



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

% Judgement delivered on: 30.06.2025

+ **RC.REV. 58/2023 & CM APPL.9101/2023**

MR IFTIKHAR AHMAD AND ANRPetitioners

versus

MOHD ATIQ AND OTHERSRespondents

Advocates who appeared in this case

For the Petitioners : Ms. Aditi Gupta, Adv.

For the Respondents : None.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

1. The present petition has been filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (**'DRC Act'**) seeking quashing and setting aside of order dated 28.09.2022 (**'impugned order'**) passed by the learned ACR-01, Central District, Delhi (**'Rent Controller'**) in RC ARC No. 463/2019 (**'Eviction Petition'**) for eviction of premises at 1st Floor, consisting of one room with open courtyard in property bearing no. 4235, Gali Barna Wali, Ward XIV, Sadar Bazar, Delhi- 110006 (**'tenanted premises'**).

FACTUAL BACKGROUND:

2. *Vide* impugned order, the learned Rent Controller dismissed the application for leave to defend along with an application for condonation of delay for one single day in filing leave to defend to the Eviction Petition under Section 14(1)(e) of the DRC Act on the ground of *bonafide*



requirement of the Respondents.

3. The Petitioners have sought setting aside of the impugned order on the ground that the learned Rent Controller erred in dismissing the application for leave to defend by not condoning the delay of one day in filing the same. The Eviction Petition was served on the Petitioners on 11.07.2019 and the leave to defend as per the provisions of Section 25B of the DRC Act had to be filed within fifteen (15) days of the service. Accordingly, the last date for filing leave to defend was 26.07.2019. It is the case of the Petitioners that immediately upon service of the notice of the Eviction Petition, the Petitioners approached the Central District Legal Service Authority ('**DLSA**'). The DLSA assigned a counsel and leave to defend was prepared and attested on 26.07.2019. However, the learned counsel for the Petitioners could reach the Rent Controller at about 04:30 PM on 26.07.2019, by which time the learned Rent Controller had left and the filing could not be done.

4. Accordingly, on 27.07.2019, the Petitioners filed the leave to defend along with an application seeking condonation of one day delay. The application for condonation of delay was supported by the affidavits of the Petitioners.

5. The Respondents filed reply for application to the leave to defend on 12.02.2020 denying the contents of the application for leave to defend. The learned Rent Controller *vide* the impugned order rejected the application for condonation of delay on the ground that the learned Rent Controller did not have power to condone the delay in filing the leave to defend application under any circumstances. Accordingly, the application for condonation of delay in filing the application for leave to defend was dismissed. Even though, the application for leave to defend was dismissed,



the learned Rent Controller observed that all the ingredients of Section 14(1)(e) of the DRC Act for *bonafide* requirement of the Respondents for the tenanted premises are required to be satisfied. The learned Rent Controller in the impugned order recorded that the Respondents have averred in the Eviction Petition that the Respondents did not have any other reasonably suitable accommodation for the residence of their family. Since, the Petitioners had failed to file leave to defend within fifteen (15) days, the Petitioners were deemed to have admitted the ownership of the Respondents and the relationship and the landlord between the Respondents and the Petitioners. It was further held that the Petitioners deemed to have admitted that the Respondents required the tenanted premises *bonafide* for their residential needs and they did not have any other reasonably suitable accommodation for this purpose. Accordingly, the Eviction Petition was allowed and the Petitioners were directed to vacate the tenanted premises.

6. Being aggrieved by the impugned order, the present Petition has been filed. This Court *vide* order dated 24.02.2023 issued notice to the Respondents and directed to obtain a letter from the learned counsel, who was appointed by DLSA explaining the time taken from 15.07.2019 to 27.07.2019 in filing the leave to defend.

7. Accordingly, the DLSA filed a letter of the counsel appointed with a supporting affidavit on 18.03.2023. *Vide* order dated 21.11.2023, this Court observed that the explanation of the learned counsel was unsatisfactory. It was further observed by this Court that from the explanation it is apparent that the learned counsel appointed by the DLSA was not aware of the law settled by the Supreme Court in ***Prithipal Singh v. Satpal Singh*** (2010) 2 SCC 15 that the learned Rent Controller has no power to condone the delay



in filing of an application for leave to defend. However, the learned counsel for the Petitioners before this Court submitted that the Division Bench of this Court in case of *Director, Directorate of Education and Anr.v. Mohd. Shamim & Ors*, (2019) SCC OnLine Del 11490 has set forth a dual test wherein this Court can extend time for filing the leave to defend. The learned counsel for the Petitioners submitted that the Petitioners in the present case had made out the case for passing the dual test laid down in the said decision. In view of the same, the parties were directed to file their respective written synopsis and the present Petition was listed for hearing on 11.01.2024.

8. When this petition was taken up for hearing on 11.02.2025, this Court recorded that the Respondents were not represented in the previous hearing as well as on the said date. Therefore, fresh default notice was issued via all permissible modes. This Court also observed that in view of the decision in *Directorate of Education* (supra), a dual test need to be fulfilled. *Firstly*, the tenant is required to show that he was prevented by reasons beyond his control for applying for leave to defend within the prescribed time. *Secondly*, the tenant is to make out a substantial case for consideration in the application for leave to defend. It was further held by the Division Bench of this Court that the power to condone the delay is not available with the Rent Controller, but the High Court has such power subject to both the conditions set out above being satisfied. Accordingly, this Petition was listed for hearing on 24.02.2025.

9. When the petition was taken up on 26.05.2025, despite a passover and service of the default notice, none appeared for the Respondents. Hence, despite giving opportunity, the Respondents did not appear and after hearing the arguments of the learned counsel for the Petitioners, the



judgment was reserved.

SUBMISSIONS OF THE PETITIONERS:

10. The learned counsel for the Petitioners has submitted that the Petitioners have fulfilled the dual test as laid down in the case of *Directorate of Education* (supra).

11. The Petitioners were prevented by reasons beyond their control from applying for leave to defend within prescribed time as although the application for leave to defend was prepared and attested on the last date of hearing, by the time the learned counsel for the Petitioners representing before the learned Rent Controller could reach for filing, the time was over. Therefore, despite the Petitioners trying their best, the application for leave to defend could not be filed within time.

12. The Petitioners were vigilant and on the very next day, the application for condonation of delay in filing the application for leave to defend was filed before the learned Rent Controller. Accordingly, the first test for condonation of delay in filing the leave to defend has been satisfied.

13. As regards the second test, the learned counsel for the Petitioners has submitted that the Petitioners have raised triable issues in the leave to defend. It is evident from the reply to the leave to defend that the Respondents had suppressed true and correct status of the tenanted premises by filing the wrong site plan. The learned counsel for the Petitioners submitted that the Respondents were not the owners of the tenanted premises as the Eviction Petition was not filed by all the legal heirs of Late Azimuddin, who was the original landlord of the tenanted premises.

14. The learned counsel for the Petitioners submitted that the leave to defend also mentioned that the Respondents had relied upon a forged and



fabricated sale deed and the Respondents were not the exclusive landlord *qua* the Petitioners as there was no relationship of the landlord and the tenant between the Petitioners and the Respondents.

15. The learned counsel for the Petitioners submitted that the leave to defend also mentions that the Respondents were in occupation of more than 2/3rd of the property and neither of the portions in possession of the Respondents were being used by them. Hence, there was no necessity to file the Eviction Petition on the ground of *bonafide* requirement as the Respondents were having suitable accommodation at property no. 7403, Gali Sheikh Lalan Wali, Quresh Nagar, Qasabpura, Delhi-110006 having an area approximately admeasuring 75 sq. yds. which is very spacious.

16. The learned counsel for the Petitioners submitted that the learned Rent Controller ought to have considered the *bonafide* requirement of the Respondents before passing the impugned order for eviction of the Petitioners. It was also submitted that the reply to the leave to defend did not give any adequate response to the grounds raised in the application for leave to defend.

17. In view of the same, the learned counsel for the Petitioners has prayed that the present Petition be allowed and the delay in filing leave to defend be condoned by this Court in view of the law laid down in the ***Directorate of Education*** (supra) as the dual test prescribed in the said decision has been fulfilled.

ANALYSIS AND FINDINGS:

18. In view of the decision of ***Directorate of Education*** (supra), the following two (2) questions are required to be examined in this Petition:

- i. Whether the Petitioners were prevented by reasons beyond their



control from applying for leave to defend within the prescribed time; and

- ii. Whether the Petitioners had made out a substantial case of consideration in the application for leave to defend.

19. As regards the first question, from the perusal of the records and the letter submitted by the learned counsel appointed by DLSA before the learned Rent Controller and the report dated 18.03.2023 submitted by the DLSA pursuant to order dated 24.02.2023 passed by this Court in this Petition, the following facts emerge:

19.1. The service of the notice issued by the learned Rent Controller of the Eviction Petition was completed on 11.07.2019.

19.2. The DLSA appointed the learned counsel to represent the Petitioners in the Eviction Petition on 15.07.2019. Thereafter, the Petitioners had approached the learned counsel on 15.07.2019 itself and supplied the summons of the Eviction Petition along with the copy of the Eviction Petition.

19.3. The learned counsel appointed by DLSA instructed the Petitioners to come after three (3) days for drafting the leave to defend application and to inform the facts of the case and the relevant documents to be filed.

19.4. The Petitioners contacted the learned counsel as per schedule and informed that since the Petitioners were residing in the tenanted premises for more than sixty five (65) years even before the partition, most of the owners of the tenanted premises had left for Pakistan, the collection of facts and information was taking more time.

19.5. After the information was provided by the Petitioners, the application for leave to defend was drafted and finalized on 26.07.2019 and the supporting affidavit of the Petitioners were attested before 04:00 PM on the



said date and the advance copy of the complete paper book was also sent to the post to the Respondents.

19.6. Thereafter, the Petitioners and the learned counsel approached the learned Rent Controller at about 04:35 PM and the Reader of the Court of the learned Rent Controller refused to accept the application for leave to defend as the learned Rent Controller had left the Court and instructed the learned counsel to come on the next day.

19.7. The learned counsel had approached the learned Rent Controller at 10:00 AM on 27.07.2019, however, the Reader of the learned Rent Controller after taking instructions from the learned Rent Controller instructed the learned counsel to file an application for condonation of delay with the reason of delay. Accordingly, the application was filed seeking condonation of delay on the same date.

19.8. The learned counsel appearing for the Petitioners before the learned Rent Controller has also filed an affidavit dated 18.03.2023 in support of its reply submitted to this Court affirming that the contents of the reply are true and correct to the best of the knowledge of the learned counsel.

20. From the above, it is evident that the application for leave to defend was prepared and attested on 26.07.2019 and the attempt was made to file the same on very same day. However, due to slight delay in reaching the Court of learned Rent Controller, the same could not be filed in time.

21. The application for condonation of delay and the letter dated 18.03.2023 submitted by the learned counsel for the Petitioners states that the Petitioners approached the learned Rent Controller on the very next day for filing the application to leave to defend, however, the same was not accepted. This shows that the Petitioners were vigilant about the compliance within time and took all steps to bring the application for leave to defend on



record.

22. Hence, the first test laid down in the case of *Directorate of Education* (supra) has been fulfilled that the Petitioners were prevented by reasons beyond their control to apply for leave to defend.

23. As regards the second test, as to making out a substantial case of consideration in the application for leave to defend, a perusal of the application for leave to defend and the reply thereto would show that:

23.1. The Petitioners have submitted that there are seven (7) portions of one room along with courtyard etc. constructed in the tenanted premises and there are three (3) empty portions of one room that were available to be used as residence by the Respondents. Further, the Respondents had filed the wrong site plan.

23.2. The leave to defend mentions that there was no cause of action of *bonafide* requirements as the Eviction Petition did not show how the Respondents were utilizing the remaining portion of the tenanted premises as the portion constructed in the middle of the tenanted premises consisting of three (3) floors that were unoccupied showed false need of the Respondents.

23.3. The Respondents had suppressed material facts as the Respondents were not the rightful owner of the entire tenanted premises as all the legal heirs of Late Azimuddin were not made party to the Eviction Petition.

23.4. The leave to defend further mentioned that the Respondents had filed a forged and fabricated sale deed and also had failed to show the ownership of the tenanted premises. Hence, there was no landlord and tenant relationship between the Petitioners and the Respondents.

23.5. The reply to the leave to defend has denied the averments of the leave to defend, however, the Respondents had not produced any further evidence



in support of such denials.

24. In view of the above, it is clear that the substantial issues arise for determination before the learned Rent Controller as pleaded in the leave to defend and reply thereto. However, the impugned order proceeds on the basis that there was a deemed admission of the contents of the Eviction Petition as there was failure to file leave to defend on time.

25. Accordingly, the second test has laid down in *Directorate of Education* (supra) has also been fulfilled in the facts of the present case.

26. Considering the facts and circumstances of this case, the delay of one (1) day in filing the leave to defend is hereby condoned. The impugned order is quashed and set aside.

27. Accordingly, the present Petition is allowed. No orders as to costs.

TEJAS KARIA, J

JUNE 30, 2025/ 'A'