



\$~4

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

% *Date of decision: July 23, 2024*

+ **RC.REV. 232/2023 & CM APPL. 41968/2023**

**SHRI BISHAN SINGH (SINCE DECEASED)
THROUGH HIS LR SURENDER KUMAR**

.....Petitioner

**Through: Mr. Jalaj Singhal, Mr. Vivek
Sharma, Mr. Vibhor Bagga
and Ms. Isha Dogra,
Advocates**

versus

**PT KANHAIYA LAL BRAHAMCHARI
SHIV MANDIR TRUST**

.....Respondent

**Through: Mr. Kunal Yadav and
Mr. Prateek Baghel,
Advocates**

**CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN
J U D G M E N T (oral)**

1. The present revision petition is filed under section 25B of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) to impugn the order dated 06.06.2023 passed in eviction petition bearing RC ARC no. 48/2019 titled as **Pt. Kanhaiya Lal Brahamchari Shiv Mandir Trust V Bishan Singh Through LRs**



by the court of Ms. Divya Malhotra, ACJ/ARC, North-West District, Rohini Courts, Delhi in respect of suit premises i.e. one shop admeasuring 19.7' x 20.9', height about 9-10 ft. approximate area measuring 400 sq. ft. (hereinafter referred to as the “**tenanted premises**”) whereby the application for leave to defend preferred by the petitioner was rejected.

2. The respondent filed an eviction petition under section 14(1)(e) read with section 25B of the Act titled as **Pt. Kanhaiya Lal Brahamchari Shiv Mandir Trust V Bishan Singh** bearing RC ARC no. 48/2019 on the ground of *bona fide* requirement against the petitioner. The summons were ordered to be issued as per the Third Schedule and stated to be served on the petitioner/tenant on 29.11.2019. However, the petitioner did not file an application for leave to defend along with affidavit within 15 days, rather he filed the written statement on 19.12.2019, which was followed by an application for leave to defend on 27.01.2020 as such, the application for leave to defend along with affidavit was preferred by the petitioner much beyond the statutory period. Due to the failure of the petitioner in filing the application for leave to defend, an eviction



order in respect of the tenanted premises was passed by the trial court. The trial court also considered the various ingredients of section 14(1)(e) of the Act. The petitioner being aggrieved, filed the present petition.

3. The counsel for the petitioner stated that the respondent earlier filed two cases/petitions against the petitioner and he was under the *bona fide* belief that eviction petition under section 14(1)(e) of the Act is also an ordinary suit and at that time, the previous counsel for the petitioner was not keeping well. The counsel for the petitioner further stated that the petitioner has denied the existence of relationship of landlord and tenant between the parties. The counsel for the petitioner argued that the petitioner is able to establish sufficient reason for condonation of delay in filing the application for leave to defend and able to raise triable issues and referred the judgment dated 29.11.2019 titled as **Director Directorate of Education & Anr. V Mohd. Shamim & Ors.** passed by Division Bench of this Court.

4. The counsel for the respondent argued that the petitioner himself admitted the relationship of landlord and tenant and the



ignorance of law cannot be an excuse as such, the present petition is liable to be dismissed. He further argued that the medical documents pertaining to the illness of the previous counsel have not been placed on record.

5. There is no dispute that on previous occasions, the respondent had filed two suits/petitions i.e. one civil suit and one eviction petition. The petitioner had filed the written statement in the eviction petition before the trial court under the belief that it was an ordinary suit. The court of Ms. Divya Malhotra, ACJ/ARC, North-West District, Rohini Courts, Delhi also made certain observations in the impugned order dated 06.06.2023 regarding the alleged relationship of landlord and tenant between the parties.

6. This Court in RC. Rev. 106/2024 titled as **Raj Kumar Singh V Veena Gupta Alias Beena Gupta** observed as under:-

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.

7. After considering all facts, the present case is found to be fit for condonation of delay in filing the application for leave to defend before the trial court. Accordingly, the delay is condoned and the impugned order dated 06.06.2023 is set aside including the eviction order. However, the trial court is directed to decide the application for leave to defend preferred by the petitioner, preferably, within a period of 02 months from the date of receipt of this order.

8. The present petition along with pending application, stands disposed of.



9. Copy of this order be sent to the trial court for information and compliance.

10. The petitioner and the respondent are directed to appear before the trial court on 05.08.2024 at 2:30 PM for further directions.

DR. SUDHIR KUMAR JAIN
(JUDGE)

JULY 23, 2024

N/AM

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 26.07.2024
16:53:52