** *In other words, taking into consideration the object of the Act and the intention of the Legislature and in view of the discussions made herein earlier, we are of the view that the word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may", in our view, was used by the Legislature to mean that the procedure given in those provisions must be strictly followed as the special protection has been given to the tenant from eviction. Such a cannon of construction is certainly warranted because otherwise intention of the Legislature would be defeated and the class*

*of landlords, for whom also, the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of them."*

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**24.** *It is not in dispute that the tenant/respondent had availed the benefit of Section 14(2) of the Act by its order dated 3<sup>rd</sup> of December, 2001 passed by the Additional Rent Controller, Delhi. Since we have already come to the conclusion that since the tenant/respondent has failed to deposit rent in compliance with Section 27 of the Act because in the present case, admittedly, landlord/appellants had not accepted any rent tendered by the tenant/respondent within the time referred to in Section 26, it was the duty of the tenant to deposit such rent before the Rent Controller as prescribed in Section 27 of the Act. Admittedly, this step was not taken by the respondent which is mandatory in nature and, therefore, we must hold that the tenant/respondent had committed a second default in payment of rent and is, therefore, liable to be evicted from the suit premises.*

**25.** *In view of our discussions made hereinabove and considering the scope and object of the Act and the provisions of the same, we are of the view that the word "may" in the context of the Act, shall be construed as "shall" and therefore, the tenant shall deposit the rent after refusal by the landlord and, accordingly, having not done so, he is liable to be evicted."*

40. This Court in ***Abid*** (supra) was again dealing with a case of the second default and it was reiterated that in case of a refusal by the

landlord of the tender of rent, the tenant has to comply with the procedure specified under Section 27 of the Act. The said judgments therefore, would have no application to the facts of the present case.

41. Coming now to Order XII Rule 6 of the CPC, the Supreme Court recently in *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414, has reiterated that power under Order XII Rule 6 of the CPC is discretionary and cannot be claimed as a matter of right. Where the defendant has raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 of the CPC.

42. In the present case, in case it is to be accepted that on the date of the legal notice dated 19.11.2005 sent by the respondent, there was no legally recoverable rent payable by the petitioner as the rent was payable on a quarterly basis; or that the petitioner had, in fact, tendered the rent for the months as demanded by the respondents, the conditions of Section 14(1)(a) of the Act would not be satisfied and the eviction petition itself would be liable to be rejected. The question of reaching the stage of Section 14(2) of the Act would also not arise in such circumstances.

43. This, therefore, certainly was not a case which could have been decreed by taking recourse to Order XII Rule 6 of the Code. The learned Rent Controller and the learned Rent Control Tribunal have therefore, erred in exercise of their jurisdiction.

44. In view of the above, the present petition is allowed. The Impugned Order dated 04.05.2019 of the learned Rent Controller, as confirmed by the Impugned Order dated 21.09.2020 of the learned



Rent Control Tribunal, are set aside. There shall be no order as to costs.

45. The application filed by the respondents under Order XII Rule 6 of the Code shall stand dismissed.

46. The learned Trial Court shall proceed to decide on the eviction petition on merits. It is clarified that no observations made on the merit of the factual dispute between the parties shall bind the learned Rent Controller, who shall determine the same in accordance with law.

47. As the application of the respondents under Section 15(7) of the Act has been dismissed as infructuous on account of the Impugned Order having been passed under Order XII Rule 6 of the Code, with the consent of the parties, the application shall be treated as revived and restored back to its original number before the learned Rent Controller, to be decided on its own merit.

48. As the eviction petition has been pending since 2009, the learned Rent Controller shall make an endeavour to dispose of the eviction petition expeditiously, preferably within one year from today.

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**NAVIN CHAWLA, J**

**MARCH 4, 2021**

**RN**