

(2015) 09 DEL CK 0344

In the Delhi High Court

Case No : RC. Rev. 479/2015 and CM 1888/2015

Ram Shree

APPELLANT

Vs

Sanjeev Jain

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Evidence Act, 1872 — Section 116, 14(1)(e)
Limitation Act, 1963 — Section 5

Citation : (2015) 09 DEL CK 0344

Hon'ble Judges : V.K. Shali, J.

Bench : Single Bench

Advocate : A.K Singhal, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

V.K. Shali, J.

CM APPL.18881/2015 (exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

RC. REV. 479/2015 & CM 18880/2015 (delay)

1. The present revision petition has been filed by the petitioner/revisionist against the order dated 01.06.2012 passed by the Ld. Additional Rent Controller, North East District, Karkardooma Court, Delhi by virtue of which the Ld. ARC dismissed the petitioner's eviction petition along with an application for condonation of delay in filing the revision petition.

2. The petitioner in the application under S.5 of the Limitation's Act has sought condonation of the delay of 1068 days in filing the present revision petition. It has been averred by the petitioner in the said application that the delay in filing is on account of ill health of the revisionist who suffered from paralysis and other

diseases. It is further stated that the petitioner was advised to file an appeal which was filed on 28.10.2014. This appeal was withdrawn with liberty to approach the appropriate forum, on 09.07.2015 as the same was not maintainable. The certified copy of the order dated 01.06.2012 and 09.07.2015 was received on 22.07.2015. It has been stated in the application u/s. 5 of the Act that the delay in filing the revision petition is neither deliberate nor intentional and it is on account of the wrong advice and under the impression that the petitioner being the landlady can file the revision at any time whenever a fresh bonafide need may arise. Therefore in the light of the aforesaid facts it is prayed that the delay may be condoned.

3. Before proceeding further the brief facts of the case are that the petitioner/landlord is the owner of the property bearing no. 27/5-C, (New No. E 1168/A), Main Road, Babarpur, Shahadara, Delhi- 110032. The respondent is a tenant under the petitioner since the year 1985 in respect of one shop (tenanted premises). The petitioner had alleged in the eviction petition that the respondent had sub-let the tenanted premises without the consent and permission of petitioner and started business at Pocket-E, 158-A, G.T.B. Enclave, Delhi-92. It was further averred that the family of the petitioner consists of herself, her husband, two sons and two daughters who all are married. The petitioner had sought possession of the tenanted premises on the grounds that the said premise are required for the settlement of his son namely Pramod Sharma who is a civil contractor and he desires to open his office and godown in the tenanted premises.

4. On merits it is the case of the petitioner that the learned trial court failed to consider the arguments of the petitioner and the evidence adduced by him with respect to the ownership of the tenanted premise especially when in separate proceedings before this court the respondent had acknowledged the landlord-tenant relationship and the same is a matter of judicial record. It is further stated that even otherwise on payment of rent to the petitioner the respondent has acknowledged the petitioner as the landlord and by virtue of the bar u/s 116 of the Evidence Act the respondent cannot be allowed to take a contrary stand. The learned counsel for the petitioner has averred that it is settled law that in an eviction petition u/s 14(1)(e) of the Act, the petitioner/landlord does not need to prove an absolute title but only needs to establish that he has a better title than the tenant.

5. I have heard the learned counsel for the appellant and perused the averments made in the application for condonation of delay. The reasons offered on account of which the delay has been caused do not show the bona fides of the appellant in preferring the appeal. As a matter of fact, the conduct of the appellant is full of gross negligence. This is on account of the fact that no material information or evidence has been filed to support the reasons stated in the said applications. The petitioner has claimed respite on account of ill health but has not produced even a single medical bill or doctors report to support his case. It is pertinent to

note that the petitioner filed the appeal also with considerable delay. The petitioner has stated that she acted under the wrong advice but the same seems to be a far-fetched theory and is more like an afterthought, in the absence of any evidence.

6. The petitioner has further stated in the said application, that she was of the view that she will pursue her legal remedies as and when fresh bonafide requirement arises. This argument holds no water on account of the fact that no new ground has been raised. Further no application for leading any new evidence has been placed on record to show that any new facts have come to light.

7. The act of the petitioner clearly shows that there was a lack of seriousness in pursuing legal remedies that might be available to her. It clearly flows from the aforesaid that there was gross negligence on the part of the petitioner in prosecuting the matter.

8. Section 5 of the Limitation Act clearly lays down that before the delay is condoned, it must be shown that there is a "sufficient cause" for the same and the "sufficient cause" which has been interpreted by the Apex Court in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others*, is a cause which is beyond the human control. The Honourable Supreme Court in the aforesaid judgment very categorically stated that although the words "sufficient cause" must be interpreted with a liberal, justice oriented, pragmatic and non-pedantic approach but at the same time the bonafides of the applicant seeking condonation of delay must be made out. It was further held that the increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner and requires to be curbed.

9. In the instant case prima facie I am not convinced that any cogent reason has been given by the appellant in the application which may constitute sufficient cause in the eyes of law.

10. It is such like litigants who have clogged the arteries of justice which has resulted in piling up of cases in courts and consequently, not only the number of pending cases swells but even the day to day hearing of cases gets affected. Further the attention of the court gets diminished in matters that require its attention.

11. "Vigilantibus Et Non Dormientibus Jura Subveniunt" is a settled principle of law i.e the law assists those that are vigilant with their rights, and not those that sleep thereupon. Merely because the revisionist/petitioner has woken up belatedly to file the present revision without showing any sufficient cause does not entitle the revisionist to disturb a finding which has been returned by the Trial Court more than three years back.

12. Further even on merits, it is evident from a perusal of the impugned order that the petitioner/revisionist miserably failed to establish his case before the

trial court. It was alleged therein that the owner of the premise was one Puran Chand and the same was proved on record but no evidence to rebut the same was adduced by the petitioner herein. Further there are discrepancies in the statement made by the petitioner and PW-2 with respect to the job profile of PW-2 casting doubts on the alleged bonafide requirement of the petitioner. It has been recorded by the trial court on a perusal of the photographs of the tenanted premise placed on record by the respondent herein that the tenanted premise consists of four shops and not two as has been contented by the petitioner. The petitioner failed to substantiate his averments with cogent evidence. Therefore even otherwise on merits the petitioner has failed to make out a case.

13. Accordingly the application for condonation of delay is dismissed. Resultantly the revision is dismissed as barred by limitation.

14. Pending application stands disposed off.