

Khushbir Singh Vs. Ajaib Singh

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SooperKanoon Citation : sooperkanoon.com/691371

Court : Delhi

Decided On : Mar-15-1982

Reported in : 21(1982)DLT338; 1982RLR534

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 39; Limitation Act, 1908 - Sections 5

Appeal No. : Second Appeal No. 113 of 1973

Appellant : Khushbir Singh

Respondent : Ajaib Singh

Advocate for Pet/Ap. : B.S. Dhir and; B.P. Sagar, Advs

Judgement :

Snltn Singh, J.

(1) The respondent filed an application against the appellant for eviction under Section 14(1)(a) of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the Act') alleging that the appellant neither paid nor tendered any arrears of rent in spite of service of a notice of demand. The Additional Rent Controller on 2-4-1974 passed an order of eviction under Section 14(1)(a) of the Act but further directing that if the appellant deposits the arrears of rent from 1-7-1970 up to date within

one month at the rate of RS.100.00 per month, the eviction petition would fail and he would be deemed to have enjoyed the benefit under Section 14(2) of the Act. The appellant filed an appeal before the Rent Control Tribunal but the appeal being barred by time was dismissed on 19-8-1976. The appellant filed second appeal on 18-9-1976 together with the certified copy of the Tribunal's order dated 19-8-1976. This appeal was admitted on 20-9-1976. The certified copy of the Controller's order, was directed to be filed in accordance with law. The second appeal came up for hearing on-25-2-1980. The respondent pointed out that appeal was barred by time as certified copy 'of the Controller's order had not been filed. The appellant on 7-3-1980 filed an application (G.M. 915/80) under Section 5 of the Limitation Act for condensation of delay in filing the certified copy of the order of the Controller. The appellant has alleged that an application for obtaining the certified copy was made to the Copying Department but no intimation of the said copy being ready was sent by Copying Agency in terms of Rule 24, Chapter 17 Volume Iv of the Punjab High Court Rules and Orders. The appellant further states that when the objection was raised on 25-2-1980 efforts were made to obtain the certified copy. It is stated that Mr. Narender Singh, Advocate was counsel in the case and he had made an application for obtaining the certified copy, that the receipt received from the Copying Department was misplaced or lost by him, that after making enquiries the certified copy was collected on 6-3-1980 and the same was filed in this Court on 7-3-1980. Rule 24 of the Punjab Civil and Criminal Courts, Preparation and Supply of Copies Rules 1965 (Chapter 17, Vol. Iv of the High Court Rules and Orders) reads as under :

'24.(1) A copy shall ordinarily be ready by the third working day of the receipt of application, but an urgent copy shall be ready before the close of the same day, if possible, provided the application is presented with the urgent fee within the first two hours of the same day. If the application is presented later, the copy shall be furnished, if possible, in the forenoon of the following working day. Any case of delay shall be verified and certified by the Examiner, or Copying Agent, before the copy is attested and delivered. (2) Any complaint by Copyist or applicant shall be made in writing to the Officer-in-charge who shall take such action thereon as he may deem proper.'

(2) This Court framed rules called, Arrangement, Preparation and Supply of Copies Rules 1972, in exercise of the powers conferred by Article 227 of the Constitution of India. Rules 2 and 15 of these rules read as under

'2.The rules framed by the High Court of Punjab under Article 227 and known as Punjab Civil and Criminal Courts, Preparation and Supply of Copies of Record Rules, 1965, published in Rules and Orders of the Punjab High Court Vol. Iv, Chapter 17, shall mutates mutants apply subject to the following modifications and amendments and such other amendments as may, from time to time, be made.'

'15.The applications will be entertained at the enquiry counter by the clerk concerned who will enter them in the prescribed register and will issue a receipt in the form C.D. 10 (Prescribed by Rule 15) and on the said receipt, it would be indicated as to when the copy was likely to be ready and on it would also be noted the date of the visit of the applicant or his agent making enquiries about the copy which be not ready.'

(3) Rule 15 was thus framed by this Court in 1972 superseding Rule 24 of 1965 Rules. According to Rule 15 of 1972 a receipt is issued to the applicant indicating when the copy was likely to be ready and when he would be required to visit for making enquires about the copy. In view of the Rules of 1972, Rule 24 of 1965 is not applicable. Thus the Explanationn given by the appellant that no intimation was sent to him about the copy being ready is of no avail. The certified copy of the Rent Controller's order was applied on 17-9-1976 and it was ready for delivery on 20-9-1976 but it was filed in this Court on 7-3-1980. There is no Explanationn why the copy was not filed during the period from 20-9-1976 to 7-3-1980. Rule2(b) of Chapter I-A of the Rules and Order of Punjab High Court Vol. V applicable to this Court requires the filing of a copy of the judgment of the court of first instance Along with a copy of the order of the first appellate court. The certified copy of the Controller's order as already stated was not filed up to 7-3-1980. Under Section 12 of the Limitation Act the appellant is entitled to exclude the time taken by him in obtaining the certified copy of the impugned judgment i.e. the judgment and order of the Rent Control Tribunal and not of the Rent Controller. The certified copy of Controller's order was ready on 20-12-1976, and the appellant ought to have filed

the same within a reasonable time after 20-12-1976 but it was not so filed. In *Bhagwan Dass Gupta v. Mukat Lal and others*, : 6(1970)DLT64 , it has been held by the Division Bench that only those days which were spent by the appellant in actually obtaining the copy of the judgment of the court of first instance after the expiry of the period of limitation and till the delivery of the copy to him plus time as may be reasonably spent thereafter in drafting the grounds of appeal, etc. would be regarded as sufficient cause for condensation of the delay in preferring the appeal.

(4) No Explanationn has been given by the appellant for not filing the certified copy of the order of Controller from 20-12-1976 to 25-2-1980. No sufficient cause has thereforee, been disclosed for condensation of delay. The application for condensation of the delay is thereforee, dismissed. Consequently the second appeal (S.A.O. 113 of 1976) is dismissed being barred by time.

(5) In the connected appeal S.A.O. 112 of 1978 similar application was filed by the appellant for condensation of delay. In that case the certified copy of the order of the Controller was applied on 17-9-1976 but the application was rejected by the Copying Department on 19-10-1976 being defective. The learned counsel for the appellant submits that the same application was taken back and was tiled in this Court as the record had since been received by this Court. From the certified copy of the order of the Controller filed in the appeal, I find that the application for obtaining the same was made on 7-3-1980 and it was ready on 7-3-1980. In this case no Explanationn has been given by the appellant as to why the defect in the application for copy was not removed up to 7-3-1980. There is thus no sufficient cause for condensation of the dely. The application for condensation of delay is thereforee, dismissed. Consequently S.A.O. 112 of 1976 stands dismissed. No order as to costs. (D.B.)