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

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Judgment delivered on: 16.10.2019

+ RC.REV. 124/2018 & CM APPL. 12980/2018, 19838/2018,
52619/2018

GOPAL DAS (SINCE DECEASED)

THR LRS & ORS

..... Petitioners

versus

SAROJ & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Savita Rustogi, Advocate

For the Respondent: Mr. Prem Chhetri, Mr. Promod Kumar and Ms.
Sebika Lama, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 16.11.2017 whereby leave to defend application of the petitioner was dismissed on the ground that it was filed beyond the statutory period of 15 days.

2. Subject eviction petition was filed by the respondents seeking eviction of the petitioner on the ground of bonafide necessity under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 from one Shop

on ground floor alongwith one small store at Basement in Property bearing No. 10307, Tokri Walan, Library Road, Mill Wall Gall, Azad Market, Delhi - 110 006, more particularly as shown in red colour in the site plan attached with the eviction petition.

3. Impugned order records that the petitioner was served on 15.12.2011 but had filed the leave to defend application on 12.01.2011 along with an application seeking condonation of delay.

4. Learned counsel for the petitioner submits that the eviction petition was defective, in as much as, the petition was filed by the four petitioners, however, it was signed by only by three petitioners and verified by the fourth petitioner.

5. Learned counsel submits that accordingly the petition was not signed and verified by the petitioners and was defective. She further points out that the impugned order itself records that the defect in the petition was cured by permitting the respondent No. 1 to sign the petition on 27.05.2014.

6. Learned counsel for the petitioner further submits that since the defect was cured on 27.05.2014, the petitioner should have been given a fresh opportunity to file the application seeking leave to defend or at least the leave to defend application already on record should have been considered on merits.

7. Perusal of the record shows that the petition initially filed not

signed and verified by the petitioners. It was signed by respondent no. 2 to 4 but not verified and verified by respondent no. 1 but not signed. The Rent Controller records that it was a defect and accordingly permitted respondent No. 1 to sign the petition for curing the defect. The defect was cured on 27.05.2014 when the leave to defend application of the petitioner was already on record.

8. Clearly, the Rent Controller was himself of the view that the petition as originally filed was defective and thus permitted the Respondent to cure the defect by signing the petition, which was corrected on 27.05.2014.

9. In view of the fact that the Rent Controller was of the view that the petition was defective and the defect was cured on 27.05.2014, so on 15.12.2011, when the petitioner was served and on 12.01.2012, when petitioner filed the Application seeking leave to defend, there was no valid petition before the court.

10. Accordingly, when the corrected petition came before the Court on 27.05.2014, the application seeking leave to defend, filed by the petitioner on 12.01.2012, was already on record and accordingly it was obligatory on the part of the Rent Controller to consider the leave to defend application on merits and not to reject the same on the ground of limitation.

11. In view of the above, the impugned order dated 16.11.2017 is set aside. The matter is remitted to the concerned Rent Controller to

consider the leave to defend application of the petitioner afresh on merits.

12. Parties shall appear before the concerned Rent Controller on 18.11.2019. Since the petition was filed as far back as in 2011, the Rent Controller is directed to expedite the hearing and endeavour to decide the leave to defend application within a period of one month from the date fixed before the Rent Controller.

13. The petition is accordingly allowed in the above terms.

14. Order *dasti* under signatures of the Court Master.

OCTOBER 16, 2019

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SANJEEV SACHDEVA, J,