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

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Reserved on: July 08, 2024

Decided on: July 19, 2024

+ **RC.REV 106/2024, CM APPLs. 22076/2024 & 37659/2024**

RAJ KUMAR SINGH

..... Petitioner

**Through: Mr. Madan Lal Sharma and
Ms. Tejaswini Verma,
Advocates**

V

VEENA GUPTA ALIAS BEENA GUPTA

..... Respondent

**Through: Mr. Ajay Gupta and
Mr. Anant Gupta, Advocates**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The respondent/landlady/owner (hereinafter referred to as “**the respondent**”) is claiming to be the owner/landlady of one shop situated at ground floor and forming the part of the property bearing Municipal no. 1468, Rang Mahal, Nahar Sadat Khan, S.P. Mukherjee Marg, Delhi-110006 (hereinafter referred to as “**the tenanted**”



premises”) which the respondent had purchased from the previous owner vide a registered sale deed.

2. The respondent stated that the tenanted premises is under the occupation of the petitioner as tenant on a monthly rent of Rs.220/- besides other charges which was stated to be let out for non-residential purposes. The respondent filed an eviction petition under section 14(1)(e) read with section 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as “**the Act**”) on the ground of *bona fide* requirement against the petitioner. The court of Ms. Pragati, ARC-01, Central, Tis Hazari Courts, Delhi (hereinafter referred to as the “**trial court**”) vide order dated 22.05.2023 ordered for issuance of summons to the petitioner as per the Third Schedule of the Act. The respondent also filed an application under Order V Rule 20 read with section 151 CPC for substituted service as the summons issued to the petitioner were received back unserved with the report that the premises was lying locked. The trial court vide order dated 21.09.2023 ordered for the service of the petitioner through substituted service by way of publication in the Hindi daily newspaper Veer Arjun on filing of PF and also by affixation of the



copy of the summons at a conspicuous place on court house and a conspicuous part of the house wherein the respondent was lastly residing or carrying on his business or was personally working for gain.

3. The petitioner as reflecting from the order dated 02.12.2023 passed by the trial court filed an application for leave to defend on 22.11.2023 i.e. after the expiry of the period of limitation of 15 days. The trial court vide order dated 30.01.2024 (hereinafter referred to as “**the impugned order**”) dismissed the application for leave to defend and accordingly passed an eviction order under section 14(1)(e) of the Act in favour of the respondent and against the petitioner in respect of the tenanted premises. The relevant portion of the impugned order is reproduced verbatim as under:-

5. A perusal of the record shows that the respondent was served by way of affixation on 14.10.2023. Although affixation is not a mode of service under the provisions of Section 25B of DRC Act yet what is important is that the respondent was duly served by way of publication in a newspaper under the orders of the Court on 16.10.2023.

It is also seen that a vakalatnama was filed on behalf of the respondent on 14.10.2023. Thus, the respondent had knowledge about the present case on 14.10.2023, even before the service was effected through publication.



6. It is also to be observed that although the respondent has stated that he had applied for certified copies yet neither the date of application for certified copies has been mentioned nor any such application has been filed on record.

Even if, for argument sake the averment of the respondent is considered that he had received the certified copies on 06.11.2023 and only then he could have filed the leave to defend yet no explanation has been given as to why the respondent had not applied for a certified copy on an earlier date, when he had notice of the present petition on 14.10.2023 itself. Moreover, it is also not explained as to why the application for leave to defend was filed on 22.11.2023 and not immediately after obtaining the certified copies. There is thus no explanation for this inordinate and unreasonable delay on the part of the respondent.

7. Furthermore even if the period of time is computed starting from 06.11.2023, the period of 15 days would lapse on 21.11.2023. The application for leave to defend should have been filed on or before 21.11.2023, yet the same has been filed on 22.10.2023 and hence, by no stretch of imagination can it be said that the leave to defend application was filed within the prescribed period of time.

8. It is pertinent to note the judgement of the Hon'ble Apex Court in *Prithipal v Satpal* (dead through LR's) 2010 (2) SCC 15 in which it was held that there is no provision for condonation of delay in filing of the application of the leave to defend in proceedings under section 14(1) (e) of the Delhi Rent Control Act as the provisions of the Limitation Act, 1963 could not be attracted.

9. Thus in view of the above discussion, the conclusion is drawn that the leave to defend application has been filed beyond the prescribed period of time and hence is dismissed.



13. Section 25-B (4) of the Delhi Rent Control Act provides that the tenant shall not contest the prayer for eviction unless he files an affidavit stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. Such leave for contesting has to be sought within 15 days from service of summons. Since such leave has not been sought within 15 days from service, the assertions made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the petitioner shall be entitled for an order for eviction on the said ground.

14. The respondents are therefore deemed to have admitted the relationship of landlord and tenant between the petitioner and the respondents. They are also deemed to have admitted that the petitioner is owner of the tenanted premises and requires the premises bonafide for her son who is dependent upon the petitioner and that the petitioner does not have any other reasonably suitable accommodation for this purpose. Therefore, the eviction petition is allowed and an eviction order is passed u/s 14(1) (e) r/w Section 25-B of Delhi Rent Control Act in favour of the petitioner and against the respondent in respect of the tenanted premises i.e. 1468, Rang Mahal, Nahar Sadat Khan, S. P. Mukherjee Marg, Delhi-110006, more specifically shows in red color in the site plan filed with the eviction petition.

3.1 The trial court while passing the impugned order also satisfied itself that all the ingredients of section 14(1)(e) of the Act have been made out in the petition. The petitioner being aggrieved filed the present petition to challenge the impugned order.

4. The petitioner stated that the bare perusal of the eviction petition would reflect that it does not comply with the essential ingredients of



the section 14(1) (e) of the Act. The petitioner was not validly served with the summons in the eviction petition as provided under the Third Schedule of the Act and the substituted service by way of publication in the newspaper Veer Arjun is not a valid service as the copy of the petition and the documents annexed with the petition were not duly published as mandated by the law. The petitioner on 22.11.2023 had filed an application for grant of leave to defend along with a detailed affidavit wherein the plea was taken that the petitioner was not validly served with the summons in eviction petition and service by way of affixation is not the valid mode of service and the service by way of publication in the newspaper Veer Arjun dated 16.10.2023 is not a valid service.

5. Sh. Madan Lal Sharma, Advocate for the petitioner after referring **Prithipal Singh V Satpal Singh (Dead) through LR's**, 2010 2 SCC 15 and **Directorate of Education & another V Mohd. Shamim & others**, 266 (2020) DLT 1 (DB) argued that the delay in filing the application for leave to defend, if any, be condoned and the counsel for the respondent argued to the contrary.



6. It is reflecting that the petitioner was ordered to be served by way of publication vide order dated 21.09.2023 and was stated to be served by way of publication in newspaper Veer Arjun published on 16.10.2023. The petitioner filed the application for leave to defend on 22.11.2023.

7. Chapter III-A of the Act deals with summary trial of certain applications. Section 25B of the Act deals with special provision for the disposal of application for eviction on the ground of *bona fide* requirement. Section 25B(1) of the Act provides that the application for eviction on the ground of *bona fide* requirement shall be dealt with in accordance with the procedure specified under section 25B. Sub-section (2) also provides that the Controller shall issue the summons in relation to every application as referred in sub-section (1) in the form specified in the Third Schedule. Sub-section (3) provides that the summons are required to be serviced by registered post, acknowledgment due addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain. It further provides that the summons may



also be issued by way of publication in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain. Sub-section (4) further provides that the 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 ground on which he seeks to contest the application for eviction and obtains leave from the Controller. It further provides that in default of the appearance in pursuance of 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 of *bona fide* requirement.

8. The appellant/landlord in case of **Prithipal Singh V Satpal Singh (Dead) through LR's**, 2010 2 SCC 15 filed an eviction petition under section 14(1)(e) of the Act for eviction of the respondent and summons were issued in compliance of section 25B(3)(a) of the Act to the respondent. The respondent/tenant filed an affidavit by way of an application praying for leave to defend the eviction petition after a



delay of 08 days from the date of service of the notice upon him. The Additional Rent Controller had dismissed the application for leave to defend by holding that the Additional Rent Controller under the Act does not have power to condone the delay in filing the affidavit and accordingly, the prayer for leave to defend was rejected and an eviction order was passed. The respondent being aggrieved filed an application for setting aside the eviction order under Order IX Rule 13 read with Order XXXVII Rule 4 read with section 151 CPC and prayed for leave to defend the eviction proceedings after condoning the delay in filing the same. The Additional Rent Controller had allowed the application for setting aside the *ex parte* order for eviction. The appellant/landlord being aggrieved by the order of Additional Rent Controller filed a petition under Article 227 of the Constitution before this Court, which was dismissed by this Court while observing that the Additional Rent Controller may not have power to condone the delay in seeking the leave to defend but once the eviction order was passed, the Additional Rent Controller can set aside the order of eviction and restore the prayer for leave to defend the eviction proceedings by resorting to Order IX Rule 13 read with



Order XXXVII Rule 4 read with section 151 CPC. The Supreme Court after considering the provisions as contained under section 25B of the Act observed that the power was not conferred on the Rent Controller to entertain the application for condonation of delay in filing the application for leave to defend.

9. The counsel for the petitioner also referred the judgment delivered by the Division Bench of this Court in **Directorate of Education & another V Mohd. Shamim & others**, 266 (2020) DLT 1 (DB) wherein it was held 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.

10. The Third Schedule of the Act prescribes form of summons in a case where recovery of possession of premises is prayed for on the ground of *bona fide* requirement. The form of summons also mandated that copy of application for recovery of possession is also mandated to be annexed with the application for recovery of possession. In the present case, only the summons as per the Third Schedule of the Act was published in the newspaper Veer Arjun on 16.10.2023 but the copy of the application for recovery of possession on ground of *bona fide* requirement i.e. the eviction petition was not published, as such service of summons cannot be stated to be the complete service of the summons as prescribed under the Third Schedule of the Act.

11. The petitioner also alleged that he suffered because of the negligence of the previous counsel who filed the application for leave to defend on 22.11.2023 without filing an application for condonation of delay and the petitioner cannot be allowed to suffer due to the negligence of his previous counsel. The petitioner in the application



for leave to defend filed before the trial court had mentioned that the respondent does not require the tenanted premises *bona fide* and the respondent has not disclosed the relevant facts which may disentitle the petitioner for the grant of leave to defend. The petitioner also stated that the respondent is having other accommodation as reflected from the Sale Deed dated 30.06.2009 on the basis of which the respondent is claiming the ownership rights qua the tenanted premises.

12. It is reflecting that the petitioner was not properly served with the summons as per the Third Schedule of the Act and has also raised certain issues which may require consideration of the trial court while deciding the application for leave to defend. The petitioner has as such satisfied twin test as laid down by the Division Bench of this court in **Directorate of Education & another V Mohd. Shamim & others.**

13. The petition is accordingly allowed and the delay in filing the application for leave to defend is condoned. The Additional Rent Controller is also directed to decide the application for leave to defend independent of any observation made in this order and



preferably within a period of 03 months from the date of receipt of this order. The present petition along with pending applications stands disposed of.

14. The petitioner and the respondent are directed to appear before the trial court on 30.07.2024 at 2:30 pm for further directions.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

JULY 19, 2024
N/AK