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

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*Judgment reserved on: 15.02.2024*  
*Judgment pronounced on: 27.02.2024*

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**RC.REV. 527/2018**

NAVEEN

..... Petitioner

Through: Mr Satyam Thareja with Mr  
Pratyaksh, Advs.

versus

AKSHMA DEVI

..... Respondent

Through: Mr Asheesh Jain with Mr Gaurav  
Kumar, Advs.

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

1. By way of this petition, brought under the proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed order dated 01.05.2018 of the learned Additional Rent Controller, Central District, Delhi, whereby the belatedly filed application for leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed and eviction order with respect to shop no.3828, Arya Samaj Road, Karol Bagh, New Delhi (hereinafter referred to as “the subject premises”) was passed. On service of notice, the present respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

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



follows. On 23.02.2013, the present respondent filed an eviction petition under Section 14(1)(e) of the Act against the present petitioner with respect to the subject premises. The summons issued in the prescribed format were served on the present petitioner through registered post on 06.03.2013 and through ordinary process on 18.04.2013. The present petitioner filed his application seeking leave to contest on 03.05.2013, claiming that the summons were served only on 18.04.2013. The present respondent filed reply to the said application, reaffirming service of summons on the present petitioner on 06.03.2013 through registered post. Subsequently, the present respondent obtained a certificate from the Post Master of the concerned Post Office to the effect that summons were served on the present petitioner on 06.03.2013. Therefore, the present respondent filed an application dated 14.03.2017 before the Additional Rent Controller seeking dismissal of the application for leave to contest as barred by time. By way of the impugned order the learned Additional Rent Controller allowed the said application dated 14.03.2017 of the present respondent and dismissed the application of the present petitioner for leave to contest.

3. Hence, the present petition.

4. During final arguments, learned counsel for petitioner/tenant took me through above record and contended that the impugned order is not sustainable in the eyes of law since the summons in the prescribed format were served for the first time on the petitioner on 18.04.2013 and leave to contest was filed on 03.05.2013 within time prescribed by law. It was argued on behalf of petitioner/tenant that merely on the basis of certificate issued by



the Post Master concerned, service of summons through registered post on 06.03.2013 cannot be believed. Learned counsel for petitioner/tenant also argued that in view of law laid down by a division bench of this court in the case of **Director, Directorate of Education & Anr vs Mohd Shamim & Ors**, (2020) 266 DLT 1 this is a fit case for this court to condone the delay in filing the application for leave to contest and allow the application in that regard.

5. Per contra, learned counsel for respondent/landlord reaffirmed that summons in the prescribed format were duly served on the petitioner/tenant through registered post on 06.03.2013 as established from the certificate issued by the Post Master concerned in that regard, therefore, the application for leave to contest filed on 03.05.2013 was clearly beyond the time prescribed by law. Further, learned counsel for respondent/landlord also contended that the grounds taken by the petitioner/tenant in application for leave to contest are exactly the same as raised in another proceedings filed by the present respondent against another tenants Jagdish & Others, which grounds were rejected by a coordinate bench of this court in the case titled **Akshma Devi vs Jagdish & Others**, MANU/DE/2592/2016, so even on merits, the present petitioner has no case.

6. Thence, the core issue in the present case is as to whether the delay on the part of the present petitioner in filing the application for leave to contest on 03.05.2013, despite service of summons in prescribed format on 06.03.2013, can be condoned.



7. In the case of **Mohd. Shamim** (supra), a division bench of this court examined the powers of this court under proviso to Section 25B(8) of the Act with regard to condonation of delay in filing application for leave to contest and held thus:

*“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.”* (emphasis is mine)

8. In view of the aforesaid legal position, this court has to apply dual test and ascertain as to whether the delay in filing the application for leave to contest in this case was occasioned by reasons beyond control of the present petitioner and as to whether the present petitioner has been able to make out a substantial case for consideration of his application for leave to contest.

9. To recapitulate, summons in the prescribed format were served on the present petitioner through registered post on 06.03.2013 and the application for leave to contest was filed on 03.05.2013, claiming that it is only on 18.04.2013 that the present petitioner was served with the summons; on the other hand, in view of this stand taken by the present petitioner in the application for leave to contest, the present respondent applied before the Post Master concerned, who issued a certificate of postal service. The only resistance of the present petitioner against the postal service is that the postal certificate is a procured one. I am in agreement with the learned Additional Rent Controller that on the basis of mere bald statement of the present



petitioner, the postal certificate issued by a competent authority, namely the Post Master concerned cannot be discarded as a procured one. Further, as observed in the impugned order on the basis of material on record, the acknowledgement card of the summons sent by registered post returned to the present respondent and it was found to bear illegible signatures with two stamps, but complete dates except March, 2013 were not clearly legible. That being so, even if it is assumed that the summons were served on the present petitioner on last day of March, 2013, evidently the application for leave to contest filed on 03.05.2013 was beyond time prescribed by law.

10. As regards commencement of the prescribed period to file application for leave to contest in case where summons are served on two different dates, the admitted legal position is that it is the earlier date which matters, as held by a division bench of this court in the case titled **Ashok Kumar vs Purshottam Lal**, [233(2016) DLT 761 DB].

11. The petitioner has not disclosed any circumstance, which was beyond his control and prevented him from filing the application for leave to contest within the time prescribed by law. That being so, the first of the dual test laid down in the case of **Mohd. Shamim** (supra) goes against the petitioner/tenant.

12. As regards merits of the defence raised in the application for leave to contest, as mentioned above the present petitioner raised same grounds in his leave to contest application as were raised in the other eviction proceedings and those grounds were rejected as not constituting any triable



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issue by a coordinate bench of this court in the case of *Akshma Devi* (supra). In any case, since the petitioner has failed to cross the first hurdle of the dual test, this court need not enter into the sustainability of the defence sought to be raised by the petitioner/tenant in his application for leave to contest.

13. I am unable to find any infirmity in the impugned order, so the same is upheld and the revision petition is dismissed.

**GIRISH  
KATHPALIA**  
**GIRISH KATHPALIA  
(JUDGE)**

Digitally signed by  
GIRISH KATHPALIA  
Date: 2024.02.27  
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**FEBRUARY 27, 2024/ry**