

**Autocrat Tours Vs. Arjan Dev**

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**Court :** Delhi

**Decided On :** Oct-29-1982

**Reported in :** 23(1983)DLT201

**Judge :** O.K. Luthra, J.

**Acts :** [Delhi Rent Control Act, 1958](#) - Sections 39; Second Appeal and Limitation Act - Sections 5

**Appeal No. :** Second Appeal No. 204 of 1977

**Appellant :** Autocrat Tours

**Respondent :** Arjan Dev

**Advocate for Pet/Ap. :** V.B. Andlay,; Rajinder Mathur,; R.L. Tandon and;

**Judgement :**

**G.R. Luthra, J.**

(1) By means of this order, two applications, one of the respondent which is C.M.. 784/80 and the other filed by the appellant (G.M. 1238/80) are being decided.

(2) The appellant is a tenant of premises bearing No. 16, Todar Mal Lane, New Delhi at plot No. 58, Block 205-G New Delhi, Arjun Dev, respondent is the owner of the same. The respondent brought a petition for eviction of the appellant on the

ground of non-payment of rent and sub-letting. That petition was dismissed on 15th February, 1975 by Shri V.S. Aggarwal, Additional Rent Controller. The respondent went in appeal which was accepted by the Rent Control Tribunal and eviction of the appellant was directed on both grounds on September 30, 1977. The appellant filed appeal (SAO No. 204/77). Along with the Memorandum of appeal the appellant filed an application for stay of eviction proceedings during the pendency of the appeal. The appellant did not file certified copies of the orders of the Rent Control Tribunal as well as the Additional Rent Controller. He filed an application (G.M. 1834/77) to the effect that he applied for obtaining certified copies of the judgment of the Rent Control Tribunal as well as the Additional Rent Controller but that the same were not ready and were not supplied to him, that he also applied for obtaining certified copies of the grounds of appeal taken before the lower appellate court) that the same was also not supplied, that he was filing the uncertified copies of the aforesaid judgments and grounds of appeal and that in the interest of justice filing of the certified copies be dispensed with for the time being. On that application it was ordered on 14th October, 1977 that certified copies be filed within time. The appeal was admitted on the same day and eviction of the appellant was stayed.

(3) The appellant did not file the certified copies. therefore, the respondent filed on 14th March, 1980 an application (C.M. 784/80). In that application, the respondent stated that on inspection of file on March 13, 1980 it was found that certified copies of the aforesaid were not filed, that therefore the appeal was incompetent and liable to be dismissed on the ground alone and that in the alternative, the said appeal was liable to be dismissed as barred by limitation. A notice of that application was directed to be served upon the appellant. On March 28, 1980 appearance was put in by Ajay Kapur on behalf of the appellant and a request was made that time be given for filing the reply. Two weeks time was given for filing the reply and next date was April 17, 1980, on which date another adjournment was sought and time up to 24th April, 1980 was fixed for filing the reply. Besides filing the reply, the appellant filed an application (G.M. 1238/80) under Section 5 of the Limitation Act, for condoning the delay in filing the certified copies and treating the appeal as having been filed within period of limitation. The aforesaid application is contested by the respondent. I have heard the learned

counsel for the parties at length.

(4) The main contention of the appellant is that whatever he could do he has done for the purpose of obtaining the certified copies and filing the same in the court but that it was on account of negligence of the clerk of his counsel Shri S.R. Yadav that the copies were not obtained and filed in time. In his application (G.M. 1238/80) he stated that he requested his counsel Shri S.R. Yadav for applying for the obtaining of the copy, that Shri Yadav entrusted the application to his clerk Shri Ashok Kumar Sharma and that application for obtaining the copy of the judgment of Rent Control Tribunal was put in the Copying agency on 5th October, 1977 and the same wai numbered as 5513, that application for obtaining certified copies of the grounds of appeal in the lower appellate court and copy of the judgment of the Rent Controller was filed in the Copying agency on 15th October, 1977 and was registered at No. 6077. The appellant adds that Shri Ashok Kumar Sharma had been making enquiries from the Copying Agency regarding preparation of the said certified copies from time to time, that dates of the enquiries were duly mentioned in the receipts Annexures A and B, that said Shri Ashok Kumar Sharma left the service of Shri S.B. Yadav, Advocate on December, 1977, that at the time of leaving the service he handed over all the relevant papers in his custody and that all the time he and his counsel were under an impression that Shri Ashok Kumar Sharma must have obtained the certified copies and also must have filed the same in the Court.

(5) It was on March 14, 1982 that copy of the application of the respondent ( G.M. No. 784/80) was handed over to counsel for the appellant. The appellant in his application has also stated as to what steps were taken when the notice was so served. Briefly, the appellant has stated as follows. Counsel for the appellant on receipt of notice of G.M. No. 784/80 was surprised to know that certified copies were not filed in the court. He (Shri S.R. Yadav) then made a search of the record left behind by his clerk Shri Ashok Kumar Sharma and found to his surprise that the receipts issued by the Copying Agency regarding application for obtaining copies were lying in an envelop which was placed along with file of decided cases. On 19th March, 1980 Shri S.R. Yadav, Advocate personally made enquiries from the Clerk, Copying Agency and the former was informed that certified copies had

been sent to the office of Deputy Commissioner for delivery of the said copies against recovery of dues. Thereafter Shri Yadav, Advocate made enquiries from the office of Tehsildar (Recovery Section) and himself made a search of the registers for the year 1977 onwards relating to such type of copies and also from heap of certified copies which were lying in the said office but in spite of extensive search, he was unable to find out the copies or any clue in respect of them. Thereafter, Shri Yadav made an application in the office of Tehsildar (Recovery Section) for giving clue as to where the certified copies had gone but that application was returned with the remark that neither the certified copies nor the relevant registers were traceable. In the application (G.M. 1238/80) the date of filing the application in the office of the Tehsildar (Recovery Section) was not mentioned and in fact the place for mentioning the date was left blank. However, afterwards by means of an affidavit dated 5th May, 1980 Shri S.R. Yadav, Advocate supplied the information regarding the date as 27th March, 1980. Then application says that having failed to trace out the certified copies already prepared, Shri S.R. Yadav, Advocate made a fresh application to the Copying Agency concerned for supply of certified copies.

(6) In that application, the date of applying for fresh certified copies was not given. Also the date of making final enquiry from the Agency in respect of the certified copies already prepared was not given. The only date given was that the appellant received certified copies on 19th April, 1980. However, in the affidavit dated 5th May, 1980 Shri S.R. Yadav stated that he gave an application to the Copying Agency to supply the already prepared certified copies and that the Copying Agency returned the said application on 9th April, 1980 with the remark that these copies were not in the said agency. In that affidavit also, the date of fresh application for obtaining copies was not mentioned and it was for the first time that in the affidavit dated 4th September, 1980 of Ashwani Kumar, one of the partners of the appellant firm mentioned the date as 15th April, 1980.

(7) The respondent contested the application and prayed that the delay should not be condoned and that the appeal be dismissed as barred by time. 7A. The matter came up for hearing before B.N. Kirpal, J. on August 21, 1980 who passed the following order :- 'The question involved in G.M. 1238 of 1980 is as to whether

there is sufficient cause for condoning the delay in filing the certified copies or not. In the said application as well as the affidavits of Shri S.R. Yadav, Advocate full details have not been given with regard to the period 14th March, 1980, when a copy of G.M. 784 of 1980 was served on the appellant's counsel, and 15th April, 1980, when applications were made for certified copies of the orders. Let a detailed affidavit be filed by Shri S.R. Yadav giving an Explanation as to how the time was spent during this period. The affidavit be filed by 28th August, reply by the respondents by 16th September, rejoinder if any, by 22nd September, 1980 List these applications for hearing on 25th September, 1980.'

(8) Initially compliance of that order was not done and instead of filing the affidavit of Shri S.R. Yadav Advocate, an affidavit of Ashwani Kumar, stated to be one of the managing partners of the appellant firm was filed. That affidavit is dated 4th September, 1980. But thereafter affidavit of Shri S.R. Yadav was filed on Nov. 6, 1980 on similar lines. Briefly stated, affidavits are to the following effect. On 14th March, 1980 counsel for the appellant (Shri V. B. Andley, Advocate) received copy of C.M. 784/80. On 15th March, 1980 at about 8 pm. Shri Andley informed on telephone Mr. Yadav about the contents of the said application, 16th March, 1980 was Sunday and thus holiday and, therefore, Mr. Yadav could not be contacted. On 17th March, 1980 Mr. Yadav tried to contact Shri Ashwani Kumar but the latter was out of Delhi and hence could not be contacted. On 18th March, 1980 there was a meeting between Mr. Yadav and Ashwani Kumar and on search of the old records of the clerk of the former receipt dated 5th and 15th October, 1977 in respect of filing of applications for obtaining certified copies were found out. On 19th March, 1980 Mr. Yadav made enquiries from the clerk, Copying Agency, personally in the presence of Ashwani Kumar and the said clerk gave the information that the certified copies had already been sent to the office of Deputy Commissioner. On 21st, 22nd and 26th March, 1980 Mr. Yadav and Ashwani Kumar made enquiries from the office of the Tehsildar (Recovery Section) and also search was made for the registers regarding such copies maintained in the years 1976 and 1977. Search was also made from the heap of unclaimed certified copies lying in the office of Tehsildar (Recovery). The aforesaid enquiries and search did not yield any result and the certified copies were not found out. 23rd, 24th and 25th March, 1980 were holidays and, therefore, nothing was done on

the said dates. On 27th March, 1980 Mr. Yadav moved an application to the Tehsildar (Recovery Section) for delivery of certified copies. That application was returned on 28th March, 1980 with the report that the copies were not traceable and that the register relating to such copies for the year 1978 was missing. Both Shri Yadav and Ashwani Kumar were orally directed to contact the Copying Agency (Sessions) to find out the date when the certified copies were sent to the Tehsildar (Recovery Section), 29th and 30th March, 1980 were holidays. On 31st March, 1980 Mr. Yadav and Ashwani Kumar took the aforesaid application with the report of the office of Tehsildar to a clerk in the Copying Agency (Sessions) for making further enquiry. As the relevant registers were not available, no information would be given even though attempts were made on 3rd, 5th and 7th April, 1980. It was on 9th April, 1980 when the clerk of Copying Agency (Session) made an endorsement on the back of the application dated 27th March, 1980 and returned the said application to Mr. Yadav. On 10th April, 1980 Mr. Yadav contacted V.B. Andley Advocate and on 11th April 1980 was fixed for discussion and taking further action in the matter. Discussion was held on 11th April, 1980 was fixed for 12th and 13th April, 1980 were holidays, being 2nd Saturday and Sunday. On 14th April, 1980 enquiries were made as to where the records of the trial Court as well as of the lower appellate Court were so that application for obtaining certified copies could be given at a proper place. On 15th April, 1980 applications for obtaining certified copies were filed. The said copies were delivered on 19th April, 1980 and they were filed in this court on 21st April, 1980.

(9) On 25th September, 1980 an order was passed by this Court that in the affidavit of Ashwani Kumar a reference was made to some talks stated to have taken place between Shri Yadav and Ashwani Kumar on the one hand and clerk concerned of Copying Agency on the other, that the name of the clerk was not disclosed in the affidavit, that however from the endorsement dated 9th April, 1980 on the application filed by the appellant it appeared that the clerk concerned was Shri Behl and that, therefore, Shri Behl should be directed to file his affidavit in connection with the averments relating to the Clerk, Copying Agency made by Ashwani Kumar Appellant in his affidavit dated 4th September, 1980. It may be recalled that in the affidavit of Ashwani Kumar it was stated that enquiries were made from the Clerk, Copying Agency on a number of times since 31st March,

1980. therefore, it was necessary to find out if any enquiries were made from Shri Behl from that date. In view of the aforesaid order of this Court, Shri Jagdish Chander Behl filed an affidavit dated 25th October, 1980. He categorically stated that neither Ashwani Kumar nor his counsel ever contacted him before 9th April, 1980, that it was for the first time on 9th April, 1980 that he was presented with application dated 27th March, 1980 an endorsement and returned the application. He denied that he asked anyone to come again and again on any day in connection with the enquiry regarding certified copies.

(10) The question for determination is if there is sufficient cause for not filing the certified copies of the judgments of the Rent Controller, Rent Control Tribunal and the grounds of appeal before the lower appellate court. The argument of the learned counsel for the appellant was that in the present case the omission was on account of negligence of the lawyer and his clerk and that under such circumstances, as held by this Court in Lachhiman Das v. Shri Suraj Parkash, : 18(1980)DLT75 and Nirmala Devi v. Gopal Krishan and others, : 21(1982)DLT326, the delay should be condoned. therefore, it is to be seen it negligence of the lawyer alone was the cause of non-filing the certified copies within time.

(11) There are circumstances to show that the conduct of the appellant has not been straightforward and truthful from the very start. In the application (C.M. 1843/77) for dispensing with the filing of the certified copies, the appellant inter alias stated that he applied for obtaining certified copy of the judgment dated 15th February, 1975 passed by Shri V.S.Aggarwal, Addl. Rent Controller, Delhi that the certified copy had not been prepared and supplied till then. That application is dated 13th October, 1977 and also the said application was taken up before this court on 14th October, 1977. It is apparent from the present application (C.M. 1238/80) and the affidavit mentioned already that the appellant had not applied for obtaining certified copy of that judgment by that time and actually it was on 15th October, 1977 that the application was filed. The receipt for the said application is Annexure B to C.M.No.1238/80. The appellant further wrongly stated in the aforesaid application for dispensing with the certified copies (G.M. 1843/77) that certified copy of the impugned judgment dated 30th September, 1977 had not till then been prepared and delivered to the appellant. The aforesaid assertion is

falsified from the receipt annexure A to G.M. 1230 of 1980. That receipt shows that the certified copy of that impugned judgment was ready on 11th October, 1977 yet the appellant was stating in the application two days later i.e. 13th October, 1977 that the copy was not ready. It is very important to note that the appellant supported the contents of the application on oath by means of an affidavit dated 13th October, 1977. It is apparent that no steps were taken to find out if the copy of that impugned judgment was ready or not and even then it was stated on oath that the copy was not ready.

(12) Under the above circumstances it is not safe to rely upon the assertions of the appellant, as contained in his application for condensation of delay. Further, that is not all. It is very important to note that the appellant kept the original application (C.M. 1238/80) very vague and did not give the details as to what steps he had been taking for obtaining and filing the certified copies since the time (middle of March, 1980) he came to know that certified copies were not filed within limitation. Details were given in the affidavit dated 4th September, 1980 after the appellant was called upon to do so. Then it was stated that a number of times enquiries were made from Clerk, Copying Agency but the statement of Shri Behl, Clerk Copying Agency belies the same. According to him, it was only on 9th April, 1980 that enquiry was made and was replied on the same day.

(13) The story that the clerk of Shri S.R. Yadav, Advocate did not hand over the documents properly to Shri Yadav when he left the service of the latter does not appeal to reason. Generally when a clerk is leaving employment of a lawyer, the latter asks as to what remains to be done in respect of different briefs and takes all the files after checking up. therefore, the case of the appellant is not believable.

(14) Even if we take it for granted that the appellant was under an impression that his counsel must have done the needful and the omission in respect of filing the copy ascribed to the negligence of his counsel and his clerk Shri Ashok Kumar Sharma, no sufficient Explanation has come up for the period from 14th March, 1980 that. It is common ground that it was on 14th March, 1980 that Shri V.B. Aridley got copy of the application of the respondent (C.M. No. 784/80). Normally the reaction should have been to inform the appellant immediately to that respect

and to take all steps for finding out as to what happened to the certified copies already applied for. Also the immediate reaction should have been to apply afresh for obtaining certified copies. No such promptness was shown. Affidavit of Ashwani Kumar dated 4th September, 1980, the contents of which have been briefly narrated above, indicates that he was taking the matter very casually. Further, as it appears from the affidavit of Shri S R. Yadav. It was on 27th March, 1980 itself that his application for finding out as to where the certified copies were, was returned. Ashwani Kumar gave the date in his affidavit as 28th March, 1980 but obviously the date is wrong having regard to the affidavit of Shri S.R. Yadav, Advocate. No prompt steps were taken from 28th March 1980 onwards. That returned application should have been given to the clerk, Copying Agency on March 28, 1980 itself but that was not done. Even according to Ashwani Kumar it was on 31st March, 1980 that enquiries from the Copying Agency were started. That was clearly a negligence on the part of the appellant. In fact, it is obvious from the record that no such enquiry was made before 9th April, 1980. Shri Behl, Clerk Copying Agency says categorically that no enquiry was made from him before 9th April, 1980. First of all, as it appears from the order dated September 25, 1980, the counsel for the appellant came up with a plea that it was possible that on the dates earlier than 9th April, 1980 there might be some other clerk from whom enquiries were made. This court directed the learned counsel for the appellant that names of the other clerks should be communicated on the next date of hearing. The next date of hearing was 30th October, 1980 and on that date it was admitted by the learned counsel for the appellant that it was Shri J.G. Behl who was the clerk concerned in the Copying Agency. That means, according to the appellant himself it was Shri Behl whom the former had been meeting but Shri Behl categorically says that the former never met him before 9th April, 1980. Under these circumstances the delay from 28th March, 1980 to 9th April, 1980 does not stand explained.

(15) There is no good Explanation in respect of the delay caused after 9th April, 1980. When the appellant had come to know on that day that the certified copies, which were originally applied for, were untraceable an application on the very next day should have been made for obtaining fresh certified copies but that was not done but it was on 15th April, 1980 that such an application was made.

(16) Under these circumstances it cannot be said that there is sufficient cause for condoning the delay in filing the certified copies. therefore, the appeal has become barred by time. I, therefore, reject the application (CM. 1230/80), accept C.M. 784/80 and dismisses the appeal (S.A.O.204 of 1977) as barred by limitation.

(17) The parties arc left to bear their own costs.

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