

Jainab & Ors vs.mohd Ashraf

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Court : Delhi

Decided On : Sep-14-2017

Appellant : Jainab & Ors

Respondent : Mohd Ashraf

Advocate for Def. : Mr. Mohd. Sajid, Mr. Kiran Bairwa

Advocate for Pet/Ap. : Mr. Pushpender Sehgal

Judgement :

\$~10 * + IN THE HIGH COURT OF DELHI AT NEW DELHI RC.REV. 367/2017 & CM No.28639/2017 (for stay) JAINAB & ORS Through: Mr. Pushpender Sehgal, Adv.

... Petitioner

s Versus MOHD ASHRAF Respondent Through: Mr. Mohd. Sajid & Mr. Kiran Bairwa, Advs. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW %

ORDER

1409.2017 1. This Rent Control Revision Petition under Section 25B (8) of the Delhi Rent Control Act, 1958 impugns the order [dated 16th May, 2017 in RC/ARC No.32/2017 of the Court of ACJ/ARC/CCJ, North-East District, Karkardooma Courts, Delhi]. of eviction of the petitioner owing to the petitioner, though having been served on 18th March, 2017, having filed the leave to defend on 3rd April, 2017 which was the sixteenth day from the date of service.

2. On the contention of the counsel for the petitioners that 2nd April, 2017 was a Sunday, the petition was entertained and notice thereof issued.

3. 4. The counsel for the respondent appears. The counsel for the respondent appears and has referred to Shiv Gopal Vs. Shipra Singh 186 (2012) DLT194 5. The reference to the aforesaid judgment is misconceived inasmuch as the field, since then is covered by Prithipal Singh Vs. Satpal Singh (2010) 2 SCC15 and by Kailash Devi Vs. Brij Pal Manocha (2014) 213 DLT726 RC.REV. 367/2017 Page 1 of 4 6. I have also informed the counsel for the respondent of the reference to the Division Bench made by me vide order dated 16th August, 2017 in RC Rev.No.279/2014 titled Director Education Vs. Mohd. Shamim.

7. Per Section 4 of the Limitation Act, 1963, when the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court reopens. Applying the same also, the filing of the application for leave to defend was within time and which aspect has been totally ignored by the learned Additional Rent Controller (ARC).

8. Though it has been held in several judgments that the Limitation Act does not apply to proceedings under the Rent Act but the principle contained in Section 4 supra is a principle of good conscience and when the Rent Act permits time of 15 days to tenant to apply for leave to defend, the said time cannot be permitted to be curtailed to 14 days by requiring the tenant to file for leave to defend within 14 days if the 15th day is a holiday. This becomes evident from Section 10 of the General Clauses Act, 1897 as under:-

"10. Computation of time - (1) Where, by any [Central Act]. or regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open: The Rent Act is a Central Act and per judgments referred in my judgment dated 16th August, 2017 in RC Rev.No.279/2014 titled Director

RC.REV. 367/2017 Page 2 of 4 Education Vs. Mohd. Shamim Limitation Act does not apply to proceeding thereunder.

9. The same learned Judge who in Kailash Devi supra held that in view of Prithipal Singh supra this Court also does not have power to extend the time for filing of leave to defend. In S. Ravinder Pal Singh Vs. Kewal 2014 SCC OnLine Del 6741 after considering Prithipal Singh held that though Limitation Act does not apply with respect to special procedure under Section 25B read with Section 14(1)(e) of the Rent Act but merely because strictly the provisions of Limitation Act will not apply will not mean that the leave to defend application has to be filed even when the Court is closed. Accordingly, the leave to defend application filed on the day when the Courts reopened after the summer break, notwithstanding the period of 15 days for filing thereof having expired during the summer vacations was held to have been filed within time. Special Leave Petition (SLP) (C) No.13578/2015 preferred thereagainst was dismissed in limine on 8th May, 2015. Similarly in Salazar Luis Anthony Marques Vs. Mohd. Haroon Japanwala (2015) 217 DLT261 leave to defend application filed on 18th August when the period of 15 days for filing thereof expired on 15th August and 16th and 17th August were also holidays was held to be within time. SLP (C) No.30694/2014 preferred thereagainst also was dismissed in limine on 21st November, 2014.

10. Considering the aforesaid and the fact that if this petition were to be clubbed along with the reference made to the Division Bench, it will not be in the interest of the respondent, it is deemed appropriate to allow this petition.

11. The petition is allowed. RC.REV. 367/2017 Page 3 of 4 12. Axiomatically, the order dated 16th May, 2017 of eviction in favour of the respondent and against the petitioner is set aside.

13. The ARC, North-East District, Karkardooma Courts, Delhi is directed to restore RC/ARC No.32/2017 to its original position and to proceed to consider the application of the petitioner for leave to defend on merits.

14. The parties to appear before the ARC, North-East District, Karkardooma Courts, Delhi on 24th October, 2017.

15. The respondent to on that date file reply to the application for leave to defend.
RAJIV SAHAI ENDLAW, J SEPTEMBER14 2017 gsr/pp.. RC.REV. 367/2017
Page 4 of 4

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