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

+ **RC.REV. 289/2022, CM APPLs. 55537-38/2022**

SH. HAKUMAT RAI

.... Petitioner

Through: Mr. M.C. Jain, Advocate with Mr.
Shashi Chaubey.

Versus

SH. MADHUR KRISHAN DHINGRA

..... Respondent

Through: Mr. Rupendev Sharma, Advocate
along with Respondent.

Reserved on: 10.02.2023

Date of Decision: 21.02.2023

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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 Petitioner, tenant assailing the eviction order dated 24.09.2022 ('impugned eviction order') passed by the Rent Controller, Central District, Tis Hazari Courts, Delhi ('the Trial Court') with respect to shop bearing private No. 1, Ground floor, for the building bearing Municipal No. 1049/50, Kucha Natwan, Chandni Chowk, Delhi- 110006 ('the tenanted premises'), passed in favour of the Respondent, landlord.

2. The Trial Court has recorded in the impugned eviction order that the tenant failed to file an application seeking leave to defend within the statutory period prescribed under the Delhi Rent Control Act, 1958 ('the DRC Act'), even after being duly served with the notice of the eviction petition and thereby directed the eviction of the tenant from the tenanted premises.

3. Learned counsel for the Petitioner, tenant states that the Trial Court failed to appreciate that the copy of the eviction petition served on the tenant on 10.05.2022, contained few illegible pages. He states that on account of the said illegible pages the tenant was unable to file his leave to defend within 15 days.

3.1 He states that the finding of the Trial Court that the tenant was served by speed post on 21.09.2021 is incorrect and the affidavit of service filed by the landlord alleging service is wrong.

4. In reply, learned counsel for the Respondent, landlord states that it is a matter of record that the tenant herein after due service of notice, appeared before the Trial Court on 10.05.2022. The proceedings of Trial Court on 10.05.2022 record that a copy of eviction petition was provided to the tenant from the judicial record and he was granted liberty to file his leave to defend within the prescribed period of limitation, i.e., 15 days.

4.1 He states that however the tenant failed to file his application seeking leave to defend on the adjourned date of hearing i.e., 05.08.2022 and therefore the right of the tenant to file to leave to defend stood closed by operation of law.

4.2 He states that belatedly on 15.09.2022, the tenant filed an application alleging that certain pages of the eviction petition were not

legible. He states that the Trial Court has appropriately dealt with the said application and not found any merit in the same. He states that the Trial Court has acted in accordance with law in passing the eviction order, as admittedly no application seeking leave to defend was filed before the Trial Court.

4.3 He states that in fact the tenanted premises are lying locked and the tenant has not been using the said premises for several years now. He states that the present petition is therefore an abuse of process, filed for oblique motives and the tenant has no need or requirement of the tenanted premises.

5. This Court has heard the learned counsel for the parties and perused the paper book.

6. The eviction petition was filed by the landlord before the Trial Court under Section 14(1) (e) the DRC Act on the ground of *bona fide* requirement of the tenanted premises for opening a showroom and commencing a business of garments, lehengas, sarees. It is stated in the eviction petition that the tenanted premises is located in a commercial market, which is ideal for commencing the said business.

7. The impugned eviction order was passed by the Trial Court after recording that the tenant failed to file an application seeking leave to defend despite having entered appearance on 05.05.2022, 10.05.2022, 05.08.2022 and 24.09.2022.

8. At the outset, it is noted that no leave to defend has been filed by the tenant either before the Trial Court or even along with the present revision petition. This Court notes that thus, there has been abject failure on behalf of the tenant in diligently defending the eviction proceedings.

9. It is admitted that the tenant herein was provided a copy of the eviction petition from the judicial record on 10.05.2022 and granted liberty to file his leave to defend; and the matter was then posted for consideration on 05.08.2022. Pertinently, the tenant was present in person along with his advocate on 10.05.2022. Hence, as on 10.05.2022, the tenant was well instructed in law to file his leave to defend within statutory period of 15 days. The relevant portion of the order dated 10.05.2022 reads as under:

“It is submitted by Ld. counsel for respondent that respondent has not been served with the notice of the petition and only through his neighbouring shopkeepers who also have connected case pending before this Court has come to knowledge to the pendency of the present petition. It is further submitted that the copy of petition has also not been received by respondent.

Heard.

Perusal of the record reveals that an additional copy of petition to be supplied to the respondent is available on judicial record.

Let same be released to the respondent against due acknowledgment.

The respondent is at liberty to file an application for leave to defend to the present petition, if any, as per the period of limitation on or before NDOH with advance copy to the opposite party.

Put up for filing of leave to defend/further proceedings on 05.08.2022.”

(Emphasis supplied)

10. The tenant duly appeared before the Trial Court on 05.08.2022, however, he failed to file his leave to defend. Therefore, the matter was adjourned to 24.09.2022.

11. It is noted that even on 24.09.2022, the tenant did not file the application seeking leave to defend before the Trial Court. Instead, on 15.09.2022, the tenant chose to file an application under Section 151 Code of Civil Procedure (‘CPC’) seeking supply of the legible copies of the documents at page nos. 25, 42, 43, 44 and 45 of the eviction petition and some other documents received along with the petition.

12. The Trial Court upon examination of the judicial records observed that the said documents at pages nos. are 25, 42, 43, 44 and 45 are the site plan and the reply issued by the tenant himself to a legal notice issued by the landlord. The Trial Court was not persuaded that the said application filed by the tenant offered any genuine reason for not filing the leave to defend.

13. In the aforesaid circumstances, the Trial Court dismissed the application filed by the tenant under Section 151 of CPC and held that the tenant has not filed any application seeking leave to defend, despite due service of the notice of the petition and supply of its copy. The relevant portion of the impugned eviction order reads as follows:

*“However, as is apparent from the judicial record, there is no denial of the fact that prior to the moving of the application for supply of the legible copy of the petition on 15.09.2022, no steps were taken by the respondent for approaching the Court and seeking such direction to the petitioner. Further no reason for such inaction is also explained in the said application or during the oral submissions made today. **Similarly, the fact that no such objection was taken on the last date of hearing when the respondent was present in the Court further suggest that the delay in moving of the said application is only in order to delay the proceedings of the present petition and a chance has been taken by the respondent despite knowing it very well the limitation period for filing of leave to defend and the consequences of non-filing thereof.** Further, the perusal of the contents of the petition as well as the index of the petition sufficiently enabled the respondent to know that the documents referred to at serial no. 41 to 45 are the copies of the reply which were sent to the legal notices issued by the petitioner on 23.06.2021 and 15.07.2021 and were in fact the own reply of the respondent and as such the objection taken that since the said documents were illegible, the respondent was unable to prepare his case and was not in a position to apply for leave to defend is otherwise also without any merit. **Similarly, the objections w.r.t. illegibility of the site plan could also have very easily taken by the respondent in his application seeking leave to defend and he also had all the liberty to file***

his own site plan. However, as already noted above, the respondent has not bothered to do any such thing and as such since till date there is no application on behalf of the respondent for seeking leave to defendant despite due service of the notice of the petition and supply of its copy, the petition of the petitioner is deserved to be allowed in view of Section 25(4) of DRC Act as in view of such failure the statement made by the petitioner/landlord in his petition shall be deemed to be admitted by the respondent.

Accordingly, the application filed by the respondent u/s 151 CPC for supply of the legible copies of the site plan and some other documents stands rejected.”

(Emphasis supplied)

14. In this regard, it is also instructive to refer to the judgment of the Supreme Court in **Prithipal Singh v. Satpal Singh, (2010) 2 SCC 15**, the relevant portion of which reads as under:

“14. Sub-section (3)(b) of Section 25-B says when the acknowledgment purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

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.***

(Emphasis supplied)

15. This Court finds no infirmity in the impugned eviction order of the Trial Court. The Trial Court has relied upon the proceedings dated 10.05.2022 for reckoning the 15 days statutory period available to the tenant for filing the leave to defend. Pertinently, the advocate who represented the tenant before the Trial Court on 10.05.2022 and 24.09.2022 has also filed the present revision petition. The said advocate has no reasonable explanation to offer for the tenant's non-filing of the leave to defend within the statutory period.

16. This Court also finds no error in the impugned eviction order of the Trial Court dismissing the application dated 15.09.2022 filed by the tenant seeking legible copies of the different pages of the eviction petition. There is no ground in the revision petition explaining the lack of diligence shown by the tenant in obtaining the legible copies by inspecting the records or filing the leave to defend raising the said objection. There is also no averment in the revision petition to explain the

disadvantage, if any, the tenant faced on account of unavailability of the said documents.

17. The revision petition is bereft of any facts or particulars which would give rise to triable issue entitling the tenant herein to a leave to defend.

18. Therefore, in view of the law laid down in *Prithpal Singh (supra)*, the impugned eviction order passed by the Trial Court suffers from no infirmity. The present revision petition and all pending applications, if any, are dismissed.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 10, 2023/kv/hp