

Manish Kumar Vs. Hemlata Sharma

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Court : Delhi

Decided On : Mar-05-2014

Judge : Manmohan Singh

Appellant : Manish Kumar

Respondent : Hemlata Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment pronounced on: March 05, 2014 RC.REV. 15/2013, C.M. Nos.540/2013, 809/2013 & 1138/2013 MANISH KUMAR Through Petitioner Mr.Mohit Chaudhary, Adv. with Ms.Damini Chawla, Adv. versus HEMLATA Through Respondent Ms.Manisha Agrawal Narain, Adv. AND + C.R.P. 77/2013 & C.M. No.6576/2013 MANISH KUMAR Through Petitioner Mr.Mohit Chaudhary, Adv. with Ms.Damini Chawla, Adv. versus HEMLATA SHARMA Through Respondent Ms.Manisha Agrawal Narain, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. By way of the present petition under Section 115 of CPC, the petitioner has assailed the eviction order dated 26th March, 2013 passed by the learned Addl. Rent Controller whereby the leave to defend application filed by the petitioner was dismissed for the reason mainly that the same was not filed within the stipulated period prescribed under the Act.

2. Brief facts for the purpose of adjudication of the present petitions are that the respondent had filed an eviction petition bearing No.E-25/2010 against the petitioner under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act) in respect of an L- Shape shop No.3 situated in the property bearing No.41, Subhash Park, Kotla Mubarakpur, New Delhi (hereinafter referred to as the tenanted premises). However the petitioner did not file the leave to defend application within the prescribed period of 15 days.

3. The petitioner had filed an application under Section 5 of the Limitation Act seeking condonation of delay in moving leave to defend application. It was stated in the application that the copy of the summons and annexure was not complete and page Nos. 19, 20, 32, 33, 38 and 39 were missing and therefore the said service could not be called as complete service. It was further stated that the copy of the plaint was very dim and illegitimate and the same could not be called as complete service in the summary trial. The petitioner also assailed the maintainability of the eviction petition in respect of the commercial property.

4. It was further stated that the counsel was engaged on 29th May, 2011 and the inspection was carried out on 30th May, 2011 by the counsel of the petitioner and even in the summons, no next date of hearing was mentioned and hence the summons itself were illegal and not as per principles of natural justice. It was stated that the petitioner is an illiterate person and it could not be presumed that the petitioner may be aware about the technicalities of filing the reply within 15 days from receipt of the summons and moreover the summons were not supported with complete set of plaint and annexure.

5. The petitioner to explain the delay in filing the leave to defend application has taken grounds such as copy of the summons and annexure were not complete and copy of the plaint was very dim and illegitimate and the same could not be called as complete service etc. (i) The said plea raised by the petitioner has been discussed in the following decisions: In M/s. Delhi Book Store vs. K.S. Subramaniam, AIR2006 Delhi 206.

10. Another submission vehemently made on behalf of the defendant is with regard to the service of the summons upon the defendant in accordance with the

provisions of Order 37 of the CPC. It is contended that the documents were not given to the defendant along with the plaint and the service of the summons was not proper. The copy of the summonses which were served upon the defendant indicates that they were duly received by the defendant and nothing was recorded on the said summonses that the documents annexed to the plaint have not been served upon the defendant. Even after the summonses were received and prior to filing the application for leave to defend, there is nothing on record which could indicate that the defendant had written to the plaintiff or placed any document on the Court file at the time of putting in appearance that the requisite documents were not supplied to the defendant. This again appears to be an afterthought on the part of the defendant.

(ii) *Rena Verma vs. Veena Gupta*, CM(M) 178/2012, dated 6th August, 2012, (Date of decision :

6. h August, 2012). The contention of the petitioner before this court is that the copy of the eviction petition was illegible and hence rendered her unable to file the application for leave to defend. The same contention was urged by the petitioner before the Id. ARC, but the perusal of record shows that after service of summons, the petitioner took no step to obtain the copy of petition or to bring the matter before the trial Court immediately, but instead waited till last day, i.e., 01.02.2011 to file an application for direction to the petitioner to supply legible copy of petition. The only reason put forward by the petitioner was that no steps could be taken by him due to his marriage. Even the application filed under Order 37 Rule 4 of CPC on 30.09.2011 for review of order dated 27.04.2011, was time barred and was not accompanied with the application for condonation of delay. The whole chain of events displays chronic apathy on the part of the petitioner, and I am unable to find the presence of any special circumstances existed which could merit the condonation of delay in filing the application for leave to defend.

6. The learned Trial Court vide the order dated 20th August, 2011 observed that the summons in the matter were directed to be served on the petitioner vide order dated 19th February, 2010, but the petitioner could not be served. An application under Order 5 Rule 20 CPC was moved by the respondent for substitute service,

which was allowed and the petitioner was served by way of affixation on 4th May, 2011 and also by way of R/C and duly signed AD card, which was on record. The learned Trial Court observed that the petitioner had not disclosed in his application as to when was he served. However, as per material on record, the petitioner was required to file the leave to defend application on or before 21st May, 2011 since as per report of process server, the summons were affixed on 4th May 2011 with a copy of the petition and duly signed AD card filed on record bore the stamp of postal authority dated 6th May, 2011. However, the leave to defend application was filed on 7th June, 2011, much beyond the stipulated period of 15 days from date of service and in the opinion of the learned Trial Court, was time-barred.

7. The learned Trial Court observed that if the copy of the petition and annexure supplied to the petitioner were dim or incomplete, the petitioner should have approached the court immediately and should have brought this fact to the knowledge of the court, but no such steps had been taken by the petitioner. Further, a perusal of order sheet dated 4th June, 2011 revealed that no such contention as alleged by the petitioner that copy of the petition supplied to him was very dim nor any application intimating the Court in this regard was moved by the petitioner.

8. The learned Trial Court observed that contrary to the contention of the petitioner, the record revealed that Sh. Jitender Prasad, Advocate had inspected the judicial record on 25th May, 2011 and the contention of the petitioner that he engaged the counsel on 29th May, 2011 who carried out the inspection on 30th May, 2011 was false and contrary to the record. Further it was observed that admittedly the petitioner was served with notice of the petition as per Schedule III of the Act and in the summons, it had been clearly mentioned that leave to defend application was required to be filed within 15 days from the date of service. Therefore, the plea that petitioner is not aware that the reply was to be filed within 15 days from the date of service was not tenable.

9. With these observations, the learned Trial Court passed the impugned eviction order dismissing the application seeking condonation of delay in filing leave to defend application. Aggrieved thereof the petitioner filed a review application.

10. The review application was filed primarily on the ground that the respondent had not filed the petition as prescribed under form A and as required under the Rule 3 of the DRC Rules, 1959 and that column 12 and 14 had not been clarified in the petition and column 15 and 16 of the petition mentions the name of one Rishipal in the shop whose status was not known. It was averred that the time of 15 days is directory and not mandatory and since the summons had not been sent in the proper format, the period of limitation was not applicable. There was non-compliance of Rule 21 of the DRC Rules, 1959. It was averred that Order 37 and Order 8 CPC were directory and the Additional Rent Controller had inherent powers to allow fresh affidavit after expiry of 15 days in case there were no procedural or technical defects. The petitioner also questioned the merits of the eviction petition.

11. The learned Trial Court while dismissing the review application observed that there was no infirmity in the order dated 20 th August, 2011 as neither any discovery of new and important matter was brought by the petitioner before the court nor any evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed and neither there was any mistake nor error apparent on the face of record and there was no sufficient reason which called for review of the order. It was observed that the order dated 20 th August, 2011, all the points raised by the petitioner now, had been duly considered by the court. By way of the review application, the petitioner intended to raise all those issues which he intended to raise in his leave to defend application, but what cannot be done directly, cannot be done indirectly.

12. Accordingly, the review application was dismissed and the petitioner filed an appeal which was withdrawn by the petitioner with the liberty to approach his Court vide order dated 3rd January, 2013. Subsequently the petitioner filed the petition being RCR No.15/2013.

13. During the pendency of the petition being RCR No.15/2013, the petitioner moved two applications before the learned Trial Court in the execution petition filed by the respondent in respect of the tenanted premises. One seeking to set

aside the eviction order dated 20 th August, 2011 stating the same grounds which were taken up in the earlier proceedings before the learned Trial Court, and another for appointment of Local Commissioner. It was also stated that the revision petition was pending and the respondent had made a statement before the Court not to press for execution till 15th April, 2013.

14. The learned Trial Court dismissed both these applications vide order dated 26th March, 2013 observing the applications to be completely devoid of merit, considering that the application for condonation of delay and the review petition were dismissed and the fact that the matter was pending before this Court. Aggrieved thereof the petitioner filed CRP No.77/2013.

15. In the abovesaid two petitions, the petitioner has challenged the three orders, details of which are given as under: (i) Order dated 20th August, 2011 passed in Eviction Petition bearing No.E-25/2010. (ii) Order dated 1st December, 2012 deciding the application of review of order dated 20th August, 2011. (iii) Order dated 26th March, 2013 passed in Execution Petition bearing M. No.04/2013.

16. The issue for consideration before this Court is whether Rent Controller was correct in rejecting the application for leave to defend after expiry of the prescribed period and the review application on the ground that he had no power to condone the delay under the Act. In various cases decided from time to time it has been held that the Rent Controller has no other option but to pass an order of eviction.

17. It is true that before this Court many revision petitions against the orders passed by the Rent Controller(s) are being filed on similar issue, it has been urged on behalf of the tenants that the law of limitation was not intended to extinguish the right of the parties which cannot be defeated for procedural laws. Thus passing of mechanical orders by the Rent Controller(s) to the effect that they have no jurisdiction to condone the delay in filing the application for leave to defend after the expiry of fifteen days would not only defeat the ends of justice but violate the basic purpose of Limitation Act, 1963.

18. The legal issue involved in the present case is the same as in RCR No.298/2013, RCR No.341/2013, RCR3632013, RCR4182012 and RCR3592013.

Almost same arguments were addressed in all three matters.

19. It is submitted that in the matter of jurisdiction of the controller to extend the time for compliance of the provisions of Section 14(1)(a) for payment of rent and 14(1)(e) for obtaining leave to contest as required under the third Schedule to Chapter IIIA is the same and the Act does not contemplate different treatment between the said two provisions. A number of decisions rendered by this Court have been referred in this regard under which powers of the Controller to condone the delay in complying with the orders under Section 15(1) of the Act has been upheld. In the case of Rakesh Kumar vs. Gandharv Singh, 155 (2008) DLT750 a Single Judge of this Court after referring to the judgment of the Supreme Court in the case of Ram Murthy vs. Bhola Nath, AIR 1984 SC1392 held as under:

A perusal of aforesaid observations in the judgment would clearly show that the learned Additional Rent Controller or for that matter Tribunal is not powerless to condone the delay in a given case which may occur on account of the reasons which are beyond the control of the tenant to physically make the deposit within a period of one month as stipulated in law. The said paragraph gives various illustrations under which the tenant may be unable to deposit the rent. In all such contingencies the ARC would not be powerless to condone the delay. Therefore, in the light of the aforesaid facts, it could not be said that the learned Tribunal or the ARC did not have the power to condone the delay. However, so far as the question of actually delay being condoned in the present case is concerned, that aspect has to be seen as to whether the delay could have been condoned or not. In the instant case, there was no application filed by the petitioner for condonation of delay nor was such an application filed before the learned Additional Rent Control Tribunal therefore the delay could not be ipso facto condoned automatically by the learned Additional Rent Controller or by the Tribunal without there being an application. To that extent, I feel that the order of the learned Additional Rent Controller as well as that of the Tribunal cannot be found fault with.

20. In the case of Smt. Anit Maharani vs. Sh. Shashi Bhushan, decided by Valmiki J.

Mehta, J., on 19th April, 2011, while referring to the judgment of the Supreme Court in the case Ram Murthy vs. Bhola Nath (supra), this Court has held that the Controller has got the powers to condone the delay in case the tenant is able to show that the delay was on account of reasons which were beyond his control.

21. In view of abovesaid decisions referred, it is argued that the provisions of Limitation Act, 1963 cannot selectively be applied to proceedings under the same Act as observed in the cases decided wherein the Courts have held that the Controllers have power to condone the delay in complying with the orders under Section 15(1) of the Act and in another provision of the same Section, it is being held that the Controller(s) have no power to condone the delay. It cannot be selectively applicable. Therefore, the Controller does possess the power to condone the delay if an application for leave to defend is filed after the prescribed period of 15 days in case the tenant is prevented from filing the same due to reasons which were beyond his control.

22. Let me now consider the submissions made on behalf of three petitioners/tenants i.e. present revision petition and RCR No.298/2013, RCR No.341/2013, RCR3632013, RCR4182012 and RCR3592013. Before dealing with their arguments, it is necessary to refer the relevant provisions of Section 25-B(4) in order to decide the issue in hand. The same reads herein as under:

25. B Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.-. (4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files and affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

23. The provisions of Chapter III-A of the Act stood challenged in an earlier proceeding and the Supreme Court in the case of Kewal Singh vs. Smt. Lajwanit,

(1980) 1 SCC290 In the said case, the classification on the class of landlords under Section 14 (1)(e) and the procedure applicable and as contained in Section 25-B of the Act had been questioned; submission was that the classification is not in consonance with the object sought to be achieved by the Act. The Supreme Court had answered this question in the following words:

We would, therefore confine ourselves to the validity of Section 14(1)(e) and the procedure prescribed to give relief mentioned in the aforesaid Section in Section 25B. Before discussing the relevant provisions of the Act it may be necessary to observe that the Rent Control Act is a piece of social legislation and is meant mainly to protect the tenants from frivolous evictions. At the same time, in order to do justice to the landlords and to avoid placing such restrictions on their right to evict the tenant as to destroy their legal right to property certain salutary provisions have been made by the legislature which give relief to the landlord. In the absence of such a legislation a landlord has a common law right to evict the tenant either on the determination of the tenancy by efflux of time or for default in payment of rent or other grounds after giving notice under the Transfer of Property Act. This broad right has been curtailed by the Rent Control Legislation with a view to give protection to the tenants having regard to their genuine and dire needs. While the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief W.P.(C) No.1801/2013 Page 10 of 13 which it seeks to give to the landlord also. For instance one of the grounds for eviction which is contained in almost all the Rent Control Acts in the country is the question of landlord's bonafide personal necessity. The concept of bonafide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical.

24. The scope of Chapter IIIA of the Rent Act has been elaborately discussed in the case of Ravi Dutt Sharma vs. Ratan Lal Bhargava, (1984) 2 SCC75 in which this Court duly discussed the object of the Rent Act and also the insertion of Chapter IIIA of the same in the following manner:

7..The dominant object of the act is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14-A and

for avoiding unusual dilatory process provided otherwise by the Rent Act. It is common experience that suits for eviction under the Act take a long time commencing with the Rent Controller and ending up with the Supreme Court. In many cases experience has indicated that by the time the eviction decree became final several years elapsed and either the landlord died or the necessity which provided the cause of action disappeared and if there was further delay in securing eviction and the family of the landlord had by then expanded, in the absence of accommodation the members of the family were virtually thrown on the road. It was this mischief, which the Legislature intended to avoid by incorporating the new procedure in Chapter III-A. The Legislature in its wisdom thought that in cases where the landlords required their own premises for bona fide and personal necessity they should be treated as a separate class along with the landlords covered by Section 14-A and should be allowed to reap the fruits of decrees for eviction within the quickest possible time. It cannot, therefore, be said that the classification of such landlords would be an unreasonable one because such a classification has got a clear nexus with the objects of the Amending Act and the purposes, which it seeks to subserve. Tenants cannot complain of any discrimination because the Rent Act merely gave certain protection to them in public interest and if the protection or part of it afforded by the Rent Act was withdrawn and the common law right of the tenant under the Transfer of property Act was still preserved, no genuine grievance could be made.

25. In the case of Prithipal Singh vs. Satpal Singh (D) through legal heirs, 2010 (2) SCC15 the Supreme Court, while dealing with the specific plea set up by the tenant as to whether the Addl. Rent Controller had the power to condone the delay of 15 days in seeking leave to defend, held as under:

23. As noted hereinafter, Section 25-B(1) clearly says that any application filed by a landlord for recovery of possession of any premises, inter alia, on the ground of Section 14(1)(e) of the Rent Act, shall be dealt with in accordance with the procedure specified in Section 25-B of the Rent Act. Therefore, Sub-section (1) of Section 25-B makes it clear that if any application for eviction of a tenant is filed by the landlord, the special procedure indicated in Section 25-B has to be followed and Section 25-B(1) clearly stipulates that the application for eviction shall be

strictly dealt with in accordance with the procedure specified in this Section. Apart from that, as we have noted herein earlier, Section 25-B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25-B of the Act. Therefore, after insertion of Section 25-B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25-B and question of relying on Rule 23 of the Code, which also does not give full right to apply the provisions of the Code, could be applied.

24. That apart, Rule 23 does not specifically confer any power on the Controller to follow the provisions of the Code in special classes of landlords. It is a general rule, by which the Controller in deciding any question relating to procedure not specifically provided by the Act and these rules shall, as far as possible, be guided by the provisions contained in the Code.

25. In view of our discussions made hereinabove that Section 25B has been inserted by the Legislature for eviction of a tenant of a certain classes of landlords, in which the entire procedure has been given, it is difficult for us to hold that Rule 23 of the Rules can be applied in the present case in view of the specific provisions provided in Section 25B of the Rent Act. Accordingly, we are of the view that Rule 23 has no manner of application.

26. That being the position, if Rule 23 cannot be applied in the present case because of applicability of Section 25B, which is a special code and specific procedure for eviction of a tenant by a landlord on the ground of bona fide requirement, we cannot agree with the courts below that in view of Rule 23 of the Rules, the provisions of the Code can be applied in the present case and, therefore, we are of the view that the High Court had acted illegally and with material irregularity in the exercise of its jurisdiction in setting aside the order of eviction and in allowing the affidavit filed by the tenant for the purpose of defending the proceedings for eviction.

27. That apart, from a perusal of the order of the High Court and also of the Rent Controller, it would be evident that the High Court had relied on a decision of the

Delhi High Court in the case of Mohd. Quresh vs. Smt. Roopa Fotedar & Ors. [1990 (1) ILR16 and held in favour of the tenant/respondent. In Mohd. Quresh (supra), another decision of the Delhi High Court in the case of Gurditta Mal Vs. Bal Sarup [AIR1980 Delhi 216]. was relied on to come to a conclusion that in view of Rule 23 of the Rules, the Rent Controller was conferred with the power to entertain an application under Order 37 Rule 4 read with Section 151 of the Code.

26. The Division Bench of this Court in the case of Olive Marques vs. Union of India, 2013 (199) DLT727 has discussed the implications and consequences of non-filing of application for leave to defend in the prescribed time in para 8 of the judgment which reads as under:

8. The elaborate submission of the learned counsel for the petitioners on this score being that the last four lines in the said sub- clause are the offending lines. This envisages a situation where if the tenant does not file his defence within the stipulated period, the statement made by the landlord in his eviction petition shall be deemed to be admitted by the tenant and the landlord would straightway be entitled to a decree of eviction; this impinges upon the power of judicial review which the Courts have; there could be cases where the landlord has filed an eviction petition which is based purely on a fraud and merely because of an inadvertent mistake or error on the part of the tenant in not being able to file his application for leave to defend within the time frame as contained in Section 25-B (4), such a landlord would also be entitled to a decree straightway which could not have been the intention of the legislature. This principle is in fact opposed to the principles of natural justice; it denies a right to be heard to the tenant. Submission being that this so called summary procedure is in fact a flagrant abuse of right of equality before the law and equal protection which is guaranteed under Article 14 of the Constitution; such a legislation can in no manner be sustained. The vehement submission of learned counsel for the petitioners being that Section 4 of the Evidence Act contains a rebuttable presumption giving a right to the opposing party to rebut such a presumption but the language of Section 25-B (4) has gone beyond that point; it has embodied within itself a conclusive proof which is draconian in character and is liable to be struck down. Learned counsel for the petitioners has taken us through Article 31-C of the Constitution of India;

submission being that last three lines of the said Article "and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy" had been declared as invalid by the Supreme Court in Keshavananda Bharati Vs. The State of Kerala (1973) Supp SCR1 Learned counsel for the petitioners by relying upon this Article seeks to draw a parallel with his submission that the last four lines contained in Section 25-B (4) also need to be invalidated.

27. Similar view was also taken 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 following cases. (i) In the case of Rakesh Gupta & Another vs. Ashok Dilwali, reported in 2012 (1) RCR (Rent) 342, it was held that the tenant seeking permission to contest the eviction petition filed under Section 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. (ii) In the case of Om Prakash vs. Ashwani Kumar Bassi, 2010 (2) RLR289 it was held that wherein the application for leave to contest, there was a delay of one day in filing the application, the Rent Controller has no jurisdiction to condone the delay. The eviction order has been rightly passed as the Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot therefore entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power. (iii) Shiv Gopal & Anr. vs. Shipra Singh & Ors., reported in 186 (2012) Delhi Law Times 194, wherein it was held that the Rent Controller has not been conferred with power to condone delay even for one day. (iv) Ramesh Tuli vs. Sharda Kapoor, reported in 153 (2008) Delhi Law Times 302, wherein it was held that in view of Prithi Pal Singhs case, 133 (2006) DLT686 Court of Additional Rent Controller had no jurisdiction to entertain application under Section 25B which is filed beyond period of 15 days. It was further held that the provisions of Limitation Act are not applicable.

28. In view of settled law on the issue in hand, there is no force in the submissions of the petitioner to the effect that in view of the law laid down by the Supreme Court wherein it is held that despite of time stipulated under Section 15(1) read with Section 14(1)(a) and 14(1)(2) of the Act, the Tribunal is not powerless to condone the delay in a given case, therefore, those decisions would also apply in the same manner, as there is a delay in filing of the application for leave to defend in the petition filed under Section 14(1)(e) of the Act when there can be circumstances which may be beyond the control of the tenant which may prevent the tenant from complying with the order under Section 15(1) of the Act. However, this Court is of the considered opinion that the said decisions have no application in the situation when the eviction orders are passed under Section 14(1)(e) of the Act on failure of filing the application for leave to defend beyond the time prescribed. The main reasons are that the eviction sought by the landlord under the provision of Section 14(1)(e) is to be treated as summary proceedings and in view of the special procedure provided under sub-section (4) of Section 25B which mandates that in default of tenants appearance pursuant to the summons or in obtaining such leave, the statement made by the landlord in the application for leave to eviction shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order of eviction on the grounds stated in the eviction petition. Such deeming provision is not prescribed in the provision and procedure under Section 14(1)(a) if the arrears of rent are recoverable. Therefore, the arguments addressed by the petitioner cannot be accepted in the absence of such deeming provision available in the eviction petition under Section 14(1)(a) for recovery of rent.

29. For the aforesaid reasons as explained and in view of settled law on the issue involved and in existence of special provision for bonafide requirement under Section 25(B) sub-section (4), this Court under the inherent and plenary powers is not empowered to take different view by exercising discretionary jurisdiction and to mould the statutory and mandatory provisions even in the cases where the tenant is able to make a sufficient case for filing the application beyond the period of time. All the decisions rendered by the Courts on the issue in hand are binding and my view is also the same. However, I am of the considered opinion that in order to provide justice in these nature of the cases where the eviction orders are passed

without having considered the defence of tenant, some reasonable time should be granted to evict the tenant as one must understand that after the decision of Satyawati Sharma (Dead) by LRs vs. Union of India (UOI) & Anr., AIR 2008 SC3148 the distinction between a premises let out for a residential purpose and those let out for commercial purpose for the purpose of an eviction petition filed under Section 14(1)(e) of the Act had been abrogated.

30. Considering the overall facts and circumstances of the case, I am of the view that at least the petitioner is entitled for sufficient time to vacate the tenanted premises without deciding the case of the petitioner on merit due to the reasons that the application for leave to defend has not been filed by the petitioner within the prescribed time.

31. In the case of Mohd. Ayub vs. Mukesh Chand, (2012) 2 SCC155 it was observed that the hardship Appellants would suffer by not occupying their own premises would be far greater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.

32. In view of the hardship shown by the petitioner, coupled with the fact that it is a commercial property which is being used by the petitioners for more than 45 years and in the interest of justice, equity and fair play, the petitioners are granted one years time from today to vacate the tenanted premises. During this period, the petitioner shall not sublet or create any third party interest in the tenanted premises and after the expiry of said period, the petitioner shall hand over the peaceful and vacant possession of the tenanted premises to the respondent.

33. The petitions are accordingly disposed of with these directions.

34. No costs. (MANMOHAN SINGH) JUDGE MARCH05 2014

