

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

% *Judgment pronounced on: July 04, 2013*

+ **RC. Rev. No.317/2012, C.M.Nos.12074/2012 & 12113/2012**

KALLU RAM Petitioner
Through Mr.R.S.Sharma, Adv.

versus

LAXMI DEVI Respondent
Through Mr.L.C.Rajput, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J. (ORAL)

1. The abovementioned petition has been filed by the petitioner against the rejection of leave to defend application and eviction order dated 24th April, 2012 passed by the Rent Controller (North), Delhi in Eviction Petition No.22/2011. The main reason for rejection of application was that the same has not been filed within stipulated period.
2. The prayer made in the petition is to set-aside and quash the order dated 24th April, 2012.
3. Learned counsel for the petitioner has not disputed the fact that there is delay of one day in filing the application for leave to defend.
4. The petitioner received the summons on 3rd July, 2011. The application for leave to defend was filed on 19th July, 2011. The last date for filing the application for leave to defend was 18th July, 2011, under the prescribed period of 15 days.

5. The explanation given in the application for condonation of delay filed by the petitioner is that the next date of hearing mentioned in the summons was 19th July, 2011, therefore, due to wrong impression the said delay has happened, though counsel has not denied that the summons were received by his client in the prescribed form.

6. The question before this Court is, as to whether this Court has power to condone the delay in filing the application for leave to defend.

7. The law in this regard is well settled by the Supreme Court of India as well as by this Court that the Court has no power to condone the delay in filing the application for leave to defend. In the case of ***Prakash Jain vs. Merry Fernandes***, reported in 2004 RLF 83 (SC), the Supreme Court has held that the condonation of delay can also not be sought under the inherent powers as the Rent Authority is not a Civil Court though the Rent Act provides for that authority to exercise certain powers under the said Code.

8. Similar view was taken by this Court in the following cases:-

(i) ***Shiv Gopal & Anr. vs. Shipra Singh & Ors.***, reported in 186 (2012) Delhi Law Times 194, wherein it was held that the Rent Controller has not been conferred with power to condone delay even for one day.

(ii) ***Ramesh Tuli vs. Sharda Kapoor***, reported in 153 (2008) Delhi Law Times 302, wherein it was held that in view of *Prithi Pal Singh's* case, 133 (2006) DLT 686, Court of Additional Rent Controller had no jurisdiction to entertain application under Section 25B which is filed beyond period of 15 days. It was

further held that the provisions of Limitation Act are not applicable.

- (iii) In the case of *Rakesh Gupta & Another vs. Ashok Dilwali*, reported in 2012 (1) RCR (Rent) 342, it was held that the tenant seeking permission to contest the eviction petition filed under Section 14(1)(e) of the Rent Act, is supposed to file an affidavit within 15 days from the date of receipt of summons pleading such facts as would disentitle the landlord from obtaining an eviction order. Failure to file the affidavit has to result in the passing of an eviction order against the tenant. It was further held that period of 15 days is not extendable even for a day.

9. The tenanted premises, i.e. one room was let out for residential purposes who has during the pendency of tenancy also acquired the vacant possession of the premises bearing No.4139/2, Gali Barna, Sadar Bazar, Delhi. The case of the respondent on merit was that she requires at least nine rooms as per the details given in the eviction petition. She has only four rooms, hence vacation of the property is sought under Section 14(1)(e) read with Section 15(B) of the Act.

10. Even if the matter is examined on merit, the petitioner would be disentitled for leave to contest as there are genuine grounds of bonafide requirement in view of statement made in the eviction petition. Thus, the petitioner was not entitled to the prayer made in the present petition.

11. In view of the above settled law, I am not inclined to interfere with the impugned order passed by the Rent Controller on 24th April, 2012. Accordingly, the petition is dismissed in favour of the respondent.

12. However, in the interest of justice, equity and fair play, the petitioner is granted six months time to vacate the suit property, i.e. one room bearing No.4134, Gali Barna, Sadar Bazar, Delhi-110006 which was shown in red colour in the site plan annexed with the petition by handing over peaceful possession to the respondent. During this period, the petitioner shall not sublet or create any third party interest in the suit property. Pending applications also stand disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 04, 2013