

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RC. REV. 313/2013

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**31<sup>st</sup> July, 2014**

SMT. KAILASH DEVI & ANR.

.....Petitioners

Through: Mr. Pradeep Dewan, Sr. Adv. with  
Ms. Anupama Dhingra and Mr.  
Shashank Khurana, Advs.

VERSUS

SHRI BRIJ PAL MANOCHA & ORS.

..... Respondents

Through: Mr. S.N.Gupta and Mr. Naveen  
Kumar, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This petition under Section 25(B)(8) of the Delhi Rent Control Act, 1958 is filed against the impugned order of the Additional Rent Controller dated 27.5.2013 which has decreed the eviction petition for *bonafide* necessity on account of the petitioner/tenant failing to file leave to defend application within the statutory period of 15 days inasmuch as delay cannot be condoned in view of the ratio of the judgment of the Supreme Court in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15* .

2. Though counsel for the petitioner has sought to again argue that this Court has power to condone the delay in exercise of inherent powers or such powers which every High Court has to do justice, however, I refuse to allow the petitioner to raise such argument because if I permit so, it will be violating the direct ratio of the Supreme Court in the case of ***Prithipal Singh(supra)*** which says that neither the Additional Rent Controller nor the High Court has power to condone the delay of even one day inasmuch as neither the provision of Section 5 of the Limitation Act, 1963 nor the provisions of Code of Civil Procedure, 1908 (CPC) apply to the special procedure for eviction of the tenants on the ground of *bonafide* necessity.

3. There is however one ground which is rightly raised by the petitioner with respect to challenge to the impugned order, and which is that the impugned order grants eviction not only with respect to the tenanted premises with respect to which eviction was sought but also for an additional area. In order to appreciate this contention the operative portion of the impugned order is reproduced below:-

“In view of the same, eviction order is passed in favour of the petitioner and against the respondents in respect of suit premises no. 198/5, Garhi Jharia Maria also known as Ramesh Market, Garhi, Lajpat Nagar, New Delhi, which is one tea shed measuring 10’x 9’ as shown in red in the site plan and the open space in front of the Tea

Shed as shown green in the site plan Ex.P-1 (exhibited today while passing this order).” (underlining added)

4. Therefore, eviction decree is passed both with respect to the portion marked in red and green, however, it is noted that even as per the relief claimed in the eviction petition, the tenancy with respect to which eviction is sought is said to be shown in red. The relevant clause in the eviction petition reads as under:-

“a) pass an order for eviction in favour of the petitioner and against the respondents directing them to vacate the tin shed shown as red in the site plan i.e. Portion of property No. 198/5, Garhi Jharia Maria, Lajpat Nagar, New Delhi”. (underlining added)

5. Leaned senior counsel for the petitioner has rightly drawn the attention of this Court to para 8 of the eviction petition which shows that the area in green is not the part of the tenancy premises, and this para 8 reads as under:

8.	Details of accommodation available together with particulars as regards ground area garden and out house, if any (Plan to be attached).	One tea shed measuring 10’ x 9’ apprx. as shown red in the site plan attached and the open space in front of the tea shed shown as green being illegally used by the respondent No.1
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6. Since in law, Additional Rent Controller will have jurisdiction to decree an eviction petition only with respect to a tenanted premises ie where there is a relationship of landlord and tenant, and that too only as per the prayer made in the eviction petition, the impugned order of the Additional Rent Controller dated 27.5.2013 is modified by directing that the eviction decree will only be passed with respect to the prayer clause (a) which is reproduced above, ie the tin shed shown in red in the site plan forming part of the property bearing no. 198/5, Garhi Jharia Maria also known as Ramesh Market, Garhi, Lajpat Nagar, New Delhi.

7. In view of the above, the petition is dismissed, however, the impugned order is modified to grant eviction only with respect to the tenancy portion which is shown in red colour in the site plan filed in the eviction petition.

8. If respondent wants to take any action with respect to any area in green which does not fall in the tenancy, but is stated to be in illegal use of the petitioner, respondent/landlord can take such action against the petitioner as regards the green portion, in accordance with law. Parties are left to bear their own costs.

**JULY 31, 2014/ib**

**VALMIKI J. MEHTA, J.**