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

+ RC. REV. 31/2023 & CM APPL. 4974/2023, CM APPL. 4975/2023

SH NABBO SINGH @ NABOYA NATH Petitioner

Through: Mr. S.P. Shukla, Advocate

versus

SH JITENDER SINGH Respondent

Through: Mr. Rohit Goel, Advocate

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Date of Decision: 15th February, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (Oral):

1. The present petition has been filed by the tenant assailing the eviction order dated 21.10.2021, passed by Additional Rent Controller (West), Tis Hazari Court, Delhi ('Trial Court') in ARC No. 64/2020, whereby the tenant's application seeking leave to defend was not considered for being time barred.

2. The impugned eviction order has been passed in favour of the Respondent, landlord, *qua* tenanted premises being one room, ad-measuring 9'6" X 8'3", situated at ground floor, forming part of Property No. 2131, Gali No. 1, Prem Nagar, Near Delhi Milk Scheme, West Patel Nagar, New Delhi – 110018 ('tenanted premises'), shown in red colour in the site plan.

3. The Petitioner, tenant, is aggrieved by the non-consideration of his application seeking leave to defend, which admittedly was filed on 10.03.2021 i.e., after 26 days from the service of the eviction petition.

4. Learned counsel for the Petitioner states that the summons in the eviction petition were served on the Petitioner's son, on 12.02.2021. He states that since the wife of the Petitioner was then unwell, it took him some time to engage a lawyer for drawing up an application seeking leave to defend. He states that however, the said facts of hardships were not taken into consideration by the Trial Court while passing its impugned eviction order.

5. He states that after the passing of the impugned eviction order, the Petitioner herein engaged advocates namely Mr. Satish Kumar (D/2995/2015) and Mr. Rajesh Kumar (D/2373/2011) to file a revision petition before this Court, assailing the said order. He states that the Petitioner took steps to execute documents for facilitating filing of the revision petition and that the Petitioner verily believed that the same had been filed and is pending consideration.

6. He states that, in fact, when the execution proceedings were filed the said advocates i.e., Mr. Satish Kumar, Advocate, appeared before the executing Court and stated that a revision petition pending adjudication before the High Court.

7. He states that in these circumstances the Petitioner also believed the statement made by the said advocates, as he had also executed an affidavit and *vakalatnama*.

8. He states however, the Petitioner has now learnt in December, 2022, that the said advocates had not filed any revision petition and therefore, the

statement made before the executing Court was incorrect. He states that thereafter the Petitioner's wife passed away due to illness and he therefore, could not immediately engage a lawyer.

9. He states that the aforesaid circumstances led to this delay of 1 year and 3 months in filing the present petition, belatedly on 24.01.2023. He states that the Petitioner was constrained to engage a new counsel and he prays for condonation of delay on the ground of hardship.

10. He states that in the leave to defend the Petitioner has raised primarily two triable issues which reads as under and therefore, he is entitled to grant of leave to defend:

- a. that the site plan filed by the landlord is incorrect; and
- b. that he does not admit that the landlord herein is absolute owner of the premises and infact, he is only the co-owner of the premises.

11. In reply, learned counsel for the Respondent, landlord, states that the Petitioner had not filed any application seeking condonation of the admitted delay of eleven (11) days before the Trial Court and, therefore, the Trial Court has not committed any error in not considering the application seeking leave to defend. He states even otherwise the Trial Court could not have condoned the delay of even a single day in view of the law settled by the judgment of the Supreme Court in ***Prithipal Singh v. Satpal Singh (Dead) through its LRs, (2010) 2 SCC 15.***

12. He further states that the argument that the site plan filed with the eviction petition is wrong cannot be accepted as no other site plan has been placed on record by the tenant with his leave to defend. He states that the site plan filed by the landlord is accurate and duly delineates all the rooms existing in the Property, wherein the tenanted premises are located.

13. He states that as regards the ownership, there is no dispute that the grandfather of the Respondent, landlord, was the owner of the Property wherein the tenanted premises are situated. He states that the grandfather had executed a Will in favour of the Respondent whereby the entire Property has devolved upon the Respondent herein.

14. He states that no objection has been raised by any other legal heirs of the grandfather to the Respondent's filing of the eviction petition and therefore the aforesaid averment by the Petitioner also does not give rise to any triable issue.

15. This Court has heard learned counsel for the parties.

16. To begin with, in view of the statement of the Petitioner that his wife passed away recently in December 2022, it has been enquired from the learned counsel for the Petitioner, whether the Petitioner requires the extension of time to vacate the premises, though it is a matter of record that the eviction was order passed on 21.10.2021 and till date i.e., February 2023, the tenant has continued to be in occupation of tenanted premises, despite the passing of the eviction order. He states on instructions that the tenant does not seek any extension of time for vacating the tenanted premises.

17. As per Section 25B of the Delhi Rent Control Act, 1958, the limitation period for filing the application seeking leave to defend is 15 days from the service of the eviction Petition. However, in the present case, there is an admitted delay of 11 days in filing the said application.

17.1. This Court finds no infirmity in the impugned eviction order allowing the eviction petition in view of the fact that the tenant herein admittedly failed to file the leave to defend within the stipulated time of 15 days. The

Trial Court rightly held that it does not have any right to condone the delay in view of the law settled by the Supreme Court in **Prithipal Singh** (Supra).

17.2. The Petitioner herein has further filed the present revision petition after 1 year and 3 months and has continued to enjoy the occupation of tenanted premises after passing of the eviction order, without payment of user charges. Thus, the Petitioner has not been diligent in defending itself in the present proceedings.

18. This Court is also of the opinion that the two pleas raised by the Petitioner, tenant, do not give rise to a triable issue.

18.1. With respect to the site plan, this Court finds merit in the submission of the learned counsel for the Respondent, landlord, that in the absence of any other site plan having been filed by the Petitioner, tenant, with his application seeking leave to defend, no adverse inference can be drawn against the site plan filed with the eviction petition.

18.2. Similarly, with respect to the plea of the co-ownership, this Court fails to appreciate the said submission,

18.3. The Respondent has asserted that the Property has devolved upon him in pursuance to a Will executed by his grandfather. Admittedly, in Delhi a Will does not mandatorily require a probate and in the absence of any challenge by other legal heirs to the said Will, the legal heir can rely upon the said Will to claim devolution of rights in immovable property. A tenant has no *locus* to challenge the Will executed by the landlord. Therefore, there is no merit in the dispute raised by the tenant herein to the reliance placed by the Respondent on the Will executed by the original landlord.

18.4. In any event, the tenant admits that the grandfather of the Respondent was the absolute owner of the subject Property. The tenant further admits

that the Respondent is the legal heir of the grandfather and does not dispute his co-ownership. It is a matter of record that no other legal heir of the grandfather has filed any objection to the maintainability of the revision petition. In view of the said admission of co-ownership and the absence of any objection by the other legal heirs, the eviction petition filed by the Respondent herein is maintainable.

19. No other plea has been raised by the Petitioner. As held above, this Court is satisfied that no triable issue has been set out in leave to defend.

20. Accordingly, the present petition along with all pending application stands dismissed.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 15, 2023/hp/aa

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