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Suraj Bhan vs.asha

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SooperKanoon Citation : sooperkanoon.com/1213254

Court : Delhi

Decided On : Mar-05-2018

Appellant : Suraj Bhan

Respondent : Asha

Advocate for Pet/Ap. : Mr. Deepak Sharma, Mr. Manish, Mr. Jai Bansal, Mr. Respondent Manish

Judgement :

$~4 & 41 * IN THE HIGH COURT OF DELHI AT NEW DELHI + CM(M) 954/2015 Decided on:

5. h March, 2018 + SURAJ BHAN .....

... Petitioner
ASHA Through: Mr. Deepak Sharma & Mr. Manish, Advocates. versus Through: Mr. Jai Bansal, Advocate ..... Respondent RC.REV. 39/2018 & CM No.4377/2018 ASHA SURAJ BHAN .....

... Petitioner
Through: Mr. Jai Bansal, Advocate versus Through: Mr. Deepak Sharma & Mr. ..... Respondent Manish, Advocates. CORAM: HON'BLE MR. JUSTICE R.K.GAUBA ORDER (ORAL) 1. Both these petitions arise out of the proceedings relating to the eviction case (E No.68/2014 - new ARC258672016) registered on the application of Suraj Bhan (landlord) who is petitioner in CM (M) CM (M) 954/2015 & conn.

Page 1 of 6 954/2015 and respondent in RC Rev.39/2018 - seeking an order of eviction on the ground of bona fide need under Section 14 (1) (e) of Delhi Rent Control Act, 1958 which is governed by the special procedure envisaged in Section 25 B of the said enactment, such proceedings being directed against Asha (concededly a tenant) in the premises in question.

2. It appears the tenant had earlier filed an application for leave to defend in the afore-said proceedings on 20th August, 2014, the landlord having raised the issue of such application having been filed belatedly beyond the statutorily permissible period of 15 days after service in terms of Section 25 B of Delhi Rent Control Act, 1958. The objection about the application for leave to defend being filed belatedly and hence not maintainable was considered by the Additional Rent Controller and rejected by order dated 25.08.2015 which was challenged by the landlord by CM (M) 954/2015.

3. Later, however, the new presiding officer in the Court of Additional Rent Controller reconsidered the said issue and by order dated 16.08.2017, observed that the application for leave to contest was belated not having been presented within the statutorily permissible period of 15 days after service. He also went into the merits of the application for leave to defend and returned a finding that no triable issues had been raised, consequently passed an order of eviction on 16.08.2017 which is challenged by the tenant by RC Rev. 39/2018.

4. The issue to be considered in these proceedings, thus, is as to whether the application for leave to defend concededly submitted on CM (M) 954/2015 & conn. Page 2 of 6 20.08.2014 was within the statutory period of 15 days after service or not.

5. The learned counsel on both sides have been heard and the record has been perused with their respective assistance.

6. It is seen from the record that the eviction petition came up before the Additional Rent Controller for the first time on 07.06.2014. It was kept for consideration on 25.07.2014. The Additional Rent Controller was satisfied that a case had been made out for special summons to be issued in the form prescribed under

Schedule-III, Delhi Rent Control Act, 1958 relatable to Section 25 B. He thus, directed such summons to be issued upon steps to be taken inclusive of filing of registered cover, the process to be returnable on 27.09.2014. The process in terms of the said direction under Section 25 B, was issued on 28.07.2014, cautioned the tenant that she would be required to appear before the Rent Controller within 15 days of the service and to obtain leave of the Rent Controller to contest the application for eviction and further that in case of default of such steps being taken, the applicant landlord would be held entitled at any time after expiry of the said period of 15 days to obtain an order of eviction from the subject premises. Concededly, the process was duly served on the tenant personally on 03.08.2014, the process server having made a statement to this effect on the basis of process server report (Ex. PS-1/A) on 28.10.2014.

7. Since the order had directed the attempt of service through additional mode of registered post acknowledgement due (RCAD) another summons under Section 25 B of Delhi Rent Control Act had CM (M) 954/2015 & conn. Page 3 of 6 also been sent by such mode. The report of the postal official on the said registered cover indicates an attempt was made for service on 5,6 & 7 August, 2014 but the premises was found locked and, thus, the postal article could not be delivered.

8. It is against the above backdrop that the landlord prayed before the Additional Rent Controller that the tenant having been served personally on 03.08.2014, the application for leave to defend which was supported by affidavit of the claimant sworn on 20.08.2014 had been filed belatedly and the Additional Rent Controller having no power to condone the delay, order of eviction should follow. The Additional Rent Controller considered this submission but rejected the contention of the landlord referring in this context to ruling of learned single judge of this Court in Frank Anthony Public School vs. Amar Kaur ,1983 (2) RCR544 observing that service through both the modes under Section 25-B of Delhi Rent Control Act was compulsory and since attempt had been made to serve through the postal article on 05.08.2014, the submission of the leave to defend application on 20.08.2014 was within time.

9. The above view taken by the Additional Rent Controller in light of the ruling of the learned Single Judge of this Court in Frank Anthony Public School (supra) is apparently wrong. The issue is covered by a decision of division bench of this Court in RC Rev. 242/2013 Ashok Kumar vs. Purshotam Lal Verma decided on 22.09.2016, it being a matter arising out of a reference made by a learned Single Judge of this Court by order dated 12.05.2015 wherein the following questions of law were raised:-

"CM (M) 954/2015 & conn. Page 4 of 6 1. Whether the tenant is required to be served by both the modes as prescribed under Section 25B DRC Act or even service by one mode is sufficient service as per the requirement of the provision?.

2. In case the tenant is served by both the modes whether the period of 15 days for filing the leave to defend has to be counted from the first service or the second service?. 10. The division bench answered the reference thus: 1. Both modes of service are mandated and have to be resorted to simultaneously by the Controller. However, if service through one mode is completed or successful, that is deemed sufficient, irrespective of whether the other mode is successful or not.

2. In case the tenant is served by both the modes, the period of 15 days for filing the leave to defend has to be counted from the first date of service. Time, for the purpose of filing leave to defend, does not depend on the second service of summons.

11. The above ruling, particularly in the context of first question referred for decision, leaves no room for doubt that in the present case, the period to be counted for submission of the application for leave to defend would begin with reference to the date of personal service on the tenant i.e. 03.08.2014. The date of service i.e. 03.08.2014 has to be discounted and the period would commence from the next day. Thus, it is clear that the submission of the application for leave to defend on 20.08.2014 (concededly, a Wednesday) is beyond the period of 15 days.

12. In above facts and circumstances, the order dated 25.08.2015 rejecting the objection of the landlord on the ground of belated CM (M) 954/2015 & conn. Page

5 of 6 application for leave to defend being entertained must be set aside. Ordered accordingly. In the result, the petition of the landlord CM (M) 954/2015 - deserves to be allowed, the only consequence of this order would be that an eviction order should have followed and now must follow against the tenant. In this view, the opinion expressed by the Additional Rent Controller in the subsequent order dated 16.08.2017, particularly, on the question of the application for leave to defend being belated and, therefore, impermissible must be upheld. Ordered accordingly.

13. In above view, there is no need to go into the merits of the contentions raised in the application for leave to defend. The order of eviction passed in the present case, thus, will be treated as an eviction order on account of default on the part of the tenant to timely submit her application for leave to defend.

14. The interim order of stay against execution of the eviction order is vacated. The tenants petition is dismissed.

15. Both the petitions and the pending application filed therein stand disposed of in above terms. MARCH05 2018 nk R.K.GAUBA, J.

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