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

% Judgment delivered on: 15.01.2020

+ RC.REV. 519/2018

SUSHIL KUMAR KHANNA

..... Petitioner

versus

SUDESH RANI

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Gopal Jha, Advocate.

For the Respondent: Ms. Ashima Mandla with Ms. Mandakini Singh, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 519/2018 & CM APPL.46347/2018 (stay)

1. Petitioner impugns order dated 11.07.2018, whereby, the eviction petition filed by the respondent has been allowed and an eviction order passed.

2. Respondent had filed the subject eviction petition seeking eviction of the petitioner on the ground of bonafide necessity under Section 14(1) (e) of Delhi Rent Control Act, 1958 from one shop without roof in premises No.5 at B-37, Gulab Bagh, Near Nawada, New Delhi, more particularly as shown in red colour in the site plan

attached to the eviction petition.

3. The contention of the respondent in the eviction petition was that the respondent is the landlord of the above property, which was being let out to the petitioner, herein, on 20.05.1992 initially @ Rs.600/- per month and subsequently, rent had been increased to Rs.900/- per month in the year 2011. Besides contending that the petitioner is in arrears of rent and is threatening to sublet the premises, respondent has contended that she is a widow aged 63 years at the time of the filing of the petition and does not have any source of income as her family is not staying with her.

4. It is contended that she is staying alone as her son is living outside India and her daughters are married and there is no means of income to earn her livelihood and support herself and with great difficulty she is making two ends meet.

5. It is contended that she bonafide requires the premises for herself to earn her livelihood and wants to open a bangles and cosmetics shop. It is contended that her husband has expired on 18.12.2016 and he was the one who used to maintain her and after his death she has no means to earn her livelihood.

6. Subject eviction petition was filed on 14.02.2018. On 11.07.2018, the Trial Court noticed that the petitioner had been served and had not filed any application seeking leave to defend. Accordingly, the eviction petition was allowed and an eviction order

was passed under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958.

7. The contention of the learned counsel for the petitioner is that petitioner had engaged a counsel in April 2018 and the counsel appeared before the Rent Controller on 11.07.2018 and sought for time to file an application for leave to defend, however, the same was declined and an eviction order passed.

8. Learned counsel for the petitioner also relies on a letter issued by the petitioner's erstwhile counsel dated 02.09.2018, wherein, the counsel has stated that he has tried his best to argue the case but due to certain exigencies, he was out of Delhi for a few days and could not attend the case during interregnum and the request for extension of time made by him was not granted by the Court and the impugned judgment was passed.

9. Section 25B (4) of the Delhi Control Act, 1958 reads as under:-

(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 and 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.”

10. In terms of Section 25B(4) of the Delhi Rent Control Act, 1958, a tenant is not permitted to contest the prayer for eviction unless he files an affidavit stating the ground on which he seeks to contest the application and obtains leave from the Controller.

11. Summons in respect of the eviction petition filed under Section 25B of the Delhi Rent Control Act have to be served in terms of the form specified in the Third Schedule of the Act, which provides for a period of 15 days to a tenant to appear before the Rent Controller and obtain leave to contest the application for eviction.

12. The Supreme Court of India in *Prithipal Singh vs. Satpal Singh*: (2010) 2 SCC 15 has categorically held that the period of 15 days is sacrosanct and in case an application seeking leave to defend is not filed within a period of 15 days, the Rent Controller does not have the power to extend the period.

13. Neither has the petitioner before the Rent Controller nor before this Court pleaded any ground to show as to how petitioner was prevented from filing an application seeking leave to defend within the statutory period.

14. Petitioner is also silent with regard to the date of service. The admission of the petitioner in the list of dates is that petitioner had engaged a counsel in April 2018, which shows that petitioner was served prior to or in April, 2018. Impugned order has been passed on

11.07.2018 i.e. after a period of about three months of the service of the petitioner and petitioner engaging a counsel. Since no leave to defend application was filed, the Rent Controller has passed the eviction order.

15. Since no application seeking leave to defend has been filed, there is no infirmity in the view taken by the Rent Controller and the eviction order passed by the Rent Controller.

16. I find no merit in the petition. The Petition is, accordingly, dismissed.

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

JANUARY 15, 2020
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SANJEEV SACHDEVA, J