

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 09.02.2012.

R.C.R. No. 539/2011, CAV No. 1160/2011 & CMNo. 23286/2011

MASTER ABDUL ALEEM DECD THR LRS Petitioner
Through Mr. Jayant K. Mehta, Adv

versus

HAMEEDA SHAHZAD Respondent
Through Mr. Raman Kapur, Sr. Advocate with Mr. R.P. Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 17.10.2011; the Court had not taken the application for leave to defend on record holding it to be barred by delay of one day; necessary corollary was that the eviction decree had followed in favour of the landlord.

2 Record shows that the present eviction petition has been filed under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA). The tenant was served with the summons on 12.01.2010; he had filed an application seeking a complete set of the petition which was provided to him on 30.10.2010. The impugned order has noted that even if the date of summons is counted from 30.01.2010, the application for leave to defend filed on 15.02.2010 was barred by limitation as the limitation has expired on 14.02.2010. It is not in dispute that 14.02.2010 was a Sunday. Contention of the petitioner before this Court is that 14.02.2010 being a Sunday which has necessarily to be excluded for the purpose of computing the period of 15 days which is the

outer limit within which an application for leave to defend can be filed in eviction proceedings under Section 14 (1)(e) of the DRCA.

3 This argument has been refuted by the learned counsel for the respondent; reliance has been placed upon the judgment of this Court reported in 177 (2011) DLT 747 Aster Publishing Vs. Shi Niwas Aggarwal & Others as also another judgment in R.C.R. No. 9/2011 decided on 11.02.2011 titled Shiv Gopal & Anr Vs. Shipra Singh & Others; contention is that even a one day delay cannot be condoned. Both the said judgments are inapplicable. In the first case there was admittedly a delay of three days in filing the application for leave to defend and in the second case there was a delay of two days. The question which has arisen for consideration in this case is not whether a delay in filing an application for leave to defend can be condoned; but how the said period has to be computed and when the last day is a Sunday and the Courts being closed on that day, does it have to be counted in computing the period of 15 days.

4 A similar question has come for consideration before a Bench of this Court in 1984 (6) DRJ 47 Frank Anthony Public School Vs. Amar Kaur which was also in proceedings under Section 14 (1)(e) of the DRCA where the application seeking leave to defend was within the period of 15 days; the expression within 15 days from service hereof had come up for consideration. Relevant extract of the said order reads herein as under:-

“The expression "day" has been understood in different ways by different nations in different times. Lord Coke said :

"The Jewes, the Chaldeans, and Babylonians, begin the day at the rising of the sun: the Athenians at the fall; the Umbri in Italy beginner at midday: the Egyptians and Romanes from midnight; and so doth the law of England in many cases". The English day begins as soon as the clock begins to strike twelve p.m. of the preceding day. Williams v. Nash 28 L J. Ch. 886".

In Halsbury's Laws of England, third edition. Vol. 37, P 84 it is said :

"The term "day" is, like the terms "year" and "month", used in more senses than one. A day is strictly the period of time which begins with one midnight and ends with the next. It may also denote any period of twenty-four hours, and again it may denote the period of time between sunrise and sunset."

(27) Counsel for the landlady argues that time ought to be counted from 12-5-1982 and the period of fifteen days expired on 26-5-1982. In any event he says the leave application made on 27-5-1982 was barred by time. I have no hesitation in rejecting this argument. The question is what is meant by the phrase "within fifteen days from the service hereof". In my opinion, on a

proper reading of the third schedule, the word "day" should be read as meaning a "calendar day". I propose to found my decision R. v. Turner (1910) 1 K.B. 346 and Chambers v. Smith (1843) 152 E.R. 1085 and to decide that the phrase means fifteen clear days exclusive of the day of service. The words ' within fifteen days of the service hereof' in the form of summons prescribed in third schedule must be construed as meaning fifteen consecutive periods of twenty-four hours after the service of the summons.

(28) It is well known maxim that the law disregards fractions. By the Calendar the day commenced at midnight, and most nations reckon in the same manner. The English do it in this manner. We too have adopted the same. In the space of a day all the twenty-four hours are usually reckoned, the law generally rejecting all fractions of a day, in order to avoid disputes. If anything is to be done within a certain time of) from, or after the doing or occurrence of something else, the day on which the first actor occurrence takes place is to be excluded from the computation. (Williams v. Burgess (1840) 113 E.R. 955) unless the contrary appears from the context. (Hare v. Gocher (1962) 2 Q.B. 641). The ordinary rule is that where a certain number of days are specified they are to be reckoned exclusive of one of the days and inclusive of the other. (R. v. Turner, supra p. 359).

(29) Fraction of a day has not to be counted. So I would disregard 12-5-1982, the day on which the ordinary summons were delivered to the Principal. Fifteen days will commence from 13-5-1982. Counting in this way the application was made on the last day, i.e. 27-5-1982. The application for leave to appear and contest is within time. I Therefore hold that the tenant was entitled to count fifteen days from the receipt of the second summons on 12-5-1982.”

5 In view of the aforementioned legal position, it is clear that 14.02.2010 has to be excluded. If 14.02.2010 which was a Sunday is excluded the application seeking leave to defend filed by the tenant is clearly within time. The impugned order decreeing the eviction petition thus suffers from an infirmity. It is accordingly set aside. The application for leave to defend is taken on record. Parties to appear before the Additional Rent Controller on 22.02.2012 who shall proceed to deal with the application on its merit.

6 Petition disposed of.

Sd/-
INDERMEET KAUR, J