

52

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

+ RC.REV. 128/2009

SHIRAJUDDIN

..... Petitioner

Through; Mr S.S. Kalra and Mr A.N. Khan, Advocates

versus

DALIP SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

26.11.2009

%

This Revision petition under Section 25 B(8) of the Delhi Rent Control Act 1958 has been preferred by the tenant against the order dated 8th September, 2009 of the Additional Rent Controller. The respondent/landlord had filed the petition for eviction under Section 14(1)(e) of the Act. Summons were ordered to be issued to the petitioner/tenant. The petitioner/tenant applied on 25th April, 2009 for leave to defend the petition for eviction. However, alongwith the application for leave to defend and an affidavit therewith, the petitioner/tenant also filed an application for condonation of delay in applying for leave to defend. It was stated in the said application for condonation of delay that the petitioner/tenant had been served by way of registered post on 8th or 9th April, 2009 and by way of ordinary process on 14th April, 2009.

The Additional Rent controller in the order impugned, without entering into any inquiry on his own as to when the petitioner/tenant had been served or whether the application for leave to defend had been filed within time or not, merely because an application for condonation of delay had been filed, dismissed the same on the basis of the judgments holding that the controller is not entitled to condone the delay.

RC.REV.128/2009

page 1 of 3

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

2

Consequently, an order of eviction has been passed against the petitioner/tenant.

This court in *Frank Anthony Public School Vs Aman Kaur* 1984 (6) DRJ 47 and in *Surinder Kumar Vs Prem Kumar* 18 (1980) DLT 255 has held that the time for filing the application for leave to defend in case of multiple service by several modes is to be computed from the date of the last service. As per the averments of the petitioner/tenant in his application for condonation of delay, the last service was on 14th April, 2009. If that be so, the application for leave to defend filed on 25th April, 2009 was within time and, in fact, the application for condonation of delay was misconceived. The Additional Rent Controller has erred in dismissing the application for leave to defend without applying himself to the matter and in being misled merely because an application for condonation of delay in applying for leave to defend had been filed.

The question which next arises is whether this court should entertain this revision petition. The law provides for the remedy to a tenant in such a situation to apply to the Additional Rent Controller under Order 37 Rule 4 of the CPC. Faced with the same, the counsel for the petitioner/tenant relies on *Prithi Pal Singh vs Satpal Singh* 133 (2006) DLT 686 to contend that the said remedy is not available to the petitioner/tenant. However, the judgment holds otherwise. The head note of the said judgment appears to be slightly erroneous. The same view has been taken earlier also by this court in *Mohd. Quresh Vs Roopa Fotedar* ILR 1990 Delhi 16. Rather than this court examining the matter which has not been examined by the controller, for the first time, it is deemed appropriate that the petitioner/tenant applies to the Additional Rent Controller under Order 37 Rule 4 of the CPC for setting aside the order of eviction which has been passed. If the Additional Rent Controller is satisfied that the application for leave to contest had been filed within the prescribed time, the Additional Rent Controller shall proceed to deal with the application for leave to defend which already stands filed.

In case the petitioner remains aggrieved, the filing of this petition will not come in the way of the petitioner in approaching this court again.

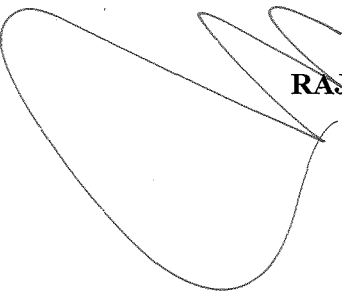
2
With the aforesaid directions, this petition is disposed of.

Dasti.

CM.No.17048/2009 (u/O 41 Rule 5 r/w Section 151 CPC for stay)

With the disposal of the main petition, this application has become infructuous and is disposed of.

NOVEMBER 26, 2009/M



RAJIV SAHAI ENDLAW, J