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

+ RC.REV. 282/2017

JAI PRAKASH

..... Petitioner

Through: None.

versus

SHEELA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **30.05.2017**

RC.REV. 282/2017

1. The petitioner has filed the instant revision petition under Section 25-B(8) of Delhi Rent Control Act, 1958 impugning the order dated 10th April, 2017 whereby learned Rent Controller dismissed the application for condonation of delay in filing the application seeking leave to defend and passed an eviction order in respect of tenanted premises i.e. two rooms with common latrine and bathroom on ground floor of H.No.237, U-Block, Mangol Puri, Delhi.

2. On the last date of hearing i.e. on 29th May, 2017, the learned counsel for the petitioner contended before the Court that there was a delay of just one day in applying for grant of leave to defend. The learned Rent Controller was duly empowered to condone the delay. The learned counsel for the petitioner sought passover to refer case law in support of his contentions. Since, despite the matter being passed over and kept pending till 3.00 pm, none appeared on behalf of the petitioner, the case was adjourned for today.

3. Today also none has appeared on behalf of the petitioner.
4. Vide impugned order, the application seeking condonation of delay in applying for grant of leave to defend has been dismissed by the learned Trial Court for the reasons mentioned in paras 4 and 5 which read as under:-

‘4. In the above circumstances, present application has been filed for condonation of delay in filing of the leave to defend application. It would be appropriate to rent to the settled proposition of law on the law on the point.

*5. It is the settled proposition of law having been held in **Gurdita Mal vs. Bal Swaroop, 1980 (1) RCJ 500** and **Jagdish Prasad vs. Phoolwati Devi, 170 DLT (1980) 172**, that the provision about limitation for applying leave to defend needs strict construction and that the period of 15 days prescribed in the third schedule can not be condoned even under Section 5 of the Limitation Act. The ratio in **Narender Singh vs. Rajkumari Karira 1992 (1) RCJ 64** can also be adverted on the said point. Thus, the delay in filing of leave to defend application can not be condoned.’*

5. After dismissing the application seeking condonation of delay in filing the application for grant of leave to defend and observing that the application seeking leave to defend being filed beyond the stipulated period which cannot be condoned, the eviction order was passed in respect of tenanted premises i.e. two rooms with common latrine and bathroom on ground floor of H.No.237, U-Block, Mangol Puri, Delhi.

6. The petitioner is praying for condonation of delay of one day in filing the application seeking leave to defend. Legal position in this regard is well settled that delay in filing the application seeking leave to defend cannot be condoned. In the decision reported as *Prithipal Singh vs. Satpal Singh (D) through LRs* 2010 SLT 116 the Supreme Court has held as under:

‘There is another aspect of this matter. 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 provision of the Limitation Act, 1963 could not be attracted.'

7. A Co-ordinate Bench of this Court in the case reported as Sham Murari vs. Rajneesh K.Kashyap & Anr. 155 (2008) DLT 336 has held that an application for condonation of delay in filing leave to defend is not maintainable and if leave to defend is not filed within 15 days, the Rent Controller is bound to pass an eviction order.

8. In view of the above discussion, it is clear that the learned Rent Controller has no power to condone the delay in filing the application seeking leave to defend.

9. The impugned order does not suffer from any illegality of perversity so as to warrant any interference by this Court under Article 227 of the Constitution of India.

10. The petition is dismissed.

CM No.20956/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 30, 2017

'st'