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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: March 16, 2010

Date of Order: April 08, 2010

+ CM(M) 429/2005

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08.04.2010

Shiv Kumar

...Petitioner

Through: Mr. Manoranjan and Mr. S.K. Tomar, Advocates

Versus

Dr. Darshan Kumar

...Respondent

Through: nemo

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. The petitioner has assailed an order dated 20th September 2004 of learned Additional Rent Control Tribunal (ARCT) allowing an appeal filed by respondent against an eviction order of learned Additional Rent Controller (ARC) passed against the respondent on the ground of not filing written statement by the respondent within the period of 90 days.

2. The learned ARCT observed that there was no sanction in law for the written statement to be put in petition box if the presiding officer was on leave. The proceedings in the matter were adjourned by the Reader of the Court on 22nd April, 2004 since the presiding officer was on leave, for 15th July, 2004 and non-filing of written statement under these circumstances was duly explained and the Court below should have taken the written statement on record. He, therefore, set aside the eviction order passed by learned ARC and directed that the written statement be taken on record and the eviction petition be proceeded in accordance with law.

3. It is submitted by the counsel for the petitioner that the written statement was to be filed within 90 days as per the mandate of Civil Procedure Code and the

presiding officer being on leave for one day would not absolve the responsibility of the defendant to file written statement within 90 days. The defendant could have approached the Court on next day for filing written statement and the observations made by learned ARCT that since the date was given by the Court official for 15th July, 2004, the written statement could be filed on 15th July, 2004 much beyond the period of 90 days was contrary to law.

4. I would agree with the petitioner that merely because the presiding officer was on leave for one day i.e. the date fixed, would not absolve the defendant to file written statement within 90 days. Ninety days is the outer limit for filing written statement which could be extended by the Court on an application only under exceptional circumstances. Otherwise normally the written statement should be filed within 30 days, whether the date of hearing is there or not. In District Courts and before Rent Controller, the documents and the pleadings can be filed in the Court even when the case is not fixed on the day. Such filing is done with the Court staff who put it before the presiding Officer day to day. Such filing is done even in absence of the presiding officer and when the presiding officer joins the duty, he is informed of the different applications and documents filed as all filing is to be countersigned by the presiding officer subsequently. I also do not agree with the observations made by learned ARCT that the acts of the plaintiff in not filing the process fee in time was incompatible with the time-bound provision of Civil Procedure Code in filing the written statement and, therefore, the time provided in Civil Procedure Code for filing written statement can also be ignored.

5. However, the eviction order passed by learned ARC even otherwise is not tenable in the eyes of law. The learned ARC in this case, after observing that the written statement was not filed within the period of 90 days and the time of 90 days could not be extended in any manner, straightway passed a decree of eviction under Order 8 Rule 1 CPC on the ground of Section 14(1)(a) of DRC Act observing it was a case of second default. The learned ARC went wrong on two counts. First, the time

limit for filing written statement of 90 days has been held not to be sacrosanct and the Supreme Court in *Aditya Hotels (P) Ltd. v Bombay Swadeshi Stores Ltd. & Ors* AIR 2007 SC 1574 observed as under:

“...that ordinarily the time schedule prescribed under Order 8 Rule 1 is to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him, he should take steps for drafting his defence and filing the written statement on the appointed day of hearing without waiting for arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the Court whether within 30 days or 90 days, as the case maybe, should not be granted just as a matter of routine and merely for the asking. After expiry of 90 days, the extension can be granted only by way of an exception and for cogent reasons assigned by the defendant to be recorded by the Court to its satisfaction.”.....that in any case where the defendant is permitted to seek extension of time, when the Court is satisfied that it was a case of laxity or gross negligence on the part of defendant or his Counsel, the Court may impose costs for dual purpose i.e. to deter the defendant to seek extension of time just for the asking, and to compensate the plaintiff for the delay and inconvenience caused to him.”

6. Where the Court considers that there was no sufficient cause for extension of time and the written statement was not to be allowed to be filed after 90 days, the course open to the Court is not to decree the suit straightway without even adverting to the pleadings and without looking into the facts of the case. The Supreme Court in *Balraj Taneja v Sunil Madan* AIR (1999) SC 381 observed as under:

“The Court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor the Court should proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the Court. In a case, specially where a written statement has not been filed by the defendant, the Court should be a litter

cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Courts satisfaction and, therefore, only on being satisfied that there is no fact which need proved on account of deemed admission, the Court can conveniently pass a judgment against the defendant who has not filed the written statement."

7. It is thus clear that the learned ARC did not act in accordance with law. The learned ARCT observed that the decree had been passed only on the ground that written statement was not filed and directed the ARC to take the written statement on record and proceed with the trial in accordance with law.

8. I consider that in this case, it would be appropriate that the learned ARC decide the issue of eviction on the ground of second default on merits. The case was filed in the year 2004 and we are already in 2010, six years have gone by. If in accordance with the directions given by learned ARCT, the trial had proceeded further after taking the written statement on record, the matter would have been decided long back. It would not be appropriate now to ask the respondent to file an application for condonation of delay in filing the written statement and ask the learned ARC to decide such an application and again start another round of litigation on order on application. I, therefore, consider that it would be appropriate that the case is decided on merits after taking the written statement already filed by the respondent on record of learned ARC. Let the case be decided on merits.

9. With above directions, the present petition stands disposed of.

April 08, 2010
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SHIV NARAYAN DHINGRA J.