

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

% RC. REV.No. 251/2010

+ Date of Decision: 23rd August, 2011

SH. YASH PAL ...Petitioner
! Through: Mr. Rajinder Singh Negi, Advocate

Versus

\$ CHAMPA LAL CHARORIA& ORS. Respondents
Through: Mr. Ramesh Kumar, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

- 1. Whether Reporters of local papers may be allowed to see the judgment? (No)**
- 2. To be referred to the Reporter or not? (No)**
- 3. Whether the judgment should be reported in the digest? (No)**

ORDER

P.K BHASIN,J:

This revision petition has been filed by the petitioner - tenant under Section 25-B (8) of the Delhi Rent Control Act, 1958 against the order

dated 09.09.10 passed by the learned Additional Rent Controller whereby an eviction order was passed against him in respect of house no. 7601, plot no. 8, Ram Nagar, Delhi in the eviction case filed against him by the respondents-landlords under Section 14 (1) (e) on the ground of their bona fide requirement of the same.

2. Since the eviction petition had been filed on the ground of bona fide requirement of the respondents herein in respect of the tenanted premises in occupation of the petitioner herein, summons under Section 25 – B(3) of the Delhi Rent Control Act were ordered to be served upon the petitioner by the trial Court returnable for 25th October, 2009. Before that date, however, the respondents served upon the petitioner a notice dated 1st August, 2009 through an advocate in which he was informed about the filing of the present eviction case as well as the aforesaid date before the trial Court. It was also mentioned in the notice that the petitioner was required to apply for leave to defend the eviction petition within 15 days from the date of receipt of notice of the eviction petition. On receipt of the said legal notice, the petitioner instead of waiting for

the receipt of summons from the Court chose to appear before the trial Court on 29th October, 2009. On that date the learned trial Court after noticing the process server's report that the petitioner – tenant had remained unserved with the summons got him delivered the copy of the eviction petition and the supporting documents from the respondents' counsel. Thereafter the petitioner was informed to file the leave to defend application within stipulated time. The petitioner – tenant, however, did not move any application seeking leave to defend the eviction petition within the statutory period of 15 days as provided under Section 25 – B (4) of the Delhi Rent Control Act. On 9th February, 2010 the respondents moved an application under Section 25 – B (4) informing the trial Court that the petitioner – tenant had failed to seek leave to defend the eviction petition within 15 days from 29th October, 2009, on which date he was deemed to have been served with the summons of the eviction petition because of his appearance in Court and so it was prayed that eviction order should be passed. Notice of that application was issued to the petitioner – tenant for 31st March, 2010 on which date also

he appeared before the trial Court and sought permission to make his submissions in the matter. The case was then adjourned to 13th April, 2010 by the trial Court on which date the trial Court recorded the following proceedings:-

“13.4.2010

*Present: None for the petitioner
 Respondent in person.*

Respondent submits that on 29.10.2009 when he appeared in the Court for the first time, the petitioner supplied the documents regarding the present petition. Respondent further submits that he appeared in the court as a notice dated 01.08.2009 was received by him of some Advocate Ramesh Kumar. Respondent further submits that all the documents which have been placed on record by the petitioner are all forged. Respondent further submits that the petition is not maintainable at all. At this stage respondent submits that the petition should not be dismissed but the same be transferred as the present matter is a criminal matter. Respondent further submits that the documents placed on record by the petitioner regarding the property are forged. Respondent again submits that the petition is forged. A reply has also been filed by the respondent. Respondent further submits that the advocate signed the petition on 31.3.2010 in the court.

It is seen that on 25.01.2010, when I was on leave, the matter was fixed for 06.05.2010. Thereafter on 09.02.2010 an application was moved by the petitioner u/o 25-B(4) of the Delhi Rent Control Act. Notice of the application was issued to the respondent and the respondent appeared on 31.3.2010 and the matter was fixed for order for today. As the date had already been

fixed as 06.05.2010, it would not be appropriate to pass any order before this date.

Appropriate order will be passed on 06.05.2010.

*(SAMEER BAJPAI)
CCJ-CUM-ARC (CENTRAL)
THC/Delhi : 13.04.2010”*

3. Thereafter, the learned Additional Rent Controller vide impugned order dated 9th September, 2010 passed an eviction order against the petitioner – tenant since he had failed to file leave to defend application within the stipulated time of 15 days from 29th October, 2009.

4. Feeling aggrieved by the passing of the eviction order against him the petitioner – tenant filed the present revision petition. It was contended by the learned counsel for the petitioner – tenant that even though he had appeared before the trial Court on 29th October, 2009 but he was not formally served with the summons of the eviction petition as per the Schedule 3 of the Delhi Rent Control Act nor was he specifically informed by the trial Court that leave to defend application was to be moved within 15 days from that date. It was further contended that the petitioner – tenant being an uneducated person did not follow as to what

was meant by “within stipulated period”, as was recorded by the trial Court in its proceedings of 29th October, 2009 and, therefore, the impugned eviction order having been passed against the petitioner without giving him an opportunity to seek leave to defend the eviction petition is liable to be set aside.

5. Learned counsel for the respondents, on the other hand, submitted that no fault can be found with the impugned eviction order inasmuch as the petitioner – tenant was given notice of the eviction petition in Court itself by the learned Additional Rent Controller when he had appeared before him on 29th October, 2009 and was required to file leave application within the stipulated time which he failed to do. It was also submitted that the petitioner’s plea that he did not know as to what was the stipulated period during which he was expected to move leave to defend application cannot be accepted for the reason that when in response to the notice issued to him by the trial Court of the application filed by the respondents under Section 25-B(4) to the effect that eviction order should be passed because of his failure to file leave to defend

application within 15 days from 29th October, 2009 he had appeared in Court on 31st March, 2010 he did not take this plea and, therefore, it is clear that it is only an afterthought and taken only to prolong the matter.

6. It was submitted by counsel for both the parties that after filing of the present petition the respondents had taken the possession of the tenanted premises through execution proceedings.

7. After having considered the rival submissions of the counsel for the parties I am of the view that no fault can be found with the impugned order of the learned trial Court. Notice of the eviction petition was given to the petitioner – tenant by the trial Court in Court on 29th October, 2009 when he had appeared in Court and there could not be a more fool proof service of notice upon the petitioner and I am in agreement with the submission of the learned counsel for the respondents that petitioner's plea that he did not know as to within what period from 29th October, 2009 he was to move leave to defend application is an afterthought since no such plea was taken by him before the trial Court when he had appeared there on 31st October, 2010 in response to the notice issued to

him of the respondents' application under Section 25-B(4) of the Delhi Rent Control Act or subsequently also.

8. I, therefore, do not find any merit in this revision petition and any reason to interfere in the impugned order in exercise of revisional jurisdiction. This revision petition is accordingly dismissed.

P.K. BHASIN,J

August 23, 2011
nk/sh