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

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Judgment delivered on: 23.09.2019

+ RC.REV. 302/2016

M/S GAUTAM GENERAL MERCHANT & ANR Petitioners

versus

MURTI DEVI

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Vipin Kumar Sharma and Mr. N.K. Kukreja,
Advocates

For the Respondent: Mr. Amitabh Kr. Verma and Mr. Joytindra Kumar,
Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugn order dated 15.12.2015 whereby the review application filed by the respondent seeking review/recall of order dated 03.06.2013 was allowed and the leave to defend application filed by the petitioner was held to barred by limitation.

2. Respondent filed the subject eviction petition on the ground of bonafide necessity under Section 14 (1) (e) and 14D of the Delhi Rent Control Act, 1958.

3. By order dated 03.06.2013, leave to defend application of the petitioner was allowed and the petitioner was granted leave to defend.

4. Respondent impugned order dated 03.06.2013 granting leave to defend in RC REV. 234/2013. During pendency of the revision petition, respondent sought leave to withdraw the revision petition with liberty to file a review in terms of the judgment of Supreme Court in *Prithi Pal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC page 15*.

5. It was contended by the respondent before the High Court that leave to defend application by the petitioner was filed beyond the statutory period of 15 days and as such the respondent sought liberty to approach the Rent Controller by way of a review petition.

6. Thereafter respondent filed the subject review petition and by the impugned order dated 15.12.2015, the review petition filed by the respondent has been allowed and it has been held that the leave to defend application filed by the petitioner was beyond time, having been filed after 15 days of the date of service.

7. Learned counsel for the petitioner contends that the Rent Controller has erred in holding that the leave to defend application was filed beyond the statutory period of 15 days. He submits that in fact the leave to defend application was filed within time, however, there was defect pointed out of absence of identification of the petitioner in his affidavit and accordingly the petitioner filed another

leave to defend application.

8. Rent Controller's record reveals that the petitioner was served with the notices in the prescribed form on 22.02.2013.

9. Fifteen days calculated from 22.02.2013 show that the petitioner had to file the leave to defend application on or before 09.03.2013.

10. A handwritten application, filed by the petitioner is on record of the trial court, which was filed on 08.03.2013. In the said application, petitioner has mentioned that there is a strike of Advocates going on for several days and he has prayed that adjoining application for leave to defend be taken on record. It has been mentioned in the application that due to strike, Advocates are not allowed to enter the Court.

11. In the records of the Rent Controller, immediately after the said application of 08.03.2013, there is an application filed by the petitioner under Section 25 (b) (4) of the Delhi Rent Control Act seeking leave to defend application and contest the petition. Said application is dated 15.03.2013 and also bears a stamp at the rear of 15.03.2013.

12. It appears that the Rent Controller erred in taking into account only this application which bore the date of filing as 15.03.2013. Rent Controller has not noticed that immediately after this application there is another identical application, which at the rear side bears the date

08.03.2013 as the date of filing.

13. If the Rent Controller had noticed the earlier application filed by the petitioner on 08.03.2013, the Rent Controller would have found that the application seeking leave to defend was filed by the petitioner within the statutory period of 15 days.

14. Further it may be noticed that on 11.03.2013 in the order sheet itself, the Rent Controller has noticed that leave to defend application has been filed. The Order dated 11.03.2013 notices that lawyers are on strike and leave to defend application filed.

15. The order dated 11.03.2013, in fact, confirms the submission of the petitioner that he had filed his first leave to defend application on 08.03.2013.

16. Both the applications are identical. Merely because petitioner has filed another application, which is identical to the first application does not render his first application redundant. Clearly the Rent Controller committed an error in reviewing its earlier order and recalling the leave to defend already granted to the petitioner and holding that the leave to defend application filed by the petitioner is beyond time.

17. In view of the facts as noticed above, the impugned order dated 15.12.2015, is not sustainable and is accordingly quashed. Sequitur to the same is that the leave to defend granted to the petitioner by order

dated 03.06.2013 is reinstated. The eviction petition is accordingly restored to the file of the Rent Controller.

18. It is informed that case was at the stage of filing of replication by the respondent.

19. Accordingly, list the eviction petition before the concerned Rent Controller on 05.11.2019, on which date the respondents shall file their replication and the Rent Controller shall proceed with the petition in accordance with law.

20. Since the eviction petition was originally filed in the year 2013 and eviction petition was filed on the ground of bonafide necessity under Section 14 (1) (e) and 14D of the Delhi Rent Control Act, the Rent Controller is directed to expedite the proceedings and endeavour to conclude the proceedings within a period of 9 months from the next date fixed before the Rent Controller.

21. Petition is disposed of in the above terms.

22. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 23, 2019

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