

IN THE HIGH COURT OF DELHI AT New Delhi

RC. REV. No. 9/2011

Date of Decision:- 11.2.2011

Shiv Gopal & Anr.

...Petitioner

Through: Mr. A.K.Nigam, Sr. Adv.
with Mr. Satya Narayan for
Petitioner

Versus

Shipra Singh & Ors.

...Respondent

Through: Mr. S.K. Chachra, Adv.
for Respondent No.1

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

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

S. L. BHAYANA, J.

The present petition is filed under Section 25-B of Delhi Rent Control Act against the order dated 13.7.2010 passed by the Additional Rent Controller, wherein the trial court has dismissed leave to defend application filed by the petitioner/tenant and passed an eviction order against the petitioner herein.

2. The facts necessary to be highlighted in the present petition are that the petitioner herein was served by Registered Post on 13.2.2009 and the returnable date was 16.3.2009. As per statutory provision the leave to defend application was to be filed latest by 28.2.2009 (i.e. within 15 days). According to the petitioners they have signed the application of leave to defend on 28.2.2009 and handed over such application after lunch at about 3 P.M. to the Reader of the Learned

ARC, on that day it was Saturday. Next day i.e. on 1.3.2009 it was Sunday. Subsequently, on 2.3.2009 the petitioner came to know that the Reader put up the application before the Learned ARC on 2.3.2009 and upon which the following endorsement was made "Be put up on date fixed with the file. Sd/-ARC, ND 2.3.2009" and on that very day the counsel for petitioner was not present. Accordingly, after hearing the arguments on the application the Learned ARC has dismissed the application for leave to defend the eviction petition on the ground of not filing within the statutory time frame of 15 days as provided in the DRC Act.

3. Learned counsel for the petitioner has asserted that the impugned judgment is bad in law and the Learned ARC has not appreciated the correct facts that the counsel has handed over the copy of the application to Reader of the Learned ARC on 28.2.2009 at about 3 P.M. and the endorsement on that application was not made in the presence of the counsel for the petitioner and he was also not present in the court on 2.3.2009. Therefore, there is no delay on the part of the petitioner as well as his counsel as he has handed over the application to the Reader on the last day of expiry of the statutory period of 15 days.

4. On the other hand learned counsel for the respondent has asserted that application for leave to defend the eviction petition was filed on 02.3.2009 and if the last service of summon by post upon the petitioner is considered to be served by AD card on 13.2.2009 even then, the leave to contest has to be filed by 28.2.2009. If, the date 13.2.2009 is excluded for the purpose of limitation the leave to defend has to be filed on 28.2.2009.

5. Learned counsel for the petitioner/tenant has relied upon the judgments of Supreme Court in cases Tharia Ram V/s. Chitra Devi etc., 1983 RLR 482, State of Maharashtra V/s. Ramdas Shrinivas Nayak, AIR 1982 SC 1249, and Jagdish Prasad V/s. Phool Wati Devi, 1980 RLR 367. The facts of these citations are not applicable to the facts of the present case.

6. I have heard learned counsel for both the parties and perused the record. The contention of the learned counsel for the petitioner that the application for leave to defend was filed on 28.2.2009 is not supported from the record. There is an endorsement of the learned A.R.C on the said application "Be put up on date fixed with file. Sd/- A.R.C dt. 2.3.2009". The endorsement of the A.R.C on the application also bears his signatures and date i.e. 2.3.2009. Had the petitioner submitted the said application on 28.2.2009, the A.R.C would not have put the date as 2.3.2009 but would have put the date as 28.2.2009. So the record shows that the said application was not filed before the Trial Court on 28.2.2009 but was filed only on 2.3.2009.

7. From the materials on record it is clear that the application for leave to contest the eviction petition under section 25-B of the Act has to be made within 15 days from the date of service of the summons. In this case, the application for leave to contest the eviction petition was filed two days after the said period had expired. The issue for consideration before me is whether the Rent Controller was right in rejecting the application on the ground that he had no jurisdiction to condone the delay under the Act.

8. In Om Prakash V/s. Ashwani Kumar Bassi, **AIR 2010 SC3791**, the Supreme Court while deciding the question of condonation of delay in filing the leave to defend application has held that the Rent Controller has no power to condone the delay. The Hon'ble Supreme Court has laid down the law as under:-

“17. Section 13B is a power given to a Non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of any one ordinarily living with and dependent on him or her. The right has been limited to one application only during the life time of the owner. Section 18A (2) of the aforesaid Act provides that after an application under Section 13B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. **There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power.**

18. In such case, neither the Rent Controller nor the High Court had committed any error of law in rejecting the petitioner's application for seeking leave to contest the suit, since the same had been filed beyond the period prescribed in the form in Schedule II of the Act referred to in Section 18A (2) thereof”.

9. Keeping in view the law laid down by the Hon'ble Supreme Court, I am of the opinion that Section 25-B of the Delhi Rent Control Act is a complete Code by itself and other provisions could not, therefore, be brought into play in such proceedings. In the instant case, the same principle would apply having regard to the fact that the Rent Controller had not been conferred with power to condone the delay even for one

day. The Rent Controller has rightly observed on submissions made on behalf of the respective parties, which is reproduced as under:

“It is not in dispute between the parties that the leave to defend has to be filed within 15 days from the service of summons. The Rent Controller has no power to condone the delay in filing leave to defend. The respondents No.1 &2 had lastly served by AD card on 13.2.2009. The date of 13.2.2009 is excluded for the purpose of limitation then the leave to defend has to be filed by 28.2.2009 in court hours. The leave to defend has been filed on 2.3.2009 and I have made an order on the application as “Be put up on date fixed with file. /Signatures/” The order itself says that the file has not been put up on the application and the order was made to put up the leave to contest application along with file on the date fixed. The argument of the learned counsel for applicant/respondent No.1&2 are, not sustainable that he had filed the application on 28.2.2009.”

10. For the aforesaid reason the Rent Controller has dismissed the leave to defend being barred by limitation.

11. Thus, the Trial Court has given a detailed and reasoned order which does not call for any interference nor the same suffers from any infirmity or erroneous exercise of jurisdiction.

12. The present petition is hereby dismissed accordingly. However, there will be no order as to costs.

S.L.BHAYANA,J

FEBRUARY 11, 2011