

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

Judgment Reserved on: October 29, 2015

% *Judgment Delivered on: November 02, 2015*

+ **LPA 333/2015**

VINAY D TIWARI

..... Appellant

Represented by: Mr.Pawan K.Bahl, Mr.Veeresh
K.Sharma, Advs.

versus

DDA & ORS

..... Respondent

Represented by: Mr.Rajiv Bansal, Sr.Standing
Counsel with Mr.Kartik Jindal,
Adv. for R-1/DDA.
Mr.M.L.Sharma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Respondent No.2 K.K.Sharma was allotted a DDA flat bearing No.179-C Pocket J&K, Dilshad Garden, Delhi in the draw of lots held by the DDA on May 19, 1985. The physical possession of the flat was also handed-over to K.K.Sharma vide letter dated May 28, 1986. It is the case of the appellant Vinay D.Tiwari that K.K.Sharma executed a general power of attorney, possession letter, receipt dated January 08, 1987 in his favour after selling the flat for a consideration of ₹28,000/-. DDA/ respondent No.1 issued a show cause notice to K.K.Sharma on October 07, 1988, seeking explanation about the transfer of the flat.

2. K.K.Sharma filed a suit seeking declaration, permanent and mandatory injunction and damages for use and occupation of the flat against

Vinay D.Tiwari before the learned Civil Court which was later on amended by K.K.Sharma seeking possession as well. In the written statement DDA stated that the possession of the flat had been handed over to Vinay D.Tiwari.

3. The learned Civil Judge vide its order dated February 06, 1992 directed the parties to the suit to maintain status-quo in respect of the flat in question. The suit was finally disposed of in favour of K.K.Sharma where after an appeal was preferred by Vinay D.Tiwari before the learned ADJ.

4. In the meantime Estate Officer of the DDA issued a show cause notice to Vinay D.Tiwari under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short the PP Act) wherein vide order dated August 31, 2010 an eviction order was passed. On an appeal filed by Vinay D.Tiwari, the order dated August 31, 2010 passed by the Estate Officer was set aside and the matter was remanded back for re-consideration. The Estate Officer vide its order dated May 15, 2014 disposed of the show cause notice dated April 21, 2010 directing eviction. As neither the appellant nor his counsel appeared on June 11, 2010 before the Estate Officer nor even on the next date i.e. June 29, 2010 for which summons were sent nor even thereafter, the Estate Officer on the basis of material before it and considering the reply of Shri Vinay D.Tiwari to the show cause notice directed eviction of Vinay D.Tiwari from the flat. The appeal preferred by Vinay D.Tiwari against the order dated May 15, 2014 passed by the Estate Officer was dismissed being barred by limitation by the learned District Judge vide order dated December 08, 2014 which was challenged by way of W.P.(C) 273/2015 which was also dismissed by the impugned order.

5. The short issue before this Court was whether on the facts of the case

the learned Single Judge and the learned District Judge were justified in not condoning the delay in filing the appeal against the order dated May 15, 2014 passed by the Estate Officer. Section 9 of the PP Act provides for filing of an appeal against the order under Section 5 passed by the Estate Officer within 12 days from the date of publication of the order.

6. The ground taken by the appellant seeking condonation of delay in filing the appeal under Section 12 of the PP Act before the District Judge was that he became aware of the order dated May 15, 2014 only on July 21, 2014 during the pendency of civil suit titled as '*Krishan Kumar Sharma Vs. DDA & Ors.*' when Krishan Kumar stated that he was given possession of the flat. The certified copy of the order was received on July 22, 2014 and thus the appeal was immediately filed thereafter on August 01, 2014. Both the learned District Judge and the learned Single Judge held that the explanation rendered was not sufficient because admittedly physical possession of the flat was taken on June 26, 2014 and thus Vinay D.Tiwari had knowledge of the order on June 26, 2014 at least.

7. The judgment dated August 04, 2004 in the suit titled as '*Krishan Kumar Sharma Vs. DDA & Ors.*' the learned Civil Judge noted the submission of Krishan Kumar at the time of final arguments i.e. on July 21, 2014 that he had received the vacant peaceful physical possession from the DDA on July 08, 2014 and he placed on record the possession slip Ex.C-1. It has been the claim of the appellant admittedly that he has been in physical possession and once possession was taken from him by the DDA vide the possession slip dated July 08, 2014 at least from July 08, 2014 the appellant could not claim that he was not aware of the order of the Estate Officer and came to know about the same only on July 21, 2014. The explanation of the

appellant for seeking condonation of delay in filing the appeal being not plausible we find no reason to disturb the concurrent finding arrived at by the two courts. Hence the present appeal warrants no interference.

8. Appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 02, 2015
‘ga’