

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 391/2013 & CM Nos. 16760/2013, 21159/2014**

% Reserved on: 23rd February, 2015

Decided on: 10th March, 2015

SHRI PRABHUDAYAL BATRA Petitioner
Through: Mr. Pradeep Dewan, Sr. Advocate
with Ms. Anupam Dhingra, Advocate.

versus

M/S SHREYANS BUILDWELL PVT LTD Respondent
Through: Mr. Arjun Singh Bhati, Advocate.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Learned counsel for the Respondent at the outset submits that the Petitioner is not paying the user charges as directed by this Court and thus the interim order passed in favour of the Petitioner as fixed by this Court in terms of the decision of Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Ltd., 2005 (1) SCC 705 be vacated. Learned counsel for the Petitioner admits that the user charges as directed by this Court have not been paid. He however, states that he is ready to address arguments in the matter and thus arguments have been heard.

2. Aggrieved by the order dated 25th September, 2013 whereby the leave to defend application of the Petitioner was dismissed for the reason the same was filed beyond the period of 15 days, the present petition has been preferred.

3. Learned counsel for the Petitioner states that the learned ARC wrongly relied upon the decision in Prithpal Singh vs. Satpal Singh (Dead) through

LRs, 2010 (2) SCC 15. The High Court being the Court of original jurisdiction as well as the Court of Appeal it has inherent powers to condone the delay and thus the same should be considered by this Court and on the facts of the case the delay be condoned. It is further stated that in Prithpal Singh (Supra) the applicability of law of limitation was directly not in consideration and the only issue was whether the Controller can recall an order of eviction by applying the provisions of Order 9 Rule 13 read with Order 37 Rule 4 and Section 151 CPC. It is further submitted that de hors the delay in the application for leave to defend being not condoned, the learned Trial Court was bound to look into the fact that the eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') was not maintainable and the same was maintainable only under Section 22 of the DRC Act. Reliance is placed on Madan Mohan Lal vs. P.Tandon, 21 (1982) DLT 16 and Superior Exim Pvt. Ltd. vs. Sitar Ram Goel, RC Rev. No.401/2012 decided on 14th August, 2012.

4. Learned counsel for the Respondent on the other hand further states that Section 22 of DRC Act is not applicable to the present case as the four conditions mentioned in the said provision do not apply to the facts of the present case. Reliance is placed on Satnam Kaur and others vs. Ashlar Stores P. Ltd., 158 (2009) DLT 62.

5. I have heard learned counsel for the parties and perused the record.

6. The Respondent filed the eviction petition before the learned ARC under Section 14 (1) (e) of the DRC Act stating that the Respondent was a company registered under the Companies Act, 1956, Shri Vinod Nair is the Principal Officer and Attorney of the Respondent Company and is duly authorized to sign, verify and institute the present petition. It is further

stated that Shop No. 32, 9062, Ram Bagh, Azad Market, Delhi-110006 has been let out to the Petitioner for commercial purposes from where the Petitioner was carrying his business activity. It was stated that the Respondent Company was incurring losses for a long time and thus to revamp its business, the Respondent Company requires place for building proper infrastructure and office to be used by its employees as per the plan finalized. The Respondent Company is in the process of hiring more than 40 new employees and therefore it has to build up a new and bigger office. The Respondent Company requires the said shop bona fide for its own use and for the use of its employees and Respondent Company does not have any alternative or suitable non-residential premises. The Respondent Company is presently accommodating in shop No.21 of the said complex. It is further stated that the Respondent Company has initiated similar process of eviction against the other ten tenants in various shops in the complex.

7. Summons were served to the Respondent on 23rd July, 2013 which fact is not disputed by the learned counsel for the Petitioner herein and the leave to defend application was filed on 30th August, 2013, that is, beyond the period of 15 days.

8. In Prithpal Singh (supra) the Supreme Court authoritatively held:

“16. From a careful perusal of Sub-section (4) of Section 25-B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceeding shall be deemed to be

admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition. At this stage, we may also note that in Sub-section (4) of Section 25-B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.”

9. Thus the Supreme Court in Prithpal Singh (Supra) noted the dominant object of the amending Act so as to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14A of the DRC Act and for avoiding unusual dilatory process. Section 25-B (1) being a special provision and every application on the ground of Section 14 (1) (e) of the DRC Act is required to be dealt with in accordance with the procedure specified under Section 25-B(1) of the DRC Act. Since no power has been conferred on the Controller apart from Rule 23 which is a general rule, the Controller is required to be guided with the provisions of Section 25-B DRC Act and thus there was no power with the Controller to condone the delay in filing the leave to defend application. In view of this decision of the Supreme Court it cannot be said that this Court in its inherent jurisdiction has power to condone the delay. This Court exercising jurisdiction under Section 25-B (8) of the DRC Act, acts in a supervisory capacity to see whether any illegality has been committed by the learned ARC. Thus in view of the decision in Prithpal Singh (Supra) it cannot be said that the learned ARC committed any illegality in not

condoning the delay or this Court has the power to condone the delay in filing the leave to defend application.

10. Learned counsel for the Petitioner further stated that even if the leave to defend application of the Petitioner was not to be allowed and the averments in the eviction petition are to be taken on their face value the same do not attract provision of Section 14 (1) (e) DRC Act and eviction petition only under Section 22 of the DRC Act could have been filed. Section 14 (1) (e) and Section 22 of the DRC Act provide as:

14 (1)(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

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22. *Special provision for recovery of possession in certain cases.-* Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution, for the furtherance activities, then, notwithstanding anything contained in section 14 or any other law, the Controller may, on an application made to him in his behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied-

- (a) *that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or*
- (b) *that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or*
- (c) *that any other person is in unauthorised occupation of such premises; or*
- (d) *that the premises are required bona fide by the public institution for the furtherance of its activities.*

11. A perusal of the eviction petition as noted above would show that the premises was required for commercial purposes for the Respondent Company to extend its office where it can arrange for the sitting of the employees as it was going to recruit 40 more employees to expand its business and was not required for the residential purposes of the employees. The first three clauses of Section 22 of the DRC Act has no application to the facts of the present case. The Petitioner is not in service of the Respondent, nor it is alleged that the Petitioner has contravened the terms of occupancy of the premises nor is an unauthorized occupant. Even Clause (d) is not applicable as the Respondent is not a public institution. 'Public' has been defined in the explanation to Section 22 which includes Educational Institutions, Library, Hospital and Charitable Dispensary but does not include any such institution set up by any private trust.

12. Learned counsel for the Petitioner has relied upon the decision of this Court in Madan Mohan Lal (supra) where this Court held that if the company or a body corporate requires the premises for the use of its employees Section 22 DRC Act alone would apply and not Section 14 (1) (e) of the DRC Act. The said decision was rendered by this Court before the decision of the Supreme Court in Satyawati Sharma (dead) by LRs vs. Union of India and another, 2008 (5) SCC 287 when Section 14 (1) (e) of the DRC Act was applicable to the residential premises only and thus this Court held that if the premises was required for the residence of the employees then Section 22 of the DRC Act would be applicable. As noted from the contents of the eviction petition, the Respondent clearly stated that the tenanted premises was required to expand its business and for this reason it requires the premises for its own use and the use of its employees. The tenanted premises was required as a commercial premises and not as a residential premises for the employees. Even if the employees sit in the office, the same cannot be said that the premises are required for the use of the employees. There is no gainsaying that it is for the use of the company itself. The decision relied upon by the learned counsel in Superior Exim Pvt. Ltd. (supra) is also not applicable because in the eviction petition therein the landlord had stated that he required the premises to fulfill the need of residential accommodation of the employees.

13. Consequently, I find no force in the present petition. The petition and the applications are dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 10, 2015/‘vn’