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

+ **RC.REV. 40/2019**

GOPAL

..... Petitioner

Through : Mr.D.S.Chauhan and Ms.Naina
Bajaj, Advocates.

versus

SITA RAM GARG

..... Respondent

Through : NEMO.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **25.01.2019**

CM APPL No.3313/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RC.REV. 40/2019 & CM APPL Nos.3314-15/2019

1. This revision challenges the eviction order dated 21.03.2016 passed by the learned ACJ-CCJ-ARC (South-East District), Saket Courts (hereinafter 'Trial Court') in Eviction Petition 49/2015 titled *Sita Ram Garg vs Gopal and Another* in favour of the respondent.

2. Before coming to the impugned order, let me state few facts:-

a) on 04.11.2015 the respondent/petitioner filed an eviction petition No.49/2015 under Section 14 (1) (e) of Delhi Rent Control Act,1958 against the revisionist/respondent in the court of Ld. RC/ARC (SE) Saket Courts, New Delhi;

b) on 28.11.2015 the notice was issued to the revisionist/respondent to file leave to appear and contest the application before the Ld. RC/ARC (SE), New Delhi in terms of Section 25 (3) of the

Delhi Rent Control Act,1958;

- c)* on 12.01.2016 the revisionist/respondent through counsel filed an application for leave to defend on 12.01.2016 which was 36 days after the date of service of summons and hence there was a delay of more than 15 days in applying the leave to defend and contest the application;
- d)* on 22.03.2016 the delay of 15 days in filing the application for leave to defend was not condoned by the learned RC/ARC (SE) Saket Courts, New Delhi and the eviction petition was allowed;
- e)* on 19.10.2016 the respondent/petitioner filed an execution petition before the learned RC/ARC (SE), Saket Courts, New Delhi;
- f)* on 31.03.2016 the counsel for the revisionist/respondent filed an application for modifying the order dated 22.03.2016 passed by the learned RC/ARC (SE), Saket Courts, New Delhi;
- g)* the application filed by the revisionist/ respondent was dismissed by the learned RC/ARC (SE), Saket Courts, New Delhi vide order dated 07.06.2016;
- h)* on 09.12.2016 the counsel of the revisionist filed an application under section 2 & 12 of the Contempt of the Courts Act,1971 against the respondent for committing the civil contempt which is still pending before the learned District & Sessions Judge (SE), Saket Courts, New Delhi;
- i)* on 23.12.2016 the revisionist was evicted from the premises;
- j)* on 01.11.2017 the counsel of the revisionist again filed a suit for mandatory injunction and declaration against the respondent bearing CS No.1630/2017 before the learned District & Sessions

Judge (SE), Saket Courts, New Delhi;

k) on 24.11.2017 the suit filed by the counsel of the revisionist was dismissed by Ms.Surya Malik Grover, learned ADJ (SE), Saket Courts, New Delhi with the remarks "*the present suit is rejected as it suffers from poor drafting, does not set proper valuation and court fee clause and not maintainable in the present form*";

l) on 29.11.2018 the revisionist withdrew the civil contempt petition filed by his previous counsel before the court of learned District & sessions Judge (SE) with a liberty to seek appropriate remedy;

m) on 01.12.2018 the revisionist has made a written complaint against his counsel Sh.Sandip Mandal to the Saket Bar Association and Bar Council of Delhi for misguiding and filing of wrong petitions before different courts; and hence this present petition.

3. A bare perusal of the impugned order shows despite the petitioner being duly served on 07.12.2015 by way of ordinary process and the summons being received by the petitioner, the petitioner failed to file an application for leave to defend. Nevertheless, it was moved on 12.01.2016 approximately 36 days from the date of service to the petitioner and hence there was delay of 15 days. Since, learned Trial Court had no power to condone the delay, the application for leave to defend was not taken on record and was rejected.

4. Admittedly, the possession of the subject premise was taken over on 23.12.2016 by the respondent in execution proceedings and

the petitioner pursued different remedies and now has filed this revision after much delay.

5. The conduct of the petitioner shows he was callous in pursuing his cause and despite handing over the possession took so long to challenge the impugned order before the appropriate forum and kept on pursuing a remedy, not contemplated under the Delhi Rent Control Act. The filing of revision after about two years and that too after handing over the possession on 23.12.2016 is bad on account of laches, hence the petition and pending application, if any, is dismissed. No orders as to cost.

YOGESH KHANNA, J.

JANUARY 25, 2019

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