

**Tharia Ram Vs. Chitra Devi and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/690114](http://sooperkanoon.com/690114)

**Court :** Delhi

**Decided On :** Mar-28-1983

**Reported in :** AIR1984Delhi181; 23(1983)DLT393; 1984(6)DRJ181; 1983RLR482

**Judge :** D.R. Khanna, J.

**Acts :** [Delhi Rent Control Act, 1958](#) - Sections 25B

**Appeal No. :** Civil Revision Appeal No. 498 of 1981

**Appellant :** Tharia Ram

**Respondent :** Chitra Devi and ors.

**Advocate for Pet/Ap. :** Pramod Ahuja,; S. Pappu and; Anjali Chopra, Advs

**Judgement :**

**D.R. Khanna, J.**

(1) Section 25B as introduced in the [Delhi Rent Control Act, 1958](#), provides special procedure for the disposal of applications for eviction on the ground of bona fide requirement. On an application being moved by a landlord under these provisions summons have to go in a specified form to the tenant. On service being completed as provided for, the tenant cannot contest the prayer for eviction from the demise unless he files an affidavit within fifteen days, stating the grounds on which he seeks to contest the eviction and obtains leave from the Rent Controller. In default

of his appearance in pursuance of the summons or his obtaining such leave the statement made by the landlord in the eviction petition has to be deemed as admitted by the tenant and an eviction order passed. However if the tenant's affidavit discloses such facts as would disentitle the landlord from obtaining eviction the Controller has to allow leave to contest to the tenant.

(2) These provisions are substantially analogous to those contained in Order 37 of the Code of Civil Procedure for summary trial of suits. However, unlike Order 37 Rule 3(7) of the Code, which permits the Court for sufficient cause shown by t

(3) What transpired in the present case was that the tenant was served with the summons issued under Section 25B on 2-11-1980. He could have, therefore, filed an affidavit disclosing circumstances for leave to contest up to 17-11-80. The tenant instead of filing such affidavit, moved an application under Section 25B on 15-11-1980, and sought leave to defend on the grounds mentioned therein. This was signed by his counsel only. Subsequently an application under Section 151 Civil Procedure Code was moved by the tenant on 27-11-1981 seeking condensation of delay in the filing of his affidavit. It was mentioned that the affidavit had been duly prepared on 14-11-1980 and attestation from Oath Commissioner obtained. The same was handed over along with the application for leave to defend and the power of attorney by the tenant's counsel to his clerk for being filed. That clerk later informed that he had filed them on 15-11-1980. However, on 3-12-1980, the counsel for the tenant learnt that the affidavit for leave to defend which had been prepared on 14-11-1980, was not filed and had been inadvertently left in the case file by a bona fide mistake of the clerk. In the meanwhile, the clerk of the counsel left the service on 27-11-1980. The counsel, therefore, hastened to file the affidavit before the Rent Controller on 3-12-1980. No application was moved with this affidavit, but the stamps on backside of each page shows its filing on 3-12-1980, and purports to bear the initial of the Additional Rent Controller.

(4) On 27-11-1981, the tenant moved an application under Section 151 C.P.C. for condensation of delay in the filing of the affidavit in support of the application for leave to defend. In this way the aforesaid circumstances of the non-filing of the

affidavit along with the application for leave to defend, were brought out. It was at the same time, mentioned that the Additional Rent Controller was on leave on 3-12-1980, and, therefore the matter was adjourned to 11-12-1980. This application was accompanied by an affidavit of Shri B.S. Charya, counsel for the tenant, to the effect that the contents thereof were true to his knowledge.

(5) The learned Additional Rent Controller, however, did not allow this application, and came to the view that the affidavit was not prepared on 14-11-1980, but was got attested from Oath Commissioner on 24-11-1980. He, therefore, held that no affidavit had been filed within the period prescribed for leave to defend as required by Section 25B. The statements made in the petition of the landlord seeking eviction, were, therefore, treated as admitted, and an ejection order passed. The tenant was allowed six months' time to vacate.

(6) It is in these circumstances that the tenant feeling aggrieved, has moved the present petition before this Court. I have heard both the sides and given my due consideration to all the circumstances. The tenant did take steps during the 15 days' period to move for obtaining leave to defend the eviction proceedings. However, instead of doing so by filing an affidavit as required by law, an application simplicities was moved. It contained all the particulars on the basis of which he was seeking premission. An affidavit was also prepared along with the application for being filed before the Rent Controller. The circumstances in which the same was not filed, has been explained in the subsequent application moved under Section 151 Civil Procedure Code . The contents thereof are supported by an affidavit of the counsel. Normally such affidavit unless there are compelling circumstances to the contrary, should be accepted, and the inherent powers exercised for condoning the delay. The tenant cannot be made to suffer for the default committed by the counsel's clerk specially when it is shown that the tenant had done all that was required of him under the law and by his counsel. It was unfortunate circumstance that the affidavit remained in the file of the counsel. I have in this regard carefully perused the said affidavit and find hat so far as the date mentioned at the bottom, it is quite clear that it was attested by the Oath Commissioner on 14-11-1980. The date in between the stamp of the Oath Commissioner is not that legible. It is not possible to categorically hold that it was

24th. In such state of affairs, the affidavit of the counsel clarifying the position, should have been considered as enough. I am therefore, inclined to allow the application under Section 5 of the Limitation Act, and condone the delay.

(8) I would have proceeded to decide the case of the tenant seeking leave to defend as it has been pointed out from the side of the landlords that their case is extremely hard, and that a large number of family members (numbering 9) are living huddled together in a very small accommodation consisting of one room, store, bath and kitchen, and further that the defense set up on the face of it, has no basis, and deserves to be rejected straightaway. In case any amount of Rs. 4,300.00 was due to the tenant in 1971 for the construction effected in the premises, he would not have allowed that to become manifestly barred by time, and not taken any action. As regards the averments about the intended sale, the allegations are highly vague as even the name of the intending purchaser has not been mentioned. In 1981 RLR 380 (*Kasturilal Nandraj v. Bakshi Ram*), it was observed that usual pleas of tenants in application for leave to defend under Section 25B should not be given any weight unless these are accompanied with precise details.

(9) In the case of *Jagdish Prasad v. Phoolwati Devi* (supra) the Division Bench had proceeded to decide the application which the Rent Controller had not considered, and as such the same can be done in the present case as well. However, the application that was considered by the Division Bench concerned the grounds on which delay in applying for leave to defend was sought to be condoned. Prima facie, the aforesaid circumstances may tend to bring out a good case for the landlords to seek eviction as well as disentitle the tenant to any permission. However, I will not like to express any opinion on the same. Once the affidavit of the tenant is admitted on record, the landlords may like to file a counter-affidavit to the same lest they may be accused of allowing those averments to go unrebutted. In the circumstances, I am inclined to send back the case to the learned Additional Rent Controller for proceeding further in accordance with the law. Parties to appear before the Additional Rent Controller on 4-4-83. The case should be decided as early as possible as the landlords appear to have suffered for no fault of their. Rather this appears to be one of those unfortunate cases where a

counsel's over zealousness to take narrow technical advantage over a minor lapse of the other (instead of being guided by broad liberal approach), results in the ultimate good being rendered more distant.

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