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

+ **RC.REV. 110/2017**

BHAGWAN DASS

..... Petitioner

Through: Mr. Rakesh C. Agrawal, Adv.

Versus

USHA GUPTA & ORS

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.08.2017

CM No.29119/2017 (of the petitioner for extension of time for payment of costs)

1. Vide order dated 14th March, 2017, the Rent Control Revision Petition aforesaid was disposed of by directing consideration of the application of the petitioner / tenant for leave to defend subject to the petitioner / tenant paying earlier cost of Rs.25,000/- and further cost of Rs.10,000/- within two weeks from 14th March, 2017.
2. The aforesaid costs have not been paid inspite of more than five months having lapsed. CM No.29119/2017 has been filed for extension of time for payment of costs.
3. On enquiry, it is stated that owing to non payment of costs by the petitioner / tenant, the order of eviction earlier passed against the petitioner / tenant stands and now the execution thereof is pending and in which the petitioner / tenant has filed objections.
4. The petitioner / tenant / applicant has not disclosed the said fact in CM No.29119/2017.

5. Once the order of eviction has attained finality, this application is misconceived.

6. Even otherwise, no ground for extension of time to pay the costs has been disclosed. As per the record, the petitioner / tenant is residing in the tenancy premises along with his family members and though in the application it is stated that the sons of the petitioner / tenant were not “cooperating” with the petitioner / tenant in contributing towards the amount of the costs but the counsel for the petitioner / tenant / applicant on being asked, in first instance stated that sons of the petitioner / tenant / applicant are residing in the same premises with the petitioner / tenant / applicant but subsequently states that they were earlier residing but have shifted out now.

7. The conduct of the petitioner / tenant, of avoiding payment of costs till forced to, does not entitle the petitioner / tenant to any indulgence. The negligence, default and abuse of the process of the Court by obtaining an order dated 14th March, 2017 and not complying with the condition thereof is evident from the costs which were to be paid by end of March, 2017 having not been paid till now.

8. The counsel for the petitioner / tenant has referred to the judgment dated 20th January, 2017 in CR No.399/2017 titled ***Babu Lal through next friend Punit Kumar Vs. Sodagarmal (since deceased) through LRs*** of the High Court of Punjab & Haryana, relying on earlier judgment of the Full Bench of that Court in ***Shri Anand Parkash Vs. Shri Bharat Bhushan Rai*** 1982 (1) RCR (Rent) 1 (P&H), holding that where costs are not paid as a result of circumstances beyond the control of the defaulting party, then the Court will be within its jurisdiction to exercise powers under Section 148 of the CPC.

9. The reliance on the aforesaid judgment is misconceived inasmuch as the question is not about the power of the Court but whether the facts in which such power should be exercised in favour of the petitioner exist. In the present case, the conduct of the petitioner/tenant does not entitle the petitioner / tenant to any such extension.

10. Thus, not only does the application not disclose any ground for extension of time to pay costs but even otherwise is not maintainable and is dismissed.

RAJIV SAHAI ENDLAW, J

AUGUST 18, 2017
'gsr'..