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

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Judgment delivered on: 29.08.2019

+ RC.REV. 198/2019

M/S MADAN MOHAN KHULLAR & CO. Petitioner

versus

ISHWAR SARAN MITTAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Ravi Joshi, Advocate.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 198/2019 & CM APPL. 15064/2019 (stay)

1. Petitioner impugns order dated 16.02.2019, whereby, leave to defend application, filed by the petitioner, has been dismissed on the ground that the same was delayed and an eviction order has been passed.

2. Subject eviction petition was filed by the respondent under Section 14(1)(e) read with Section 25-B of the Delhi Rent Control Act. Summons in the prescribed format were issued for service of the

tenant/petitioner herein.

3. Petitioner filed an application under section 151 C.P.C. on 16.01.2018 stating that he received the notice from the Court on 01.01.2018 and was directed to file the written statement within 15 days. In the application, it is contended that after receipt of notice, he was suffering from viral fever and is also a patient of diabetes and blood pressure and due to the said reason could not prepare and file the written statement and sought an extension of one week to file the written statement.

4. Subsequently, an application seeking leave to defend was filed on 20.01.2018. In the application seeking leave to defend, it is contended that the summons were served on one Manjeet Singh, who was working on daily basis and the petitioner had left for Dubai on 24.12.2017 and returned only on 03.01.2018 and was unwell due to diabetes, high blood pressure and high viral fever and was admitted to a hospital Narula Medical Centre on 04.01.2018 and it was only on 16.01.2018 that he joined duties and was informed about the summons.

5. The Trial Court in the impugned order while considering the application under Order 25-B of the Delhi Rent Control Act seeking leave to defend noticed the earlier application filed by the petitioner stating that the summons were received on 01.01.2018 and extension of one week was sought for filing leave to defend. The Trial Court

relied on the judgment of the Supreme Court in *Prithipal Singh vs. Satpal Singh*: (2010) 2 SCC Page 15, wherein, the Supreme Court has held that the delay in filing the leave to defend application cannot be condoned. The Trial Court noticed that, by filing an application seeking extension of time, the petitioner had admitted that the summons were served on 01.01.2018 and the leave to defend was filed on 20.01.2018, which was beyond the prescribed period of 15 days. Accordingly, the leave to defend was held to be beyond time and the eviction order passed.

6. Before this Court submission of the learned counsel for the petitioner is that the petitioner was out of the country till 03.01.2018 and thereafter it is contended that he was unwell suffering from severe back pain and was admitted in Narula Medical Centre from 04.01.2018 till 01.01.2019. Medical Certificate in support thereof is annexed with the application seeking leave to defend.

7. Learned counsel for the petitioner submits that there was a typographical error in the application seeking extension of time, filed by the petitioner, inasmuch as what the petitioner really wanted to say was that he had received the notice only on 16.01.2018.

8. I am unable to accept the contentions of the learned counsel for the petitioner. The application seeking extension of time filed by the petitioner on 16.01.2018 very categorically states that he was served with the summons on 01.01.2018. Even if the contention of the

learned counsel for the petitioner was to be accepted that as the petitioner was out of the country till 03.01.2018, the service is deemed to have been effected only on his return to the country on 03.01.2018, the application seeking leave to defend would still be beyond time. The leave to defend application was filed on 20.01.2018, which is after a lapse of 17 days of his return on 03.01.2018. Even if that benefit is granted to the petitioner and period till 03.01.2018 is excluded, the leave to defend application is still beyond time.

9. The other contention of the learned counsel for the petitioner that petitioner was hospitalised as he was suffering from ailments is no ground for condonation of delay as has been held by the Supreme Court in *Prithipal Singh* (supra).

10. Further, it may be noticed that the contention of the petitioner is that he was hospitalised from 04.01.2018 to 10.01.2018. The medical certificate annexed with the application seeking leave to defend to show that he was hospitalised is not a document of admission in any hospital for treatment but it is only a certificate issued by Dr. Robin Sharma, who is a physiotherapist and it certifies that the petitioner is under his treatment for severe lower back pain and has been advised complete bed rest and to avoid any kind of travelling.

11. It is seen that in the application seeking extension of time and also seeking leave to defend, the ground taken by the petitioner was that he was suffering from viral fever, diabetes and blood pressure and

was hospitalised. The medical certificate annexed with the application contradicts the said averments and certifies that he was under treatment for back pain.

12. In that view of the matter, the contention of the learned counsel for the petitioner that the petitioner was hospitalised and could not attend to office till 16.01.2018 is *ex facie* incorrect and unbelievable. Even otherwise, since no condonation of delay is permissible, the same would not have come to the rescue of the petitioner.

13. In view of the above, I find no infirmity in the order dated 16.02.2019, whereby, leave to defend application, filed by the petitioner, has been dismissed on the ground of delay and an eviction order passed. There is no merit in the petition. The Petition is, accordingly, dismissed.

SANJEEV SACHDEVA, J

AUGUST 29, 2019
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