

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

+ R.C.REV 528/2012, CM 18391-92/2012

Date of Decision: 31.10.2012

CHARAN SINGH

.....Petitioner

Through: Mr. Krishan N. Rana, Adv.

Versus

RAMESH

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This is a revision petition u/S 25 B (8) of the Delhi Rent Control Act (for short "the Act"), assailing the order dated 30.08.2012 passed by the Ld. ARC, North East, Delhi, whereby the written statement filed by the petitioner tenant was disallowed and the eviction order was passed.

2. Brief facts of the case are as follows. The petitioner was the tenant in respect of property bearing house no.65, Gali No. 2, Harijan Basti, Amar Vihar, Karawal Nagar, Delhi-94 (hereinafter referred to as

“the tenanted premises”). The respondent landlord filed an eviction petition u/S 14(1) (e) of the Act wherein he stated that the tenanted premises was needed by him for his own residence as he was then residing in a rented accommodation. Notice was affected as per the prescribed form in the IIIrd Schedule of the Act. Summons was duly served on him personally on 17.05.2012. The matter was taken up again on 23.07.2012 and then again posted for 18.08.2012 on which date, instead of filing a leave to defend application, the petitioner filed a written statement. This fact was pointed out and the matter was adjourned to 28.08.2012, on which date, the leave to defend application was filed. The Ld. ARC dismissed the leave to defend application on the ground that there was a delay of 90 days in filing the leave to defend application and the same could not be condoned. This order is under challenge in the present petition.

3. Before advertng to the submissions made by the learned counsels for the parties, I must reiterate that the power of this Court under Section 25–B (8) Act are not as wide as those of Appellate Court, and in case it is found that the impugned order is according to law and does not suffer from any jurisdictional error, this Court must

refrain from interfering with the same. The power under this provision is limited and supervisory in nature. Only when it is evident that the Rent Controller has committed grave illegality or came to a conclusion which was not possible, based on the material produced, should this Court interfere in the orders passed by the Rent Controller.

4. In light of the above principle of law, I have heard the counsels for the parties and examined the records.

5. Chapter III A was introduced with regard to eviction petitions filed u/S 14(1) (e) wherein it provides a separate procedure to follow while disposing off the petition. It has been held in a number of landmark cases that this chapter forms a code in itself and thus has to be strictly conformed to without scope for leniency anywhere. The Hon'ble Supreme Court addressed the above issue in the case of ***Prithipal Singh Vs. Satpal Singh(Dead) through LRs. 2009(14)SCALE 672***, wherein it was held that Chapter IIIA of the Act was specifically introduced to set up a separate procedure to try certain applications made under the Act through summary trial. The Apex Court also looked into Rule 23 of the Delhi Rent Control Rules, 1959 (hereinafter referred to as "the Rules") and stated that this is a general

rule and is not applicable where a specific mode of procedure has been provided as u/s 25B of the Act. After the insertion of Chapter IIIA, it is very clear that applications made therein should be dealt with only in strict compliance with Sec 25B of the Act and Rule 23 of the Rules cannot be made applicable. In addition, the Court also stated that the provisions of the Limitation Act, 1963 would also not be applicable.

6. Further in the case of “***Aster Publishing vs. Niwas Aggarwal and Ors RC. REV No. 296/2010***” this court held that :-

“15. Keeping in view the law laid down by the Hon’ble Supreme Court, I am of the opinion that Section 25B of the 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 the power to condone the delay for even one day”

7. Thus, it is evident that the procedure given under Chapter IIIA should be followed strictly. In the present case, the petitioners filed a written statement after the lapse of 90 days. As per the provisions of Section 25B (4) the tenant has to file an affidavit along with his leave to defend application wherein he states the grounds challenging the eviction petition and this application has to be filed within a period of

15 days of service of notice. When such a specific procedure has been laid down in law, the court cannot be lenient with those persons who do not follow procedure. The petitioner not only did not follow procedure when he did not file leave to defend application, but proceeded to file written statement, which is not permissible. The written statement filed cannot be treated as leave to defend application. Even if it is so treated, the court has no power to condone delay for even a day let alone that of 90 days. Thus the Ld. ARC was right in dismissing the leave to defend application and passing the eviction order. The Ld. ARC relied on the judgment of “**Krishan Kumar v. Vinod Kumar, (2008) 148 DLT 668**” wherein it was held that:-

*“3. The primary contention of the petitioner is that once an application seeking leave to defend is dismissed, or in a case where the same is not filed, the Controller has no jurisdiction to dismiss the petition under Section 14(1)(e) and he must proceed to allow the petition. In support of this submission, the petitioner relied on two decision of this Court **1987 (1) RCR 556, Shri Bachan Singh v. Shri Khem Chand and 1993 (3) RLR 133, Smt. Bhuvneshwari Devi v. Col. Kalyan Singh**. In the first of the aforesaid two decisions, while interpreting Section 25B(4) of the Act this Court held that the said provision is mandatory*

and if no application for leave to defend is filed, it is obligatory for the Rent Controller to accept the statement made by the owner-landlord and order eviction. In the second decision as well, this Court has held that if the tenant on whom the summons are duly served in the form specified in 3rd Schedule does not contest the prayer for eviction by filing an affidavit seeking leave to defend, the Controller is bound to take the statements made by the landlord in the application for eviction as correct. In Bhuvneshwari Devi (supra), the Additional Rent Controller, instead of taking the statements made by the petitioner in the Eviction Petition as correct, had proceeded to analyse the facts and came to conclusion that the grounds of eviction had not been made out. This Court upset that decision and allowed the landlord's revision petition.”

8. In the light of my above discussions and the principle of law applicable to the facts of the case, the Ld. ARC was right in not condoning the delay in filing the leave to defend application. I see no infirmity or illegality in the impugned order. The petition is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 31, 2012/rmm/awanish