2024:DHC:1005

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

% *Judgment reserved on: 05.02.2024*
Judgment pronounced on: 12.02.2024

\+ **RC.REV. 331/2023**

PRAVEEN KUMAR MALHOTRA (THROUGH SPA) ..... Petitioner

Through: Ms. Manali Singhal, Mr. Rohit Kaul, Ms. Aanchal Kapoor and Mr. Deepak Singh Rawat, Advs.

versus

ARUN KUMAR ..... Respondent

Through: Mr Neeraj Bidhuri, Adv with respondent in person

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 (hereinafter referred to as "the Act"), the present petitioner/tenant has assailed order dated 17.08.2023 of the learned Additional Rent Controller Delhi, whereby application of the present petitioner for leave to contest the proceedings under Section 14(1)(e) of the Act was dismissed on the ground that the application was filed beyond the time prescribed by law, and consequently eviction order in respect of the ground floor shop No.212, Gali Loharan, Ward VIII, Ajmeri Gate, Delhi

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(hereinafter referred to as "the subject premises") was passed against the present petitioner. On service of notice, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

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

2.1 The present respondent, claiming himself to be a co-owner of the subject premises on the basis of a registered Will dated 15.10.2013 of his grandfather, filed against his tenant - the present petitioner, an eviction petition under Section 14(1)(e) of the Act on the ground that being unemployed with a family to support, he has to start business of artificial jewelry, for which he has *bona fide* requirement of the subject premises, as he has no reasonably suitable alternate accommodation.

2.2 On service of summons in the prescribed format, the present petitioner filed application for leave to contest, which was dismissed, as mentioned above, on the ground that the same was filed beyond time prescribed by law. That being so, it would be necessary to take a note of the relevant dates according to the trial court record, which are as follows. The said eviction petition was instituted by the present respondent on 21.11.2022 and summons in the format prescribed under the Act were served on the present petitioner on 05.01.2023. On the very next day, 06.01.2023 the present petitioner filed an application before the Additional Rent Controller for directions to the present respondent to supply legible copies of

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documents, which application was allowed by the Additional Rent Controller on 13.03.2023, thereby directing the present respondent to supply against acknowledgement within three days, legible paper book to the present petitioner, who in turn was directed to file application for leave to contest within stipulated period of time. Accordingly, a copy of paper book was supplied to the present petitioner on 16.03.2023. However, the leave to contest application was filed by the present petitioner on 11.04.2023, i.e. beyond the stipulated period of 15 days.

2.3 Placing reliance on the judicial pronouncement of this court in the case of ***Ramesh Tuli vs Sharda Kapur,*** 153(2008) DLT 302, the learned Additional Rent Controller held that she had no power to condone the delay in filing the application for leave to contest and accordingly, the said application was dismissed and the impugned eviction order was passed.

2.4 In the impugned order, after traversing through the above mentioned dates, the Additional Rent Controller also observed on the basis of printouts of electronic records that by email dated 15.03.2023 scanned copy of documents was dispatched to the counsel for the present petitioner, which was followed by WhatsApp message dated 16.03.2023 informing the counsel for the present petitioner about the said email, with a request to send acknowledgement of receipt of the paper book; that in response WhatsApp, counsel for the present petitioner answered "OK", but no formal acknowledgement, as had been directed vide order dated 13.03.2023, was sent by counsel for the present petitioner; that according to the present

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petitioner, acknowledgment was not sent because copy of the Will supplied to him was not legible, so on 04.04.2023 and 05.04.2023, he again requested for supply of the same; that accordingly, the legible copies were supplied to counsel for the present petitioner through WhatsApp on 04.04.2023, so according to counsel for the present petitioner the application for leave to contest filed on 11.04.2023 was within prescribed period. But the learned Additional Rent Controller was not impressed with the said submissions of counsel for the present petitioner and passed the impugned order.

2.5 Hence, the present revision petition.

3. During arguments, learned counsel for the present petitioner/tenant took me through the above mentioned circumstances and fairly admitted that in view of the judicial precedent referred to by the learned Additional Rent Controller in the impugned order, coupled with the judgment of Supreme Court in the case of ***Prithipal Singh vs Satpal Singh(Dead) through LRs***, (2010) 2 SCC 15, the Additional Rent Controller did not have power to condone the delay in filing the application for leave to contest, irrespective of the peculiar circumstances of this case. However, placing reliance on the judgment of Division Bench of this court in the case of ***Director, Directorate of Education & Anr vs Mohd Shamim & Ors,*** (2020) 266 DLT 1, learned counsel for the present petitioner contended that this is a fit case for this court to exercise discretion and after condoning the delay in filing the application for leave to contest, remand the matter to the Additional Rent Controller for fresh consideration.

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4. On the other hand, learned counsel for the present respondent/landlord supported the impugned order, contending that since the period prescribed for filing an application for leave to contest expired on 31.03.2023 after supply of fresh paper book on 16.03.2023, further supply of the copy of Will on 04.04.2023 was irrelevant. Learned counsel for the present respondent contended that this is not a fit case to exercise discretion in terms with the Division Bench judgment of this court in the case of ***Mohd Shamim*** (supra) since there is no explanation with regard to silence of the present petitioner during the period from 15.03.2023 (*when copy of paperbook was supplied afresh*) till 31.03.2023 (*when the prescribed period expired*).

5. Thence, the fulcrum of the present petition rests on the question as to whether it is a fit case for this court to condone the delay in filing the application for leave to contest, since admittedly, as mentioned above, the Additional Rent Controller does not have power to condone such delay.

6. It would be apposite to traverse through the development of law from the case of ***Prithipal Singh*** (supra) to the case of ***Mohd Shamim*** (supra). Initially, the issue qua condonation of delay in filing the application for leave to contest came up before a co-ordinate bench of this court in the case of ***Mohd Shamim*** (supra) and after detailed discussion recapitulating the legal position, including the judgment in the case of ***Prithipal Singh*** (supra), the learned Single Judge directed the matter to be placed before the Hon'ble Chief Justice of this court to consider constitution of a larger bench to

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examine two questions, framed thus:

> *"(A) Whether this Court, in exercise of powers under Section 25B(8) of the Act, is entitled to set aside an order of eviction under Section 14(1)(e) or 14A or 14B or 14C or 14D owing to the application for leave to defend having not been filed within the prescribed time, if finds sufficient grounds for non-filing of application for leave to defend and to condone the delay and remand the matter to the Rent Controller to consider the leave to defend application on merits.*
>
> *(B) Whether the Rent Controller, in exercise of powers under Section 25B(7) or 25B(9) is entitled to set aside an order of eviction under Sections 14(1)(e) or 14A or 14B or 14C or 14D owing to non-filing of application for leave to defend within the prescribed time, if finds sufficient grounds therefor."*

6.1 Accordingly, under Rule 8 of Part B of Chapter 3 of Volume V of the Delhi High Court Rules and Orders, a Division Bench was constituted in this court for answering the questions formulated above. The Division Bench of this court after detailed analysis of various aspects of law held thus:

> *"9. As would be evident from the analysis aforesaid of Prithipal Singh supra, what was laid down therein was in answer to the issues framed therein. The Supreme Court therein was concerned only with the power of the Rent Controller in a proceeding under Section 25B of the Act, to consider an application for recall of the order of eviction in exercise of powers under Order XXXVII Rule 4 of the CPC read with Rule 23 of the Delhi Rent Control Rules. Section 37 of the Act was not for consideration therein.*
>
> *10. Section 37(1) of the Act prohibits the Controller from making any order which prejudicially affects any person, without giving such person a reasonable opportunity of showing cause against the order proposed to be made and which opportunity extends to consideration of the objections and the evidence produced in support of such objections.*
>
> *……*
>
> *19. Supreme Court in Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111, Union of India Vs. Dhanwanti Devi (1996) 6 SCC 44, Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate (2005) 2 SCC 489, In Re. Natural Resources Allocation (2012) 10 SCC 1 and Punjab National Bank Vs. R.L. Vaid (2004) 7 SCC 698 has held that a judgment is a precedent on what was for adjudication and not what can*

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be logically deduced or inferred therefrom. Applying the said principle, ***what was for adjudication in Prithipal Singh supra was as set out in the issues framed therein and thus Prithipal Singh supra is a precedent on the power of the Controller to recall the order of eviction and to consider the application for leave to defend filed belatedly. The Supreme Court in Prithipal Singh supra was not concerned with the power of this Court under Section 25B(8).***

20. …… The High Court thus, when approached in exercise of its jurisdiction under the proviso to Section 25B(8) against an order of eviction under Section 25B(4), on failure of tenant to within the prescribed time apply for leave to defend, would be entitled to consider whether there is any substantial ground which prevented the tenant from, within the prescribed time, applying for leave to defend and any substantial reason which disentitles the landlord from an order of eviction on the ground of requirement of premises on deemed admission of such requirement by the tenant.

….

22. ..... the High Court would certainly be entitled to set aside the said order if the petitioner, under proviso to Section 25B(8), is able to rebut the said deemed admission and/or make out a case for being given an opportunity for rebutting the same.

.....

24. ..... However Section 25B(4) empowers the Controller to order eviction on failure of the tenant so served to apply for leave to defend only when the summons is "duly served". A summon purporting to be served or refused cannot be said to be "duly served" if it is shown that what was purporting to be signed by the tenant was indeed not signed by the tenant and / or what was purporting to be refusal of the tenant was indeed not refusal of the tenant. ***An order of eviction passed on purported service if allowed to stand notwithstanding being shown to be not duly served would be in violation of Section 37(1) prohibiting the Controller from passing any order without giving reasonable opportunity to show cause there against and would also be in violation of the practice and procedure of a Court of Small Causes. For this reason also in our view Prithipal Singh supra cannot be read as closing all doors or remedy at least before this Court.***

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

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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 Prithipal Singh supra choose/opt to not answer the question (B) framed in the referral order."* (emphasis is mine)

6.2 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/tenant and as to whether the present petitioner/tenant has been able to make out a substantial case for consideration of his application for leave to contest.

7. As mentioned above, summons in the prescribed format were served on the present petitioner/tenant on 05.01.2023 and immediately on the next day i.e. 06.01.2023, the petitioner/tenant admittedly filed an application for supply of legible copies of the paper book, which application was allowed by the Additional Rent Controller on 13.03.2023, thereby directing the present respondent/landlord to supply legible paper book to the present petitioner/tenant within three days against acknowledgement and the present petitioner/tenant was directed to file leave to contest application within

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stipulated period of time. The order dated 13.03.2023 of the Additional Rent Controller lends credence to the claim of the present petitioner/tenant that copy of paper book supplied with the summons was not legible, otherwise there was no occasion for the Additional Rent Controller to again direct supply of legible paper book. Obviously, the learned Additional Rent Controller, having examined the paper book supplied to the present petitioner/tenant accepted the contention of the latter that the paper book earlier supplied was not legible.

8. The provision under Section 25B(4) of the Act stipulates that the tenant on whom summons is *duly served* in the form specified in Third Schedule shall not contest the prayer for eviction from the premises unless he files an application seeking leave to contest and the same is allowed by the Rent Controller. The expression "*duly served*", in view of Section 37 of the Act read with Rule 23 of the Delhi Rent Control Rules, has to be read in consonance with the provision under Order V Rule 2 CPC, which mandates that every summons shall be accompanied by a copy of plaint. Of course, the purpose of inserting Chapter IIIA by way of amendment of the year 1976 in the Act was to expedite the trial of eviction petitions of the designated categories, but that does not mean that the courts would be insulated to the principles of *jus naturale* in a zest for speedy disposals. If a person receiving the summons does not receive legible paper book, his right to respond and to be effectively heard gets completely desecrated. More so, in the proceedings of the present nature where the eviction respondent does not have right to defend himself unless he obtains leave to contest, that too by

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moving application within specified period. To my mind, the very first stage in this case was kaput, in the sense that the summons sent to the present petitioner/tenant were not accompanied with legible copy of the paper book.

9. Further, on 13.03.2023 after directing the present respondent/landlord to supply a legible set of paper book alongwith coloured copy of Will to the present petitioner/tenant within three days against acknowledgment and directing the present petitioner/tenant to file leave to contest, if any within stipulated period, the Additional Rent Controller posted the matter to 04.07.2023 for filing of reply to the leave to contest application. In the meanwhile, fresh copy of paper book was sent to counsel for the present petitioner/tenant through email dated 15.03.2023, and then, through WhatsApp dated 16.03.2023 counsel for the present petitioner/ tenant was informed about the said email with a request to send acknowledgment, to which the counsel for the petitioner/tenant answered "OK", but did not send any acknowledgement. The not sending of acknowledgment is explained by counsel for the present petitioner/tenant for the reason that the copy of Will supplied to him was not legible and therefore, he again requested on 04.04.2023 and 05.04.2023 for supply of the same. According to counsel for the present petitioner/tenant, on 04.04.2023 a legible copy of the Will was supplied through WhatsApp, so on 11.04.2023 he filed the application for leave to contest within the time of 15 days as prescribed by law.

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10. The document at page 92 of the paper book of the present proceedings is screenshot printout of WhatsApp chat thread between counsel for both sides, reflecting two intact messages dated 16.03.2023 and three deleted messages dated 04.04.2023. Significantly, learned counsel for the present respondent/landlord admitted having deleted the WhatsApp messages dated 04.04.2023 sent from his phone, but he could not come up with any convincing reason for having done so. Learned counsel for the present respondent/landlord feebly tried to explain this, stating that he deleted those messages because the matter had come to an end by expiry of the prescribed period to file application for leave to contest. But it fails to explain as to why the learned counsel would delete WhatsApp messages of only 04.04.2023, retaining the earlier two messages in the chat thread. The only logical inference is that by way of those deleted WhatsApp messages dated 04.04.2023, counsel for the present respondent/landlord had supplied fresh copies of paper book and the Will to counsel for the present petitioner/tenant. And that being so, the application for leave to contest filed on 11.04.2023 was not beyond the time prescribed by law.

11. Learned Additional Rent Controller in the impugned order took a view that learned counsel for the present petitioner/tenant ought not to have kept silent from 15.03.2023 (*when he received the paper book through email*) and 31.03.2023 (*when the prescribed period to file application for leave to contest expired*). That silence is understandable, as counsel for the present petitioner/tenant was yet to send acknowledgment of having received the complete paper book, so at his end, the issue was still open and

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the next date before the Additional Rent Controller was already due for 04.07.2023. The WhatsApp text dated 16.03.2023 "OK" was not acknowledgment of receipt of the complete paper book; it was only an expression that counsel for the present petitioner/tenant would check his email and revert.

12. I have no hesitation to hold that the present petitioner/tenant was not supplied with complete and legible paper book alongwith the summons or even thereafter. That being so, there can be no doubt that the present petitioner/tenant was prevented from filing the application for leave to contest within time prescribed by law by cause beyond his control. The first part of the dual test stands satisfied in favour of the present petitioner/tenant.

13. Coming to the second part of the dual test as to whether the present petitioner/tenant has been able to make out a substantial case for consideration of the application for leave to contest. I have examined copies of the eviction petition and the application for leave to contest, which are annexed with the present petition. Keeping in mind the limited scope of jurisdiction under proviso to Section 25B(8) of the Act, I would refrain myself from commenting in details the merits and/or demerits of the grounds on which leave to contest has been sought by the present petitioner/tenant. That would fall in the domain of the first adjudicatory authority - learned Additional Rent Controller. But suffice it to say on the basis of above record that the present petitioner/tenant certainly does make out a substantial case for *consideration* of the application for leave to contest. It is clarified that

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what I opine herein is not that the leave to contest in this case must be granted or must not be granted; what I opine herein is just that the case set up by the present petitioner/tenant deserves examination by the Additional Rent Controller. The second part of the dual test also stands satisfied in favour of the present petitioner/tenant.

14. Accordingly, the dual test as prescribed in the case of ***Mohd Shamim*** (supra) stands clearly satisfied in favour of the present petitioner/tenant.

15. Therefore, the impugned order is set aside and the revision petition is allowed, thereby remanding the matter to the learned Additional Rent Controller to proceed in accordance with law. All pending applications accordingly stand disposed of. Both parties and/or their counsel shall appear before the learned Additional Rent Controller on 15.02.2024 at 02:00pm.

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(JUDGE)

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