

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWP227 No. 496 of 2020

- H.S. Yadav, Director, Gayatri Institute Of Nursing, Shiv Mandir Ward-3, Naya Pul Donga Ghat- Jagda Industrial Estate, Pagaria House, Wardhman Colony, Jagdalpur, Bastar - Chhattisgarh

---- Petitioner

Versus

1. Shankuntala Devi Parakh W/o Late Gyanchand Parakh, R/o Circuit House Road, Jagdalpur, District - Bastar Chhattisgarh.
2. Rent Control Officer, Jagdalpur, District - Bastar Chhattisgarh.
3. Chhattisgarh Rent Control Tribunal, Raipur Chhattisgarh.

---- Respondents

For Petitioner : Shri Vipin Tiwari, Advocate

For Respondents : Shri Shashank Thakur with Shri Atanu Ghosh, Advocates

Hon'ble Shri Justice Goutam BhaduriHon'ble Shri Justice N.K. ChandravanshiJudgment on BoardPer Goutam Bhaduri, J.20/12/2021**Heard.**

1. The challenge is this petition is to the order dated 18.02.2019 passed by Rent Control Tribunal whereby an appeal preferred by the petitioner against the eviction order dated 04.10.2018 was dismissed on the ground of delay.
2. Learned counsel for the petitioner would submit that the petitioner has already vacated the premises, however certain goods in the premises were

remaining which has been locked. He further submits that by cursory order without assigning any reason, the appeal against order of eviction dated 04.10.2018 has been dismissed whereby the arrears of rent and eviction order was passed. He further submits that sufficient reasons were stated before the Rent Control Tribunal to condone the delay in filing the appeal. He would submit that the tribunal should have considered and heard the appeal on merits as no exorbitant delay was caused. He would submit that only 34 days delay was there in filing the appeal and sufficient reasons were assigned, therefore the order dated 18.02.2019 (Annexure P-1) be set aside.

3. Learned counsel for the respondents would submit that the order of Rent Control Tribunal is well merited and after due consideration of the reasons which have been assigned, the delay was refused to be condoned, therefore no interference is called for.
4. Heard learned counsel for the parties and perused order dated 18.02.2019.
5. We have considered the reasons assigned and at the outset the submission of the petitioner is that he has already vacated the premises for which the eviction decree was passed on 04.10.2018. Therefore, we deem it proper to hold that the issue of possession is no longer *res integra* before the Rent Control Tribunal and the petitioner shall not be allowed to raise that ground before the Court below against order for vacating premises. With respect to the dismissal of the appeal which is preferred before the Rent Control Tribunal, a perusal of the order would show that reason was assigned that on 21.11.2018, the petitioner went to his counsel to enquire about the date of hearing wherein it was informed that he is not appearing in the case. Subsequently, it was enquired from the clerk of the Rent Control Authority wherein it was revealed that the eviction order and the orders of arrears have already been passed on 04.10.2018. Thereafter, the

application was filed on 26.11.2018 and eventually appeal was filed before the Rent Control Tribunal on 10.12.2018. *Prima Facie*, it shows that delay of 34 days was caused. The delay of 34 days which has been caused in filing of this appeal, appears to have been supported by the reason assigned. A perusal of the application for condonation of delay along with the affidavit would show that petitioner consulted his counsel on 21.11.2018 and he was informed that he was not attending the case and was not aware about the status. Subsequently, he went to Rent Control Authority for enquiring wherein it was revealed that the application has been disposed off by order dated 04.10.2018 and the certified copy of the order was applied for on 26.11.2018 which was delivered on 27.11.2018 and thereafter the application was filed.

6. Therefore, considering the fact, *prima facie* it appears that there is no exorbitant delay. It appears that petitioner was dependent on the counsel and if the counsel has not appeared for reason whatsoever, in that case considering the number of days for which delay is caused, the petitioner cannot be made to suffer. Under the circumstances, we deem it proper to condone the delay in filing the appeal before the Rent Control Tribunal and it is directed that Rent control Tribunal shall decide the appeal on merits. Accordingly, it is directed that order dated 18.02.2019 (Annexure P-1) is set aside and the appeal is remitted back to the Rent Control Tribunal to hear it on the merits with the exception as observed supra.

7. With such observation, the petition stands disposed off.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(N. K. Chandravanshi)
Judge