

\$~A-33

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

%

Date of decision: 09.08.2016

+ CM(M) 761/2016 and CM No.28688/2016.

ABDUL HAMID WARSI Petitioner

Through Mr. S.D. Ansari, Advocate.

versus

SHRI ABDU QADAR Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present petition is filed seeking to impugn the order dated 08.07.2016 whereby an application filed by the petitioner under Section 151 CPC to bring on record subsequent events was dismissed.
2. The respondent/landlord has filed an eviction petition against the petitioner/tenant under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act) for eviction of the petitioner from the shop No. 1492 on GF, Part of 1483-1492, Ward No. XIV, Gali Chuleh Wali, Sadar Nala Road, Pan Mandi, Sadar Bazar, Delhi-110006. The petitioner has filed his application for leave to defend under Section 25B of the DRC Act.
3. The petitioner has thereafter filed an application to bring on record subsequent events for consideration at the time of granting leave to contest the eviction petition and for permission to file additional affidavit in support

of his earlier application for leave to defend. In the application it is sought to be urged that the respondent/landlord in March 2016 started raising construction of three shops and completed the construction of the shops on 03.05.2016. When the construction was started, it is claimed, photographs were taken and the same are being filed. Two of the shops said to have been completed. Whereas the last shop was completed on 24.08.2016. The photographs are filed showing completion of construction of the three shops.

4. The respondent in its reply has denied the facts sought to be alleged by the petitioner. He has pointed that there are no subsequent facts which warrant to be brought on record. He denied construction of three shops. It is pointed out that the application filed by the petitioner is absolutely vague and bereft of any detail. The photographs filed by the petitioner are said to be not of the property in question and are manipulated photographs. It is also pointed out that no details are forthcoming as to in which part of the property the additional shops have been constructed. It is further stated that as per the site plan filed by the respondent, there is no space for construction of any additional shop what to talk of additional three shops

5. The ARC by the impugned order has noted that no proof has been filed to prove that new construction can be raised on the said property. The photographs filed by the petitioner do not show that the same pertains to property in question as none of the photographs bear the property number or the address or identification. It is also noted that the petitioner has failed to show in which portion of the site plan filed by the respondent the said additional construction has been carried out. No site plan has been filed by the petitioner. Hence, the ARC dismissed the said application.

6. I have heard the learned counsel for the petitioner.

7. The legal position is well settled that within the period of 15 days from the date of service of summons, the tenant is obliged to file his affidavit/application seeking leave to defend. The triable issues can only be culled out from the eviction petition, application for leave to defend and the reply of the landlord to the leave to defend. Additional issues beyond these pleadings cannot normally be considered. Additional affidavit or amendments to leave to defend application are not permitted as they would violate the 15 days' mandate as provided under Section 25B of the DRC Act.

8. The Supreme Court in the case of *Prithipal Singh v. Satpal Singh*, (2010) 2 SCC 15/(MANU/SC/1920/2009) held as follows:-

“16. From a careful perusal of Sub-section (4) of Section 25B 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 25B 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. Similarly, the Supreme Court in the case *Om Prakash vs. Ashwani Kumar Bassi*, (2010) 9 SCC 183 held as follows:-

“24. Section 13B is a power given to a Non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of any one ordinarily living with and dependent on him or her. The right has been limited to one application only during the life time of the owner. Section 18A(2) of the aforesaid Act provides that after an application under Section 13B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power.”

10. This court in the case of *Madhu Gupta v. Gardenia Estate Pvt. Ltd.*, 184 (2011) DLT 103 held as follows:-

“11. Contention of the petitioner before this Court is that the procedure contained in Section 25B is silent as to whether an amendment is permissible or not and in the absence of which Rule 23 of the Delhi Rent Control Rules, 1959 can be adhered to. Reliance has also been placed upon the judgment of Ved Prakash (supra). The said judgment had been pronounced on 07.8.2009 which is admittedly prior in time to the judgment of Prithipal Singh (supra) which was pronounced on 18.12.2009. The judgment of Prithipal Singh is clear and categorical on the point that the procedure contained in Section 25B of the DRCA has to be strictly adhered to for dealing with a petition under Section 14(1)(e) of the DRCA. This ratio of Prithipal Singh precludes the applicability of the provisions of the Code of

Civil Procedure; further the amendments sought for even otherwise were of facts which were already known to the petitioner. The facts which were sought to be incorporated i.e. that the landlord company was a part of a huge Real Estate Group of companies having several properties in their name were all facts known to the tenant; even otherwise they would not have a bearing on the bonafide requirement of the Director of the company namely Amit Deep Singh who is seeking this eviction order for the personal residence for his wife and two children. These facts were all pre-existing i.e. existing at the time when the application for leave to defend was filed; if such an application is permitted the whole purpose and intent of the provisions of Section 25B(4) would be defeated as the specifically stipulated period for filing an application for leave to defend within 15 days would be given a go by and by permitting the amendment there would be an automatic extension of time for filing the application for leave to defend. This could not and was not the intent of the statute. In *Ved Prakash (Supra)* also the amendments sought for although being of subsequent events were disallowed, as having been filed belatedly.”

11. The learned Single Judge of this court in *Sh.Mirajuddin v. Mohammad Habib & Ors., R.C. Rev. No.488/2011*, decided on 24.07.2014, held as follows:

“9. Learned counsel for the petitioner wanted to argue orally before this Court by placing reliance upon certain documents by stating that facts have now come to notice which entitle grant of leave to defend, however, this is not permitted in law in view of the judgment of the Supreme Court in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LR*s (2010) 2 SCC 15 and which holds that whatever has to be stated for grant of leave to defend has to be necessarily and only stated within 15 days in the leave to defend application and the statutory period of 15 days is sacrosanct. Supreme Court has held in the case of

Prithipal Singh (supra) that there cannot be condonation of delay of even one day in filing of an application for leave to defend because neither the provision of Section 5 of the Limitation Act, 1963 nor the provisions of CPC, 1908 apply to the exhaustive procedure for bonafide necessity under Section 25 B of the Act. Once the period of 15 days is sacrosanct, it is not permissible to a tenant after the period of 15 days to keep on filing affidavits or documents to urge grounds for seeking leave to defend, and which if permitted to be done, will be violative of the ratio of the judgment of the Supreme Court in the case of Prithipal Singh (supra) that 15 days period for filing of leave to defend application is non-flexible and a fixed period, and every aspect for seeking leave to defend has to be stated within 15 days only and not thereafter. Therefore, the so called subsequent events which are sought to be urged cannot be urged on behalf of the petitioner.”

12. Similar view was taken by the learned Single Judge of this court in ***Sh.Sanjeev Gupta & Ors. v. Sh.Subhash Kumar Gupta & Anr., R.C.Rev. No.270/2013***, decided on 27.08.2014, wherein it was held as follows:

“2. Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15 has held that the statutory period for filing of leave to defend is sacrosanct and there cannot be condonation of delay of even one day in filing of the leave to defend application. A learned single Judge of this Court in the case of Ms. Madhu Gupta Vs. M/s. Gardenia Estates (P) Ltd. 184 (2011) DLT 103 has held that there cannot be filed an application for amendment of the leave to defend application after a period of 15 days because that would amount to destroying the sanctity of the 15 days period as stated in the case of Prithipal Singh (supra).

3. In view of the above, it is clear that whatever has to be stated by a tenant for seeking leave to defend has to be stated within 15 days, and after a period of 15 days, no application for

leave to defend should be entertained nor any additional affidavit or document be allowed to be taken on record/considered or an application to amend the leave to defend application be entertained on the ground that certain additional facts or documents are required to be considered”

13. Similar view was also taken by the learned Single Judge of this court in *Mohd. burhan. v. Shri Triloki Nath Nirmal*, *R.C.Rev. No.240/2013*, decided on 25.08.2014 and in *Punjab Stainless Steel House v. Sangeeta Kedia* *MANU/DE/2055/2014; C.M.(M) No.1354/2011*.

14. Hence, the settled legal position is that the time period stipulated under Section 25-B of the DRC Act has to be adhered to. No additional documents or additional affidavit can be filed as is sought to be done.

15. Coming to the facts of the present case. What the petitioner seeks to add by his application is an additional affidavit to bring on record alleged construction of three additional shops. No details as to where these shops have been constructed are provided. No site plan has been filed. The photographs filed do not show that the same pertains to the tenanted property. In my opinion, the ARC rightly concluded that the said application cannot be allowed as the petitioner has miserably failed to show that there are any additional facts which have arisen after having filed his application for leave to defend.

16. There is no merit in the present petition and same is dismissed.

17. All pending applications also stand dismissed.

JAYANT NATH, J

AUGUST 09, 2016/rb