

Smt. Shakuntala and ors. Vs. Smt. Kanti Devi and anr.

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Court : Delhi

Decided On : Jul-31-2014

Judge : Valmiki J. Mehta

Appellant : Smt. Shakuntala and ors.

Respondent : Smt. Kanti Devi and anr.

Judgement :

* + % IN THE HIGH COURT OF DELHI AT NEW DELHI RC. REV. No.352/2012
31st July , 2014 SMT. SHAKUNTALA & ORS. Through:Petitioners Mr. Kriti Uppal, Sr. Adv. with Mr. Pawan K. Bahl, Mr. Sajan K. Singh and Mr. Aman Bhalla, Advocates. VERSUS SMT. KANTI DEVI & ANR. Through: Respondents Mr. O.P.Verma, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. The challenge by means of this petition under Section 25(B)(8) of the Delhi Rent Control Act, 1958 is to the impugned judgment of the Additional Rent Controller dated 16.5.2012 by which the Additional Rent Controller has dismissed the leave to defend application and has granted eviction with respect to the suit premises comprised of two halls on the first floor in the property bearing municipal No.IX/1254, Satish Market, Tikona Park, Subhash Road, Gandhi Nagar, Delhi-31.

2. The Supreme Court in the case of Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC15 has held that the statutory period of 15 days for filing the leave to defend application is sacrosanct and delay of even one day cannot be condoned. Impliedly therefore it is also the ratio of the Supreme Court that additional affidavits or grounds or documents cannot be filed after the period of 15 days. The issue however is that if there are actual subsequent events happening post the period of 15 days of filing of the leave to defend application, whether the ratio of Prithipal Singh's case (supra) bars the court from considering such events which affect the bonafide necessity one way or the other happening after the period of 15 days from filing of the leave to defend application.

3. In view of the factual position which emerges in this case with respect to subsequent events which are averred by the petitioner/tenant happening after the 15 days period, as also certain subsequent events which the respondent/landlord avers have happened after 15 days period by which it is agreed that even the respondent/landlord should be allowed to plead additional facts for buttressing the bonafide necessity petition, besides challenging the subsequent events which are pleaded by the petitioner/tenant for grant of leave to defend application, it is hence agreed that the Additional Rent Controller be requested to decide the application for leave to defend afresh subject to the following directions: (i) Petitioner/tenant will file an additional affidavit before the Additional Rent Controller on the first date which is fixed before the Additional Rent Controller supported by the necessary documents, and which affidavit and documents will be confined to subsequent events affecting the bonafide necessity petition happening after the 15 days period prescribed for grant of leave to defend application. (ii) Respondent-landlord shall file reply to this additional affidavit controverting the aspects which are mentioned therein as also pleading such additional facts supported by documents if so required of happening of subsequent events which buttress and enhance the case with respect to the bonafide necessity. This reply affidavit of respondent/landlord will be filed within a period of four weeks of filing of the affidavit with respect to subsequent events by the petitioner/tenant. (iii) In case, the respondent/landlord in his additional affidavit adds facts beyond the facts required to be stated for replying to the additional averments by the petitioner/tenant with respect to the subsequent events, then qua those additional facts and documents pleaded by the

landlord, the petitioner/tenant can file rejoinder affidavit within a period of four weeks of the reply affidavit being filed by the respondent-landlord. (iv) The Additional Rent Controller is requested to complete hearing of the arguments on application for leave to defend by considering the additional affidavits and documents filed by both the parties pursuant to the present order, within a period of three months of the pleadings being complete pursuant to the present order.

4. In view of the above, it is agreed that the impugned order dated 16.5.2012 is set aside, however, the Additional Rent Controller will now pass a fresh order and the leave to defend aspect in accordance with law taking into account the observations made in the present order.

5. Parties are directed to appear before the District and Sessions Judge (East District) Karkardooma Courts, Delhi on 25.8.2014 and District and Sessions Judge will mark the eviction petition to a competent court/Additional Rent Controller/Rent Controller in accordance with law. Dasti to counsel for the parties. JULY31 2014 ib RCR3522012

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