

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RC.REV.No.60/2006**

Reserved on : 18.3.2010

Pronounced on : 19.4.2010

IN THE MATTER OF :

SHRI RAMBIR SINGH Petitioner

Through: Mr. S.C. Singhal with
Mr. S.R. Sharma, Advs.

Versus

SMT. BALWANT KAUR CHOUDHARY & ANR. Respondents

Through: Nemo.

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J.

1. Challenge has been laid in the present petition to an order dated 19.7.2006 passed by the learned Additional Rent Controller dismissing an application filed by the petitioner/tenant praying *inter alia* for issuance of fresh summons to him under the Third Schedule of

the Delhi Rent Control Act (in short '**the Act**') ; or in the alternate, for grant of 15 days time to file a leave to defend application to be reckoned from 13.7.2006 ; or permit the written statement filed by him to be taken as the grounds for leave to defend the eviction petition filed by the respondents/landladies under Section 14D of the Act. By the same order, after holding that the petitioner/tenant had failed to seek leave to defend the eviction petition within the prescribed period of limitation upon receipt of summons under the Third Schedule, the statement made by the respondents/landladies in the eviction petition was deemed to be admitted and an eviction order was passed in respect of the tenanted premises bearing House No.31/7, Ramesh Nagar, New Delhi.

2. Before examining the submissions made by the learned counsel for the petitioner/tenant, it is worth mentioning that though the present petition has remained on the regular board since 7.12.2009, none has been appearing for the respondents/landladies. This is despite the fact that on the basis of an application for early hearing filed by the respondents/landladies on the ground that both of them are widows and additionally, the respondent No.1 is a senior citizen, which was allowed vide order dated 15.1.2009, hearing of the present case was expedited and on 17.02.2009, it was directed that the matter be listed for final hearing, subject to overnight part-heard.

3. The sequence of events relevant for deciding the present case are that upon receiving the eviction petition filed by the

respondents/landladies under Section 14D of the Act, the same was registered by the learned Additional Rent Controller on 01.03.2006 and summons were issued to the petitioner/tenant by ordinary process returnable on 18.5.2006. As a result, summons for settlement of issues under Order V Rules 1 & 5 of CPC, dated 9.3.2006, were issued to the petitioner/tenant calling upon him to appear in court on 18.5.2006. The said summons were received by the petitioner/tenant on 17.3.2006. On 5.5.2006, the petitioner/ tenant filed his written statement accompanied by an application under Section 148 CPC praying *inter alia* for enlargement of time and for condonation of delay of 19 days in filing the written statement.

4. A perusal of the trial court record shows that an endorsement dated 5.5.2006 was made on the margin of the aforesaid application to the effect that the same may be put up with the file on the date fixed. On 18.5.2006, an application was filed by the respondent No.1/landlady under Sections 25B(2) & 25B(3) of the Act read with Section 151 CPC stating *inter alia* that a perusal of the application filed by the petitioner/tenant under Section 148 of the CPC revealed that the summons of the eviction petition filed under Section 14D of the Act had not been issued by the court staff in the prescribed format of the Third Schedule of the Act, which is mandatory. It was further prayed that the period of filing the leave to defend application may be computed from the date of expiry of 30 days as mentioned in the summons served upon the petitioner/tenant, or the said period be

computed from the date when the petitioner/tenant put in appearance, i.e., 5.5.2006 or 18.5.2006 ; or in the alternate, fresh summons be issued in the prescribed format of the Third Schedule of the Act.

5. As the Presiding Officer was on leave on 18.5.2006, the Ahlmad of the court endorsed a note on the margin of the aforesaid application filed by respondent No.1/landlady that the same be put up with the file on 22.5.2006 at 2.00 PM. Pertinently, a copy of the said application was not served upon the petitioner/tenant or his counsel. On 22.5.2006, the aforesaid application filed by the respondent No.1/landlady was taken up by the Additional Rent Controller in the absence of the petitioner/tenant and his counsel. After recording the statement of the counsel for the respondents/landladies to the effect that ordinary summons had been issued to the petitioner/tenant instead of summons under the Third Schedule of the Act, fresh summons were directed to be issued under the Third Schedule of the Act, returnable on 13.7.2006.

6. In terms of the aforesaid order, fresh summons were issued under the Third Schedule of the Act on 23.5.2006, which were duly received on behalf of the petitioner/tenant on 27.5.2006. On 13.7.2006, the petitioner/tenant filed an application under Section 151 CPC stating *inter alia* that he had telephonically informed his counsel that he received summons from the court, upon which the counsel informed him after checking the records, that the written statement and application had already been filed and, therefore, nothing further

needed to be done. It was further stated that a couple of days prior to the date of hearing, i.e., on 12.7.2006, the petitioner/tenant brought the copy of the summon so received by him and showed the same to his counsel and only then did it dawn on the counsel that summon had been issued under the Third Schedule of the Act. Immediately thereupon, the said application was drafted stating *inter alia* that the written statement had already been filed by the petitioner/tenant along with an application for condonation of delay, which was duly served upon the other side and that the application filed by the respondents/landladies for issuance of fresh summons was not served on the petitioner/tenant or his counsel, who remained under the *bona fide* impression that as summons received subsequently were with regard to the same case, no further steps were required to be taken by the petitioner/tenant.

7. In the aforesaid circumstances, it was prayed by the petitioner/tenant that fresh summons be issued to him under the Third Schedule, or he be granted 15 days time for filing a leave to defend application, which period may be reckoned from 13.7.2006; or in the alternate, the written statement filed by the petitioner/tenant may be taken as grounds of leave to defend the eviction petition filed by the respondents/landladies. The aforesaid application however came to be dismissed by the learned Additional Rent Controller, who passed the impugned order. On the same date, an eviction order was passed in favour of the respondents/landladies and against the petitioner/tenant,

which has resulted in filing of the present petition by him.

8. Counsel for the petitioner/tenant states that the learned Additional Rent Controller did not appreciate the fact that the summons directed to be issued, vide order dated 1.3.2006, were not in proper format under the Third Schedule of the Act and when the aforesaid mistake on the part of the court staff was pointed out by the respondents/landladies, who filed an application dated 18.5.2006, the said mistake ought to have been rectified by affording a proper opportunity to the petitioner/tenant to file an application for leave to defend. It was contended that the petitioner/tenant having already filed his written statement on 5.5.2006 along with an application seeking condonation of delay and enlargement of time for filing the same, with an advance copy to the other side, it was incumbent on the part of the respondents/landladies to have furnished a copy of the application dated 18.5.2006, whereby fresh summons under the Third Schedule of the Act were sought to be issued to the petitioner/tenant.

9. Counsel for the petitioner/tenant stated that his client ought to have been afforded an opportunity to reply to the application moved by the respondents/landladies under Section 25B (2) & (3) of the Act, particularly when they had themselves stated that the mistake of issuing the summons in the wrong format had occurred on account of an oversight on the part of the court staff and also, in view of the fact that the petitioner/tenant had already filed his written statement.

It was argued that the entire confusion in the mind of the petitioner/tenant occurred on account of the mistake on the part of the court staff, for which he cannot be made to suffer as there was no negligence attributable to him. To fortify his submissions, counsel for the petitioner/tenant relied on a judgment in the case of Shri Rishi Prakash vs. Shri Raghbar Dayal, reported as **1979 (1) R.C.R. 730** and an order dated 8.2.2010 passed by the Division Bench of this Court in **FAO(OS) No.67/2010** entitled Srei Venture Capital Ltd. & Anr. vs. Vijay Gopal Jindal.

10. As noted above, none has appeared for the respondents/landladies. However, written submissions filed by them on 9.9.2008 have been duly perused. The respondents/landladies have supported the impugned order and stated that both of them are widows and that the petitioner/tenant is trying to prolong the case so as to defeat the intention of the legislature as contained in Section 14D of the Act, which requires a summary procedure for cases involving widows. It is further stated that though the statutory provisions provide that summons are required to be sent in the prescribed format under Section 25B of the Act, on account of oversight by the Rent Controller in issuing the summons, in the first instance, the same were issued under Order 5 of the CPC. Reliance is placed on a judgment of this Court in the case of Shri Rishi Prakash vs. Shri Raghbar Dayal, reported as **1979 (1) RCR 730** to state that non-compliance with the provisions for issuance of summons in the format

prescribed in the Third Schedule is a material irregularity in the disposal of a petition for eviction filed under Section 14(1)(e) or 14A read with Section 25B of the Act and that when such a defect is brought to the notice of the court, it ought to have rectified the proceedings by serving the summons in the proper format upon the tenant to enable him to take steps for his defence under Sub-section 4 of the Act. In the written statement, the respondents/landladies have stated that they had pointed out the mistake in issuance of summons in the ordinary process and upon so, intimating the learned ARC, he had rectified the defect by issuing fresh summons under the Third Schedule of the Act and that even thereafter, as the petitioner did not seek leave to defend within the period prescribed under the Act, the learned ARC was justified in passing an order of eviction against him.

11. I have heard the learned counsel for the petitioner/tenant, considered the written submissions filed on behalf of the respondents/landladies and also perused the record of the court below, including the order sheet and the relevant applications filed by the parties.

12. It is undoubtedly true that the requirement of issuance of summons in the prescribed format is a procedural one as the intention is to apprise the defendant/respondent of filing of the petition and at the same time, calling upon him to take steps to defend the same. However, Section 25B of the Act has been legislated in such a manner that keeping in view the summary procedure prescribed for certain

type of cases as specified under Section 14(1)(e), Section 14A, B, C and D, the statute has provided special safeguard to the respondents in such like cases. Sub-section (2) of Section 25B of the Act mandates that the Controller shall issue summons, in relation to every application referred to in sub-Section (1), in the format prescribed in the Third Schedule. The said summons notifies the respondent that he has to file an application for leave to appear and contest within the prescribed period and in a prescribed manner. Sub-section (4) of Section 25B of the Act lays emphasis on the fact that the tenant on whom the summon is duly served in the format specified in the Third Schedule, shall not contest the prayer for eviction without obtaining such leave. In other words, any non-compliance of the aforesaid provisions would amount to a material irregularity in the disposal of the eviction petition filed under Sub-section (1) of Section 25B of the Act. Thus, while the combined effect of Section 25B (6),(7)&(8) of the Act is that it would lead to expeditious disposal of an eviction petition so as to ensure that a landlady need not wait or suffer for a long time, it is only such a tenant on whom summons have been duly served in the prescribed format as envisaged under Sub-sections (2),(3) & (4) of Section 25B of the Act who is precluded from contesting the petition for eviction, when leave to appear and contest the same is not filed by him within the prescribed period within the prescribed period.

13. In the present case, the factual position is undisputed. In the first instance, when the eviction petition was filed by the respondents/landladies, vide order dated 1.3.2006, the learned ARC issued summons to the petitioner/tenant by ordinary process instead of under the Third Schedule, as prescribed under Sub-section (2) of Section 25B of the Act. The said summons also called upon the petitioner/tenant to appear in the court on a specified date, i.e., on 18.5.2006. The petitioner/tenant filed his written statement on 5.5.2006, duly accompanied by an application seeking enlargement of time and condonation of delay. Pertinently, copies of the said written statement as also the application were duly served upon the other side. The said application was however directed to be put up with the file on the date fixed, i.e., on 18.5.2006.

14. On 18.5.2006, the respondents/landladies became aware of the fact that summons were issued in ordinary process and they filed an application before the learned ARC under Section 25B(2) and (3) of the Act. While filing such an application, they chose not to serve a copy thereof on the petitioner/tenant or his counsel. It was a matter of chance that on the said date, the Presiding Officer was on leave. As a result, the Ahlmad of the court took the application on the record and made a note that the same be put up with the file on 22.5.2006. On 22.5.2006, when the aforesaid application filed by the respondent No.1/landlady came up before the learned ARC, in the absence of any intimation of the said date and in view of failure to serve a copy of the

application on the petitioner/tenant, none was present on his behalf. On the said date, fresh summons were directed to be issued as per the prescribed format to the petitioner/tenant returnable on 13.7.2006. The said summons were received on his behalf on 27.5.2006. It was at this stage that some confusion arose at the end of the petitioner/tenant who remained under the *bona fide* impression that having filed a written statement in response to the first set of summons issued to him under ordinary process, along with an application for enlargement of time, he had done all that was required of him in law. It is further stated that the petitioner/tenant made doubly sure that no further act was required to be done on his part by informing his counsel as to the receipt of the second set of summons, upon which his counsel assured him that nothing further needed to be done as necessary steps had already been taken by them in the matter.

15. It was submitted by the counsel for the petitioner/tenant that only upon the petitioner/tenant contacting his counsel a couple of days prior to the date of hearing, i.e., on 12.7.2006 and showing him a copy of the summons received by him, did it dawn upon the counsel that the second set of summons had been issued as per the prescribed format under sub-section (2) of Section 25B of the Act. It was at that stage that an application was filed by the petitioner/tenant explaining the circumstances in which he did not file any application for leave to defend the eviction petition within the prescribed time. Apart from

requesting that fresh summons be issued to him or he be granted 15 days' time to file a leave to defend application while reckoning the period of 15 days from 13.7.2006, an alternate prayer was made by the petitioner/tenant that the written statement already filed by him on the record, may be taken as grounds for leave to defend the eviction petition.

16. Having regard to the aforesaid facts and circumstances, the petitioner/tenant is justified in taking a stand that he cannot be made an scapegoat for a mistake committed by the court and the court staff. Undoubtedly, grave prejudice has been caused to the petitioner/tenant on account of the said mistake. Issuance of summons by ordinary process resulted in him filing a written statement. Failure on the part of the petitioner/tenant to file a leave to defend application even after receipt of the second set of summons pursuant to order dated 22.05.2006, occurred due to the aforesaid mistake and under a *bonafide* impression that he had already taken necessary steps by filing a written statement. Such a mistake cannot be treated as *mala fide* or deliberate, nor can it entitle the respondents/landladies to steal a march over the petitioner/tenant by insisting that in the given circumstances, the consequences as prescribed under sub-section (4) of Section 25B of the Act ought to follow as a natural corollary. Interestingly, even the respondents/landladies were conscious of the fact that such a stand if taken by them, would be fallacious. This is borne out by the fact that in the application filed by respondent

No.1/landlady on 18.5.2006, the blame was not sought to be placed at the door of the petitioner/tenant. Rather, it was correctly stated that summons were sent in the ordinary process on account of an error on the part of the court staff.

17. In such circumstances, no *mala fides* can be imputed to the petitioner/tenant. Nor has any reason been shown as to why the petitioner/tenant would not want to contest the eviction petition, had he been aware of the fact that on non-filing of his leave to contest within the prescribed period, would result in such a grave consequence of an eviction order being automatically passed against him. This is more so, when the petitioner/tenant had not dragged his feet and had already filed his written statement on the record, with a copy to the other side. It can also not be said that the said mistake on the part of the petitioner/tenant was not *bona fide* or was a deliberate attempt on his part to prolong the litigation. Nor can it confer an undeserved benefit on the opposite party, at the cost of the petitioner/tenant.

18. Clearly, in the present case, the fault lay at the door of the court when summons in the eviction petition filed under Section 14D of the Act were issued to the petitioner/tenant by ordinary process, instead of under the Third schedule. It is well settled that no man should suffer because of the fault of the court or on account of delay in the procedure : "*actus curiae neminem gravabit*" – an act of court shall prejudice no man. (Ref.: Vineet Kumar vs. Mangal Sain Wadhera, (1984) 4 SCC 284 and Suresh Chand vs. Gulam Chisti,

AIR 1990 SC 897).

19. In the aforesaid circumstances, the impugned order cannot be sustained as the same is not in accordance with law. The learned ARC ought to have exercised his discretion in favour of the petitioner/tenant and accepted the explanation offered by him. He however fell in error by refusing to accept the written statement filed by the petitioner/tenant and treating the same as his application for leave to contest the eviction petition. In the given circumstances, no ulterior motives can be attributed to the petitioner/tenant for intentionally trying to prolong the proceedings or causing any delay. Rather, he has been gravely prejudiced. Accordingly, the impugned order is set aside and the present petition is allowed. The written statement already filed by the petitioner/tenant shall be treated as his application for leave to contest the eviction petition. Pleadings in the said application shall be completed by giving liberty to the respondents/landladies to file their reply thereto.

20. Parties are directed to appear before the learned ARC on 3.5.2010. As none has appeared on behalf of the respondents/landladies in the present proceedings, the learned ARC shall issue notices for appearance to them in accordance with law. Considering the fact that the eviction petition of the respondents/landladies filed under Section 14D of the Act has been considerably delayed for no fault of the respondents, the learned ARC is requested to dispose of the eviction petition as expeditiously as

possible, and preferably within a period of six months from the date of completion of pleadings.

21. In the peculiar facts and circumstances of the case, while allowing the present petition, there shall be no order as to costs.

(HIMA KOHLI)
JUDGE

APRIL 19, 2010
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