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Naresh Mohan Vs. Urmila Devi

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Court : Delhi

Decided On : Oct-26-2004

Reported in : AIR2005Delhi225; 115(2004)DLT200; (2005)139PLR24

Judge : R.S. Sodhi, J.

Acts : Delhi Rent Control Act - Sections 14(1), 25B and 25B(2); Code of Civil Procedure (CPC) - Order 37, Rule 4; Limitation Act - Sections 5

Appeal No. : Rent Control Revision 5/2004 and C.M. Appl. 690/2004

Appellant : Naresh Mohan

Respondent : Urmila Devi

Advocate for Def. : A.C. Bhasin, Adv.

Advocate for Pet/Ap. : Shailender Dahiya, Adv

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. RC-REV 5 of 2004 is directed against order dated 4.4.2003 of the Additional Rent Control Tribunal in RCA No. 130/2003 dismissing the appeal preferred by the petitioner against order dated 25.1.2003 passed by the Additional Rent Controller

in M-1/2000 dismissing an application of the petitioner under Order 37 Rule 4 CPC, which application, in turn, was preferred against order dated 17.11.1998 passed in a petition filed by the respondent under Section 14(1)(e) read with Section 25-B of the Delhi Rent control Act (for short 'Act'). The Additional Rent controller had dismissed the application on the ground that the same was barred by time.

2. Brief facts of the case, as noted by the Additional Rent Controller, are as follows :

'a petition u/s 14(1)(e) read with Section 25-B of the Act was filed against the respondent on the averments that house No. 595-B (Old No.), 595-B/T-751 (New), Gali No. 38, Onkar Nagar 'C', Tri Nagar, Delhi-110035 consisting of one room, one kitchen, on the first floor and common use of latrine on ground floor in said property as shown in red colour in the site plan was let out to the respondent on 1.6.91 at the monthly rent of Rs. 1100/- for residential purposes. Smt. Krishna Kumari mother in law of the petitioner was the owner of the premises and property. She died on on 16.4.96 leaving behind a registered Will dt. 27.3.95 bequeathing her entire property in favor of the petitioner and as such petitioner became the owner by operation of law family of petitioner consists of herself, her husband, three sons, one daughter in law and a daughter, besides father in law. She is in possession of three rooms at ground floor and three rooms at first floor. One room at ground floor is in possession of another tenant, Shri Bhagwati Parshad. She has no other suitable residential accommodation. Petitioner has no separate room for sleeping of the children, no drawing room, guest room, study room, pooja room for the family. Petitioner prayed for passing of an eviction order against the respondent.

Summons of petition on prescribed performa as given in Schedule-3 of the Act were issued to the respondent in terms of Section 25-B(2) of the Act.

The respondent filed the application in question for condensation of delay along with application u/s 25-B for permission to defend the petition. It has been mentioned in the application for condensation of delay that he had filed an application for leave to defend on 15.10.98 i.e. after delay of 21 days on account

of sickness of the respondent. The respondent is a heart patient and had suddenly felt chest pain on 7.9.98. He visited Dr. K.B. Gupta, MBBS, MD, in Tri Nagar who prescribed him certain medicines and advised complete rest for 10 days. He underwent certain tests with M/s Brahm Shakti Charitable Medical Centre, Tri Nagar, Delhi. He did not recover from the chest pain and suffered a heart attack on 18.8.98 at his residence. He was taken to Tirth Ram Shah Hospital where he was admitted and was discharged on 25.9.98 with strict direction to take medicines regularly and to avoid any movement of any kind. He again developed chest pain and complications and was rushed to Gupta Heart Care Centre, G-2/2A, Paschim Vihar, New Delhi, where he was advised rest for 10 days. Respondent with great difficulty and with the assistance of his son had come to the court on 8.10.98 to attend a case in the court of Sh. V.P. Khandpal, Civil Judge, Delhi and he handed over the copy of summons along with the copy of petition to his counsel in his chamber but could not meet his counsel as his counsel was busy in High Court. He could not contact his counsel up to 11th of Oct. 1998. He had conversation with his counsel on 12.10.98 and on his advise he contacted his counsel and got the application prepared. He explained that delay was not intentional but due to the reasons mentioned above, he prayed for condensation of delay.

3. It is contended by counsel for the petitioner that the delay was in entering appearance and filing affidavit for leave to defend by 37 days on account of unavoidable circumstances and, thereforee, delay ought to have been condoned and leave granted.

4. Heard counsel for the parties and perused the judgment under challenge as also the material on record. It appears to me that the present case is covered by a judgment of the Supreme court in Prakash Jain vs. Marie Fernandes 2004 RLR 83 where the Supreme Court has held that a tenant who has not filed his application for leave to defend within time granted under the Act cannot take recourse to Section 5 of the Limitation Act nor can he draw upon the inherent jurisdiction of the Rent Controller. That being the situation, I see no error of law committed by the Rent Controller or the Tribunal that needs interference by this court. Consequently, RC-REV.5 of 2004 and C.M.Appl. 690 of 2004 are dismissed.

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