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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 5th April, 2018

+ RC.REV. 295/2016 and CM APPL.20160/2016 (stay)

ANANYA KAKKAR

..... Petitioner

Through: Ms. Deepali Gupta, Advocate
with petitioner in person.

versus

REENA

..... Respondent

Through: Mr. Wills Mathews, Advocate
with Mr. Ginesh P., Adv. with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The relationship of tenant and landlord between the petitioner on one hand and the respondent on the other is admitted. The tenancy portion is described as one room with kitchen, besides latrine and bathroom on the top floor of property No.40-A, Old DDA Janta Flats, Chilla Village, Mayur Vihar Phase-I, Delhi-110091. The respondent-landlady had moved a petition (E. No.73/2013) for an order of eviction against the petitioner-tenant on the ground under Section 14 (1)(e) of the Delhi Rent Control Act, 1958. The petitioner in response to the special summons under Section 25-B of Delhi Rent Control Act, 1958 had submitted an application seeking leave to contest. The said application was dismissed by additional rent controller (ARC) for non-prosecution and as “*not pressed*” by order dated 05.10.2015, this

leading to the eviction order being passed on 06.11.2015. An application for review was filed which was dismissed by subsequent order dated 28.03.2016.

2. The petition at hand challenges the above mentioned orders.

3. After some hearing, the learned counsel for the respondent fairly conceded that the application for leave to contest could not have been dismissed as “*not pressed*” or for want of prosecution in the manner done by order dated 05.10.2015. He, however, submitted that while the respondent concedes to the restoration of the said application for leave to contest and consequent setting aside of the order of eviction as indeed the order whereby the review application was dismissed, the petitioner-tenant be put to terms inasmuch as she has not been paying the rent since April, 2012 fixed @ Rs.3,000/- per month and nor has complied with the directions of paying user charges @ Rs.1,000/- per month for which proof was required to be submitted in terms of order dated 25.05.2017 passed in these proceedings.

4. The petitioner’s counsel, on instructions, submitted that the rate of rent is Rs.1,000/- per month only and that the petitioner admittedly is in arrears since September, 2015, the rent for the earlier period having been paid but the landlady having failed to execute any formal receipt. The counsel for the petitioner sought to explain that the order for payment of user/occupation charges @ Rs.1,000/- has not been complied with inasmuch as the essential amenities of electricity and water have been disrupted, this in spite of the directions in the proceedings taken out under Section 45 of the Delhi Rent Control Act,

1958.

5. Against the above backdrop, the petitioner while praying for the eviction order to be set aside and for she to be granted hearing on the application for leave to contest, submitted through her counsel, an undertaking to the effect that she would clear the arrears of rent at the admitted rate of Rs.1,000/- per month with effect from September, 2015 up-to-date within sixty days hereof and would further continue making the payment of the rent at such rate from month to month without any default, the payment to be tendered by cheque or deposited in the court of the Ld. ARC.

6. The learned counsel for the respondent-landlady, on instructions, submitted that she is acceptable to this undertaking being taken on record as a pre-condition to the right of the petitioner to contest the proceedings in the case from which the present case arises without prejudice to his contentions as to the rate of rent and the period of arrears for which the respondent reserves the right to pursue appropriate remedies.

7. Coming back to the circumstances in which the impugned orders were passed, this court accepts the grievance of the petitioner that the ARC actually misconducted the proceedings. The record would show that the petitioner-tenant had been provided with the services of an advocate at State expenses by Legal Services Authority, but her counsel was not forthcoming, though she herself was present in person. The order dated 05.10.2015 was passed dismissing her application for leave to contest on account of non-availability of her

counsel “*to argue*”. In these circumstances, it was wholly improper for the ARC to hold that the application was not being prosecuted or that it was “*not pressed*”. The appropriate course for the ARC would have been to consider the contentions raised in the application for leave to contest and evaluate their worth on merits rather than treating the application as “*not pressed*”.

8. The responsibility of the juridical forum is to afford opportunity to the parties to present their case, if so required, through the counsel of their choice. The ARC having given such an opportunity and finding no good reasons as to why counsel was not forthcoming, could not allow the proceeding to be held to ransom. But the manner in which the application was dismissed is a procedure wholly unknown to law.

9. For the foregoing reasons, the impugned orders dismissing the application for the petitioner for leave to contest and grant of eviction order in favour of the respondent are set aside. The proceedings in the eviction case of the respondent are revived on the file of ARC, who is directed to proceed further thereupon in accordance with law. Needless to add, the application for leave to contest will have to be considered and adjudicated upon on its merits after affording fresh opportunity to the parties to present their respective case at the hearing on the date to be fixed for such purposes.

10. However, given the conduct of the petitioner, as noted above, vis-à-vis her responsibility towards the rent, it is directed that her undertaking for payment of arrears of rent and for payment of future

rent is hereby taken on record and accepted. Strict compliance therewith shall be a pre-condition to her right to participate in the further proceedings before the ARC.

11. The parties are directed to appear before the additional rent controller on 3rd May, 2018.

12. Given the time which has been wasted over the last several years, mostly on account of recalcitrance of the petitioner, it is expected that the ARC will control the proceedings for taking the case to adjudication at the earliest.

13. The petitioner is at liberty to pursue appropriate remedies vis-à-vis essential amenities.

14. The petition and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

APRIL 05, 2018

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