

(2013) 07 DEL CK 0540
Delhi High Court
Case No: RC. Rev. No. 554 of 2012

Rajender Kumar

APPELLANT

Vs

Sharda

RESPONDENT

Date of Decision: July 4, 2013

Acts Referred:

- Delhi Rent Control Act, 1958 - Section 14(1)(e), 25B, 25B(4)

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: Rajesh Sharda, for the Appellant; Amit Raghav, Jatin Rajput and Mr. Anupam Dubey, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan Singh, J.

The abovementioned petition has been filed by the petitioner against the rejection of leave to defend application and eviction order dated 18th April, 2012 passed by the Addl. Rent Controller, Rohini Courts, Delhi in Eviction Petition No. 62/2012 as there was two days delay in filing the application for leave to defend. Admittedly, the petitioner received the summons on 21st March, 2012 in the prescribed form. The application for leave to defend was filed on 9th April, 2012. The last date for filing the application for leave to defend was 5th April, 2012, under the prescribed period of 15 days. The 5th and 6th April, 2012 were national holidays. Thus, it could have been filed on 7th April, 2012 being the last date, but the same was filed on 9th April, 2012. The explanation given in the application filed by the petitioner u/s 25-B(4) & (5) of the Delhi Rent Control Act, is that on 7th April, 2012 there was a lawyer's strike, therefore, the affidavit could not be attested due to non-availability of the Oath Commissioner and 8th April, 2012 being Sunday, hence the application could only be filed on 9th April, 2012.

2. Learned counsel for the petitioner admits that though the application for leave to defend was filed beyond the period of 2 days, there are various triable issues raised by his client.

3. By the impugned order passed on 18th April, 2012, the application of the petitioner for leave to defend was dismissed and eviction order was passed. The said order has been challenged by the petitioner before this Court by filing the present petition.

4. Learned counsel appearing on behalf of the petitioner has admitted that in execution proceedings, the respondent has received the possession of tenanted premises as the petitioner's application for stay was rejected by this Court after hearing on 11th January, 2013.

5. The question before this Court is, as to whether this Court has power to condone the delay in filing the application for leave to defend.

6. The law in this regard is well settled by the Supreme Court of India as well as by this Court that the Court has no power to condone the delay in filing the application for leave to defend. In the case of Prakash Jain vs. Merry Fernandes, reported in 2004 RLF 83 (SC), the Supreme Court has held that the condonation of delay can also not be sought under the inherent powers as the Rent Authority is not a Civil Court though the Rent Act provides for that authority to exercise certain powers under the said Code.

7. Similar view was taken by this Court in the following cases:-

(i) [Shiv Gopal and Another Vs. Shipra Singh and Others](#), wherein it was held that the Rent Controller has not been conferred with power to condone delay even for one day.

(ii) Ramesh Tuli vs. Sharda Kapoor, reported in 153 (2008) DLT 302, wherein it was held that in view of [Sh. Prithi Pal Singh Vs. Sh. Satpal Singh](#), Court of Additional Rent Controller had no jurisdiction to entertain application u/s 25B which is filed beyond period of 15 days. It was further held that the provisions of Limitation Act are not applicable.

(iii) In the case of [Rakesh Gupta and Another Vs. Ashok Dilwali](#), it was held that the tenant seeking permission to contest the eviction petition filed u/s 14(1)(e) of the Rent Act, is supposed to file an affidavit within 15 days from the date of receipt of summons pleading such facts as would disentitle the landlord from obtaining an eviction order. Failure to file the affidavit has to result in the passing of an eviction order against the tenant. It was further held that period of 15 days is not extendable even for a day.

In view of the above settled law, I am not inclined to interfere with the impugned order passed by the Addl. Rent Controller on 18th April, 2012. The petition is

accordingly dismissed. As the respondent has already got the possession of the suit property, no further directions are required to be issued in this regard.