

**Surinder Kumar Vs. Prem Kumar**

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**Court :** Delhi

**Decided On :** May-23-1980

**Reported in :** 18(1980)DLT255; 1980(1)DRJ170; 1980RLR621

**Judge :** M.L. Jain, J.

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

**Appeal No. :** Civil Revision Appeal Nos. 157 and 858 of 1980

**Appellant :** Surinder Kumar

**Respondent :** Prem Kumar

**Advocate for Pet/Ap. :** S.L. Bhatia,; Y.K. Jain and; B.L. Kohli, Advs

**Judgement :**

**M.L. Jain, J.**

(1) This order will dispose of two revision petitions, (1) No. 157 of 1980, and (2) No. 158 of 1980.

(2) The landlord filed a petition under s. 25B of the [Delhi Rent Control Act, 1958](#) (hereinafter the Act) against the tenant for his eviction on 31.7.1979. The Controller directed that the summons on the respondent tenant be served in the Form given in the Schedule lii to the Act. The summons was, according to the

tenant, served on him on 16.10.1979; and according to the landlord, on October 6, 1979. One more summons as required by law was sent under the registered cover. The cover bears the endorsement 'not met' on October 4,5,6,8 and 10. No. A.D. card was received back but the tenant maintained that he got the registered cover on 12.10.1979.

(3) The tenant appeared on 24.10.1979. and moved an application for leave to defend the petition Reply was filed on 14.11.79. According to the summons the tenant is required to appear within fifteen days of the service of the summons and to obtain the leave of the Controller to contest the application upon the warning that in default, the applicant is entitled at any time after the expiry of the said period of 15 days to obtain an order for eviction. The applicant contended that the summons was in fact served on 6.10.79, but the tenant filed his application for leave to defend on October 24.10.1979, which he could not do and the applicant was entitled to an order of eviction. The tenant contended in the first instance that the summons was received by him on October 16. At any rate, the registered cover was received by him on October 12, and, therefore, his application for leave was within time.

(4) The learned Additional Controller held some inquiry. She examined the process-server. Ahlmad, Naib Nazir and the respondent. She came to hold on 15.11.1979, that the service through the process serves was effected on October 6 and not on October 16. In the absence of the A.D card, it was not Possible to hold that the registered cover was delivered to the tenant on 12.10.1979. Even if it were so, the count down will commence on 6.10.1979. She therefore, rejected the application for leave to defend. Revision No. 157 of 1980 is against this order.

(5) On November 16.11.1979, the learned Additional Controller passed an order of eviction in the presence of both the parties. Revision No. 158 of 1980 is directed against that order.

(6) I heard arguments on April 22, 1980, and took time for consideration. On 24.4.80, the petitioner moved an application to add an additional ground to his revision petition that even if the summons is held to have been served on October 6,1979, fifteen days expired on 21.10,79, which was a Sunday. He should have

filed the affidavit on 22.10.79, but did so on 24,10.79. This delay in filing the application for leave to defend was bonafide and was barely of two days, and the learned Additional Controller should have condoned it. It was also prayed that this court may condone the delay and remit the case for further proceedings or may direct the Additional Controller to examine whether delay be condoned or not and then proceed further.

(7) In reply, it is said :-

(1)The application is not bonafide because it is intended to delay the decision of this court on the revisions. (2) The scope of revision is only to see if the impugned order is according to law. No application for condensation of delay was made before the Addl. Controller and could not now be made. (3) The petitioner made false statements regarding the service of summons and, therefore, he does not merit any consideration with regard to condensation of delay.

(8) I have heard the parties also on this application. This Court has, in several of its decisions, held :

(1)The Controller has all the trappings, powers and procedure of a civil court, it is also a magistrate under S. 341 of the Act. It is a court under S. 195 and S. 345 of the Code of Criminal Procedure. Yet, it is not a court. Why? Perhaps, because it is not a court established under the Punjab Courts Act. Perhaps, it does not exercise the judicial powers of the State. Perhaps, because it enjoys the confidence of the people, see *Subash Chander v. Rehmatullah* 1972 Raj. L.R. 154, Para 12 ; and *Gurditta Mal v. Bal Sarup etc.* 1980 Raj. L.R. 136, para

6.

(2) The form of summons in Schedule Iii to the Act is a part of the Act the fifteen days prescribed by it is a special period of limitation beyond which an application for leave to contest cannot be made, see *Jagdish Pershad v. Smt. Phoolwati Devi*, (1980) D.L.T. 446 1980 Raj L.R.

367.

(3) The Limitation Act, 1963 (including S.

5) has no application to the proceedings before the Controller because it applies only to a court, vide Jagdish Pershad, Subhain Chander and Gurditta Mal (supra). In spite of S. 29 of the Limitation Act, it is the 'safest conclusion to draw in the present state of authorities' ; see para li of Jagdish Pershad (supra).

(4) To obtain leave to contest means to make an application to obtain such leave ; Gurditta Mal v. Bal Sarup 1980 Raj. L.R.I.

(5) The Controller has no power of review but has inherent jurisdiction to correct errors and vacate his orders. He can devise his own procedure, vide Gurditta Mal 1980 R.L.R.

136.

(6) In case of ex-parte orders, it has to follow O.9, R. 13, Civil Procedure Code : Subhash Chander (supra). He has the discretion to give the benefit of O. 37, R. 4 Civil Procedure Code ., by setting aside his order of eviction. He cannot extend the period of 15 days. That is because 'the law gives to the landlord a 'drastic' right which cannot be diluted', Jagdish Pershad (supra), although it is not a vested right Gurditta Mal 1980 R.L.R.

136.

(7) Where the tenant appears after the said 15 days but before eviction order is passed, the Controller will have to pass the eviction order. He may set it aside afterwards if sufficient cause is shown for non-appearance within the said period. This can be done in revision also by the High Court, Jagdish Pershad and Gurditta Mal 1980 R.L.R. 136.

(9) Now, several questions still remain unanswered ; the most important one is if the Limitation Act does not apply, then in the absence of powers such as are given in S. 3 of the Limitation Act, how can an application made after the given period of time be allowed There is nothing in the Act which expressly directs rejection of the application in such an eventuality.

(10) Upon the facts of the case, a perusal of the summons shows that apart from the endorsement of the process-server dated October 6, it bears the initials of the Nazir dated October 10, 1979, which show that the summons was served on October 6, 1979, and the findings of the Additional Controller in this respect which she recorded after examination of the record, evidence of the concerned officials and procedure adopted in her office are hardly vulnerable.

(11) But the postal cover was not delivered until October 10, 1979. That the cover itself shows. The petitioner has in this court produced a letter of the Postal Department showing that it was in fact delivered to him on October 12, 1979. Now, when two simultaneous modes of service have been prescribed, and if in both there is due service but on different dates, then the tenant can contend, as was done here, that the time should run from the later of the two. If the provisions are strictly construed in favor of the landlord, there is no reason in the absence of anything to the contrary contained in the Act, why the tenant should not have the right to have the time counted against him from the later date. The learned Additional Controller thought otherwise. That is because she could not declare due service under S. 25B(3)(b) in the absence of signed acknowledgement.

(12) That apart, what are the consequences of not making an application within 15 days of service? They are two :- (i) the statement made by the landlord shall be deemed to be admitted by the tenant, and (ii) the landlord will be entitled at any time after the expiry of the said 15 days to obtain an order for eviction. All it means is that the landlord shall be entitled to an order but it does not say that the order of eviction shall be or deemed to have been passed forthwith upon default and even where the landlord does not want to enforce his entitlement. I am therefore of the view that the provision is directory and until the court has passed the order, the tenant can seek leave to defend. No doubt this court has held otherwise, but it has not held that the tenant is not entitled even to show that the landlord is not entitled to an order where the summons was not strictly in accordance with the statutory form (such as here, for the word 'service hereof,' we have 'service thereof', 'hereof' would mean this summons. And no one knows what, 'thereof' refers to was for some other reason no valid summons at all, and was not duly served on him or that he could not appear within 15 days for some good or sufficient reason. Why

should it be insisted that he can show cause for default not before but only after the orders passed Such an exercise could never have been nor was contemplated by the law. In Jagdish Pershad (supra), para 16, it was held that both S. 37(2) and S. 25B(7) of the Act contemplate that the Controller shall follow the procedure laid down in O. 37, R. 4, Civil Procedure Code ., if the special circumstances of the case before him justify such a cause. If that is so the Controller is required to follow the amended sub-rule (7) of rule 3 of O. 37 C.P.C. which will operate retrospectively and which provided that the court may for sufficient cause excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit. In this case, in an application dated 11.12.79, the tenant has stated that he has applied under O. 9, R. 13, C.P.C., for setting aside of the decree of eviction but no application is on record. However, in view of the circumstance of the case, the petitioner is entitled to make an application for condensation. I refrain from making any observation regarding the merits of the request for condensation in view of the order that I am making.

(13) Consequently, while I confirm the findings of the Additional Controller insofarastheyrelat to the service of the summons on 6.10.79, I quash the impugned orders. The case is remitted to the Additional Controller for consideration of the request for condensation and then further disposal according to law. The revision petitions are disposed of accordingly. The parties shall appear before the Additional Controller on July 8, 1980.