

Sh Pradeep Kumar Vs. Sh Mukesh Kumar Jain

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Court : Delhi

Decided On : Jul-31-2014

Judge : Valmiki J. Mehta

Appellant : Sh Pradeep Kumar

Respondent : Sh Mukesh Kumar Jain

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI CM(M) 467/2014 & C.M.Nos.8155-8156/2014 % JULY31 2014 SH PRADEEP KUMAR Through:Petitioner Mr.Pankaj Vivek with Ms.Anupriya Singh, Advocates. VERSUS SH MUKESH KUMAR JAIN Through: Respondent Mr.Rahul Garg, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This petition under Article 227 of the Constitution of India impugns the order of the trial court dated 22.1.2014 whereby the right of the petitioner/defendant to file the written statement was closed.

2. Ordinarily, the courts are liberal in setting aside such orders, however, the facts as stated below will show that liberal attitude cannot be adopted in the present case.

3. The subject suit is a suit filed by the respondent/plaintiff/landlord for possession and mesne profits. In the city of Delhi, tenancies where rents are more than 3500/-

per month, and the tenant is a month to month tenant, such a tenant has no defence because premises are outside the Delhi Rent Control Act, 1958 and even if no notice is sent terminating the tenancy, it is a settled law so far as this Court is concerned vide M/s. Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr. (2011) 183 DLT712, that even summons of service of the suit can be taken as a notice under Section 106 of the Transfer of Property Act, 1882 for terminating the tenancy.

4. In the present case, counsel for the petitioner does not dispute that as per the case of the petitioner/defendant himself, the rate of rent is Rs.13,000/- per month, if not Rs.23,000/- per month, as stated by the respondent/plaintiff/landlord. It is also not in dispute that there is no registered lease deed with respect to the suit premises, and therefore the petitioner/defendant is only a month to month tenant.

5. In view of the aforesaid position, counsel for the respondent in my opinion made a very fair offer to the petitioner/defendant, that, possession can be handed over so that there is no delay on this aspect, however, the petitioner/defendant can file the written statement so far as the aspect of mesne profits is concerned, but the counsel for the petitioner after instructions obtained on a passover states that the petitioner/defendant is not agreeable. It is, therefore, clear that the petitioner/defendant has malafides to somehow or the other continue the illegal stay in the suit premises with respect to which he has no protection of law.

6. Code of the Civil Procedure, 1908 (CPC) was amended in 1999 and 2002, especially for cases such as the present, and vide Order 8 Rule1 CPC a specific time was fixed for filing of the written statement. Though the period for filing of written statement is only directory and not mandatory, courts have to see the facts of each case to determine whether delay in filing of the written statement should or should not be condoned.

7. In the present case, in view of the afore-stated including the refusal of the petitioner/defendant to accept the offer to take time for vacating the suit premises, I have no option but to hold that there is no illegality in the impugned order dated 22.1.2014 closing the right of the petitioner/defendant to file the written statement.

8. Dismissed. VALMIKI J.

MEHTA, J JULY31 2014 KA

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