

\$~46

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 155/2019
BAHADUR SINGH & ANR Petitioners
Through: Mr.C.S.Bhandari, Advocate

versus

KUSUM SHUKLA & ANR Respondents
Through: Mr.J.K.Srivastava, Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **29.01.2019**

CM No.4179/2019 (Exemption)

Exemption allowed subject to all just exceptions.

Cav.86/2019

The respondent is represented through counsel and heard. The caveat stands discharged.

CM(M) 155/2019 and CM APPL. No. 4178/2019

1. Vide the present petition, the petitioners assail the impugned order dated 22.12.2018 of the learned Additional Rent Controller-01, central Delhi in Ex. No. 61/15 vide which the warrants of execution of the decree were directed to be issued for the date 29.1.2019, i.e., for today with the matter being directed to be put up before the learned ARC -01 (Central) on 22.2.2019. Further more, vide the said order dated 22.12.2018 of the learned ARC-01 (Central), the prayer made by the learned counsel for the petitioners herein as the judgment debtors in Ex. No. 61/15 seeking to place on record an affidavit of

subsequent events, was declined which application as indicated vide the impugned order was to bring forth that there were eviction orders that had been passed in relation to the decree holders which have been upheld by this Court and as a consequence thereof, the said subsequent events would be taken into consideration qua which it was observed to the effect that merely because eviction orders have been passed in favour of the decree holders and the orders have been upheld by this Court, the same did not wipe out the cause of action on the basis of which the Eviction Petition No.259/12 was filed. The Eviction Petition No. 259/12 indicates that the petitioners 1 and 2 were arrayed as respondents No. 1 and 2 to the said eviction petition.

2. At the outset, a submission has been made on behalf of the respondents that out of the same order dated 19.5.2015 which is a common judgment *inter alia* in relation to the Eviction Petition No.259/2012, the eviction has been upheld in relation to Harish Kumar Chopra, Bhagwan Gupta and R.K.Kapoor in R.C.Rev. Nos. 418/2015, 489/2015 and 424/2015 with the *bona fide* need of the land lord decree holder having been upheld and that thus in as much as it has been observed vide the said judgment dated 28.1.2016 of this Court that the said order calls for no interference, the present petition would *per se* be not maintainable, which is refuted on behalf of the petitioner submitting to the effect that the petitioner was not a party to the said *lis*, which contention has apparently been accepted. It is in these circumstances that the petition has been taken up for consideration.

3. A submission has been made on behalf of the petitioners that in M-16/15 vide order dated 1.12.2015 of the learned ARC-01 (Central), the petition under Section 25(B)(9) of the Delhi Rent Control Act, 1958 (as amended) filed by the petitioner herein, was rejected being barred by the law of limitation and that vide order dated 21.12.2015 of this Court in CM (M) 1257/2015, the said petition was dismissed as withdrawn granting the liberty as prayed for which liberty is indicated to be vide para 2 of the said order to be to the effect that the learned counsel for the petitioners thereof i.e., the petitioners herein had sought permission to withdraw the petition with liberty to file a review application before the learned Trial Court. It has been submitted on behalf of the petitioners herein that the observations in paragraph 3 of the order dated 21.12.2015 of this Court in CM (M). 1257/2015 which categorically directs to the effect:

"It is directed that if review application is filed, the same shall be disposed of on merits and not on technical ground i.e. limitation."

and thus directed to the effect that in the event of a review application being filed by the petitioners herein the same was to be disposed of on merits and not on the technical ground, i.e., limitation.

4. It has been submitted thus on behalf of the petitioners that in M-25/15, i.e., the application under Order XLVII Rule 1 & 2 read with Section 114 and 151 of the CPC that had been filed by the petitioners herein before the learned ARC-01 (Central), vide another order dated 22.12.2018 also impugned in the present petition, the said application was declined observing to the effect that since Section

25(B)(9) of the Delhi Rent Control Act, 1958 (as amended) makes the Code of Civil Procedure applicable to a review application, the Limitation Act would also be applicable and thus there was no error apparent on the face of the record indicated vide order dated 1.12.2015. *Inter alia* reference was made in the said order dated 22.12.2018 qua M-25/15 to the observations of the Hon'ble Supreme Court in **Vidyacharan Shukla v. Khubchand Baghel & Ors.** AIR 1964 SC 1099:

"As Rajamannar, CJ, observer in Kandaswamy Pillai Vs, Kannappa Chetty AIR 1952 Mad 186 (FB); "It is well established that the Limitation Act and the Code are to be read together because both are statute relating to the procedure and they are in pari materia and, therefore, to be taken and construed together as one system as explanatory of each other."

The Ld. Judges observed thus, at p. 224:

"... The Limitation Act, Sch. II, Art 156, when it speaks of the Civil Procedure Code is on the face of it, speaking of a Code which relates to procedure, and does not ordinarily deal with substantive rights: and the natural meaning of an appeal under the Civil Procedure Code appears to us to be an appeal governed by the Code of Civil Procedure as far as procedure is concerned,"

and also to the verdict of the Hon'ble High Court of Kerala in the case of **Krishanan v. Radha Lekshmi Amma** AIR 1972 Kerala 145:

"6. The next question is regarding limitation. The review was filed on 06.02,1964 i.e. five months and 25 days after the order, The contention is that having been filed out of time, the review petition should have been dismissed on that ground alone. I think the contention is tenable, The review petition was filed under Section 23 (1) (k) of the Act which provides:

"Subject to such conditions and limitations as may be prescribed, the Accommodation Controller, the Rent Control Court and the appellate authority shall have the powers which are vested in a court under the Code of Civil Procedure when trying a suit in respect of the following matters (k) to review its own order".

The argument is that since no period of limitation is prescribed in the Rent Control Act or Rules it must be understood that review could be filed at any time. The further conditions are that neither the Limitation Act of 1908 nor that of 1963 would apply to Rent Control Act except when they are expressly made applicable. If the Limitation Act is held to apply on account of the modified provision in Section 29(2) of that Act the present application will be within time under Section 30(b) of the said Act which gives a period of 90 days next after the commencement of the Act (Limitation Act of 1963) or within the period prescribed for such appeal or application by the Indian Limitation Act of 1908 whichever period expires earlier. It is also contended that the provision in Section 23(1) of the Rent Control Act vesting the Rent Control Court and the appellate authority with the powers which are vested in a civil court in respect of certain matters prescribed in clauses (a) to (k),

will not convert such Tribunals into civil courts so as to attract automatically the provisions of the Limitation Act to the proceedings before them. These contentions have been repelled and I think rightly by the lower Court. Under Section 20 of the rent Control Act a revision from the order of the appellate authority is allowed to be filed in the High court or District Court as the case may be at any time on the application of the aggrieved party and under Section 18 which deals with appeals from the decisions of the Rent Controller to the appellate authority, the appeal is to be filed within thirty days from the date of the order. But under Section 23 no time-limit is prescribed for filing the review. But the powers vested in a Civil Court under the Code of Civil Procedure when trying a suit in respect of certain specified matters including power to review its own order, have been conferred on the Rent Control Court. The question, therefore, is whether in entertaining and trying a petition for review the Rent Control Court is to be governed by the Provisions of the Civil P.C regarding review and if the provision of the Civil P.C and made applicable, the further question would arise whether the law of limitation regarding review would also come into play."

"Power of review is conferred under O. 47 Rule 1, Civil PC and that has to be read alongwith the relevant provision of the Limitation Act..."

5. It has also been observed vide the said impugned order in relation to the said application seeking review of the order dated 1.12.2015 that even in the cases of **Sudhir Kumar Kapoor v. Sagal Mal**: M-56/2011 dated 23.3.2012 and **Bhupinder Singh V. Prabhjeet**

Singh bearing M. No. 2/2015 dated 17.7.2015, it had been held by the Rent Controller that the Limitation Act would apply to an application for review filed under Section 25B(9) of the Delhi Rent Control Act, 1958 (as amended).

6. It has been submitted however on behalf of the petitioners herein that the directions in the order dated 21.12.2015 of this Court in CM(M) 1257/15 vide paragraph 3 thereof adverted to herein above have been given a complete go by and there has been thus no application of mind at all in disposal of the application seeking review of the order dated 1.12.2015 beyond the aspect of Limitation.

7. It has been submitted on behalf of the respondents to the present petition that the averments made in the application dated 22.12.2015 i.e. M-16/15 seeking review of order dated 1.12.2015 itself were under Order XLVII Rule 1 & 2 read with section 114 and 151 of the CPC, 1973, and thus the contentions raised on behalf of the petitioners herein that the Limitation Act, 1963 would not apply to the provisions under Section 25B (9) of the Delhi Rent Control Act, 1958, as amended, have themselves been whittled down by the petitioners by moving such an application and further it has been submitted on behalf of the respondents to the present petition that the application itself was not seeking a review of the order dated 1.12.2015 on any grounds other than the aspect of limitation.

8. In relation to the said submission raised on behalf of the respondents, it has been submitted on behalf of the petitioner that the prayer clause vide the said application itself sought that the

application dated 1.12.2015 be decided and heard on merit as was directed vide the order dated 21.12.2015 of this Court in CM(M) 1257/15.

9. In response to a specific court query put to the learned counsel for the respondents qua the aspect of the directions dated 21.12.2015 of this Court having not been adhered to by the learned ARC (Central)-01, vide the impugned order, a submission is made on behalf of the respondents placing reliance on the provisions of Order XLVII Rule 9 of the CPC, 1908, as amended, to submit that no application to review an order made on an application for review or a decree was passed or made or a review shall be entertained and that thus there could be no review sought by the petitioners of the order dated 1.12.2015.

10. It is essential to observe that as vide order dated 21.12.2015 in CM(M) 1257/2015, though the said petition has been dismissed as withdrawn with liberty granted to the petitioners to file a review application before the learned Trial Court, in terms of the directions in para 3 thereof which have been adverted to herein above already, it is apparent that the application which had been filed by the petitioners seeking review of the order dated 1.12.2015 was in relation to the prayer that the petitioners could seek review of the order dated 1.12.2015 dismissing the application under Section 25(B)(9) of the Delhi Rent Control Act, 1958 as amended without consideration of the merits thereof. In view thereof the application that was filed by the petitioners seeking review of the order dated 1.12.2015 in terms of

the order of this Court dated 21.12.2015 cannot be held to have been barred by Order XLVII Rule 9 read with section 114 and 151 of the CPC, 1973.

11. In the circumstances as the impugned order dated 22.12.2018 in M-25/15 has once again disposed of the application on the grounds of it being barred by limitation without consideration of the merits of the application under Section 25(B)(9) of the Delhi Rent Control Act, 1958, as amended, despite the prayer clause to that effect vide application M-16/15 which reads to the effect

“In view of the above, it is, therefore, most humbly prayed that this Hon'ble Court may be pleased to review the order dated 01.12.15 in view of the grounds, whereby the application of the respondents filed u/s. 25- B(9) of D.R.C. Act was dismissed and this Hon'ble Court may be pleased to hear the argument and decide the said application of the respondents on merit.”,

and which application was rejected without consideration of the merits thereof, thus necessarily in terms of the order dated 21.12.2015 of this Court vide directions in paragraph 3 thereof in CM 1257/15 has essentially to be set aside. The impugned order dated 22.12.2018 in Ex. No. 61/15 is thus set aside with the directions to the learned Trial Court to consider the said application under Section 25(B)(9) of the Delhi Rent Control Act, 1958 as amended, on merits on the date 4.2.2019 at 2:30 p.m. where the parties are directed to appear.

12. As regards the prayer made challenging the impugned order

dated 22.12.2015 in Ex. No.61/15 filed by the petitioners herein, there is no merit in the prayer. The said prayer in relation thereto is declined.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 29, 2019/SV