

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV.423/2013 & C.M.No.18329/2013 (Stay)**

23th September, 2014

M/S THE BALUSSERY BENEFIT CHIT FUND PVT. LTD. Petitioner

Through Ms.Maninder Acharya, Sr. Advocate
 with Mr.P.K.Rawal and
 Mr.S.N.Khanna, Advocates.

Versus

SMT. MEETA KUMAR Respondent
Through Mr.S.K.Bhaduri with Ms.Kirti Parmar,
 Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Before passing of the judgment, in the peculiar facts of this case, and being bound by the ratio of the judgment in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*, therefore as per the suggestion given on behalf of the respondent/landlord, I had put it to the counsels for the petitioner/tenant as to whether the petitioner/tenant wanted time to vacate the suit/tenanted premises, but counsels state that the case be decided on merits as the petitioner/tenant is not interested in taking time to vacate the suit/tenanted premises.

2. Challenge by means of this petition under Section 25B(8) of the Delhi

Rent Control Act, 1958 (in short 'the Act') is to the impugned order of the Additional Rent Controller dated 07.6.2013 by which the Additional Rent Controller has held that the leave to defend application which is filed by the petitioner/tenant is beyond the statutory period of 15 days, and hence the same cannot be considered as per the ratio of *Prithipal Singh's case (supra)* , and consequently contents of the eviction petition are deemed to be admitted as per Section 25B(4) of the Act and the *bonafide* necessity eviction petition of the respondent/landlord filed under Section 14(1)(e) of the Act has been decreed.

3. It is now settled law that in Delhi in view of the judgment in the case of *Prithipal Singh (supra)*, there can be no condonation of delay of even one day in filing of the leave to defend application beyond the statutory period of 15 days, and which period is held to be a mandatory and inflexible period. Therefore, the issue in the present case is that; when ie on which date were the summons in the eviction petition served upon the petitioner/tenant in order to decide the date of commencement of the 15 days statutory period for filing of the leave to defend application. Whereas the petitioner/tenant contends that the summons were received on 29.8.2009, the respondent/landlord as per the report of the process server contends that summons were received on 27.8.2009. The leave to defend application in the case, though as per the respondent/landlord was filed on 15.9.2009, but for the sake of arguments before this Court, it is conceded that the same be taken as having been filed on 14.9.2009. The

question therefore is that is the date 14.9.2009 within the 15 days statutory period prescribed for filing of the leave to defend application? If the summons in the eviction petition are received on 27.8.2009, then the leave to defend application filed on 14.09.2009 is barred by time, and if the summons in the eviction petition are received on 28.8.2009, the leave to defend application will be within limitation inasmuch as 12th and 13th of September, 2009 were second Saturday and Sunday.

4. A reading of the process server's report, and as noted by the court below, shows that there is undoubtedly an overwriting as to the date appearing just below the recipient's signatures i.e the recipient who has signed for and on behalf of the petitioner/tenant company at the time of receiving of the summons. There are two aspects which arise i.e change of date to 27.8.2009 is not from 28.8.2009 but is from 29.8.2008 as is contended by the petitioner/tenant or the change of date is from 28.8.2009 to 27.8.2009 as contended by the respondent/landlord, and with the second related issue being that whether at all this correction of the date to 27.8.2009 has been done by the process server in collusion with the respondent/landlord as is the case of the petitioner/tenant or that the change of date is not done by the process server; much less in collusion with the respondent/landlord; and which date has been changed only by the recipient of the summons himself when the recipient had received the summons on behalf of the petitioner/tenant.

5. A reading of the photocopy of the summons filed in this Court makes one thing very clear that the original date which was written on receipt was 28.8.2009 and not 29.8.2009 as is sought to be canvassed on behalf of the petitioner/tenant. It is clear even from the photocopy of the summons that originally the date of 28.8.2009 was put, but which has thereafter been changed to 27.8.2009. Therefore, I reject the argument that originally the receipt of summons in fact at all bore the date of 29.8.2009. Therefore the original date which has been struck out is 28.8.2009, and which has been changed to 27.8.2009. Of course, it is noted that the change of date will not make any difference if the date of receipt of summons is taken as 28.8.2009 because even if summons are received on 28.8.2009, then the 15 days statutory period would have come to an end on 12.9.2009 which was a second Saturday and a holiday, and consequently the leave to defend application which was filed on 14.9.2009 would be within limitation. Therefore, the issue is whether summons are received on 27.8.2009 as is the case of the respondent/landlord being the changed date which is found in the endorsement of receipt of the summons or the summons were received only on 28.8.2009.

6. A reading of the impugned order shows that the Additional Rent Controller has very minutely and carefully examined this fact with respect to the date of receipt of summons and which is in view of the ratio of the case of *Prithipal Singh (supra)*. The Additional Rent Controller has arrived at a

categorical finding of fact that the change of date from 28.8.2009 to 27.8.2009 is as per the ink of the same writing instrument i.e the ink of the date written as 28.8.2008 is the same ink for the date of 27.8.2009, and therefore, is of the same pen or writing instrument which has been used for first writing the date as 28.8.2009 and then changing of the date from 28.8.2009 to 27.8.2009. Thus the ink of the original date of 28th and 27th is the same.

7. In view of this specific position, I put a pointed query to the learned senior counsel for the petitioner/tenant that whether there is a specific averment that the ink and the writing instrument/pen is pleaded as per the pleadings before the Additional Rent Controller by the petitioner/tenant to be of process server or the respondent/landlord and not of the recipient of the summons, but, nothing specific could be pointed out to me as per the pleadings in the applications and replies filed before the Additional Rent Controller that the pen/writing instrument with respect to the original date or changed date is not of the recipient of the summons who has signed in the same ink, but is of the process server or of the respondent/landlord. In fact, from the photocopy of the summons it is clear that it is only the recipient of the summons who received the summons in the *bonafide* necessity eviction petition who himself changed the date from 28.8.2009 to 27.8.2009 inasmuch as the date appears just/immediately below the signatures of the recipient of the summons and which is to be taken with the fact and the aspect that the ink used for the date is

the same ink of not only for the date but also of the signatures of the recipient of the summons as also for writing of the full name of the recipient of the summons which is written immediately below the date which is written as the date of receipt of the summons.

8. I would also like to note that there is no reason, and as rightly held by the Additional Rent Controller below, for the process server to manipulate the date in collusion with the respondent/landlord from 28.8.2009 to 27.8.2009 because the Additional Rent Controller rightly notes that how would the process server know that the tenant is going to file its leave to defend application only on a particular date which would be beyond the prescribed period, and therefore manipulation in the date would be required. Therefore, in my opinion it is totally misconceived on the part of the petitioner/tenant to allege that it is the process server who has changed the date of receipt of the summons from 28.8.2009 to 27.8.2009. I may only add that it is not unknown that mistakes happen while writing a date on many occasions and it is natural for the person who has written a wrong date below his signatures to correct the date, and in the facts of the present case where the ink with respect to the receipt of summons contains the recipient's name, recipient's signatures and the date of receipt and being of the same pen/writing instrument, there is no doubt that the summons were in fact received on 27.8.2009.

9. I may finally note that there would surely have been some record with

the petitioner/tenant company as to possessing of the summons and which record ought to have been filed by the petitioner/tenant company and which would have shown as per the record when the summons were received, but the petitioner/tenant conveniently has chosen not to file its record with respect to when as per its files and administrative record the summons were received by the petitioner/tenant.

10. In view of the above, 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 23, 2014
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