



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

Date of decision: 26th MAY, 2022

IN THE MATTER OF:

+ **RC.REV. 33/2020 & CM APPL. 2195/2020**

ANIL KUMAR

..... Petitioner

Through: Mr. Bharat Deep Singh, Mr. Ashish Atkaan, Advocates.

versus

PRAMOD SHARMA

..... Respondent

Through: Mr. Ankit Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J. (ORAL)

1. The instant Revision Petition has been filed against the Order dated 09.08.2019, passed by the learned ACJ-CCJ-ARC, Shahadara, Karkardooma Courts, Delhi, in ARC No.128/2018.
2. The facts leading to the instant revision petition, shorn of unnecessary details, are that an Eviction Petition had been filed by the Respondent herein under Section 14(1)(e) of the Delhi Rent Control Act, 1958, in respect of a shop located on the ground floor of property bearing no. 9/668, Subhash Nagar, Gandhi Nagar, Delhi – 110031.
3. It is stated that in pursuance of the summons served on the Petitioner herein on 18.05.2018 after the filing of the said Eviction Petition, the Petitioner herein filed his application seeking leave to defend on 31.05.2018, i.e. within the prescribed period of 14 days, however, the affidavit filed



alongside the application was unattested. Accordingly, time was granted to the Petitioner herein to file the attested affidavit within the period of limitation, but the same was not filed even till the next date of hearing in the Eviction Petition, i.e. 12.09.2018.

4. Noting the fact that ample opportunity had been given to the Petitioner herein to file the attested affidavit along with the leave to defend application and that no cogent reasons had been provided to justify the delay of 5 months, the Ld. Trial Court proceeded to dismiss the Petitioner's application seeking leave to defend and allowed the Eviction Petition filed by the Respondent herein *vide* impugned Order dated 09.08.2019. Aggrieved by the same, the Petitioner herein has approached this Court by way of the instant revision petition.

5. Learned Counsel for the Petitioner relies on a judgment passed by this Court in Alka Kasana v. Indian Institute of Technology, **222 (2015) DLT 473**, wherein this Court has held that filing an affidavit which is not attested is a curable defect, and that object of prescribing procedure is to advance the cause of justice. Learned counsel for the Petitioner further submits that the position of law has changed inasmuch the Division Bench of this Court in **RC.REV. 279/2014**, by a judgment dated 29.11.2019 titled as Director Directorate of Education & Anr. v. Mohd. Shamim & Ors., has held that a tenant can be permitted to file an application for leave to defend beyond the period prescribed if proper reasons are given to substantiate such delay.

6. *Per contra*, learned Counsel for the Respondent relies on a judgment dated 12.03.2012, passed by this Court in **R.C.R. No. 62/2010** titled as Rakesh Gupta & Anr. v. Ashok Dilwali, wherein this Court has held that filing an unattested affidavit with an application for leave to defend is not a



curable defect and leave to defend cannot be granted. The reason given in the said judgment was that permitting attestation after filing an application with an affidavit which is not attested would amount to extending the period for filing the leave to defend application which is not permissible under law, and therefore, filing of an unattested affidavit amounts to non-filing of affidavit on record.

7. The short question which arises in this case is whether an application for leave to defend which has been filed with an affidavit that has not been duly attested in accordance with law can be entertained and whether the application for leave to defend should be dismissed on this ground alone without giving an opportunity to the tenant to cure the defects.

8. Chapter III of the Delhi Rent Controller Act, 1958, was introduced with the object of ensuring that a landlord who requires his premises for *bona fide* purposes should not be forced to endure a long trials because of which the *bona fide* need may itself cease to exist or certain events may transpire that would render the entire procedure redundant. The Apex Court in Ravi Datt Sharma v. Ratan Lal Bhargava, (1984) 2 SCC 75, has succinctly laid down the object of bringing in Chapter IIIA of the Delhi Rent Control Act, 1958. Relevant portion of the said judgement reads as under:

"7. In order to appreciate this contention it may be necessary to give an extract of Statement of Objects and Reasons of the amending Act:

"There has been a persistent demand for amendments to the Delhi Rent Control Act, 1958 with a view to conferring a right of tenancy on certain heirs/successors of a deceased statutory tenant so that they may be protected from eviction by landlords and also for simplifying the



procedure for eviction of tenants in case the landlord requires the premises bona fide for his personal occupation. Further, Government decided on September 19, 1975 that a person who owns his own house in his place of work should vacate the Government accommodation allotted to him before December 31, 1975. Government considered that in the circumstances, the Act requires to be amended urgently.”

The dominant object of the amending Act was, therefore, to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14-A and for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A. The Legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14-A and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the amending Act and



the purposes which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or a part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of Property Act was still preserved, no genuine grievance could be made. This was clearly held in the case of Kewal Singh v. Lajwanti [(1980) 1 SCC 290 : AIR 1980 SC 161 : (1980) 1 SCR 854]."

9. In light of this, the legislature has fixed a period of 15 days within which the tenant has to file an affidavit raising such issues which would deny the landlord the relief of an immediate eviction order. This makes the period of 15 days, within which the tenant should raise such triable issues, sacrosanct. Since there was a difference of opinion as to whether the period of 15 days can be relaxed or not, a Division Bench was constituted to give pronouncement on this question. The Division Bench of this Court in Director Directorate of Education & Anr. v. Mohd. Shamim & Ors. (supra), has held that the period for filing an application for leave to defend can be relaxed beyond 15 days if the tenant is able to give substantial reasons as to what prevented him from filing a leave to defend application within the stipulated time. The Division Bench has observed as under:

"25. We, therefore, hold that merely because the Controller has passed an order of eviction in a proceeding governed under Section 25B, on failure of the tenant to, within the prescribed time, apply for leave to defend and merely because the Controller vide Prithpal Singh supra has been held to be not empowered to recall the said order, would not prevent this Court from, in exercise of powers under proviso to Section 25B(8), considering once a case for the



landlord to be not entitled to an order of eviction to be deemed admission following non-filing of leave to defend within the prescribed time, the said order cannot be said to have been made according to law and would qualify as being contrary to law and liable to be set aside.

26. Having held so, we answer the question no.(A) framed in the referral order in the affirmative and with the condition that **this Court would be empowered to set aside the order of eviction only if the tenant passes the dual test of prevented by reasons beyond control from applying for leave to defend within the prescribed time (as distinct from every default) and if makes out a substantial case for consideration of the application for leave to defend.** We, however, in deference to Prithipal Singh supra choose/opt to not answer the question (B) framed in the referral order."
(emphasis supplied)

10. The Court must, therefore, scrutinize the application for leave to defend very carefully and in line with the judgment of the Division Bench of this Court. It is no doubt correct that procedure is only a hand-maiden of justice and substantive law cannot be sacrificed at the altar of the procedural law. However, that concept cannot have a universal application, especially when the legislature does not intend to do so. The Courts must, therefore, interpret the law with the view to advance the purpose for which the law was introduced.

11. In the instant case, the Petitioner herein was made aware of the defects afflicting his leave to defend application and had been provided an opportunity to rectify the same by filing an attested affidavit before the next date of hearing. However, the Petitioner and his Counsel failed to do so by



the next date of hearing. There is no material on record that indicates as to whether the Petitioner or their learned Counsel had taken concrete measures to cure the defects in the affidavit and whether they were prevented from doing so for substantial reasons. It is not the case of the Petitioner that the lawyers' strike that had allegedly prevented the Petitioner from filing the attested affidavit along with the application for leave to defend before 31.05.2018, had continued for a period of five months.

12. The reliance of the learned Counsel for the Petitioner on Alka Kasana v. Indian Institute of Technology (supra) does not hold any water as in the case therein, an opportunity had been afforded to the Petitioner therein to cure the defects and the same was duly done. Furthermore, this Court observed in the judgement that if the Petitioner failed to cure the same in spite of opportunities being granted to them, then the Court could proceed with rejecting the plaint.

13. In this matter, the Petitioner herein had been granted time to file the attested affidavit within the period of limitation, i.e. before 31.05.2018. However, no attested affidavit was filed even till the next date, i.e. 12.09.2018. A delay of five months in filing of the attested affidavit cannot be stated to be inadvertent and the Petitioner, therefore, cannot be allowed to take advantage of his own mistakes as the same would defeat the intent of the Legislature in devising the procedure for summary trial for a separate class of landlords under Chapter IIIA of the Delhi Rent Control Act, 1958.

14. The Petitioner has failed to demonstrate that the delay in filing the attested affidavit, despite an opportunity being granted to do so, was for reasons not attributable to him or for reasons beyond his control. The dual test laid down in the said judgement, regarding reasons that prevented the



tenant from applying for leave to defend within the prescribed time that would empower the Court to set aside the order of eviction, has not been satisfied in the instant case.

15. This Court, therefore, finds no infirmity in the findings of the Ld. ARC in rejecting the leave to defend application of the Petitioner herein and allowing the Eviction Petition of the Respondent. The Order dated 09.08.2019 passed by the learned ACJ-CCJ-ARC, Shahadara, Karkardooma Courts, Delhi, in ARC No.128/2018 does not suffer from any legal perversity and does not warrant the interference of this Court.

16. In view of the above, the instant revision petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 26, 2022

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