

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. Revision No.312/2015 & C.M. No.11601/2015**

Decided on : 1st December, 2015

M/S. SOUND CRAFT Petitioner
Through: Mr. Rajendra Dutt, Advocate.

Versus

MADHU MALA PROPERTIES PVT. LTD. Respondent
Through: Mr. Mahmood Hasan, Advocate.

WITH

+ **RC. Revision No.341/2015 & C.M. No.12423/2015**

M/S. SOUND CRAFT Petitioner
Through: Mr. Rajendra Dutt, Advocate.

Versus

MADHU MALA PROPERTIES PVT. LTD. Respondent
Through: Mr. Mahmood Hasan, Advocate.

WITH

+ **RC. Revision No.342/2015 & C.M. No.12427/2015**

M/S. AHUJA RADIO Petitioner
Through: Mr. Rajendra Dutt, Advocate.

Versus

MADHU MALA PROPERTIES PVT. LTD. Respondent
Through: Mr. Mahmood Hasan, Advocate.

AND

+ **RC. Revision No.343/2015 & C.M. No.12431/2015**

KAMLA AHUJA Petitioner
Through: Mr. Rajendra Dutt, Advocate.

Versus

MADHU MALA PROPERTIES PVT. LTD. Respondent
Through: Mr. Mahmood Hasan, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. These are four revision petitions filed against the order dated 13.4.2015. The facts in all the four matters are almost similar and the respondent/landlord is also the same. The eviction order has been passed on the ground that the leave to defend application was not filed within the statutory period of 15 days. For the sake of convenience, facts of one case bearing RC. Revision No.342/2015 are given.

2. Briefly stated the facts are that the respondent is claiming itself to be a limited company, who had authorized one M.G. Aggarwal through their Board Resolution to file an eviction petition in respect of property No.13, Daryaganj, New Delhi which was under the occupation of the present petitioner/tenant, more particularly, shown in red colour in the

site plan. Similar other portions of the same property were also under the occupation of the other petitioners which are not in dispute. It has been stated that as per the report of the process server, the petitioners/tenants were served on 12.6.2014 but the present petitioners have stated that they had received two summons one on 9.6.2014 and the other on 12.6.2014. It was observed by the learned Rent Controller that in either case, the period of limitation of 15 days would expire on 23.6.2014 or 26.6.2014 because according to Section 25 B (4), the leave to defend has to be filed within a period of 15 days from the date of service and in the instant case, the leave to defend was filed on 1.7.2014, because the petitioner/tenant took the plea that the civil courts were closed from 8.6.2014 to 30.6.2014 and therefore, it was filed on reopening day. The learned Rent Controller observed that the court of Rent Controller was open during summer vacation and reproduced the duty roster for the month of June, 2014 which was as under :-

“OFFICE OF THE RENT CONTROLLER (CENTRAL)/THC: DELHI

CIRCULAR

Subject: Detention of one Rent Controller during summer vacation, 2014.

In pursuant to letter No.36866/SV/RC/Gaz/2014 dt. 23/05/2014 on behalf of Ld. District & Sessions Judge (HQ), Tis Hazari Court, Central Distt., Delhi and in partial modification in circular No.378/RC (Central)/2014 dt. 28/05/2014, Sh. Sunil Kumar-2, Ld. ARC, Central, in place of Sh. Sandeep Garg, Ld. ACJ/ARC, Central, is detained to look after the urgent rent matters of Central Distt., during the period 02/06/2014 to 20/06/2014. After the aforesaid modification, the following Rent Controller/Additional Rent Controller, Central Distt., are detained during summer vacations 2014 to look after the urgent rent matters of Central District under the Delhi Rent Control Act, 1958:

S. No.	Name of RC/ARC	Period of detention	District
1.	Sh. Sunil Kumar-2, Ld. ARC, Central Distt.	02/06/2014 to 20/06/2014	Central
2.	Ms. Charu Aggarwal, Ld. SCJ/RC, Central Distt.	02/06/2014 to 07/06/2014 & 19/06/2014 to 30/06/2014	Central

Sd/-
(Charu Aggarwal)
SCJ/RC-(Central)
THC/Delhi-05/06/2014

No..... RC (Central)/2014

Copy forwarded for information to:

- (i) Ld. District & Sessions Judge (HQ)/THC/Delhi.
- (ii) Sh. Sunil Kumar-2, Ld. ARC, Central, THC, Delhi.
- (iii) Sh. Sandeep Garg, Ld. ACJ/ARC, Central Distt., THC.
- (iv) AAO, Central District, Delhi.
- (v) Office file.

Sd/-
(Charu Aggarwal)
SCJ/RC-(Central)
THC/Delhi-05/06/2014”

3. On the basis of the aforesaid duty roster, the learned Rent Controller observed that as it is settled that the leave to defend has to be filed within a period of 15 days and the same has not been done in the instant case, irrespective of the fact whether they were served on 9.6.2014 or 12.6.2014, the leave to defend was summarily rejected and the eviction order was to follow. Accordingly, the learned Additional Rent Controller-1/Central, Tis Hazari, passed an eviction order.

4. The petitioner, in the present petition, has challenged the rejection of the leave to defend on the ground that the aforesaid view taken by the learned Additional Rent Controller is contrary to the view expressed by the learned single judge in case titled *M/s. Flowmore Pvt. Ltd. Vs. Keshav Kumar Swarup*; AIR 1983 Delhi 143 wherein under similar circumstances, the learned Rent Controllers were deputed to attend to the urgent matters and applications during the summer break in the year 1980 and the leave to defend was filed only on the reopening day. The same was considered to be within limitation of 15 days, the tenant having been served during the vacation and the leave to defend application having been filed within 15 days of the date of service, the same was treated as within limitation and the case was directed to be considered on merits.

5. As against this, the learned counsel for the respondent/landlord has relied upon the judgment of *Prithipal Singh vs. Satpal Singh (dead) through LRs; 2010 I AD (SC) 370* to contend that if the leave to defend application is not filed within the statutory period of 15 days from the date of service, the eviction order has to necessarily follow. It has been contended that a circular which is issued by the learned District Judge deputing two Rent Controllers on various dates to attend urgent matters is indicative enough of the fact that the leave to defend application, if so required to be filed on account of expiry of 15 days, the same should have been done during vacation. The learned counsel has drawn the attention to various paragraphs of the said judgment which are reproduced as under:-

“15If 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.

xxxxxxxxxxxxx

21.Section 25B of the Act is a complete code by which the entire procedure to be adopted for eviction of a tenant on the ground of bona fide requirement filed by the landlord in respect of a premises, shall be followed. As noted herein earlier, Section 25B (1) clearly says that any

application filed by a landlord for recovery of possession of any premises, inter alia, on the ground of Section 14 (1) (e) of the Rent Act, shall be dealt with in accordance with the procedure specified in Section 25B of the Rent Act. Therefore, sub-section (1) of Section 25B makes it clear that if any application for eviction of a tenant is filed by landlord, the special procedure indicated in Section 25B has to be followed and Section 25B (1) clearly stipulates that the application for eviction shall be strictly dealt with in accordance with the procedure specified in this Section.

xxxxxxxxxxxxxxxxxx

30.It is difficult to understand how an application for leave to contest having been rejected, may be on the ground of delay, could be allowed when it is not disputed by the tenant respondent that no application for condonation of delay could be entertained by the Rent Controller as the provisions of the Limitation Act, 1963 could not be attracted.”

6. I have carefully considered the submissions made by the respective sides and have gone through the judgments cited by the learned counsel for the parties.

7. At the outset, it must be stated that so far as *Prithipal Singh's* case (*supra*) is concerned, the question which was involved in the said judgment was not with regard to filing of the leave to defend application on the reopening day of the court after vacation on account of closure for summer break or any other break but the question which was involved

before the Supreme Court was as to whether the Rent Controller has the power to condone the delay or not.

8. While considering such a question as to whether the Rent Controller has the power to condone the delay, the Supreme Court has observed that the leave to defend has to be filed within a period of 15 days statutorily and the failure to do so, invites an order of eviction because the Rent Controller does not have any power to condone the delay. But this judgment will not cover the facts of the present case. The question involved in the present case is filing of the leave to defend application on the opening day after summer break. No doubt, there is a circular issued by the learned District Judge deputing two Rent Controllers or Additional Rent Controllers for attending to urgent matters during vacation but the fact of the matter remains that what are the kind of urgent matters are to be dealt with by the Rent Controller, is not specified in the order. Therefore, this circular in itself becomes ambiguous as to whether it is only with regard to matters where deposit of rent is involved or where somebody's essential amenity is disconnected and an application for restoration is filed, that it will be considered as an urgent matter. This question as to whether the filing of

the leave to defend application, which is required to be filed within a period of 15 days from the date of service, is not specifically specified as an urgent matter in the circular. Further, this ambiguity gets further confounded because if that was the intention of the learned District Judge, who had issued the circular, then it ought to have been stated by way of a note or in the main body itself that for the purpose of limitation, the period of vacation will not be excluded. Meaning thereby that the very fact that the period of vacation is not mentioned as a period to be excluded ,leaves the person with an ambiguity as to whether he can file the leave to defend application on reopening or not.

9. The another vital aspect of the matter which also deserves to be considered is the fact that so far as the publicity of the circular is concerned, it is not known as to how or as in what manner, the publicity has been given to the circular whether it is known to the public at large and to the counsel in general that the persons who have been served during vacation are required to file the leave to defend application within a period of 15 days even if the said period is expiring on the date of limitation.

10. I feel that the judgment passed by Hon'ble Justice Yogeshwar Dayal in *M/s. Flowmore's* case (*supra*) squarely covers the facts of the present case. In that case, the facts were somewhat similar; the petitioner was served with the summons in respect of eviction petition on 10.6.1980, the tenant had filed the application for leave to contest the eviction petition on 30.6.1980. The court of Rent Controller and Additional Rent Controller were closed during the period of 2.6.1980 to 29.6.1980 and they were only authorized to do certain specified urgent matters and applications for leave to appear and contest in eviction petition was not a matter which they were authorized to entertain during that period. It is not known from the facts as to whether in the said circular, leave to appear and contest the eviction petition was specifically excluded or not but I assume that it was specifically not mentioned in the circular and, therefore, the leave to defend application filed on the opening day after vacation was treated to have been filed within time. The present circular is in line with the circular which was issued in 1980 as is apparent from the facts. Nothing has been brought to my notice to the contrary by either the petitioner or the respondent to change my view in this regard. Because of these facts in *M/s. Flowmore's* case (*supra*),

since the leave to defend was filed on 30.6.1980 and till 29.6.1980 the courts were closed, therefore, by virtue of Section 4 of the Limitation Act read with Section 10 of the General Clauses Act, it was observed that the leave to defend which was filed on reopening, was considered to be within limitation.

11. I feel that the facts of the *M/s. Flowmore's* case (*supra*) squarely cover the present case. I, therefore, feel that the order passed by the learned Rent Controller is patently against the law laid down by our own High Court as early as in 1980 and this judgment has not been taken note of by the learned Rent Controller as it seems that the said judgment was not pointed out by any of the parties.

12. I, accordingly, set aside the order of the learned Rent Controller passed on 13.4.2015 and direct the parties to appear before the learned Rent Controller on 18.1.2016. The learned Rent Controller shall decide the leave to defend application after giving an opportunity to the respondent/landlord to file reply to the leave to defend and decide the same on merits.

13. With the aforesaid directions, all the four petitions stand disposed of. Expression of any opinion hereinabove may not be treated as an expression on the merits of the case.

V.K. SHALI, J.

DECEMBER 01, 2015
‘AA’