

\$~6 (Appellate)

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

+ **CM(M) 706/2021 & CM APPL. 36230/2021**

SH. RAJESH SHARMA Petitioner

Through: Mr. D.V. Khatri and Mr.
Bhaskar Khatri, Advs.

versus

SMT. KUSUM LATA Respondent

Through: Ms. Sumati Anand, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **19.10.2022**

1. This petition, under Article 227 of the Constitution of India, assails order dated 20th September 2021, passed by the learned Additional Rent Controller in RC ARC 10-19 (*Kusum Lata v. Rajesh Sharma*).

2. RC ARC 10-19 was an application filed by the respondent Kusum Lata against the petitioner Rajesh Sharma under clause (e) of the proviso to Section 14 (1) of the Delhi Rent Control Act ("the DRC Act").

3. Consequent to issuance of summons in the said eviction petition, an application was filed by the petitioner under Section 25-B of the DRC Act on 19th September 2019 seeking leave to defend the eviction petition. The application which was well within time, as

service of the summons had been effected on the petitioner only on 8th September 2022.

4. Coming to know of this, the application for leave to defend was, however, inadvertently filed before the learned ARC, North District, Rohini instead of the court of the learned ARC, North West District, Rohini.

5. On detecting this, the petitioner filed an application under Section 151 of the CPC before the learned ACJ, North West District, on 15th October 2019 for returning the application for leave to defend. The request was finally allowed on 4th November 2019, when the learned ACJ, North West District directed the application to be returned to the petitioner.

6. The petitioner received a certified copy of the application on 13th December 2019, and filed it before the learned ARC, North West Delhi, Rohini on the same day, i.e., 13th December 2019.

7. The learned ARC has, however, *vide* the impugned order dated 20th September 2022, treated the application for leave to defend as having been presented only on 13th December 2019 and, taking the view that he had no power to condone the delay in filing the application for leave to defend, declined the request to take the application seeking leave to defend on record.

8. Aggrieved thereby, the petitioner has approached this Court

under Article 227 of the Constitution of India.

9. It is well settled that consequences of the error of counsel, especially if inadvertent, should not visit the client.

10. Even otherwise, it can hardly be said that the filing of the application for leave to defend, within 11 days of service of summons in the eviction petition, before a wrong court, can be regarded as so serious an omission as to result in complete evisceration of the right of the petitioner to defend the eviction petition instituted by the respondent. A liberal approach ought to have been adopted in the present case.

11. The application for leave to defend having been presented within time, albeit in a wrong court, this Court is of the view that the learned ARC was not justified in refusing to take the application for leave to defend on record on the ground that he could not condone the delay in filing the application.

12. In my view, no real occasion to condone delay arose, as the application for leave to defend was presented within time, albeit in a wrong court.

13. Procedure has, at all times, to serve but as a handmaiden to justice.

14. In view thereof, the application for leave to defend is treated as having been presented within time. The impugned order dated 20th

September 2019 of the learned ARC is accordingly quashed and set aside.

15. This petition stands allowed in the aforesaid terms with no order as to costs.

C. HARI SHANKAR, J.

OCTOBER 19, 2022

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