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C.A.No. 1978 OF 2000
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ITEM No.103 Court No.10 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.1978 OF 2000@@
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Amrit Lal Appellant (s)
VERSUS

Shiv Narain Gupta Respondent (s)
(With appln. for placing the documents on record and
with office report)

With C.A. No.3735/2000

(With appln. for exem. from filing c/c of the impugned
judgment and with prayer for interim relief)

Date : 18/04/2002 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. S.K. Bagga, Sr.Adv.
Mr. Sandeep Kapoor,Adv.
Mr. Seeraj Bagga,Adv.
Mr. Rajinder Mathur,Adv.

For Respondent (s) Mr. R.M. Bagai,Adv.
Mr. R.A. Mishra,Adv.
Mr. Chander Shekhar Ashri,Adv.

Upon hearing counsel the Court made the following
O R D E R

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Mr. S.K. Bagga, learned senior counsel for the
appellant started his arguments at 11.45 AM and concluded at
1.00 PM.

The appeals are dismissed in terms of the signed
order.

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(Neena Verma) (Radha Rani Bhatia)
Court Master Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1978 OF 2000@@
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Amrit Lal Appellant

Versus

Shiv Narain Gupta Respondent

WITH@@
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CIVIL APPEAL NO.3735 OF 2000@@
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O R D E R@@
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On 13.12.1982, the respondent-landlord initiated proceedings for eviction of the appellant-tenant on the grounds available under Clause a, d, e and j of sub-section (1) of Section 14 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act', for short). There was some dispute as to the rate of rent at which rent was payable in respect of the premises. On 27.10.1983, the Trial Court passed an order under Section 15(1) of the Act directing the tenant to deposit rent in arrears calculated @ Rs.200/- per month from 01.09.1980 and to continue to deposit the rent falling due month by month by the 15th day of each month. The proceedings remained pending for quite ...2/~

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sometime. On 16.11.1992, an application was filed before the Rent Controller purporting to be a compromise titled as one under Order 23 Rule 3 and Section 151 of the CPC which recites that the dispute between the parties was settled and a new tenancy was created whereunder the tenancy premises as described in the deed, would be retained by the tenant on a monthly rent of Rs.500/-. This compromise petition was accompanied by lease deed and affidavits. It appears that the lawyers were on strike and therefore there was no appearance by the lawyers of the parties. On 23.03.1993, the landlord-respondent filed a petition disputing the factum of compromise and submitting that the documents which were filed on 16.11.1992 were the outcome of fraud and coercion and therefore were not acceptable to the landlord. By order dated 23.01.1995, the Trial Court upheld the

objection preferred by the landlord and refused to take the compromise on record. This order dated 23.01.1995 was not challenged by the tenant by filing an appeal before the Appellate Authority and hence the order achieved a finality.

On 23.03.1995, the landlord filed an application under Section 15(7) of the Act complaining of non-compliance by the tenant with the order under Section 15(1) of the Act pointing out failure on the part of the tenant in depositing

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the rent month by month. While this application was pending, on 12.12.1995, the tenant moved an application for amendment in the written statement seeking leave of the Court to incorporate a plea that on 16.11.1992, the parties had mutually agreed on new terms of tenancy whereunder a fresh deed of lease was executed. In substance, the plea sought to be put forth by way of amendment of the written statement was the same which formed the subject matter of compromise petition dated 16.11.1992. The landlord's application under Section 15(7) of the Act was opposed by the tenant submitting that he was not depositing the rent as he was under a belief that in view of fresh terms of lease having been settled between the parties, it was no longer obligatory for him to make compliance with the order dated 27.10.1983. By order dated 01.03.1996, the Trial Court rejected the application for amendment filed by the tenant and by the same order, allowed the application filed by the landlord seeking a direction for striking out the defence under Section 15(7) of the Act. The tenant preferred two appeals before the Rent Controlling Authority disputing the rejection of his application as also putting in issue that part of the order by which his defence was struck off. By order dated 06.11.1988, the Appellate Authority allowed both

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the appeals. In between, it appears that subsequent to the passing of the order dated 01.03.1996 by the Trial Court, the tenant had, in the month of April, 1996, deposited with the Trial Court the rent in arrears for the period between October, 1992 and April, 1996. Feeling aggrieved by the order of the Appellate Authority, the landlord filed a petition under Article 227 of the Constitution in the High Court. A learned single Judge of the High Court has allowed the petition and set aside the order of the Appellate Authority. Feeling aggrieved by the order of the High Court, these appeals, by special leave, have been filed by the tenant.

We have heard the learned counsel for the parties. We are of the opinion that no fault can be found with the order passed by the High Court.

So far as the rejection of prayer for amendment in the written statement is concerned, it is clear that the compromise is said to have been arrived at on 16.11.1992, which was promptly disputed by the landlord submitting that the same was void being the outcome of fraud and coercion played upon him. The Trial Court felt convinced by the plea of the landlord and therefore refused to take the compromise on record. The plea of the tenant which was specifically

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refused to be entertained by the Trial Court by order dated 23.01.1995 was sought to be raised again by way of amendment in the written statement and that too belatedly. The High Court has formed an opinion that the amendment sought for on 12.12.1995 based on an event of 16.11.1992 and that too by passing the order dated 23.01.1995 and in face of the prayer of the landlord seeking striking out of the defence of the tenant was belated and malafide and should not have been allowed by the Appellate Authority. The High Court, in our opinion, has rightly formed this opinion.

So far as the order striking out the defence of the tenant is concerned, it is clear that as far back as on 27.10.1983, the Trial Court had passed a judicial order under Section 15(1) of the Act, directing the tenant to deposit the rent month by month. Instead, the tenant defaulted in making the deposits for a period of about three and a half years. The learned counsel for the appellant submitted that striking out defence against eviction is an order which entails serious consequences on the tenant and ordinarily the defence should not be struck off unless the default is contumacious or deliberate. Sub-section (7) of Section 15 confers a discretion on the Controller who may order the defence against eviction to be struck out and
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proceed with the hearing of the application if a tenant fails to make payment or deposit, as required by Section 15. In the present case, the tenant stopped making deposits from the month of October, 1992. For the period between October, 1992 to March, 1993, it can be understood that the tenant believing that there was a compromise, did not make the deposit but the factum of compromise was disowned by the landlord on 23.03.1993. If the tenant believed bonafide that there was a compromise, then, he should have acted accordingly and paid or tendered the rent to the landlord @ Rs.500/- per month which was agreed upon between the parties on his own saying. If the landlord was disputing compromise, then the tenant should have tendered or deposited the rent before the Controller. There is a complete silence on the part of the tenant in paying or tendering the rent for the period for which he has defaulted. In such circumstances, the default in payment of rent cannot be said to be bonafide. The proceedings before the Controller have unfortunately remained pending for a long time, almost 20 years by this time. In the facts and circumstances of this case, it cannot be said that the High Court did not have jurisdiction or exceeded in exercise of jurisdiction in entertaining the petition under Article 227
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of the Constitution and setting aside the order of the Appellate Authority and restoring that of the Trial Court.

For the foregoing reasons, we are of the opinion that these appeals are devoid of any merit and are liable to be dismissed. The appeals are dismissed accordingly. The order of the High Court is maintained.

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.....J.
(R.C. LAHOTI)

.....J.
(B.N. AGRAWAL)

New Delhi,
April 18, 2002.