

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

+ **RC.REV.No.142/2012 & C.M.No.5925/2012 (Stay)**

% **26th September, 2014**

MR. FAROOQ KHAN Petitioner

Through: Mr.Vikas Nagwan with Mr.Sandeep
Arya, Advocates.

VERSUS

SMT. BITTO Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M.No.16135/2014 (for recalling)

1. On 08.9.2014, the following order was passed:-

“ 1. On as many as three calls no one appears for the petitioner. This is a petition of the year 2012 and petitioner is enjoying the benefit of interim order dated 30.3.2012 staying the impugned judgment dated 16.12.2011.

2. Learned counsel for the respondent vehemently opposes the adjournment and states that only six months statutory period is given to vacate the tenanted premises which has expired way back on 16.6.2012, and that even today in September, 2014, the petitioner continues to be in possession of the tenanted premises.

3. The impugned judgment dismisses the leave to defend application as barred by time by holding that delay cannot be

condoned in view of the judgment of the Supreme Court in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*.

4. Though the present is a fit case for the petition being dismissed for non-prosecution, however, in the interest of justice, though the case is adjourned, but the interim order passed on 30.3.2012 is vacated.

List on 23rd February, 2015.”

2. This order was passed because it is clear that the petitioner/tenant was enjoying the benefit of an interim order dated 30.03.2012 staying the operation of eviction and not arguing the main case.

3. Although, there is no merit in the main petition in view of the settled law enunciated by the Supreme Court in the judgment in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*, it is still prayed in the application that the interim order be revived. Hence instead of reviving the interim order, I have asked the counsel for the petitioner to argue the main petition, and I have heard the arguments of the counsel for the petitioner in the main petition.

4. The application is accordingly disposed of.

RC.REV.No.142/2012

5. The present petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the judgment of the Additional Rent Controller dated 16.12.2011 by which the Additional Rent Controller decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act, inasmuch as leave to defend was not filed within the statutory period of 15 days prescribed for filing of the leave to defend application, and because courts have no power to condone the delay in filing the application for leave to defend. The relevant observations of the trial court in this regard are contained in paras 8 to 10 of the impugned judgment, and which paras are reproduced as under:-

“8. Ld. counsel for respondent prayed during argument for condoning the delay in filing the leave to defend application. As far as question of condonation of delay is concerned, the Rent Controller does have no power to condone the delay in filing leave to defend application under 14 (1) (e) r/w 25-B DRC Act. The Hon’ble High Court held in **Sham Murari Vs. Rajneesh K.Kashyap & Anr. 155 (2008) DLT 336** that:-

An application for condonation of delay in filing leave to defend is not maintainable and if leave to defend is not filed within 15 days. It is clear that Rent Controller has no power to condone the delay of even a single day in filing the leave to defend application.

9. Further Hon’ble Supreme Court also held in **Prithipal Singh vs. Satpal Singh (D) through its LRs (2010) SLT 116** that:-

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 provision of the Limitation Act, 1963 could not be attracted.

10. In view of the above discussion, it is clear that controller has no power to condone the delay in filing the leave to defend application. Consequently, the leave to defend application is dismissed. Now there is no leave application so that statement made by the petitioner in the application for eviction shall be deemed to be admitted by the respondent. Accordingly the petitioner deserves to be allowed. Ordered accordingly.”

6. The Additional Rent Controller was hence justified in view of the binding ratio of the case of *Prithipal Singh (Supra)* in refusing to condone the delay in filing the leave to defend application.

7. A reading of para 7 of the impugned judgment of the Additional Rent Controller dated 16.12.2011 shows that the petitioner was playing a game of hide and seek because it was falsely stated that summons were not received on 20.6.2008 through his son Akbar, but that stand did not have any merits or honesty because the petitioner/tenant failed to show that if he was served on 27.6.2008, then in which manner/mode he was served on 27.6.2008. Obviously, the petitioner/tenant was served on 20.6.2008 and the service was to his knowledge and with consent, yet, application for leave to defend was only filed on 08.7.2008, and which was therefore beyond the statutory period of 15 days prescribed for filing of the leave to defend application.

For holding that the petitioner was duly served, I apply the principles laid down recently by me in RC. Rev. No. 294/2014 titled as ***Sh. Shyam Sunder Wadhawan Vs. Shri Vivek Arya*** decided on 09.09.2014 as regards service in a *bonafide* necessity eviction petition and which principles read as under:-

"17. The conclusions are:-

(i) Merely because summons are addressed to the tenant but received by somebody else does not mean that in each and every such case the service is not a valid service whether there is or is not service/refusal depends upon the facts of each case.

(ii) If the summons is addressed to the tenant, and if the same is received by a person other than the tenant, but with consent/or knowledge or direction of the tenant, then the service is as effective as the service on the tenant. To clarify further, if summons are addressed to an agent of a tenant, then surely instead of the agent even the tenant himself can receive the same, then, why not a summons addressed to a tenant cannot be received by a person with consent or knowledge or direction of the tenant. A caveat: when a person other than the tenant receives the summons, the tenant must at that stage be in a place/state when he can file the leave to defend application within the prescribed period.

(iii) If the tenant uses subterfuges, including those cases where he is found to have endeavoured to conceal his personality, a court can, depending upon facts of a particular case hold that there is service/refusal of the summons.

(iv) Service effected directly by affixation is not a valid service but affixation done following the refusal to receive summons is a valid service.

(v) Summons sent by registered post, when are avoided to be received by the tenant, then in such circumstances where it is clear that the tenant has the knowledge that he must receive the registered post article, but yet he does not, it can as per facts of a case, be held that there is service/refusal by the tenant."

8. The argument urged on behalf of the petitioner/tenant that there is no service by registered AD post is an argument without any merit because service in a *bonafide* necessity eviction petition can be through any mode of service, through process server, by registered post or by publication and it is not the law that service effected by one mode only is not a complete service and that service must also be endeavored to be done by other modes also.

9. In view of the factual position which emerges on the record of this case, and in view of the ratio of the judgment of the Supreme Court in the case of

Prithipal Singh (supra), there is no merit in this petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

SEPTEMBER 26, 2014
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