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

+ RC.REV. 84/2009

RAMESH CHANDER

..... Petitioner

Through: Mr. Robin Ratnakar David,
Advocate.

versus

SHYAM LAL SHARMA

..... Respondent

Through: NEMO.

CORAM:**HON'BLE MR. JUSTICE VIPIN SANGHI****ORDER**

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15.09.2009**C.M. No. 13062/2009**

Allowed, subject to all just exceptions.

RC.REV. 84/2009 & C.M. No. 13061/2009

In challenge in this petition is the order dated 20.07.2009 passed by Sh. Raghubir Singh, ARC (E) whereby the application seeking leave to defend filed by the petitioner/defendant/tenant has been dismissed being barred by limitation and an eviction order has been passed in favour of the respondent/landlord in his petition filed under Section 14 (1) (e) of the Delhi Rent Control Act. As per the report of the process server the petitioner was served with the summons in Schedule 3 on 01.05.2009. The application seeking leave to defend was filed only on 29.05.2009 whereas the same ought to have been filed within 15 days

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i.e. by 16.05.2009. There was a delay of 12 days in filing the said application. The petitioner moved an application under Section 151 CPC read with Rule 23 of the Delhi Rent Control Rules to seek condonation of delay in filing the real application. The reason for the delay was stated to be the paucity of funds with the petitioner to engage a counsel. He stated that he approached the legal aid committee on 19.05.2009 and, therefore, could not file the application to seek leave to defend earlier. The trial court dismissed both the applications by placing reliance on the decision of this court in ***Shyam Murari Vs. Rajnish Kumar Kashyap and Anr.*** 155 (2008) DLT 336 wherein it has been held that the Rent Controller has no power to condone any delay in filing of the applications seeking leave to defend. The learned ARC also took note of the fact that even if 19.05.2009 is taken as the relevant date, the application seeking leave to defend was barred by limitation even on that date. Consequently, the learned ARC dismissed both the applications and passed the eviction order in favour of the respondent / landlord.

While exercising the jurisdiction under Article 227 of the Constitution of India, this court can in appropriate cases exercise its judicial discretion reasonably to condone the delay in filing of the application seeking leave to defend so as to prevent miscarriage of justice. Keeping in view, the aforesaid position, I have perused the eviction petition as well as the application seeking leave to defend filed

by the petitioner. From the eviction petition it is seen that the ground of eviction was made out by the respondent / landlord by stating that he is 67 years of age and his wife is 65 years old. They are presently residing on the first floor of the property bearing no. 34/293, DDA Flats, Himmat Puri, Trilok Puri, Delhi – 110091. The petitioner is the tenant on the ground floor. The respondent landlord stated that on account of his and his wife's age they require the ground floor premises as they find it difficult to access the first floor. Pertinently, in the application seeking leave to defend this aspect has not been dealt with by the petitioner at all.

According to the respondent/landlord, the petitioner is a tenant at the rate of Rs. 1500/- per month as rent excluding electricity and water charges since 1st October, 2007. The respondent has also stated that rent has also not been paid since February, 2008 at the said rate. On the other hand, the stand taken by the petitioner/ tenant is that he is a tenant at a paltry rent of Rs. 100/- per month. The stand taken by the petitioner on the face of it appears to be false and totally unbelievable. It is unthinkable that a ground floor premises in a DDA flat in any part of Delhi would be let out for Rs. 100/- in the year 2007, as contended by the petitioner. The said plea is to be rejected out rightly.

It is also the case of the respondent landlord that the petitioner

did not pay the rent or the electricity charges due to which the electricity supply to the tenanted premises has been discontinued. He also alleges that the petitioner is a person with a criminal background against whom there are allegations of physical assault on the respondent's son and daughter-in-law.

The defence set up by the petitioner in his application seeking leave to defend, firstly, is that the respondent had let out a portion of the first floor of the premises recently. That in my view does not advance the case of the petitioner. Even according to the respondent, he requires the ground floor premises as the first floor premises wherein he resides is not suitable for him considering his and his wife's old age. The letting out of a portion of the first floor even if it is true, is of no relevance. The petitioner also alleges that the respondent's wife is the owner of the premises no. 34/292 which is also stated to be in possession of the respondent. Apart from the fact that the petitioner did not produce any material whatsoever in support of the said plea, in my view, the said plea even otherwise is of no relevance. Admittedly, the respondent is not the owner of the said premises. The respondent, therefore, is not legally entitled to occupy the same.

Keeping in view, the aforesaid facts and circumstances, I am of the view that there is absolutely no merit in this petition. The rejection of the petitioner's application to seek condonation of delay in filing the

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leave to defend application, and the consequential dismissal of the
leave to defend application has not resulted in any miscarriage of
justice to the petitioner.

Dismissed.

SEPTEMBER 15, 2009
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VIPIN SANGHI,J