

NONIHAL SINGH

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v.

MAYA DEVI

(Civil Appeal Nos. 3687-3688 of 2018)

APRIL 05, 2018

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**[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]**

*Rajasthan Rent Control Act, 2001 – Delay in depositing arrears of rent and mesne profits – Application for extension of time and condonation of delay – In the instant case, Tribunal granted eviction decree on 05.04.2014 on the ground of arrears of rent with direction to the appellant-tenant to vacate the premises within six months – On writ petition, High Court ordered tenant to deposit arrears of rent before 31.12.2017 and mesne profits w.e.f. 01.11.2017 – Appellant could not deposit the arrears of rent within prescribed time – Application for extension of time to deposit rent stood dismissed on 15.01.2018 – Meanwhile landlady had filed application for execution of decree of arrears of rent wherein the tenant deposited the amount on 12.01.2018 in court and the said amount was handed over to the landlady on 15.01.2018 and court recorded full satisfaction of landlady and the file was consigned – However, High Court dismissed the prayer for condoning the delay in depositing the amount in writ petition filed by the appellant – Hence the appeals – Held: It is true that amount of arrears of rent as per order dated 01.11.2017 was to be deposited till 31.12.2017 and since the amount could not be deposited, application for extension of time was filed – High Court did not consider that a substantial amount in pursuance of order of the High Court in execution proceedings was deposited on 12.01.2018 that is before passing order of the High Court on the application for extension of time which fact was a relevant fact – Order dated 15.01.2018 was passed in ignorance of the said fact – Order dated 15.01.2018 does not advance substantial justice and is set aside – Similarly, an amount of Rs.33000/- was deposited on 15.01.2018 directly in the bank account of landlady which according to appellant was rent for 11 months and condonation of delay was sought which was rejected on 27.02.2018 – The circumstance that in execution proceedings the amount was deposited and accepted by landlady*

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A was a relevant fact for condonation of delay in depositing the amount – Order dated 27.02.2018 is also set aside – Rent Control.

*Rajasthan Rent Control Act, 2001 – Plea of respondent that there was non-compliance of Order dated 05.04.2014 as in the said order after six months from the order, the deposit was to be made three times of the rent – Held: Plea not sustainable – Order dated 05.04.2014 indicated that the direction was that if the tenant does not evacuate the premises within 6 months from the date of issue of certificate of re-possession, he shall be responsible to pay 3 times rent to the landlady – The order dated 05.04.2014 itself mentions that the liability to pay three times rent shall accrue after six months from the date of issue of certificate of re-possession – There is no material to indicate as to when certificate of re-possession was issued – Secondly, the order made by the Rent Tribunal as well as Rent Appellate Tribunal stood superseded by the order of the High Court dated 01.11.2017 which was passed with the consent of both the parties – High Court in its order dated 01.11.2017 recorded terms and conditions for permitting the appellant to continue in occupation of the premises in question till 30.04.2019 – The terms and conditions recorded in the order by the High Court are clearly in variance with the decree of the Rent Tribunal and the Rent Appellate Tribunal – What was required to be adhered to are the directions of the High Court dated 01.11.2017 and not the order of the Tribunal as claimed for the respondent – Appellant is directed to be put back in possession of the premises – The appellant shall continue to deposit the mesne profit as per order of the High Court dated 01.11.2017 and in the event of any default committed by the appellant, it shall be open for the respondent-landlady to take appropriate proceedings against the appellant.*

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3687-3688 of 2018.

G From the Judgment and Orders dated 27.02.2018 and 15.01.2018 of the High Court of Judicature for Rajasthan at Jaipur in SBWMA No. 80 of 2018 and 9 of 2018 respectively.

Jasbir Singh Malik, Ms.Usha Nandini V., Advs. for the Appellant.

H Vedant Singh, Michelle Gomes, Nikilesh Ramachandran, Advs. for the Respondent.

The Order of the Court was passed by

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**ASHOK BHUSHAN, J.** Leave granted.

2. These appeals have been filed by the tenant challenging the orders dated 15.01.2018 and 27.02.2018 by which High Court of Rajasthan at Jaipur has rejected the miscellaneous application for extension of time and miscellaneous application to condone delay in depositing arrears of rent and mesne profits. Miscellaneous applications were filed in Writ Petition No.19029 of 2017 which was earlier disposed of by the High Court on 01.11.2017.

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3. Brief facts to be noted for deciding these appeals are:

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The respondent-landlady filed an application under Section 9 of the Rajasthan Rent Control Act, 2001 on 05.12.2006 before the Rent Tribunal, Alwar on the ground of default in payment of rent. The Tribunal vide its judgment dated 05.04.2014 allowed the application of landlady directing the appellant to handover the vacant possession within six months. The landlady was also entitled to receive rent from the date of filing the suit till the date of decision in the form of mesne profit.

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The appeal was filed to the Rent Appellate Tribunal, District Alwar which too was dismissed on 03.05.2017. The appellant aggrieved by the orders passed by the Rent Tribunal and Rent Appellate Tribunal filed Writ Petition No.19029 of 2017 in the High Court which was disposed of by the High Court with certain directions. As per order dated 01.11.2017 passed by the High Court the appellant was to deposit arrears of rent before 31.12.2017 and further mesne profit at the rate of Rs.3,000/- per month w.e.f. 01.11.2017. The appellant could not deposit the arrears of rent within time allowed by the High Court.

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5. An application was filed by the appellant for extension of time to deposit the rent which was dismissed on 15.01.2018 by the following order:

*“The matter comes up on an application for extension of time to deposit arrears of rent under the order dated 01.11.2017 passed by this Court.*

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*I am of the considered view that no ground for extension of time is made out.*

*It is accordingly dismissed.”*

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A 6. It is relevant to note that before 15.01.2018, the landlady has filed application for execution of decree of arrears of rent in which application the landlady has claimed arrears of rent from 04.09.2003 to 19.03.2017 totaling to Rs.96,997/-. In the execution of decree the amount was deposited by the appellant on 12.01.2018 in Court in the execution proceedings. The aforesaid amount was also handed over to the decreeholder on 15.01.2018 and execution was filed recording full satisfaction.

B 7. The appellant further made a deposit of Rs.33,000/- on 15.02.2018 in the bank account of landlady claiming to be mesne profit. Another miscellaneous application was filed by the appellant on 15.02.2018 in Writ Petition No.19029 of 2017 praying for condoning the delay in depositing the amount which application was also rejected by the High Court on 27.02.2018 by the following order:

C *“Heard the counsel for the applicant and the non-applicant on the application for condonation of delay in depositing the arrears of rent/mesne profits in pursuance to the order dated 01.11.2017 passed by this Court in SBCWP No.19029/2017 titled Nonihal Singh vs. Smt. Maya Devi.*

D *Having heard the counsel for the applicant and the non-applicant, I am of the considered view that in the facts obtaining no ground obtains for expanding the time for depositing the arrears of rent/mesne profits as prayed for.*

E *The application stands dismissed.”*

F 8. Aggrieved against the aforesaid two orders, these appeals have been filed by the appellant. The appeals were taken on 27.03.2018 which were directed to be listed on 28.03.2018. In the meantime, respondent claims to have obtained possession of premises in question on 27.03.2018 itself. When the case was taken up by this Court on 28.03.2018, this Court noticing the submission of the respondent that the possession of the premises has been taken on 27.03.2018, directed for maintaining status quo.

G 9. When the matter was heard on 05.04.2018, learned counsel for the respondent filed an affidavit annexing judgments of courts below. In the affidavit, it is stated that the appellant has not deposited the amount as per order dated 01.11.2017 of the High Court. The respondent refuted the claim of the appellant that he has deposited the entire arrears of

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rent/mesne profits. It was further pleaded that as per order dated 05.04.2014, the appellant was directed to make payment of rent calculated at three times of the existing rate which has not been complied with. A

10. We have heard learned counsel for the parties and perused the records.

11. These two appeals have been filed questioning the two orders passed by the High Court dated 15.01.2018 and 27.02.1018 by which orders prayer of the appellant for extension of time to deposit arrears of rent and condoning the delay in depositing arrears of rent has been rejected. Whether the High court committed any error in rejecting the aforesaid applications is the main question to be considered in the present appeals. B C

12. The writ petition challenging the order of Rent Tribunal and the Rent Appellate Tribunal filed by the appellant has been disposed of on 01.11.2017 with the following directions:

*“(i) The petitioner-tenant shall be entitled to continue in occupation of the tenanted premises in question upto April 30, 2019, but not beyond subject to condition that he would hand over the vacant possession of the premises in question to respondent-landlord on or before April 30, 2019.* D

*“(ii) The petitioner-tenant shall pay arrears of rent or mesne profits, if any, till October 31, 2017, as determined by the courts within a period of two months from today.* E

*“(iii) The petitioner-tenant commencing 1<sup>st</sup> November, 2017 shall pay to respondent-landlords, mesne profits @ Rs.3000/- per month on or before 10<sup>th</sup> of each month.* F

*“(iv) The petitioner-tenant shall not alienate or otherwise create third party right, or hand over possession of the tenanted premises in question to any other person.*

*Further, the petitioner-tenant shall submit an undertaking incorporating the aforesaid conditions before the Rent Tribunal Alwar, within a period of thirty days, from the date of this order. In case the petitioner-tenant fails to submit the undertaking as aforesaid within thirty days from today, and/or breaches the conditions of this order, the respondents-* G

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A *landlords shall be entitled to the immediate execution of the judgment and possession certificate dated 03.05.2017 and obtain possession of the premises in issue forthwith in accordance with law. The breach of this order shall also be liable to be punished as contempt of the court.”*

B 13. The landlady has filed execution application on 25.03.2017 before the Rent Tribunal claiming rent of Rs.96,997/- for the period from 04.09.2003 to 19.03.2017. In execution proceedings, aforesaid amount of Rs.96,997/- has been deposited by the appellant on 12.01.2018 receipt of which payment has been filed as annexure P-4. It is also relevant to note that in the execution proceedings dated 15.01.2018 court passed the following order:

C *“Decree holder Maya Devi with Advocate Manish Jain present. The file has been pursued. Mentioned amount Rs.96997/- in recovery warrant in compliance of O-21 R 30 CPC were handed over to decree holder-Mrs. Maya Devi.*  
D *The Advocate of decree holder expressed full satisfaction in the execution application. In view of full satisfaction into matter of execution, application is filed with a direction to consign the record.”*

E 14. On the same date when the execution was filed recording satisfaction, the High Court rejected the application of the appellant for extension of time. The order of the High Court does not reflect that as to whether parties brought into the notice of the Court that in pursuance of the execution application amount of Rs.96,997/- has been deposited on 12.01.2018. The High Court exercises the jurisdiction under Article 226  
F and 227 for the purpose of securing the ends of justice. It is true that amount of arrears of rent as per order dated 01.11.2017 was to be deposited till 31.12.2017 and since the amount could not be deposited, application for extension of time was filed. We have no doubt that had it been brought in the notice of the High Court that amount of  
G Rs.96,997/- has been deposited on 12.01.2018, the High Court would have considered the fact that a substantial amount in pursuance of order of the High Court in execution proceedings has been deposited on 12.1.2018 that is before passing order of the High Court on the application for extension of time which fact was a relevant fact and the order dated 15.01.2018 has been passed in ignorance of the said fact. We are satisfied  
H that order dated 15.01.2018 does not advance substantial justice. Further,

after depositing Rs.96,997/-, a further amount of Rs.33,000/- was deposited on 15.02.2018 directly in the bank account of landlady receipt of which has been filed as Annexure P-6 which according to the appellants is rent for 11 months at the rate of Rs.3,000/- subsequent to the period which was included in the execution application. After depositing amount of Rs.33,000/- another miscellaneous application being No.80 of 2018 was filed praying for condonation of delay in depositing the amount. On 27.02.2018 when application was taken both the amounts, i.e., Rs.96,997/- and Rs.33,000/- covering mesne profits upto February, 2018 were deposited. Copy of the Misc. Application No.80 of 2018 has been brought on record as Annexure P-3. In paragraph 5 of the application there is an averment regarding deposit of amount of Rs.96,997/- which was claimed to have been withdrawn by the respondent on 15.01.2018. Copy of the order sheet of the trial court was also annexed. Further, the amount from 20.03.2017 to 31.10.2017 and thereafter till February, 2018 was also claimed to be deposited which averment has been made in paragraph 6 of the application. It was also mentioned that the earlier application was dismissed on 15.01.2018. A perusal of the High Court's order dated 27.02.2018 does not indicate that the Court has referred to the above mentioned averments in the application.

15. In the subsequent application, prayer was made for condoning the delay in depositing the amount. The deposit had already been made by the appellants which was also accepted by the respondent which is clear from the order of the Trial Court dated 15.01.2018 as noted above. The circumstance that in execution proceedings the amount has been deposited and accepted by the landlady was a relevant fact for condonation of delay in depositing the amount. The power and jurisdiction of the High Court vested under Sections 226 and 227 is for the purpose of securing ends of justice. In the facts of the present case, the High Court vide its order dated 01.11.2017 has already permitted the appellants to continue in occupation of the tenanted premises in question upto 30.04.2019.

16. It is true that there was delay in depositing the arrears of rent by the tenant as per order dated 01.11.2017 but subsequently in execution proceedings deposits were made and further deposits were made in the bank account covering the period upto February, 2018, which facts were not adverted to by the High Court while rejecting the application for condonation of delay in deposit.

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A 17. Learned counsel for the respondent submits that the deposit made by the appellant is not in accordance with the order dated 05.04.2014. It is submitted that in the order dated 05.04.2014 after six months from the order, the deposit was to be made at rate of three time of the rent. Order dated 05.04.2014 which is referred by the learned counsel for the respondent is to the following effect:

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“ **-: Order :-**

C *Eventually petitioner's this petition suit under Section 9 of the Rajasthan Rent Control Act, 2001 accepting against respondent with cost is decreed this way that respondent/tenant shall handover the disputed rented premises whose complete detail is described in para 3 of main petition suit by evacuating premise's empty hold within 6 months from the date of decision to the petitioner/landlord.*

D *In the determined duration in the situation of giving the possession of the premises to the petitioner by respondent petitioner shall receive normal due rent till the receiving of the possession. If the tenant does not evacuate the premises within 6 months from the date of issue of certificate of re-possession then he shall be responsible to pay 3 times rent to the petitioner from the determined rate of due rent in the form of mesne profits from the date of issue of certificate of re-possession.*

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*Petitioner shall have right to receive rent from the date of filing suit till date of decision according to rule in form of mesne profit.”*

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The perusal of the said order indicates that the direction was that if the tenant does not evacuate the premises within 6 months from the date of issue of certificate of re-possession, he shall be responsible to pay 3 times rent to the landlady.

G 18. There are two reasons due to which the above submission of the respondent cannot be accepted. Firstly, the order dated 05.04.2014 itself mentions that the liability to pay 3 times rent shall accrue after six months from the date of issue of certificate of re-possession. There is no material to indicate as to when certificate of re-possession was issued. Secondly, the order made by the Rent Tribunal as well as Rent Appellate

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Tribunal stand superseded by the order of the High Court dated 01.11.2017 which was passed with the consent of both the parties. The High Court in its order dated 01.11.2017 recorded terms and conditions for permitting the appellant to continue in occupation of the premises in question till 30.04.2019. The terms and conditions recorded in the order by the High Court are clearly in variance with the decree of the Rent Tribunal and the Rent Appellate Tribunal. What was required to be adhered to are the directions of the High Court dated 01.11.2017 and not the order of the Tribunal as claimed by the learned counsel for the respondent.

19. We are, thus, of the opinion that the relevant materials have been brought on record to prove that the appellant deposited the arrears of rent/mesne profits as per order of the High Court dated 01.11.2017 though belatedly. The appellant has also brought on record the receipt of payment of amount of Rs.33,000/- towards rent for the period of 20.03.2017 to 28.02.2018 @ Rs.3,000/- towards March, 2018.

20. In the result, we set aside the orders of the High Court dated 15.01.2018 and 27.02.1018 and further direct that the appellant be put back in possession of the premises within a period of one week. The appellant shall continue to deposit the mesne profit as per order of the High Court dated 01.11.2017 and in the event of any default committed by the appellant, it shall be open for the respondent-landlady to take appropriate proceedings against the appellant. The appeals are allowed accordingly.