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

+ **RC.REV. 263/2022**

PRADEEP MALIK

..... Petitioners

Through: Mr. Ashutosh Lohia and Mr.
Rohit Saraswat, Advocates.

versus

CHANDER DHINGRA

..... Respondents

Through: Mr. Shekhar Dasi, Advocate.

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Reserved on: 21st March, 2023

Date of Decision: 17th April, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present revision petition has been filed by the tenant challenging the order dated 01.09.2022 ('the impugned eviction order') passed by the Additional Rent Controller (Central), Tis Hazari Court, Delhi ('Trial Court') in CIS No. E-289/22, allowing the eviction petition filed by the landlord under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') with respect to a portion of Shop no. 413, Azad Market, Delhi - 110006, admeasuring 4 ft. x 7.5 ft ('the tenanted premises').

2. The Respondent, landlord, filed the eviction petition on the ground of *bona fide* requirement of the tenanted premises for himself and his sons for carrying on business.

3. The summons of the said petition were admittedly received by

the Petitioner on 10.06.2022. After accounting for the Trial Court's summer vacation, the Petitioner, tenant, was obliged to mandatorily file his leave to defend on or before 01.07.2022; however, the Petitioner failed to file his leave to defend application within the statutory period.

4. Instead, on 11.07.2022, the Petitioner filed an application under Section 151 Code of Civil Procedure, 1908 ('the CPC') in the eviction proceedings, seeking a fresh copy of the eviction petition and in the interregnum praying for suspension of the limitation period for filing the leave to defend.

4.1. The Trial Court *vide* the impugned eviction order considered the Petitioner's application filed under Section 151 CPC and dismissed the same on merits, applying the ratio in the judgment of Supreme Court in ***Prithipal Singh v. Satpal Singh (Dead) through LRs., (2010) 2 SCC 15***. The Trial Court also held that since the tenant has not filed the leave to defend application within the statutory period of fifteen (15) days, and consequently, the impugned eviction order was passed in favour of the landlord.

Arguments of the Petitioner

5. Mr. Ashutosh Lohia, the learned counsel for the Petitioner states that, admittedly, summons of the eviction petition were issued to the Petitioner on 07.06.2022. He states that the said summons dated 07.06.2022 was received by the Petitioner on 10.06.2022, which was the last working day of the Trial Court before the start of the summer vacation.

5.1. He states that after the summons were served, the Petitioner had approached the concerned counsel (i.e., Mr. Ashutosh Lohia) to

intimate about the said service/receipt of the summons. He states that, however, the concerned counsel was travelling during the summer vacations. He states that for the said reason, the Petitioner herein decided to wait for the return of the said counsel. He states that the concerned counsel returned on 04.07.2022.

5.2. He states that in the meantime, the period of fifteen (15) days from the service of summons of the eviction petition had expired on 01.07.2022, i.e., the date when Trial Court reopened after the summer vacation.

5.3. He states that after the perusal of the eviction petition, served on the Petitioner, the concerned counsel observed that the documents annexed with the eviction petition were illegible. He states that, accordingly, the concerned counsel served a letter dated 09.07.2022 to the Respondent herein, seeking a complete set/legible copies of the entire paper book of the eviction petition.

5.4. He states that, thereafter, the Petitioner filed the application dated 11.07.2022, under Section 151 of the CPC before the Trial Court seeking a fresh copy of the eviction petition. The Petitioner also prayed before the Trial Court to suspend the period of limitation for filing of the application for leave to defend, for want of complete set/legible copies of the eviction petition.

5.5. He further states that, the Petitioner herein, subsequently filed the leave to defend application dated 15.07.2022, before the Trial Court, i.e., with a delay of 14 days.

5.6. He states that the leave to defend application was filed by the Petitioner before the Trial Court, after carrying out the inspection of the

court files on 14.07.2022.

5.7. He relies on the judgment of Division Bench of this Court in ***Director Directorate of Education and Ors. v. Mohd. Shamim and Ors., 2019 SCC OnLine Del 11490*** to contend that Section 25B of DRC Act does not employ any negative language to the effect that upon non-filing of leave to defend within 15 days from service of the notice of the eviction petition, it cannot be filed later or that the delay cannot be condoned. He states that the delay on the part of the Petitioner in filing the leave to defend application is genuine and *bona fide*; and ought to be condoned.

6. Further, he states that the Petitioner herein was initially inducted as a tenant in the year 1981 by the mother of the Respondent, i.e., Smt. Durga Devi. He states that upon the death of Smt. Durga Devi, the tenanted premises was mutated by Ministry of Urban Development ('MoUD') in favour of father of the Respondent, i.e., Shri. Tota Ram Dhingra.

6.1. He states that thereafter, the tenanted premises was sold by Shri. Tota Ram Dhingra in favour of the Petitioner on 18.08.1994 upon payment of sale consideration of Rs. 1 lakh as recorded in unregistered documents, such as General Power of Attorney ('GPA'), Agreement to Sell ('ATS'), Affidavit, Will, Receipt and Possession Letter. He states that Shri Tota Ram Dhingra has since, died on 11.08.1995.

6.2. He states that by the execution of the aforesaid documents by Shri Tota Ram Dhingra, the Petitioner has become the rightful owner of the tenanted premises, having purchased the same on 18.08.1994 for valuable consideration.

6.3. He further states that, since 18.08.1994, the Petitioner has been occupying the tenanted premises as a rightful owner and he has not tendered any rent to the Respondent.

6.4. In brief, the learned counsel for the Petitioner states that the Petitioner disputes the existence of landlord-tenant relationship between the parties herein and also disputes the ownership of the Respondent over the tenanted premises. He states that in view of the aforesaid facts, the Trial Court ought to have condoned the delay in filing the application seeking leave to defend, as the aforesaid disputes give rise to a triable issue.

Arguments of the Respondent

7. In reply, Mr. Shekhar Dasi, the learned counsel for the Respondent states that by the impugned eviction order, the Trial Court has rightly dismissed the Petitioner's application filed under Section 151 of CPC.

7.1. He states that the Trial Court has correctly applied the ratio of the judgment in ***Prithipal Singh*** (supra), and has rightly held that since the application seeking leave to defend has been filed by the Petitioner beyond the statutory period, the same cannot be considered.

7.2. He states that prayer of the Petitioner seeking a suspension of the period of limitation for filing the leave to defend is not maintainable in law in view of the judgment in ***Prithipal Singh*** (supra).

7.3. He also states that a perusal of the contents of the letter dated 09.07.2022 served by the concerned counsel for the Respondent evidences that the same is vague and failed to specify which purported documents, are alleged to be illegible. He states that the inaction and

omission of the Petitioner from 01.07.2022 to 08.07.2022 belies the stand that the documents were illegible.

7.4. He states that the contents of the letter dated 09.07.2022 and application dated 11.07.2022 filed under Section 151 of CPC, are vague in so far as the details of the alleged illegible documents of the eviction petition has not been disclosed.

7.5. He states that a perusal of the Trial Court's record evidences that the inspection of the court record was carried out by the Petitioner in person in 14.07.2022 for 15 minutes and the leave to defend was miraculously filed on the next day, i.e., 15.07.2022. He states that the inspection is a mere ruse created by the tenant to set up a justification for the delay in filing the leave to defend.

7.6. He states that in view of the aforesaid facts, the prayer seeking condonation of delay in filing the leave to defend application, for the want of legible copy of the eviction petition is based on bogus pleas. He states that the aforesaid sequence of facts has been made up to seek extension of the mandatory period of fifteen (15) days and are not genuine.

8. He states that the Respondent has become the absolute owner of the tenanted premises by virtue of the registered Will dated 05.04.1994 executed by the Shri Tota Ram Dhingra, i.e., the late father of the Respondent. He states that since then, the Respondent herein has been depositing the house tax of the property i.e., shop No. 413, ground floor, Azad Market, Delhi.

8.1. He states that the Petitioner was inducted as a tenant by i.e., Smt. Durga Devi, i.e., the mother of the Respondent. After her death, late

Shri Tota Ram Dhingra, i.e., the father of the Respondent became the owner of the tenanted premises. He states that the tenanted premises was mutated in the favor of late Shri Tota Ram Dhingra by the MoUD on 24.10.1990. He states that, thereafter the Petitioner herein attorned to Shri. Tota Ram Dhingra and has tendered rent for occupying the tenanted premises.

9. He also states that until January, 2019, the Petitioner has tendered rent to the Respondent herein. In this regard, he relies upon rent receipts counter signed by the Petitioner.

9.1. He states that once the Petitioner had stopped tendering rent from the month of February, 2019, the Respondent herein issued a legal notice dated 06.02.2020, seeking the payment of the arrears of rent amounting to Rs. 21,600/- for the period from 01.02.2019 to 31.01.2020 along with interest at the rate of 15% per annum, failing which the Petitioner was asked to vacate the tenanted premises.

9.2. He states even though the legal notice dated 06.02.2020 was duly received by the Petitioner herein, he, however, failed to reply to the said legal notice. He states that non-reply to legal notice is material since the Petitioner has not disputed the ownership of the Respondent over the tenanted premises or the existence of landlord-tenant relationship, prior to filing of the application seeking leave to defend on 15.07.2022.

10. He states therefore, there is no error in the impugned eviction order.

Findings and Analysis

11. This Court has heard the learned counsel for the parties and

perused the paper book.

12. By interim order dated 24.02.2023, the impugned eviction order was stayed subject to the payment of use and occupation charges at the rate of Rs. 18,000 per month, payable w.e.f. 01.09.2022.

13. The short issue that arises for consideration before this Court is whether the Petitioner, tenant, is entitled to seek condonation of delay of fourteen (14) days in filing the leave to defend application in law and in the facts and circumstances of this case.

Mandatory filing of leave to defend by the tenant within the statutory period of fifteen (15) days

13.1. The learned counsel for the Petitioner has admitted that the summons along with the eviction petition were duly served on the Petitioner on 10.06.2022. He also admits that the statutory period, under Section 25(B) (4) of the DRC Act read with the Third Schedule, for filing the leave to defend expired on or before 01.07.2022 (after accounting for the summer vacation).

13.2. This Court notes that the Petitioner sought extension of time on 11.07.2023 to file application seeking leave to defend, much beyond the statutory period of fifteen (15) days, on the purported plea that the documents annexed with the eviction petition served on him, were illegible. However, no details of the documents, which are alleged to be illegible has been specified either in the letter dated 09.07.2022 or the Petitioner's application dated 11.07.2022. The contents of the letter dated 09.07.2022 and the application dated 11.07.2022 reads as under:

i) Letter dated 09.07.2022

“This is with reference to the Eviction Petition No. RC ARC - 289 /2022 titled as Sh. Chander Dhingra Versus Pradeep Kumar pending in the court of Sh. Mohit Sharma CCJ cum Addl. Rent Controller which is listed next on 06.09.2022.

We are concerned for our client, Mr. Pradeep Kumar Malik who has been arrayed as a Respondent therein. He informs us that he had received a copy of the incomplete/illegible paper book of the Petition on 10.06.2022. We are further informed that since the summer vacations had started and the courts were closed, he approached and engaged the offices of the undersigned counsel upon reopening of the courts on 4th July 2022. During the course of preparation of the application for leave to defend, it has come to our notice that several documents which have been annexed alongwith the petition are illegible. We request you to kindly provide us a complete/legible set of the paper book at the earliest to enable our offices to file the leave to defend as per law.”

(Emphasis supplied)

ii) Relevant extract of the application dated 11.07.2022 filed under Section 151 of CPC

“2. That the respondent had received the summons from this Hon'ble Court, and a copy of the paper book for the captioned petition, on 10.06.2022, i.e., at the start or the scheduled summer vacations of the District Courts in Delhi.

3. That upon perusal of the petition, the Respondent noticed that certain document(s) annexed therein are illegible and the Respondent is unable- to prepare his effective defence to the captioned eviction petition. That due to those illegible documents, the Respondent's preparation of leave to defend has come to a standstill.

4. That it is thus requested that this Hon'ble Court direct the Petitioner to provide a complete legible set of the petition alongwith documents to the Respondent to enable him to file leave to defend application and set out his defence.

5. That meanwhile, the Petitioner is also proceeding to inspect the court records to read and examine those illegible document(s) for the preparation of his defend in the captioned eviction petition”

(Emphasis supplied)

13.3. As is evident, the documents which were illegible are not identified/specified in the letter or the application.

13.4. Similarly, in the revision petition filed before this Court no details of the documents, which were illegible have been enlisted.

13.5. In the opinion of this Court, it has been rightly contended by the Respondent that the plea of illegible documents is not substantiated by the Respondent. The vague contents of the letter dated 09.07.2022 and the application dated 11.07.2022 fail to validate the plea of the Petitioner that the documents supplied with the eviction petition were illegible. The plea of illegible document is therefore, a mere rhetoric and has no basis in fact.

13.6. The Petitioner was duly served with the summons on 10.06.2022 and in view of the settled position of law as regards the mandatory requirement of filing the leave to defend within fifteen (15) days, the Petitioner was bound to file his application seeking leave to defend on or before 01.07.2022.

13.7. A perusal of the contents of letter dated 09.07.2022 shows that it is the stated case of the Petitioner herein that he approached the concerned counsel for engagement only on 04.07.2022. Therefore, as per judicial record that the Petitioner engaged a counsel to appear in the eviction proceedings only after the expiry of the statutory period of limitation. In view of the contents of the letter dated 04.07.2022, this Court is unable to accept the explanation given by the Petitioner that since the concerned counsel was travelling for his summer vacations, the leave to defend application could not be filed within the statutory period and upon return of the preferred counsel on 04.07.2022, steps were taken to file the same.

13.8. The aforesaid reason offered by the Petitioner (i.e., unavailability of the preferred counsel) for not filing his leave to defend, within the statutory period, on or before 01.07.2022 is not a substantial ground,

which prevented him from filing the same. In the opinion of this Court, the Petitioner has willfully failed to prosecute his case before the Trial Court and defaulted in filing the leave to defend application within the statutory period.

13.9. If the aforesaid submission of the Petitioner is accepted so as to extend the period of limitation to file the application seeking leave to defend, will set at naught the law settled by the landmark judgment of Supreme Court in ***Prithipal Singh*** (supra), wherein it was held as under:

*“15. Next comes the very important provision in Section 25-B of the Rent Act i.e., sub-section (4) of the same. **It clearly provides that a tenant on whom the summons is duly served in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller, as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.***

*16. From a careful perusal of sub-section (4) of Section 25-B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceedings shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition. **At this stage, we may also note that in sub-section (4) of Section 25-B of the Rent Act read with the Third Schedule, it has been made clear by the legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceedings within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.***

26. That being the position, if Rule 23 cannot be applied in the present case because of applicability of Section 25-B, which is a special code and specific procedure for eviction of a tenant by a landlord on the ground of bona fide requirement, we cannot agree with the courts below that in view of Rule 23 of the Rules, the provisions of the Code can be applied in the present case and, therefore, we are of the view that the High Court had acted illegally and with material irregularity in the exercise of its jurisdiction in setting aside the order of eviction and in allowing the affidavit filed by the tenant for the purpose of defending the proceedings for eviction.”

(Emphasis supplied)

13.10. Therefore, the law as regards the mandatory nature of filing the leave to defend by the tenant within a period of fifteen (15) days from the date of service of summons is now well settled. The said period is ‘sacrosanct’. In the opinion of this Court, the submissions raised by the Petitioner, failed to raise a substantial ground to seek condonation of delay in filing the leave to defend application so as to extending the period of limitation in filing the same.

13.11. The Petitioner has failed to persuade this Court that there exists a special reason/substantial ground for not complying with the mandate of law under Section 25B (4) of the DRC Act. This revision petition ought to be dismissed on this ground alone.

13.12. The Trial Court has rightly allowed the eviction petition in favour of the Respondents herein. The relevant portion of the impugned eviction order reads as under:

“4. Coming to the facts of the present case, the summons were served upon the respondent on 10.06.2022. The present application was filed by the respondent on 11.07.2022 and leave to defend application was filed on behalf of the respondent on 15.07.2022. Once the summons were served upon the respondent on 10.06.2022, the period of limitation for filing leave to defend application would start running from 10.06.2022 itself and there is no provision for suspension of period of

*limitation under the DRC Act. Respondent did not take any steps to inspect the Court record, to obtain certified copies of the documents or to file application before this Court for supply of legible copies of the documents within 15 days from the date of service of summons upon the respondent. Respondent has not specified as to which of the documents supplied to the respondent with the summons were illegible. **Respondent filed the present application only on 11.07.2022 after the period of limitation for filing leave to defend application had expired. Since the summons were served upon the respondent on 10.06.2022 and there were holidays and Court summer vacations from 11.06.2022 to 30.06.2022, respondent could have filed the leave to defend application on 01.07.2022. Even the Court of Rent Controller was working during the summer vacations and one Rent Controller was on duty to look after the urgent matters and accordingly, respondent could have approached the Court even during the summer vacations in June, 2022 for seeking appropriate relief. There is no inherent power vested in the Rent Control Act to suspend the period of limitation or to condone the delay in filing the leave to defend application. Accordingly, there is no merit in the present application filed by the respondent and the same is dismissed.***

5. Since leave to defend application has been filed by the respondent beyond the statutory period, therefore, the same cannot be considered. Consequently, eviction order is passed in favour of the petitioner and against the respondent. The respondent is directed to vacate the tenanted premises, i.e., portion of shop no. 413, Azad Market, Delhi-110006, as shown in red colour in site plan marked as Ex. 'P' today. However, the petitioner would not be entitled for recovery of possession of the tenanted premises before expiration of six months from today in view of provisions given in Section 14 (7) of the Act. No order as to costs."

(Emphasis supplied)

Ownership and landlord-tenant relationship between the parties

14. In view of the fact that the title of late Smt. Durga Devi, i.e., the mother of the Respondent and late Shri Tota Ram Dhingra, i.e., the father of the Respondent is categorically admitted by the Petitioner, the devolution of title upon the Respondent by virtue of a registered Will dated 05.04.1994 raises a strong presumption in favour of the

Respondent herein.

14.1. This Court also notes that the Petitioner has admitted that he was inducted as a tenant in the tenanted premises by late Smt. Durga Devi, i.e., the mother of the Respondent. He has also admitted that, thereafter, he had attorned as a tenant to late Shri Tota Ram Dhingra. The Petitioner has also not disputed that the house tax for the tenanted premises is being paid by the Respondent herein.

14.2. The Petitioner has set up a plea of ownership on the basis of a disputed unregistered Will which has not been proved in accordance with law. It has also come on record that no steps have been taken by the Petitioner since 11.08.1995, i.e., the death of the Shri. Tota Ram Dhingra to have the tenanted premises mutated in his favour or assert any propriety claim before any statutory authority.

14.3. Thus, the said Will has not been acted upon before any third party. In these circumstances, to accept a plea of ownership set up by the Petitioner herein, who is admittedly a tenant, on the basis of a disputed unregistered will would lead to permitting mischief, at the behest of the tenant, in a summary proceeding before the Rent Controller.

14.4. It is also trite law that by virtue of Section 116 of Evidence Act, a tenant, during the continuance of the tenancy is estopped from challenging the title of the landlord, through whom he claims the tenancy. ***(Re: Om Prakash and Another v. Mishri Lal (Dead) Represented by his Legal Representative Savitri Devi, (2017) 5 SCC 451).***

14.5. Additionally, the disputed facts and plea of ownership has to be

established by the tenant in his independent proceedings before a civil court. (*Re: Allarakha & Anr., v. Allahwala & Anr., 2014 SCC OnLine Del 3438, Hari Gopal Manu v. B S Ohja*).

14.6. Hence, in view of the aforesaid findings, the plea of the ownership on the basis of unregistered documents (which are disputed by the Respondent) sought to be set up by the Petitioner, while admitting the status of tenancy, cannot give rise to a triable issue.

Non-reply to the legal notice dated 06.02.2020

15. The Petitioner has also not denied that he was duly served with the legal notice dated 06.02.2020 issued by the Respondent, which has not been replied to. In the said notice, the Respondent herein has categorically asserted the existence of landlord-tenant relationship between the parties. This Court take notes that the Petitioner herein has elected not to reply to the said notice. In view of the same, it can be inferred that the Petitioner has admitted the existence of relationship of landlord and tenant. In this regard, it is instructive to refer to the judgment in *Kalu Ram v. Sita Ram, 1980 RLR (note 44)* whereby, the court held that adverse presumption will be drawn if the legal notice is not replied to. The relevant portion of the said judgment reads as under:

“It was held that the plaintiff before filing suit had served defendant with a notice making serious allegations that defendant was a trespasser and that his possession was illegal. Defendant did not refute these charges and remained silent by ignoring to reply the notice. Silence showed that he had nothing to deny and hence it was a fit case for raising adverse presumption. Besides the defendant also failed to prove the two contentions that he had raised. There is nothing on record to support the pleas that he had taken. His appeal is without force. The appeal of the plaintiff is supported by the provisions of O. 20 R.12, CPC

and trial court should have ordered mesne profits till the delivery of possession. Plaintiff is held entitled to same.”

(Emphasis supplied)

15.1. The aforesaid is cited with approval by a Division Bench of this Court in ***Metropolis Travels & Resorts (I) Pvt. Ltd., v. Sumit Kalra & Anr., 2002 64 DRJ 72 (DB)***, the relevant portion whereof reads as under:

“13. There is another aspect of the matter which negates the argument of the respondent and that is that the appellant served a legal notice on the respondent vide Ex. PW-1/3. No reply the same was given by the respondent. But inspite of the same no adverse inference was drawn against the respondent. This Court in the case of Kalu Ram v. Sita Ram 1980 RLR (Note) 44 observed that service of notice having been admitted without reservation and that having not been replied in that eventuality adverse inference should be drawn because he kept quite over the notice and did not send any reply. Observations of Kalu Ram's case (Supra) apply on all force to the facts of this case. In the case in hand also despite receipt of notice respondent did not care to reply nor refuted the averments of demand of the amount on the basis of the invoices/bills in question. But the learned Trial Court failed to draw inference against the respondent.”

(Emphasis supplied)

16. In view of the aforesaid findings, this Court finds no merit in the grounds raised in this petition. Accordingly, the present revision petition and pending applications, if any, stand dismissed. The impugned eviction order dated 01.09.2022 is upheld.

17. The Respondent is at liberty to execute the impugned eviction order forthwith. The interim order dated 24.02.2023 staying the execution of the impugned eviction order stands vacated.

18. It is clarified that the Petitioner shall continue to remain liable to pay the use and occupation charges of Rs. 18,000/- per month to the Respondent, until the date of handing over of the vacant, peaceful and

physical possession of the tenanted premises.

19. No order as to costs.

MANMEET PRITAM SINGH ARORA, J
ARPIL, 17 2023/kv/asb

