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

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Judgment reserved on: 22.03.2024
Judgment pronounced on: 28.03.2024

+ **RC.REV. 248/2023, CM APPL. 1244/2024 & 47482/2023****KULWANT SINGH**

..... Petitioner

Through: Mr Chanderkant Tyagi, Advocate
with Petitioner in person.

versus

VIKAS AHUJA

..... Respondent

Through: Mr. Rajesh Bhatia and Mr. Hemant
Kakkar, Advocates

CORAM:**JUSTICE GIRISH KATHPALIA****GIRISH KATHPALIA, J.:**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed eviction order dated 16.05.2023 passed by the Additional Rent Controller because the petitioner/tenant failed to file application for leave to contest the proceedings under Section 14(1)(e) of the Act. On notice of these proceedings, respondent/landlord entered appearance through counsel. I heard learned counsel for both sides and examined the digitized trial court record.

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2. Briefly stated, circumstances relevant for present purposes are as follows.

2.1 The present respondent claiming himself to be the owner of premises bearing no.AF-6A, Ground Floor, Janta Flats, Shalimar Bagh, Delhi (hereinafter referred to as “the subject premises”) filed eviction petition against the present petitioner under Section 14(1)(e) of the Act, pleading that the present petitioner was inducted as a tenant in the subject premises on 01.05.2010 for a period of 11 months only but despite expiry of that period, he did not vacate the subject premises, so the present respondent filed a Civil Suit for recovery of possession, which was dismissed on the ground that the same was barred under Section 50 of the Delhi Rent Control Act; that the present respondent is in *bona fide* requirement of the subject premises for himself and his family consisting of his wife and two sons aged 24 and 21 years; that the present respondent is currently residing in first floor premises no.2103, Outram Lane, Kingsway Camp, Delhi and second floor of the said property is in use and occupation of his mother; and that the present respondent has no reasonably suitable alternate accommodation.

2.2 According to the record, despite specific order of the Additional Rent Controller for issuance of summons in the prescribed format, the Ahlmad of that court issued summons for settlement of issues, as are issued in civil suits. On service of those summons, the present petitioner continued to appear on few dates and even filed written statement, but thereafter stopped appearing.

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2.3 After a few dates, the Additional Rent Controller realized the issuance of summons in wrong format, so fresh summons in format prescribed under Schedule III to the Delhi Rent Control Act were ordered and issued. The said summons in prescribed format were served on the present petitioner through his brother Anil Kumar on 23.11.2021 at the subject premises. Even thereafter, the present petitioner appeared before the Additional Rent Controller but opted not to file any application seeking leave to contest.

2.4 Before the Additional Rent Controller, the present petitioner contended that Anil Kumar, who had received the summons in prescribed format is not his brother and not authorized to accept summons on his behalf. Rejecting this contention by reasoned order, the Additional Rent Controller proceeded to pass the impugned eviction order, holding that since despite service of summons the present petitioner did not file application seeking leave to contest, pleadings of the present respondent in the eviction petition were deemed admitted.

2.5 Hence, the present petition.

3. During arguments, learned counsel for petitioner/tenant took me through the above record and contended that since the service of summons in prescribed format was not on the present petitioner, there was no occasion for him to file application for leave to contest. Learned counsel for petitioner/tenant also submitted alternate contention that the Additional Rent



Controller ought to have treated the written statement as application for leave to contest, as held by a coordinate bench of this court in the case titled: ***Shri Rambir Singh vs Smt. Balwant Kaur Choudhary & Anr.***, 2010:DHC:2111.

4. On the other hand, learned counsel for respondent/landlord supported the impugned eviction order contending that the judicial precedent cited on behalf of the petitioner/tenant is completely distinguishable. Learned counsel for respondent/landlord argued that the petitioner/tenant has been trying to protract the proceedings, so deserves no indulgence.

5. There is no dispute to the legal proposition that the time prescribed for filing an application for leave to contest would commence only on service of summons in the prescribed format on the tenant or a person duly authorized by him. The issue involved in the present case is as to whether the said Anil Kumar, who admittedly received the summons, had so received the same as brother and/or authorized representative of the petitioner/tenant.

6. On this issue, it would be apposite to traverse through the trial court record, as extracted below.

6.1 The eviction petition filed by the present respondent was listed for the first time before the learned Additional Rent Controller on 08.08.2019 and after directing registration of the same, the learned Additional Rent Controller directed issuance of summons in the prescribed format to the



present petitioner returnable on 16.10.2019. On 16.10.2019, the present petitioner entered appearance through counsel, who filed his vakalatnama.

6.2 On the next date 09.01.2020, an application filed on behalf of the present respondent, earlier on 13.12.2019, for passing eviction order was taken up and posted to 22.01.2020 for reply and arguments. On 22.01.2020, the learned Additional Rent Controller being on leave, the matter was adjourned to 15.02.2020 by Reader of the court. On 15.02.2020 none appeared, so the said application dated 13.12.2019 of the present respondent was posted to 27.05.2020 for arguments.

6.3 Apparently, thereafter on account of Covid induced lockdown, the matter kept getting adjourned. On 22.07.2020, since none appeared for the present petitioner, the matter was adjourned to 06.08.2020 by the learned Additional Rent Controller.

6.4 On 06.08.2020, the learned Additional Rent Controller realized and recorded in the order that despite clear directions in order dated 08.08.2019, the Ahlmad had wrongly issued summons for settlement of issues, pursuant where to the present petitioner had filed written statement, so fresh summons in the prescribed format be issued to the present petitioner returnable on 17.10.2020 and Ahlmad to be careful in future.

6.5 On 17.10.2020, there being no learned Additional Rent Controller after transfer of the concerned judicial officer, matter was adjourned by



Reader of the court to 07.11.2020. On 07.11.2020, the status remaining same, the matter was adjourned by Reader of the court to 05.12.2020.

6.6 On 05.12.2020, the learned Additional Rent Controller again directed issuance of summons in prescribed format to the present petitioner returnable on 18.03.2021. For 18.03.2021, the summons sent to the present petitioner returned unserved with the report that the premises were lying locked, so taking note of contentions of learned counsel for the present respondent that the present petitioner was deliberately avoiding service of summons despite having filed written statement, the learned Additional Rent Controller issued fresh summons in the prescribed format returnable on 05.06.2021 granting liberty to the present respondent to accompany the process server.

6.7 But on account of Covid induced lockdown, those summons could not be issued and the matter got adjourned *en bloc*. On 21.10.2021, the learned Additional Rent Controller once again directed issuance of summons in prescribed format to the present petitioner returnable on 15.01.2022.

6.8 On 15.01.2022, the learned Additional Rent Controller recorded that according to Ahlmad report, the present petitioner stood served with summons, and at request of learned counsel for the present respondent posted the matter to 26.03.2022 for further consideration; in the course of dictation of order dated 15.01.2022, a counsel on behalf of the present petitioner entered appearance and was apprised of the order.



6.9 On 26.03.2022, the matter got adjourned in presence of both sides to 18.05.2022 as the learned Additional Rent Controller was on leave. Thereafter, on 18.05.2022, 30.07.2022, 03.09.2022 and 29.10.2022, the matter kept getting adjourned.

6.10 On 19.11.2022, the learned Additional Rent Controller adjourned the matter to 05.01.2023 after recording that despite service of summons in the prescribed format, the present petitioner had not appeared and had not filed application for leave to contest.

6.11 On 05.01.2023, in the first call, learned counsel for the present respondent was present but none appeared for the present petitioner, so matter was passed over; in the second call at 01:00pm counsel for the present petitioner appeared and after filing vakalatnama took adjournment to inspect the record in order to apprise the court regarding service of summons.

6.12 On the next date 03.02.2023, in presence of both sides, the learned Additional Rent Controller recorded that service of summons in the prescribed format had been affected on one Anil Kumar, who claimed himself to be brother of the present petitioner as per report of process server, though the present petitioner filed an affidavit denying any relationship with Anil Kumar.



6.13 On the next date 25.02.2023, after hearing arguments of both sides, learned Additional Rent Controller posted the matter for orders/clarification on 18.03.2023. On 18.03.2023 after clarifications, the matter was adjourned to 03.04.2023 followed by 25.04.2023 and 16.05.2023 by the learned Additional Rent Controller.

6.14 Finally on 16.05.2023 after hearing further submissions on behalf of the present petitioner, the learned Additional Rent Controller passed the impugned order, thereby directing eviction of the present petitioner from the subject premises because he had opted not to file an application seeking leave to contest the proceedings.

7. To begin with, the judgment in the case of **Rambir Singh** (supra) relied upon by learned counsel for petitioner/tenant is completely distinguishable. In the said case, the issue before the coordinate bench of this court was the order of learned Additional Rent Controller dismissing an application filed by the tenant praying *inter alia* for issuance of fresh summons in the prescribed format or for grant of 15 days time to file application for leave to contest or to permit written statement to be taken as grounds for leave to contest. In contrast, in the present case, admittedly, the petitioner never even whispered before the learned Additional Rent Controller to treat his written statement as application for leave to contest. It is on 05.01.2023 that the present petitioner was clearly apprised by the learned Additional Rent Controller that summons in the prescribed format stood served on him through Anil Kumar. Thereafter, proceedings before



the learned Additional Rent Controller were adjourned on as many as 06 dates of hearing. Nothing prevented the present petitioner (*who now wants his written statement to be read as application for leave to contest*) from filing an application for leave to contest, even if belated one or an application seeking to treat his written statement as application for leave to contest.

8. In the said case of **Rambir Singh** (supra) the sequence of events was that on the very first date 01.03.2006 after registration of the eviction petition, the summons were issued to the tenant by ordinary process returnable on 18.05.2006 and the same were received by the tenant on 17.03.2006, so on 05.05.2006 the tenant filed written statement with an application for condonation of delay in filing the same; that on 18.05.2006, the landladies surreptitiously filed an application under Section 25B(2) & (3) of the Act without supplying a copy to the tenant, but the presiding officer being on leave, the application was adjourned to 22.05.2006; that on 22.05.2006, fresh summons in the prescribed format were directed to be issued returnable on 13.07.2006 and the said summons were received on behalf of the tenant on 27.05.2006; that under some confusion the tenant remained under mistaken impression that having filed a written statement, he had done all that was required of him in law; that on 12.07.2006, the tenant showed the summons in prescribed format received by him to his counsel and at that stage, the tenant filed the application dated 19.07.2006, which got dismissed and was challenged before the coordinate bench. In contrast, in the present case as narrated above, the petitioner/tenant after



filing written statement simply vanished from the scene and kept avoiding the summons sent in prescribed format repeatedly to him. To repeat, the petitioner/tenant in the present case did not at any stage request that his written statement may be read as an application seeking leave to contest.

9. No doubt, an act of court should prejudice nobody. But present is the case where the concerned litigant kept sitting quiet, awaiting culmination of the proceedings in order to raise the issue of faulty summons. Not only this, as mentioned above, in the present case the learned Additional Rent Controller having realized the inadvertent procedural error *qua* the format of summons, issued fresh summons in the prescribed format and that too repeatedly because the petitioner/tenant kept avoiding service.

10. It cannot be believed that the petitioner/tenant filed the written statement without examining the contents of the petition, which clearly dealt with the summary proceedings under Chapter IIIA of the Delhi Rent Control Act. At that stage itself, instead of fairly coming before the court with any application similar to the one filed in the case of **Rambir Singh** (supra) the petitioner/tenant simply stopped appearing, otherwise fresh summons in the prescribed format would have been served personally on him in the court itself.

11. The stand taken on behalf of petitioner that Anil Kumar who received the correct summons in the prescribed format was not related to the petitioner/tenant does not appear truthful. As reflected from pdf page No.



167 of the digitized trial court record, even the first summons (*which were not in prescribed format*) were received by Anil Kumar only and admittedly on the basis thereof, the petitioner/tenant filed his written statement as well. Not only this, it is also not disputed that all the summons – in prescribed format or otherwise were served at the subject premises itself and even the written statement filed by the petitioner/tenant was from same address. Therefore, I am unable to accept that summons in the prescribed format were not served on the petitioner/tenant.

12. Thence, on account of failure on the part of the present petitioner to file application for leave to contest despite service of summons in the prescribed format, the learned Additional Rent Controller correctly deemed the contents of the eviction petition as admitted. The impugned order suffers no infirmity, so the same is upheld. Accordingly, the petition as well as the pending applications are dismissed.

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KATHPALIA**

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**GIRISH KATHPALIA
(JUDGE)**

MARCH 28, 2024/ry/as