



2025:DHC:1664



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 24.02.2025

+ RC.REV. 19/2022 & CM Appls.7977-78/2022, 74317-18/2024
NATHI LAL CHAURASIA (SINCE DECEASED THROUGH LR)

.....Petitioner

Through: Mr. Praveen Suri and Mr. Akhil
Kumar, Advs.

versus

SUSHILA DEVI JAIN AND ANOTHERRespondents

Through: Mr. Kartickay Mathur and Mr.
Shankar, Advs. for R-1.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. This matter has been listed before the Court on multiple occasions including on 04.03.2024, 16.08.2024, 25.10.2024, 18.11.2024, 02.12.2024, 11.12.2024, 18.12.2024 and 18.02.2025 and learned Counsel for the Petitioner has, on these dates, made the same submission.

2. This Court has taken a view upon the judgment passed by this Court in RC.REV. 419/2018 captioned *Ashok Gupta v. Deepak Rao*¹, which has relied upon the Judgments of the Supreme Court in *NC Daga v. Inder Mohan Singh Rana*² and *Vinod Kumar Verma v. Manmohan Verma*³. This view has also been recorded in the order dated 25.10.2024 as stated above.

3. Learned Counsel for the Petitioner seeks to rely upon the judgment dated 22.04.2024 passed by a Coordinate Bench of this Court in *Bata India*

¹ 2024 SCC OnLine Del 7148

² (2003) 1 SCC 453

³ Civil Appeal Nos. 5220-5221 of 2008



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Limited v. Sarla Sharma Through LRs and Others⁴ to submit that power to condone delay in filing the leave to defend/ Contest application is available with this Court.

4. Learned Counsel for the Respondent No.1, on the other hand, also seeks to rely upon a judgment passed by this Court in ***Ashok Gupta*** case as well as a judgment dated 10.01.2019 passed by a Coordinate Bench of this Court in ***Neelam Sharma v. Ekant Rekhan*** to submit that the judgment in the ***Neelam Sharma*** case was challenged by the tenant therein before the Supreme Court and the Supreme Court by its order dated 08.05.2019 in Petition(s) for Special Leave to Appeal(C) No. 10967/2019 captioned as ***Neelam Sharma v. Ekant Rekhan*** has after referring to the fact that the possession of the shop in question was admittedly taken over by the landlord on 30.08.2018 through the execution proceedings, has held that the Revision Petition had become infructuous, thus, the Supreme Court was not inclined to entertain the Special Leave Petition. The relevant extract of the order dated 08.05.2019 passed by the Supreme Court is set out below:

“We have heard learned Counsel appearing on behalf of the Petitioner.

In Paragraph 15 of the impugned judgment, the High Court has observed that the possession of the shop in question, admittedly is taken over by the Respondent on 30.08.2018 in execution proceedings. Therefore, the revision before the High Court has become infructuous. In such view of the matter, we are not inclined to entertain this special leave petition.

*The special leave petition is, **accordingly, dismissed.***

Pending application(s), if any, shall also stand disposed of.”

[Emphasis supplied]

⁴ 2021 SCC OnLine Del 2538



5. The attention of the learned Counsel for the Petitioner is drawn to the judgment of the Division Bench of this Court in the case of ***Directorate of Education & Ors. vs. Mohd. Shamim & Ors.***⁵ wherein it has been held that the learned Trial Court has no power to condone the delay in case of a Leave to Defend/Contest Application being filed belatedly, however, the power does lie with this Court, provided that a twin test threshold is crossed. Firstly, the tenant is required to show that he was prevented by reasons beyond his control from applying for Leave to Defend within the prescribed time. Secondly, the tenant is to make out a substantial defence warranting consideration of the Application for Leave to Defend. The relevant extract of the order passed by the Division Bench in the ***Directorate of Education*** case is set out below:

“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 Prithpal Singh supra choose/opt to not answer the question (B) framed in the referral order.

⁵ 2019 SCC OnLine Del 11490



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27. *We answer the reference accordingly.*”

[Emphasis Supplied]

5.1. Thus, the Petitioner is required to satisfy the twin tests as are set out above, to be entitled to relief from this Court.

6. The record reflects that repeated efforts were made by the Respondents to serve summons personally to the Petitioner but either the premises were found locked or the same was refused. Subsequently, the summons were served through affixation on 31.07.2009 in pursuance of an order dated 20.04.2009 passed by the learned Trial Court. Thereafter, since the Petitioner failed to file leave to defend within the stipulated time period of 15 days from the date of service of summons, the learned Trial Court passed by the Order dated 03.11.2009 for eviction of the Petitioner/tenant. The relevant extract of the Impugned Order is reproduced below:

“...I heard the submissions and perused the record which shows that both the respondents were served through affixation on 31.07.2009 and they have not filed the requisite application for seeking leave to contest the present eviction petition U/s 25 B of the DRC Act within the stipulated period of 15 days. As per settled proposition of law, time for filing the leave to defend cannot be extended beyond the statutory period of 15 days. In these circumstances, the averments made in the petition are deemed to be admitted by the respondent as per the provision of DRC Act....”

[Emphasis Supplied]

7. The Petitioner/tenant, thereafter, filed a review petition under Section 25(9) of the Delhi Rent Control Act, 1958 [hereinafter referred to as “DRC Act”]. By an order dated 10.12.2021 in the Review Order [hereinafter referred to as ‘Review Order’], the review petition was dismissed on the ground that there is no error apparent on the face of the record in the order dated 03.11.2009. Relying on the testimonies of the process servers, learned Trial Court has held in the Review Order that repeated efforts were made to



serve the summons personally upon the Petitioner/tenant but either the premise was found locked or the summons were refused and that the summons were then served through affixation. The relevant extract of the Review Order is reproduced below:

“ 30. Thus, perusal of the above stated testimonies and record of the case shows that repeated efforts were made to serve the summons personally upon the applicants/tenants but either the premise was found locked or same was refused to be accepted, finally the summons were served through affixation. Needless to say that endeavours were made not to receive summons of the Court....

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32. Thus, in view of the above stated reasons and decision of Hon'ble High court of Delhi, I am satisfied that there is no error apparent on the face of record in order dated 03.11.2009. So, the application of respondents/tenants under Section 25-B(9) of Delhi Rent Control Act for review of order dated 03.11.2009 is dismissed.”

[Emphasis Supplied]

8. As mentioned above, the service was affected on the Petitioner on 31.07.2009 by way of affixation however, the Petitioner/tenant has failed to file leave to defend within the stipulated period of 15 days from the date of service. The Petitioner/tenant has failed to show that Petitioner was prevented by reasons beyond his control from applying for Leave to Defend within the prescribed time. Since, the twin test of the **Directorate of Education** case has not been satisfied, the Court is unable to condone the delay in filing the Application for leave to defend/contest.

9. There is another aspect of this case which is of relevance. It is the admitted case of both the parties that the possession of the subject premises was restored to the Respondent/landlord. The issue of whether a Revision Petition is maintainable when the tenanted subject premises has been legally restored to the Respondent/landlord, either during or before the filing of the



Revision Petition, has been addressed by the Supreme Court as well as by Coordinate Benches of this Court.

10. The Court in *Ashok Gupta* case has held that once an Eviction Order has gained fruition and has been implemented through an Execution proceeding in accordance with law, the Revision Petition becomes infructuous. The Court has relying on the judgment in the *Abid-Ul-Islam v. Inder Sain Dua*⁶ held that the jurisdiction of this Court in a Rent Revision matter is limited and circumspect to examine if there is an error apparent on the face of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The relevant extract of the *Ashok Gupta* case is set out below:

“10. The issue of whether a Revision Petition is maintainable when the tenanted premises have been legally restored to the Respondents/landlord, either during or before the filing of the Revision Petition, has been addressed by the Supreme Court as well as by Coordinate Benches of this Court.

11. The Supreme Court in NC Daga v. Inder Mohan Singh Rana, dealt with a similar situation while dismissing a challenge by a tenant to a judgment passed by this Court upholding an order declining leave to defend passed by the learned Trial Court. The facts in the case were that pursuant to order passed by the learned Trial Court, possession had been taken pursuant to an order passed by the Executing Court. The Supreme Court dealt with the similar arguments raised on behalf of the Respondents/landlord that the Petition has become infructuous pursuant to the possession having been taken.

12. After briefly examining the contention of the parties, the Supreme Court held that in view of the admitted position of possession being taken in execution proceedings, it was not necessary to go into the further details since such a decision would be a purely academic question. The Supreme Court held as follows:

“6. In view of the admitted position that pursuant to the order

⁶ (2022) 6 SCC 30



passed by the Rent Controller, possession has been taken on execution of the order permitting eviction, and absence of specific stand regarding implied consent it is, however, not necessary to go into the finer details and to examine the rival stand in the background of legal position as it would amount to rendering decision on a purely academic question. The appeal is, therefore, dismissed, without any order as to costs.”

[Emphasis supplied]

13. A similar view was taken by the Supreme Court in Vinod Kumar Verma v. Manmohan Verma where on an averment by the Respondent/landlord that possession of the premises has already been taken over, the Supreme Court held that nothing further survives in the Appeal and disposed the Appeals filed as being infructuous. The order being brief is extracted below:

“Leave granted.

At the time of hearing of these appeals, the learned counsel appearing on behalf of the landlord-respondent submits, on instructions, that the possession of the premises in question has already been taken over by the landlord-respondent. That being the position, these appeals have now become infructuous, which have been filed against the final judgment and order dt.25.02.2008 and 28.03.2008 passed by the High Court of Delhi at New Delhi in RCR No. 49 of 2007 and C.M. No. 119 of 2008 (Review) in RCR No. 49 of 2007, by which the Revision Petition filed by the tenant/appellant was dismissed and order of eviction was affirmed. Since the possession has already been taken over by the landlord-respondent, in our view nothing survives in these appeals and accordingly, the appeals are disposed of as infructuous.

Interim order, if any, stands vacated.

There will be no order as to costs.”

[Emphasis Supplied]

14. Various Coordinate Benches of this Court have also similarly held that the tenant's Petition have become infructuous in view of possession being taken. Reliance is placed on Neelam Sharma v. Ekant Rekhan⁴ and Bhawani Shankar v. Nand Lal.

14.1 In Om Prakash Ashok Kumar & Sons v. Ajay Khurana⁶ while relying on the NC Daga case and several other cases, a Coordinate Bench held as follows:



“10. This Court in various decisions has followed the decision given by the Supreme Court in N.C. Daga v. Inder Mohan Singh Rana. The Coordinate Bench of this Court in Poonam Bangia v. Harbhagwan Dass Chandiramani in RC. REV. no. 16/2021 vide order dated 22.07.2021 after following the law laid down in N.C. Daga v. Inder Mohan Singh Rana, **dismissed the revision petition after observing that the landlord has received the possession of the tenanted premises through execution proceedings.** Another Coordinate Bench of this Court in Mange Ram v. Rajesh Narain Goel, in RC. REV. no. 147/2021, decided on 19.03.2024 after following N.C. Daga v. Inder Mohan Singh Rana and Vinod Kumar Verma v. Manmohan Verma, in Civil Appeal nos. 5220-5221/2008 passed by the Supreme Court and in Poonam Bangia v. Harbhagwan Dass Chandiramani in RC. REV no. 16/2021 passed by **this Court as mentioned hereinabove also dismissed the revision petition as became infructuous due to the reason that the possession of the subject premises has been restored to the respondent/landlord.** The same view was also taken by another Coordinate Bench of this Court in Ram Avtar v. Anuradha Shukla in RC. Rev. Bearing no. 104/2021 vide order dated 03.11.2023, the revision petition was ordered to be dismissed as the possession of the tenanted premises has already been taken by the respondent/landlord in accordance with law.

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12. In the present case as reflected from the order dated 10.05.2024, **the possession of the tenanted premises has already been restored back to the respondent/landlord in execution of warrant** of possession in accordance with law. This Court is also of the view that the present petition is not maintainable. Accordingly, the present petition, along with pending applications stands dismissed being infructuous.”

Emphasis Supplied]

15. This Court in various orders including Order dated 14.12.2023 passed in RC. REV. 335/2019 captioned Ajay Kumar v. Ranbir Singh, Order dated 06.12.2023 passed in RC. REV. 52/2023 captioned Govardhan Lal v. Smt. Vidya Rani (Deceased) Through Lrs dated 03.11.2023 passed in RC. REV. 104/2021 captioned Ram Avtar v. Smt. Anuradha Shukla has held that when **a Revision Petition has been filed challenging an order of learned Trial Court which has now gained fruition and has already been implemented through execution proceedings, in such circumstances, the Revision Petition has become infructuous. In addition, it was held that once possession was taken over by the Respondent/landlord in**



accordance with law, the Petition becomes infructuous.”

[Emphasis supplied]

10.1 It was further held in the *Ashok Gupta* case that Section 19 of the DRC Act gives a right to a tenant to recover possession from the landlord albeit in terms of the provisions of such Section. The relevant extract is set out below:

“16. The present Petition has been filed impugning the order and judgment of the learned Trial Court which has directed vacation of the subject premises in issue. **The jurisdiction of this Court is only revisionary in nature and limited in scope.** The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. **Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the fact of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere.** The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction.

17. **The provisions of the Act provide for a remedy of restoration of possession to a Petitioner/tenant in one situation and, i.e., under Section 19 of the Act. In cases allowed under Section 14(1)(e) of the Act, the recovery of possession by a tenant under Section 19(1) can be obtained if the landlord re-let the whole or part of the premises within three years from the date of obtaining possession from the evicted tenant. Sub-section (2) of Section 19 of the Act further provides that where such premises are not occupied within two months or within three years from the date of possession, are re-let to a person without permission of the Rent Controller within three years from the date of possession, the Rent Controller may direct the landlord to put the tenant in possession or pay him such compensation as is deemed fit by the Rent Controller.** Section 19 is set out below:

“19. Recovery of possession for occupation and re-entry.—(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 14D and 21, the landlord shall not, except with the permission of the Controller



obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.”

17.1 The Supreme Court in Abid-Ul-Islam case has held that Section 19 of the Act gives a right of re-possession to the dispossessed tenant if landlord recovers possession under Section 14(1)(e) of the Act and thereafter, the landlord does not use the subject premises for the purpose that it was intended and set out in such Eviction Petition on which basis, an order for eviction was obtained by the landlord. The relevant extract is set out below:

“19. Before a presumption is drawn, the landlord is duty-bound to place prima facie material supported by the adequate averments. It is only thereafter, the presumption gets attracted and the onus shifts on the tenant. The object of Section 14(1)(e) vis-à-vis Section 25-B has to be seen in the light of yet another provision contained under Section 19. **Section 19 gives a right to the dispossessed tenant for repossession if there is a non-compliance on the part of the landlord albeit after eviction, to put the premises to use for the intended purpose. Such a right is available only to a tenant who stood dispossessed on the application filed by the landlord invoking Section 14(1)(e) being allowed. Thus, Section 19 inter alia throws more light on the legislative objective facilitating a speedy possession.** The object is also reflected in the proviso to Section 25-B(8), denying a right of appeal..”

...

19. As stated above, the jurisdiction of this Court exercising revisionary powers is limited and circumspect. **The Petitioner/tenant did not initiate civil proceedings for recovery of possession, instead the present Revision Petition was filed. The Petitioner/tenant has not contended**



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that Section 19 of the Delhi Rent Control Act, 1958 has been violated.

Relying on the judgment of the Supreme Court in the NC Daga case and Vinod Kumar Verma case, this Court finds that this Petition has become infructuous and is accordingly dismissed.”

[Emphasis Supplied]

11. In view of the foregoing, this Court finds no ground to entertain this Petition.
12. The Petition and all pending Applications are accordingly dismissed. However, the Registry is directed to ascertain the costs in the matter and the Petitioner shall pay the costs within a period of four weeks.
13. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

FEBRUARY 24, 2025/r/jn

Click here to check corrigendum, if any