



2024:DHC:5388



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

% ***Judgment reserved on: 07.05.2024***
Judgment pronounced on: 22.07.2024

+ CM(M) 7/2024, CM APPL. 204/2024—stay

SURESH KUMAR AND ORS Petitioners

Through: Mr. Rajeev Verma and Mr. Dheeraj
Sharma, Advs.

versus

KRISHAN KANHAYA Respondent

Through: Mr. Anuj Arora, Adv.

And

+ CM(M) 9/2024, CM APPL. 210/2024

KAMLA THROUGH LR Petitioner

Through: Mr. Rajeev Verma and Mr. Dheeraj
Sharma, Advs.

versus

KRISHAN KANHAYA Respondent

Through: Mr. Anuj Arora, Adv.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. A similar controversy in the petitions pertains to the dismissal of the applications of the petitioners filed under Section 151 of the Code of Civil



Procedure, 1908 (hereinafter referred as “CPC”) for condonation of delay in filing rejoinder, rejoinder affidavit and documents and for recalling the order dated 22.08.2019 for closing opportunity to file the rejoinder.

2. The background of both the cases reveal that the respondent herein filed an Eviction Petition in RC/ARC No. 207/2019 and RC/ARC No. 208/2019 titled as “*Krishan Kanhaya vs. Suresh Kumar & Ors*” and “*Krishan Kanhaya vs. Kamla*” respectively against the petitioners in the year 2019. The petitioners filed a leave to defend application on 16.08.2019. Vide order dated 22.08.2019, the learned CCJ cum ARC (hereinafter referred as “ARC”) directed the respondents to file reply to leave to defend application within one month. Additionally, in RC/ARC No. 207/2019 the learned Trial Court granted one month’s time to the petitioner to file rejoinder. However, no opportunity was given to the petitioner in RC/ARC No. 208/2019 to file a rejoinder and the matter was directly listed for arguments on the application seeking leave to defend.

3. The reply to the leave to defend application along with documents was filed on behalf of the respondent on 24.10.2019. On the next date of hearing, which was on 30.10.2019, the matter was adjourned to 08.07.2020 for arguments on the leave to defend application.

4. It was brought to the knowledge of the learned Trial Court on 08.07.2020 that the petitioners have left their previous counsel, hence the matter was further adjourned for 17.10.2020. A new counsel was engaged by the petitioners on 10.09.2020 who filed his Vakalatnama and inspected the court file on 18.09.2020. It is the case of the petitioner that the new counsel came to know about the order dated 22.08.2019 during the process of inspecting the file and that is how they got to know that the petitioner was



supposed to file his rejoinder within one month from the date of receipt of reply to leave to defend in view of the order dated 22.08.2019.

5. On 25.03.2021, an application under Section 151 CPC was filed by the petitioner in the petition bearing no. RC/ARC No. 207/2019 for condonation of delay in filing rejoinder, rejoinder affidavit and documents and for recalling the order dated 22.08.2019 by which opportunity to file the rejoinder was closed. Simultaneously, similar application was also moved in RC/ARC No. 208/2019 for grant of opportunity to place on record rejoinder, rejoinder affidavit and documents. The learned ARC, vide the impugned order dated 17.08.2023 dismissed the applications moved by the petitioners.

6. The petitioners have filed the present petitions bearing CM(M) no. 7/2023 and 9/2023 respectively under Article 227 of the Constitution of India to invoke the supervisory jurisdiction of this Court impugning the orders dated 17.08.2023 passed in both Eviction Petitions pending adjudication before learned ARC.

Submissions by the Parties:

7. The arguments have been heard at length as advanced on behalf of the parties and record has been considered.

8. Learned counsel for the petitioners has questioned the correctness of the recitals as appearing in the impugned orders and submits that while filing reply to leave to defend, new extraordinary facts and some new documents have been placed on record by the respondent and in order to counter all such new facts etc. filing of rejoinder and rejoinder affidavits is essential to ascertain the true circumstances for disposal of leave to defend applications. Moreover, as far as the documents filed along with leave to defend applications are concerned, some of them pertain to the case filed by



the petitioners subsequent to filing of leave to defend applications before the learned ARC, hence, the said documents should not be looked into as they are produced sequentially after filing of the present eviction petition.

9. Learned counsel for the petitioners submits that petitioners were not able to file the rejoinder because from March 2020 to May 2020 there was national lockdown and entry of litigants inside the court premises was permitted only after August 2020 and they contacted their new counsel in the month of September 2020. Though the exemption of limitation period continued to be applicable from March 2020 to February 2022 in view of the judgment of Hon'ble Supreme Court of India in case titled '*cognizance for extension of limitation in re.*' (2021) 17 SCC 231, however, the petitioners did not wait till the end of the limitation period and filed the rejoinders along with other documents. Moreso, the petitioner in RC/ARC No. 207/2019, has moved an application under Section 151 CPC seeking extension of time to file rejoinder, which was earlier granted by the learned ARC. However, in RC/ARC No. 208/2019, the petitioner was not given any opportunity to file rejoinder which in law is to be afforded so as to rebut the pleas taken in reply to leave to defend application.

10. It was next submitted by the petitioners that since new facts have been disclosed by the respondent before the learned ARC by filing reply along with the documents to the leave to defend application hence, it was incumbent upon the learned ARC to grant an opportunity to the petitioners to file the rejoinder etc. In support of the pleas, the learned counsel has relied upon the judgment in the case of *Arvind Kumar Jain vs. Jagdish Lal Khanijo* in CM(M) 1191/2018.



11. In response, learned counsel for the respondent submitted that subsequent plea in the rejoinder affidavit could not be considered by the learned ARC. Thus by permitting additional/fresh grounds to be taken in the rejoinder affidavit would tantamount to extending the time for filing the leave to defend application, which is impermissible in law.

12. He submitted that while dealing with the applications for the leave to defend, the learned ARC should confine only to the averments made in the application for leave to defend along with supporting affidavit. The court should not consider pleas which are not found in the leave to defend application because it will amount to allowing of filing of leave to defend application beyond the statutory period of 15 days.

13. To support his pleas, the learned counsel has relied upon the following authorities:-

- a) ***Jummo Begum vs. Desh Raj Gupta (D) Through Lrs*** in CM(M) 1954 of 2024;
- b) ***Chaman Lal Kewal Krishan & Ors vs. Kanta Devi*** in RC Rev. 197 of 2015;
- c) ***Karori Mal vs. SMT. Santosh Kumari*** in RC Rev 455 of 2013;
- d) ***Ishwar Dayal Kansal vs. A.K Jain*** in RC Rev 47 of 2014

Reasons & conclusions

14. The submissions addressed at length on behalf of the parties have been heard and record has been meticulously perused.

15. To begin with I may note that the respondent / land-lord has filed two separate Eviction petitions against the petitioners under Section 14(1)(e) read with Section 25-B of the DRC Act in the year 2019 which are pending



adjudication before learned ARC. The petitioners-tenants filed separate applications to seek leave to defend in the respective petitions on 16.08.2019, the reply to which was filed by the petitioners on 24.10.2019.

16. In RC/ARC No. 207/2019, the petitioner, subsequent to filing of the reply were permitted to file rejoinder within a period of one month. It is not disputed that the respondent filed the reply to leave to defend application on 24.10.2019, the copy of reply was supplied to the petitioner on 30.10.2019. Thus, in RC/ARC No. 207/2019, the petitioner could not have filed the rejoinder before 30.10.2019.

17. In RC/ARC No. 208/2019, the learned ARC did not give any opportunity to the petitioner to file a rejoinder and listed the matter for arguments in the application seeking leave to defend.

18. In these circumstances, the petitioners have taken twofold pleas for filing the rejoinder etc. on 30.03.2021 by submitting that due to COVID pandemic, they could not file the rejoinder within time and could not engage a new counsel for doing the needful.

19. Needless to say the learned ARC has rightly observed that the nationwide lockdown due to COVID pandemic was imposed in the month of March 2020. Thus, the petitioners had sufficient time to file rejoinders etc. before March, 2020.

20. It is to be noted that the position of law is settled that the fifteen days statutory period for filing of the leave to defend application is sacrosanct and same cannot be extended by resorting either to the provision of Section 5 of Limitation Act or of the provisions of CPC and whatever averments are to be raised for grant of leave to defend has to be essentially stated by filing the application for leave to defend within the statutory period of 15 days.



Therefore, the tenant cannot be permitted in law after expiry of 15 days to file additional affidavits or documents to urge any additional or new ground for seeking leave to defend as every ground that needs to be raised in the application to seek leave to defend is to be mentioned in the application moved within 15 days.

21. However, the learned counsel for the petitioners has submitted that the respondent has pleaded new facts in its reply in response to the applications seeking leave to defend and also placed new documents on record. Therefore, in order to rebut the same, the respondent has sought permission to place the rejoinder, rejoinder affidavit and documents on record. Otherwise to the prejudice of the petitioners, the new pleas incorporated in the reply would remain unrebutted.

22. In light of the aforesaid, this Court finds no merit in petitioners' argument that if the rejoinder and documents in the present case are permitted to be placed on record, it would tantamount to extending the time for filing the leave to defend application beyond a period of 15 days.

23. In view of the peculiar circumstances of this case and in the interest of justice, rejoinders, rejoinder affidavits and documents are permitted to be taken on record without expressing any opinion regarding the merits of rejoinders, rejoinder affidavits and relevancy of the documents sought to be placed on record.

24. Having said so, I may clarify that relevancy of the documents, merits of rejoinders and rejoinder affidavits and that same are required to counter new pleas taken in reply filed by the respondent shall be considered by learned ARC at the time of disposal of the application seeking leave to defend.



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25. The decisions relied upon by the petitioners being in factual context of respective cases are not applicable to the present petition as the decisions are made on appreciation of merits of leave to defend applications, which in present petitions are still pending adjudication before learned ARC.

26. In the light of the view expressed by this Court hereinabove, the impugned orders are set aside. Consequently, the petitions along with the applications are allowed.

SHALINDER KAUR, J.

JULY 22, 2024
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