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

+ RC.REV. 294/2017 & CM No. 21866/2017 (for stay).

HUKUM SINGH

..... Petitioner

Through: Mr. Amit Mehra, Adv.

Versus

ANIL KUMAR

..... Respondent

Through: Mr. Kapil Gupta and Mr. Akhilesh
Aggarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.07.2017

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958, impugns the order (dated 4th October, 2016 in E.No.1101/14 (New No.79455/16) of the Court of Additional Rent Controller -2/Central/Tis Hazari Courts, Delhi) of dismissal in default of the application filed by the petitioner/tenant for leave to defend the petition for eviction filed by the respondent/landlord under Section 14(1)(e) of the Act.
2. Notice of the petition was issued and the Trial Court record requisitioned. The counsel for the respondent/landlord appeared before this Court on 4th July, 2017 when the matter was adjourned to today.
3. The counsels have been heard.
4. The learned Additional Rent Controller, in the impugned order, has noted that none had appeared for the petitioner/tenant despite repeated calls on 4th October, 2016 and none had appeared for the petitioner/tenant on the earlier date of hearing also when adverse orders were deferred and last

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opportunity was given to the petitioner/tenant to argue on the leave to defend application. Relying on the judgment of this Court in *Amar Photo Studio Vs. Niranjan Das Arora (Through LRs)* 2014 SCC Online Del 6486 holding that in case any party fails to appear to advance arguments on leave to defend application even after filing the same, leave to defend application should be treated as deemed to be not pressed and there is no requirement for Rent Controller to consider the leave to defend application and the same has to be dismissed in default or for non prosecution, the leave to defend application filed by the petitioner/tenant was dismissed in default and consequently the order of eviction of the petitioner/tenant passed.

5. The petitioner/tenant, in the memorandum of this petition, has pleaded: (i) that the pleadings in the leave to defend application were completed and the leave to defend application listed for arguments on 11th March, 2016; (ii) that the wife of the counsel for the petitioner/tenant, who was handling the matter before the Rent Controller, succumbed to her illness and passed away on 10th March, 2016; (iii) that thereafter the counsel for the petitioner/tenant also did not keep well and expired on 4th June, 2016; (iv) that it was in these facts that the petitioner/tenant could not keep track of the matter before the Rent Controller; (v) that the petitioner/tenant got to know about the dismissal of the leave to defend application vide the impugned order much later, only when he engaged a new advocate; (vi) that in a petition for eviction filed by the respondent/landlord, also on the ground under Section 14(1)(e) of the Act, against another tenant in the same property, leave to defend had been granted to that tenant by the same learned Additional Rent Controller; (vii) the factum of demise of the wife of the counsel for the petitioner was informed to the Court on 11th March, 2016

and is noted in the order of that date; (viii) that in the circumstances there was sufficient cause for non-appearance of the petitioner/tenant before the learned Additional Rent Controller on 4th October, 2016 when the leave to defend application was dismissed in default.

6. I have perused the Trial Court record and find that the leave to defend application on behalf of the petitioner/tenant was filed by Mr. D.K. Sharma, Advocate whose vakalatnama on behalf of the petitioner/tenant is also on record.

7. The counsel for the respondent/landlord has not disputed the factum of the demise, first of the wife of Mr. D.K. Sharma, advocate and thereafter of Mr. D.K. Sharma, Advocate.

8. There is also on Trial Court record the vakalatnama filed on 6th March, 2017 of the present advocate for the petitioner/tenant.

9. The counsel for the respondent/landlord has further contended that the petitioner/tenant has not given any explanation for not hiring another advocate when Mr. D.K. Sharma, Advocate, after the demise of his wife, was not keeping well and not attending the Court.

10. A perusal of the ordersheet of the learned Additional Rent Controller in the requisitioned record shows that on 11th March, 2016 the petitioner/tenant had appeared in person and informed of the demise of the wife of his advocate and the case was adjourned in the presence of the petitioner/tenant to 27th April, 2016 for arguments on the leave to defend application.

11. On 27th April, 2016 also, as per the ordersheet, the petitioner/tenant appeared in person and sought adjournment on the ground of non-availability of his Advocate and which adjournment was not opposed by the

counsel for the respondent/landlord; the matter was adjourned to 2nd June, 2016 for argument on the leave to defend application.

12. On 2nd June, 2016 also the petitioner/tenant appeared in person and sought adjournment on personal ground of his advocate and the matter was adjourned to 10th August, 2016 for arguments on the leave to defend application.

13. On 10th August, 2016 none appeared for the petitioner/tenant but still the matter was adjourned to 4th October, 2016 when as aforesaid, the leave to defend application was dismissed in default.

14. Though there is no explanation in the memorandum of this petition as to why the petitioner/tenant, though had been attending the court himself, even on 2nd June, 2016 when the date of 10th August, 2016 was given, did not appear on 10th August, 2016 or did not enquire about the case and it is only vaguely stated that owing to financial difficulties the petitioner/tenant could not immediately after the demise of his advocate engage any advocate but at the same time it is felt that when the petitioner/tenant was contesting the petition for eviction filed against him by filing a detailed application for leave to defend and engaging the advocate, in the light of the demise first of the wife of the advocate and thereafter of the advocate himself, the matter requires interference by this Court. It is significant that though the view of this Court(as reiterated in *Mohd. Quresh Vs. Roopa Fotedar* ILR (1990) 1 Del 16 and *Gurditta Mal Vs. Bal Swarup* AIR 1980 Del 216) was that the Rent Controller in exercise of power under Section 37 Rule 4 of the CPC can, if satisfied for the reasons of default of appearance or otherwise, itself set aside the order of eviction but the Supreme Court in *Prithipal Singh Vs Satpal Singh (Dead) through LRs* (2010) 2 SCC 15 has held that the

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provisions of Order 37 Rule 4 CPC cannot be made applicable to the Rent Act. Hence the necessity for this petition.

15. Having found sufficient cause for non appearance of the petitioner/tenant on 10th August, 2016 and 4th October, 2016 when the application filed by the petitioner/tenant for leave to defend was dismissed in default of appearance, this petition has to be allowed.

16. The petition is allowed. The order dated 4th October, 2016 of dismissal in default of the leave to defend application and the consequent order of eviction of the petitioner are set aside. Leave to defend application of the petitioner/tenant is restored to its original position. The parties to appear before the Additional Rent Controller concerned on 13th September, 2017.

Trial Court record requisitioned to this Court be sent back forthwith.

RAJIV SAHAI ENDLAW, J.

JULY 25, 2017
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