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HIGH COURT OF DELHI : NEW DELHI

RC Rev. No. 173/2010 & CM No. 13397/2010 (stay)

% Judgment reserved on: 30th July, 2010

Judgment delivered on: 4th August, 2010

Sh. Hardev Singh Sokhi
S/o Sardar Laxman Singh Sokhi
Shop No.2, Back Side,
H-30-A, Rajouri Garden,
New Delhi – 110027
Through Attorney
Sh.Surinder Singh Madan
S/o Sh. Gurcharan Singh Madan
R/o EC-144, Tagore Garden,
New Delhi -110027

....Petitioner.

Through: Mr. C.P.Vig, Advocate.

Versus

Ms. Varsha Sehgal
D/o Late Sh. Chaman Lal Sehgal
R/o H-30/A, Ground Floor
Main Market, Rajouri Garden
New Delhi-110027

....Respondent

Through: None

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |

3. Whether the judgment should be reported

in the Digest?

Yes

V.B.Gupta, J.

1. Petitioner has filed this petition under Section 25 B (8) of Delhi Rent Control Act, 1958 (for short as 'Act') praying for setting aside order dated 7.7.2010 passed by Additional Rent Controller (for short as 'Controller'), Delhi, vide which applications under Section 25 B of the Act, under Section 5 of the Limitation Act, 1963 and under Section 151 of the Code, were dismissed and for recalling of eviction order dated 30.1.2010, passed by the Controller.

2. The brief facts of this case are that respondent/landlord filed an eviction petition under Section 14 (1) (e) and 25 B of the Act, against petitioner/tenant, through his attorney. Notice under Section 25 B of the Act, was issued to the petitioner through his attorney which was duly served upon the attorney on 29.12.2009. No leave to contest application was filed within the statutory period. Hence, vide order dated 30.1.2010, eviction order was passed against the petitioner.

3. It is contended by learned counsel for the petitioner that summons in

relation to the eviction petition were required to be sent in the form specified in Third Schedule of the Act which do not prescribe mentioning of the next date of hearing. However, in the summons next date of hearing i.e. 30.1.2010 was mentioned which misled the attorney of the petitioner. As such no leave to contest application could be filed.

4 Another contention raised by learned counsel is that after receiving the summons, attorney contacted the petitioner who is in England and sought his instructions. Hence, attorney could not file leave application within the specified period.

5. In support, learned counsel has cited judgment of this Court in *V.N.Sood vs. Dr. Gurbachan Singh 1981 Rajdhani Law Reporter 4*, where the court observed;

“If mention of next date on the summons misleads tenant and he omits to apply for leave to defend within limitation, then delay may be condoned.”

6. Though, it is correct that summons specified in Third Schedule of the Act do not prescribe for mentioning of next date of hearing. Nevertheless, summon issued under Third Schedule of the Act cannot be read in isolation. It is clearly mentioned on the summon that tenant is to appear before the Controller within fifteen days of the service thereof and

to obtain the leave of the Controller to contest the application for eviction.

7. Thus, there is no force in this argument. Even assuming for arguments sake that petitioner was misled by the next date of hearing which was mentioned on the summons, even on that date petitioner did not file any application for leave to contest. Application for leave to contest was filed only on 3.2.2010 i.e. after expiry of the statutory period. As no application for leave to contest was filed within fifteen days from the date of service, trial court rightly passed the eviction order.

8. Supreme Court in *Prithipal Singh v. Satpal Singh (Dead) through LRs*, 2009 (14) SCALE 672 observed;

“14. From a careful perusal of Sub-section (4) of Section 25B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceeding shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition.

15. At this stage, we may also note that in Sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceeding is received by the

tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.

16. Sub-section (5) of Section 25B of the Act clearly says that the Controller shall give to the tenant leave to contest the eviction proceeding if the affidavit filed by the tenant discloses such facts as would itself disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Clause (e) of the proviso to Section 14(1) or under Section 14A.”

Court further observed:

“There is another aspect of this matter. It is difficult to understand how an application for leave to contest having been rejected, may be on the ground of delay, could be allowed when it is not disputed by the tenant respondent that no application for condonation of delay could be entertained by the Rent Controller as the provisions of the Limitation Act, 1963 could not be attracted.

9. Trial court in this regard held;

“I have duly considered the arguments of learned counsel for the respondent. This argument of the learned counsel for the respondent is contrary to the pleadings in the application under disposal, wherein it has been categorically admitted that the attorney of the respondent was duly served on 29.12.2009 and he had the knowledge that the notice was issued in the name of Shri Hardev Singh Sokhi only. It is pertinent to mention here that this is not the first case between the parties. Prior thereto,

respondent himself had filed petitions under Section 27 of DRCA against the petitioner for depositing the rent in court. The said petitions were filed against the petitioner by the respondent through her general attorney.”

10. The conduct of counsel for petitioner before the trial court is regrettable since he referred an overruled judgment, as observed by trial court.

11. In view of decision in *Prithipal Singh (supra)*, no infirmity, illegality or ambiguity can be found with impugned orders passed by the trial court. Trial court rightly rejected all the applications of the petitioner and passed the eviction order.

12. Since there is no merit in the present petition, the same is hereby dismissed with costs of Rs.10,000/- (Ten thousand only).

13. Petitioner is directed to deposit the costs with Registrar General of this court by way of cross cheque, within four weeks from today.

+ CM No.13397/2010 (stay)

14. Dismissed.

15. List for compliance on 9th September, 2010.

16. Copy of this order be sent to the trial court.

4th August, 2010
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V.B.GUPTA, J.