

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

+ **RE.REV.No.332/2014 & C.M.No.16749/2014 Exemption)**

% **10th October, 2014**

SH.RAM NARESH Petitioner

Through: Mr.S.S.Dahiya with Mr.Krishan
Kumar Advocates.

VERSUS

SMT. NARAYANI DEVI Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the order of the Additional Rent Controller dated 11.8.2014 by which the *bonafide* necessity eviction petition was decreed against the petitioner/tenant on account of failure of the petitioner/tenant to file the leave to defend application within the prescribed statutory period of 15 days, as held by the Supreme Court in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*. In this judgment the Supreme Court has held that there cannot be

condonation of delay of even one day in filing of the leave to defend application.

2. The impugned order records that efforts were made for service of the petitioner herein (respondent in the eviction petition) on different dates, but service was not effected, however, the petitioner/respondent along with his counsel appeared in the court on 27.11.2013, and which date was therefore taken as the date of service of summons in the *bonafide* necessity eviction petition and hence for commencement of the 15 days statutory period for filing of the leave to defend application. The order dated 27.11.2013 recording these aspects reads as under:-

“ Present: Petitioner in person.

Respondent with counsel Mr. Krishan Kumar.

Counsel for the respondent is directed to file his vakalatnama during the course of the day. Though the summons are back with locked premises report. Respondent submits that he was intimated by the petitioner about the pendency of present petition. Date of service of respondent is deemed to be today's date of hearing and copy of plaint and documents are supplied from the judicial record.

Application for leave to defend be filed within 15 days from today after supplying advance copy to the opposite party against acknowledgment.

Be listed for further proceedings on 13.12.2013.”

3. Admittedly, the application for leave to defend was filed on 04.1.2014 i.e well beyond the expiry of 15 days prescribed statutory period which commenced on 27.11.2013, and therefore in view of the ratio of the judgment in the case of *Prithipal Singh (supra)*, the leave to defend application could not be and was not considered by the court below.

4. Learned counsel for the petitioner has argued before this Court two aspects. Firstly it is argued that since the service of the prescribed summons as per the Schedule to the Act was not effected, the 15 days prescribed statutory period did not commence for filing of the leave to defend application. The second aspect which is argued is that the petition filed was without jurisdiction as the Act did not extend to the area in which the suit/tenanted premises are situated.

5. The first argument urged on behalf of the petitioner is wholly frivolous because the object of service of summons in the prescribed form is to bring to the notice of the tenant that there is a 15 days prescribed statutory period for filing of the leave to defend application. Besides that aspect, there is no sanctity to a prescribed form. Once the petitioner/tenant appeared in the court along with his counsel and the order dated 27.11.2013 was passed by the court in the presence of the petitioner recording that the 15 days

prescribed statutory period for filing of the leave to defend application had commenced, and the petitioner was supplied the entire paper book of the eviction petition, therefore, it does not lie in the mouth of the petitioner to allege that since there was no service of summons in the prescribed form, the period for filing of the leave to defend application did not commence.

6. The second argument urged on behalf of the petitioner is also equally frivolous because once a leave to defend application has not been filed, therefore grounds which could be raised/stated in the same cannot be considered i.e grounds which ought to be raised in the leave to defend application therefore cannot be raised by means of a subsequent application under Order VII Rule 11 CPC because what cannot be directly done cannot be done indirectly. I note that once there is no leave to defend application, contents of the eviction petition are deemed to be admitted in view of Section 25B(4) of the Act, and once the contents of the petition are admitted, an eviction decree has to follow.

7. I have had an occasion to examine the second argument which is urged recently in the case of *Canara Bank Vs. T.T. Ltd., RC.Rev. No.312/2013* decided on 30.9.2014 wherein I have held that where the issue of a disputed question of fact as to whether or not the Act is extended or not

extended to an area, this issue being a disputed question of fact has to be raised in the leave to defend application, and if this ground is not raised by filing of the leave to defend application, then such a ground cannot be considered because contents of the eviction petition in the absence of the leave to defend application are deemed to be admitted in view of Section 25B(4) of the Act. The relevant paragraph nos. 2 to 4 of the judgment in the case of *Canara Bank (supra)* read as under:-

“2. Learned counsel for the petitioner argued before the Additional Rent Controller below, and which argument is also urged before this Court that even if leave to defend application is not filed, yet, if the eviction petition filed is without jurisdiction ie Section 14(1)(e) of the DRC Act could not at all have been invoked by the respondent-company, then in such a case an eviction petition cannot be decreed because the eviction petition itself was not maintainable.

3. It is true that if the Additional Rent Controller lacks the inherent jurisdiction to decide a case because the provision of Section 14(1)(e) of the DRC Act cannot be invoked, and that actually it is Section 22 of the DRC Act which will apply, then even if there is no leave to defend application, the Additional Rent Controller would be required to consider if the eviction petition itself was maintainable for being decreed under Section 14(1)(e) of the DRC Act. Putting it in other words, if the eviction petition is not maintainable as per the provision under which it is filed, then the special summary procedure provided for deciding that eviction petition under the provision as per which it is filed would not be available, and therefore for non-compliance of the special procedure in not filing the leave to defend application, the eviction petition cannot be decreed by deemed admission provided under Section 25 B(4) of the DRC Act.

4. I would like to state that where there is a position which shows *ex facie* that a petition is not maintainable because of lack of jurisdiction of the Additional Rent Controller or the provision invoked is on the face of it

not maintainable, then in such a case the Additional Rent Controller can go into the aspect of lack of jurisdiction for deciding the decreeing of the *bonafide* necessity eviction petition by applying Section 25-B(4) of the DRC Act for deemed admission, but, where two views are possible, and factual issues are involved, and it cannot be said that *ex facie* the petition is not maintainable under Section 14(1)(e) of the DRC Act, then in such a case, in my opinion, the issue raised is not strictly a legal issue of lack of jurisdiction for an eviction petition not to be filed and decreed under Section 14(1)(e) of the DRC Act read with special procedure provided under Section 25(B) of the DRC Act. These observations are relevant in the present case because there are two views possible of the factual situation as to whether or not the respondent-company can or cannot invoke Section 14(1)(e) of the DRC Act and that it should have only invoked Section 22 of the DRC Act is not that *ex facie* clear. If therefore two views are possible that Section 14(1) (e) of the DRC Act could or could not be invoked, in such circumstances to argue this aspect that Section 14(1)(e) of the DRC Act definitely could not be invoked and only Section 22 of the DRC Act could be invoked, a leave to defend was required to be filed within the statutory period by petitioner/tenant, and since the leave to defend application was not filed within the statutory period, the Additional Rent Controller was justified in decreeing the petition under Section 25-B(4) of the DRC Act inasmuch as once leave to defend application is not filed within the statutory period of 15 days the contents of the eviction petition are deemed to be admitted and the eviction petition is liable to be decreed.”

8. 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

**OCTOBER 10, 2014
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