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

+ RC REV. 169/2020

DR. B.P. DANGWAL Petitioner
Through Mr. Padam K. Khanna, Adv.

versus

SMT. KIRTI GOYAL Respondent
Through Mr. Pawan Kumar Bahl, Adv.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER
% **22.07.2020**

HEARD THROUGH VIDEOCONFERENCING

C.M. Nos.15916-17/2020

Allowed, subject to all just exceptions.

RC REV. 169/2020 & CM No.15915/2020

1. This revision petition is directed against the order dated 18.12.2019 passed by the learned Rent Controller in RC/ARC No.311/2019 by which the eviction petition filed by the respondent/landlord under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") has been allowed. The respondent/landlord filed two applications for evictions; one under Section 14 (1)(a) & (b) of the Act and second under Section 14 (1)(e) of the Act to hand over vacant and peaceful possession of one shop situated

at Ground Floor of property bearing no.IX/3262, Gali No.5, Dharampura, Gandhi Nagar, Delhi-110031 (hereinafter referred to as “the premises”).

2. The learned Rent Controller issued notice on the petition under Section 14(1)(e) of the Act by order dated 3.09.2019. The notice was returnable on 9.10.2019. On 9.10.2019, the Rent Controller found that the summons sent to the petitioner herein in the prescribed format was received back served on 16.09.2019 but no application for leave to defend had been filed under Section 25B(4) of the Act by the petitioner. The matter was placed for final disposal on 21.10.2019. On coming to know about the order dated 9.10.2019, the petitioner/tenant filed an application for setting aside the order dated 9.10.2019 and for permission to file leave to defend application to the petition filed by the landlord under Section 14(1)(e) of the Act contending therein that he had not been served with the notice of the petition filed under Section 14(1)(e) of the Act. It was further stated in the application that the landlord had filed two petitions; one under Section 14 (1)(a) & (b) of Act and second under Section 14 (1)(e) of the Act and he was served only with the petition filed under Section 14 (1)(a) & (b) of Act and he was not served with the application under Section 14 (1)(e) of the Act. The said application of the petitioner for setting aside the order dated 9.10.2019 and permission to file the application for leave to defend was dismissed by an order dated 7.12.2019. The said order has not been challenged and has attained finality.

3. Pursuant to the dismissal of the application for setting aside the order dated 9.10.2019 and permission to file application for leave to

defend, the impugned order dated 18.12.2019 has been passed by the learned Rent Controller allowing the eviction petition on the ground that the application seeking leave to defend the eviction petition had not been filed.

4. Mr. Padam K. Khanna, learned counsel for the petitioner, would contend that there was no proper service of notice of the application filed under Section 14(1)(e) of the Act as prescribed under the Act and he was served only notice of the application under Section 14 (1)(a) & (b) of Act, and therefore, the order dated 18.12.2019 allowing the eviction petition should be set aside.

5. On the other hand, Mr. Pawan Kumar Bahl, learned counsel for the respondent/landlord, supports the impugned order by contending that since the order dated 7.12.2019 passed by the learned Rent Controller, by which the learned Rent Controller refused to set aside the order dated 9.10.2019 and denied permission to the petitioner to file leave to defend, has not been challenged, the same has attained the finality and therefore, the order of eviction does not warrant any interference.

6. Heard the submissions of the learned counsel for the parties and perused the documents on record. Mr. Bahl is right in contending that since the order dated 7.12.2019 has attained the finality and leave to defend has not been filed within the prescribed period of limitation, the eviction order has been passed in accordance with the procedure under Section 25B(4) of the Act.

7. Admittedly, the order dated 7.12.2019 has not been challenged. Section 25B of the Act stipulates the procedure for disposal of the applications for eviction on the ground of *bona fide* requirement. Section 25B(4) of the Act reads as under:

“25B. Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.—

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(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.”

Section 25B(4) provides that on service of the application under Section 14(1)(e) of the Act, the tenant has to file an application for leave to defend which has to be considered by the learned Rent Controller. If the learned Rent Controller does not find any merit in the application for leave to defend or if the application for leave to defend is not filed, then the eviction petition is to be allowed. The application for setting aside the order dated 9.10.2019 has been dismissed and consequently the permission to file leave defend has been denied by the order dated

7.12.2019. The said order has not been challenged. In the absence of any application for leave to defend, an order for eviction has to be passed.

8. In view of the above, there is no infirmity in the impugned order dated 18.12.2019 passed by the learned Rent Controller. The revision petition is dismissed along with pending application.

9. Learned counsel for the petitioner/tenant prays for two months time to vacate the premises. Learned counsel for the respondent has no objection to the request made by the learned counsel for the petitioner. Accordingly, the petitioner is granted two months' time to hand over the vacant and peaceful possession of the premises to the respondent, subject to filing a usual undertaking with the Registry of this Court within a period of two weeks from today. The undertaking shall state, *inter alia*, amongst other averments:

“(i) The petitioner shall handover the peaceful vacant possession of the subject premises i.e. one shop situated at Ground Floor of property bearing no.IX/3262, Gali No.5, Dharampura, Gandhi Nagar, Delhi-110031 to the respondent on or before 30.09.2020;

(ii) The petitioner shall clear all the arrears of rent, if any, till the passing of the impugned eviction order dated 18.12.2019 within 15 days from today;

(iii) Petitioner shall not sublet or part with the possession of the subject premises to any third party;

(iv) Petitioner shall make payment of water and electricity charges till the time he hands over the peaceful and vacant possession of the subject premises to the respondent, as per the bills raised by the concerned Departments, without default.”

10. The revision petition is dismissed accordingly.

SUBRAMONIUM PRASAD, J.

JULY 22, 2020

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