

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

% **Date of decision: 13th September, 2021.**

+ **CM(M) 607/2021, CMs No.30627/2021 (for stay) & 30628/2021**
(for condonation of delay of 627 days)

AJAY KUMAR

..... Petitioner

Through: Mr. Sandeep Sharma, Mr. Nilesh
Deep and Mr. Gurjas Singh Narula,
Advocates

Versus

MANOJ KUMAR & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India impugns the order dated 12th March, 2019 passed by the Rent Controller, East District, Karkardooma Courts, Delhi in ARC No.463/2016 whereby the application filed by the petitioner under Order I Rule 10 of the Civil Procedure Code (CPC) for impleading him as respondent no.2 in the aforesaid eviction proceedings has been dismissed.

2. It is the case of the petitioner that the petitioner is the brother of the

respondent no.2/tenant, Praveen Kumar and that they were both inducted as tenants in the suit premises after the death of their father and were jointly paying the rent. Therefore, it is contended that the petitioner is a necessary and proper party in the eviction petition and he should have been impleaded as a respondent in the eviction proceedings before the Rent Controller. In this regard, reliance has been placed on the judgment passed by the Supreme Court in **J.S. Yadav Vs. State of Uttar Pradesh and Anr.** (2011) 6 SCC 570. The counsel for the petitioner has also placed reliance on order of the Calcutta High Court in **Sudhendu Roy and Ors. Vs. Kashi Nath Malakar and Ors.** 2013 SCC OnLine Cal 2092 to contend that when a joint tenancy is pleaded, the joint tenant is a necessary and proper party to the petition.

3. The impleadment application was opposed by the respondent no.1/landlord on the ground that no documents have been filed by the petitioner to show that he is in possession of the tenanted shop. Further, even the rent receipts filed by the petitioner are in the name of '**Parveen Kumar, Ajay Kumar and Sons**', a sole proprietorship firm and not in the joint names of Praveen Kumar and Ajay Kumar.

4. The impleadment application filed by the petitioner was dismissed by the impugned order while observing as under :

- (i) That the impleadment application was filed by the petitioner only on 25th April, 2017, whereas the eviction petition was filed in 2013, leave to defend was granted to the respondent no.2/tenant vide order dated 11th October, 2013 and the evidence of the respondent no.1/landlord was closed on 29th June, 2015.
- (ii) That the application was filed two years after the completion of

the evidence of respondent no.1/landlord.

- (iii) That the plea regarding the petitioner and his brother Praveen Kumar being joint tenants in the tenanted shop has already been taken in the written statement filed by respondent no.2/tenant.
- (iv) That no documents have been filed by the petitioner in support of his application.

5. At the very outset, it has been put to the counsel appearing on behalf of the petitioner that the present petition has been filed more than 2 years after the impugned order was passed. In this regard, counsel for the petitioner submits that he has filed an application under Section 5 of the Limitation Act seeking condonation of delay in filing the present petition. In the application, vague averments have been made about the file getting misplaced from the office of the counsel and thereafter, the lockdown being imposed. In my view, no satisfactory explanation has been given by the petitioner with regard to inordinate delay in filing the present petition under Article 227. There is no prescribed period of limitation in respect of petitions under Article 227, however, it is settled position of law that the Courts will not entertain such petitions if the same are filed due to inordinate delay and no satisfactory explanation has been given with regard to the delay. In this regard, reference may be made to the judgment of the Supreme Court in ***Bithika Mazumdar and Anr. Vs. Sagar Pal and Ors.*** (2017) 2 SCC 748. In the present case, only some vague averments have been made in the said application filed on behalf of the petitioner, which does not qualify as satisfactory explanation for the delay of more than 2 years in filing the present petition. Accordingly, the present petition is liable to be dismissed on the ground of delay and laches alone.

6. Even with regard to the merits of the case, no fault can be found with the impugned order passed by the Rent Controller. The application for impleadment was highly belated. The only reason given in the application for impleadment filed before the Rent Controller was that the petitioner came to know about the proceedings only when his father told him to be a witness in the eviction proceedings. However, no particulars have been given as to when the father of the petitioner informed the petitioner of the present eviction proceedings.

7. I have also perused the rent receipts filed by the petitioner along with the present petition. The said receipts have not been issued by the petitioner but have been issued by '**Parveen Kumar, Ajay Kumar and Sons**', the sole proprietorship firm of respondent no.2. Therefore, there is no basis to contend that the petitioner was a tenant or a joint tenant in respect of the tenanted shop. In view of my finding that the petitioner was not a necessary and proper party in the eviction proceedings, no reliance can be placed on **J.S. Yadav** supra. The judgment in **Sudhendu Roy** supra is not at all applicable to the facts of the case as there is no plea of joint tenancy made in the eviction petition. The case made out in the eviction petition is that '**Parveen Kumar, Ajay Kumar and Sons**' being a sole proprietorship firm of respondent no.2, is the tenant. The application for impleadment was only filed to delay the eviction proceedings.

8. Even otherwise, objection with regard to non-impleadment of the petitioner/misjoinder of parties has already been taken by respondent no.2 in his written statement before the Rent Controller. Needless to say that this would be considered by the Rent Controller when the eviction petition is finally decided. In view of the above, no grounds for interference are made

to the impugned order in the present proceedings under Article 227 of the Constitution of India.

Dismissed.

AMIT BANSAL, J.

SEPTEMBER 13, 2021

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