



2024 : DHC : 1238



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

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Judgment reserved on: 05.01.2024

Judgment pronounced on: 19.02.2024

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CM(M) 558/2022, CM APPL. 27116/2022

MANISH GUPTA

..... Petitioner

Through: Ms. Anshu Priyanka, Advocate

versus

RUCHIKA GUPTA

..... Respondent

Through: Mr. Abhas Mishra and Ms. Neha
Singhal, Advocates (through VC)

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition arises out of an Eviction Petition bearing E. No. 105/2018 (renumbered as 178/2018), under Section 19(1)(a) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'DRC Act') which was listed before the learned Additional Rent Controller-01, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as 'ARC') for eviction of the petitioner from the Shop No. 10446, Ground Floor, East Park Road, Manak Pura, Karol Bagh, New Delhi-110005 (hereinafter referred to as 'Suit property'), filed by the respondent herein.

2. It is pertinent to note that the Petitioner herein is the legal representative/son of the original Defendant/ tenant now deceased, Mr. Subhash Chander and the Respondent herein is the petitioner/ landlady before the learned ARC in the eviction petition which is pending



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adjudication. For the sake of convenience, the parties will be referred to as their positions before this Court.

3. The background of the case as gathered from the record is that the respondent rented out the suit property to the tenant-petitioner, however, subsequently, filed an eviction petition against the petitioner. The petitioner after service of the summons of the eviction petition, put in appearance to contest the eviction petition by filing a written statement/reply according to the mandated procedure under the DRC Act on 31.05.2018. The copy of the same was served upon the counsel for the respondent.

4. The counsel for the respondent, however, denied having received the copy of the written statement on 31.05.2018, thus on 26.11.2018, the learned ARC directed the petitioner to supply a copy of the written statement to the respondent within a week and the matter was adjourned to 15.03.2019.

5. It is the case of the petitioner that his counsel could not appear on before the learned ARC on 15.03.2019 and the petitioner was thus proceeded *ex-parte*. Thereafter, on 11.04.2019, an application under Order IX Rule 7 read with Section 151 of the CPC, for setting aside of the *ex-parte* order dated 15.03.2019 was filed by the petitioner. Copy of the application along with copy of written statement was sent to the counsel for the respondent through the post. On 15.04.2019, the counsel for the respondent submitted before the learned ARC for not having received the copy of the application but did not submit anything with respect to the written statement though it was already supplied to him and the matter next



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came up for hearing on 16.03.2020. On said date of hearing, the application of the petitioner under Order IX Rule 7 of the CPC was allowed, however, the respondent again pointed out before the learned ARC that he has not received the copy of the written statement, thus, learned ARC granted another opportunity to the petitioner to supply a copy of the same subject to the cost of Rs. 10,000/-. Subsequent thereto, the petitioner moved an application under Section 151 of the CPC for recalling of the order dated 16.03.2020, which came to be dismissed vide the impugned order dated 16.04.2022, and the defence was struck off as the petitioner could not pay the cost of Rs. 10,000/-. Aggrieved by the impugned order, petitioner preferred the present petition.

6. The main grievance of the petitioner is that the respondent's counsel made a false statement before the learned ARC for not having received the copy of the written statement which was also sent through the post along with the copy of the application under Order IX Rule 7 of the CPC. More so, the father of the petitioner had himself supplied the copy of written statement to the counsel for the respondent or to the respondent, and, thereafter, written statement was filed in the Court. Therefore, it is unfair on the part of the respondent to have bluntly refused having received the copy of the written statement on 11.04.2019.

7. The learned counsel further submitted that petitioner not being in sound financial capacity, showed his inability to pay the cost of Rs. 10,000/- before learned ARC and instead thought to look for an acknowledgment furnished as proof of sending the written statement by post. However, the learned ARC ignored all the submissions of the



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petitioner and passed the impugned order for not taking the written statement on record and struck off the defence of the petitioner. Subsequent thereto, an application under Section 151 of the CPC was filed on behalf of the petitioner seeking to recall the order dated 16.03.2020 which was dismissed vide order dated 16.04.2022. It was submitted that in the said circumstances, the impugned order is not tenable and the same be set aside.

8. The learned counsel for the respondent refuted the above submissions and contended that there is no illegality whatsoever in the impugned order, to justify any interference by this Court.

9. The learned counsel further submitted that the petitioner had blatantly defied the orders of the learned ARC time and again and failed to furnish the copy of the written statement to the respondent or to his counsel and further refused to pay the cost imposed by the learned ARC when the *ex-parte* order against him was set aside. Thus, the petitioner has exhibited contemptuous behavior and does not deserve any leniency and the petition be dismissed.

10. Arguments heard in extenso, the impugned order as well as the record has been perused.

11. The short controversy involved in the present petition is regarding the failure of the petitioner to supply the copy of the written-statement and to pay the cost of Rs. 10,000/- imposed by the learned ARC on him. Resultantly, the defence of the petitioner was struck off.

12. The contention of the petitioner is that the written statement was filed on 31.05.2018, and a copy of the same was served on the respondent.



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However, the respondent took a false plea before the learned ARC on 26.11.2018 for not having received a copy of the written statement, nonetheless, the learned ARC directed the petitioner to supply a copy of the written statement within one week against acknowledgment and listed the matter for hearing on 15.03.2019.

13. It is to be noted that on 15.03.2019, despite waiting up till 02.15 P.M., the petitioner or his counsel did not appear. The learned counsel for the respondent again raised his objection regarding the failure of the petitioner to supply a copy of the written statement to him. The learned ARC proceeded *ex-parte* against the petitioner and listed the case on 15.04.2019 for recording *ex-parte* evidence of the respondent with directions to supply an advance copy of the evidence affidavit to the petitioner at least five days prior to the next date of hearing.

14. In the meanwhile, the petitioner filed an application on 11.04.2019 under Order IX Rule 7 read with Section 151 of the CPC seeking to set aside the *ex-parte* order dated 15.03.2019 which was taken on record vide order dated 15.04.2019 with directions to the petitioner to supply a copy of the application to the respondent on the same date against acknowledgment and the matter then came up for hearing arguments on the said application on 16.03.2020. Pertinently, on the said date of hearing, no objection was raised on behalf of the respondent that he had not received the copy of the written statement. The respondent had also filed his evidence by way of an affidavit.

15. It is important to note that vide order dated 16.03.2020, the application under Order IX Rule 7 of the CPC of the petitioner was allowed



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on merits subject to the cost of Rs. 10,000/- to be paid to the respondent. On 16.04.2022, apparently again the controversy with respect to failure to supply the copy of the written statement was raised before the learned ARC and the petitioner showed his inability to pay the cost. The learned ARC, then passed the impugned order. It is relevant to note the observation of the learned ARC which are as below:

“Despite asking by the Court, Ld. Counsel for the respondent does not pay the aforesaid cost. She does not even submit that the cost shall be paid on the next date of hearing. Rather, she submits that she will look for an acknowledgment furnished as proof of supplying copy of written statement.”

16. The learned ARC further noted as under:

‘by order dated 26.11.2018, the respondent was directed to supply copy of the written statement to the petitioner within one week and against acknowledgment. In case the petitioner or his counsel were not furnishing an acknowledgement, the respondent ought to have sent copy of the written statement to the petitioner/ her counsel by post. This was not done’.

17. Pertinently, on the same date, upon directions of the learned ARC, copy of the written statement was furnished to the learned counsel for the respondent. However, as the petitioner failed to tender the cost, the basis on which his application under Order IX Rule 7 of the CPC was allowed, the learned ARC struck off his defence and the written statement was not allowed to be taken on record.

18. From the record, it is clear that without going into the question of whether the copy of written statement was already given to the respondent or not, and to give quietus to the controversy with respect to failure to



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furnish the copy of the written statement, learned ARC on 16.03.2020 directed the petitioner to furnish the copy of the written statement subject to the cost of Rs. 10,000/-. However, as petitioner failed to comply with the order issued regarding non-payment of cost remained thus, his defence was struck off by the learned ARC.

19. This Court cannot lose sight of the fact, brushing aside the technicalities, that the ultimate aim of the legal system is an expeditious trial and resolution of the issue arising out of litigation. In the present case, the petitioner has agitated a trivial issue with respect to non-payment of the cost. Perhaps, he has failed to understand that the cost imposed by the learned ARC while allowing the application under Order IX Rule 7 of the CPC was for condoning his non-appearance on 15.03.2019, and it was not imposed as a penalty for not furnishing the copy of the written statement to the respondent. The crux of the matter is that the copy of the written statement also stands furnished.

20. Petitioner has pleaded that he was unable to pay the cost as his father was not keeping well and, huge amount of amount was spent on his treatment. Later, his father expired despite treatment.

21. Having considered the submissions addressed, this Court finds that the learned ARC had imposed a cost of Rs. 10,000/- on the petitioner since, there was a failure on the part of the petitioner to appear before the Court on 15.03.2019, which the petitioner declined to pay, thus, his defence was struck off. Nonetheless, in the facts as submitted herein above and in the interest of justice, the cost imposed by learned ARC is reduced to Rs.



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5,000/- and the impugned order is set aside . Consequently, the petition along with pending application(s) stands disposed of.

SHALINDER KAUR, J.

FEBRUARY 19, 2024

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Signature Not Verified

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