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

+ RC.REV. 650/2019

PRAVEEN KUMAR ARORAPetitioner

Through: Petitioner in person.

versus

ARUN KUMAR GUPTARespondent

Through: Mr. Arun Birbal, Advocate.

+ RC.REV. 651/2019

PRAVEEN KUMAR ARORAPetitioner

Through: Petitioner in person.

versus

ARUN KUMAR GUPTARespondent

Through: Mr. Arun Birbal, Advocate.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

17.01.2025

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1. The Petitioner who appears in person requests for an adjournment.
2. This is objected to by learned Counsel for the Respondent.
3. It is submitted by learned Counsel for the Respondent that this Court had on 24.08.2023 recorded the submission of the parties that the possession of the subject premises has been recovered in accordance with law. This submission was repeated thereafter including on the last date of hearing.
- 3.1 Learned Counsel for the Respondent further submits that on the last date of hearing time was sought by the learned Counsel for the Petitioner to



take instructions.

4. Learned Counsel for the Respondent further submits that in view of the fact that the possession of the subject premises has been restored, nothing further survives in the present Petition.

5. In **Ashok Gupta & Anr. v. Deepak Rao**¹, this Court has held that the provisions of the Delhi Rent Control Act, 1958 [hereinafter referred to as the “DRC Act”] provided the remedy of restoration of possession to a petitioner/tenant only in one situation and that is under Section 19(1) of the DRC Act. The relevant extract of **Ashok Gupta** case is below:

“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

¹ 2024 SCC OnLine Del 7148



aforsaid 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..”*

[Emphasis Supplied]

6. Thus, the Petitioner/tenant is at liberty to avail of such remedy, *albeit* in accordance with law.

7. Given the fact that the possession was restored to the Respondent/landlord in the year 2020 in execution proceedings, this Court



has also undertaken an examination of the Impugned Order.

8. The present Petitions impugn an order dated 25.09.2019 passed by the learned ARC-01, Central District, Tis Hazari Courts, Delhi. By the Impugned Order, the application that was filed by the Petitioner/tenant for leave to defend was dismissed for being filed belatedly. Concededly, summons on the Petitioner were served on 05.08.2019. Thus, the Application for leave to defend had to be filed within 15 days i.e., by 20.08.2019, which was not done. The ground as set forth in the Eviction Petition was that the Respondent required the subject premises for his bonafide use of starting a cloth business.

9. The Division Bench of this Court in the case of ***Directorate of Education & Ors. vs. Mohd. Shamim & Ors***² has 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

² 2019 SCC OnLine Del 11490



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. 27. We answer the reference accordingly.”

[Emphasis Supplied]

10. The Petitioner/tenant has failed to show that he was prevented by reasons beyond his control from applying for Leave to Defend within the prescribed time and has not been able to establish any substantial defence warranting consideration of the Application for Leave to Defend.
11. In view of the foregoing discussions, these Petitions are accordingly dismissed.
12. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JANUARY 17, 2025/pa/ ha