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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.1014/2017
PRITAM SINGH MUKHI(SINCE DECEASED)
THROUGH LRS Petitioner

Through: Mr. A.S. Dateer, Adv.

versus

HARMESH SINGH Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.09.2017**

CM No.33637/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) No.1014/2017.

3. This petition under Article 227 of the Constitution of India impugns the order (dated 15th July, 2017 in DR No.96371/16 of the Court of Additional Rent Controller (Central), Delhi) of dismissal of application filed by the petitioner under Order XXII Rule 9 of the Code of Civil Procedure, 1908 (CPC) for substitution in place of his father in the petition filed by the father under Section 27 of the Delhi Rent Control Act, 1958, on the ground of having been filed after a delay of nine days and consequently dismissing the petition under Section 27 of the Act also as abated.

4. I have enquired from the counsel for the petitioner as to why the said order of the Additional Rent Controller would not be appealable before the Rent Control Tribunal under Section 38 of the Act.

5. The counsel for the petitioner has first stated that, "because a legal question arises".

6. The Rent Control Tribunal is also entitled to decide 'questions of law' and in fact, after the amendment w.e.f. 1st December, 1988, appeal under Section 38 is confined only to questions of law.
7. The counsel for the petitioner has next contended that the order impugned is on an application under CPC and not under the Rent Act and the appeal under Section 38 is available only against an order made under the Act.
8. Though it could have been so argued if the order had only been qua dismissal of the application aforesaid but the impugned order is also of dismissal as abated of the petition filed by the predecessor of the petitioner under Section 27 of the Act and such an order would thus be appealable and would not be covered by the dictum of the Supreme Court in *The Central Bank of India Vs. Gokal Chand* AIR 1967 SC 799.
9. The counsel for the petitioner has referred to *Aggarwal Hardware Works Private Limited Vs. C.V.S. Vasantha* 22 (1982) DLT 230 and to *Nand Kishore Vs. Vijay Kumar Gupta* 2009 (1) RCR 296 and has contended that the two contain inconsistent views as to the applicability of CPC to proceedings under the Rent Control Act.
10. The two judgments aforesaid are on the aspect of exercise of power of review by the Rent Controller and which question does not arise in the present case. The question which can perhaps arise is as to the applicability of the Limitation Act, 1963 to proceedings under the Rent Control Act, 1958 and qua which the Supreme Court before *Ganpat Ram Sharma Vs. Gayatri Devi* (1987) 3 SCC 576 in (i) *Town Hall Municipal Council Athani Vs. Presiding Officer Labour Court, Hubli* (1969) 1 SCC 873; (ii) *Nityanand M. Joshi Vs. Life Insurance Corporation of India* (1969) 2 SCC 199; and,

(iii) *Sushila Devi Vs. Ramanandan Prasad* (1976) 1 SCC 361, held that the Limitation Act does not apply. A different view indeed was struck in *Ganpat Ram Sharma* supra but thereafter also the Supreme Court in (i) *Om Prakash Vs. Ashwani Kumar Bassi* (2010) 9 SCC 183; (ii) *Prithipal Singh Vs. Satpal Singh* (2010) 2 SCC 15; and, (iii) *Prakash Jain Vs. Marie Fernandes* (2003) 8 SCC 431 has consistently held that the provisions of the Limitation Act do not apply to proceedings under the Rent Act.

11. Merely because there may be some inconsistencies in the two judgments cited by the counsel for the petitioner is no ground for entertaining this petition when the question of maintainability of review before the Rent Controller does not arise in the present case.

12. It is settled position in law (See (i) *Sadhana Lodh Vs. National Insurance Co. Ltd.* (2003) 3 SCC 524; (ii) *Seth Chand Rattan Vs. Pandit Durga Prasad* (2003) 5 SCC 399 (iii) *State Bank of India Vs. Allied Chemical Laboratories* (2006) 9 SCC 252; (iv) *Bijoy Kumar Dugar Vs. Bidya Dhar Dutta* (2006) 3 SCC 242; (v) *Ajay Bansal Vs. Anup Mehta* (2007) 2 SCC 275; and, (vi) *Union of India Vs. Major General Shri Kant Sharma* (2015) 6 SCC 773) that once alternate remedy is available under CPC or a statute, the powers under Article 227 of the Constitution of India cannot be invoked.

13. The petition is thus dismissed as not maintainable with liberty to petitioner to avail the remedy of appeal before the Rent Control Tribunal.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 15, 2017

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