

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

+ **RC.REV.No.546/2011 & C.M.Nos.23526-23527/2011,  
17639-17640/2013**

% **08<sup>th</sup> August, 2014**

M/S HIM TRADERS PVT LTD. .... Petitioner  
Through Mr.N.K.Aggarwal, Advocates.  
versus

SH. S.K. GUPTA .... Respondent  
Through Mr.C.P.Vig, Advocate.  
Ms.Geetanjali Mohan, Advocate for  
applicant/sub-tenant.

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

To be referred to the Reporter or not?

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

1. This revision petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') challenges the impugned order of the Additional Rent Controller dated 31.3.2011 which has dismissed the leave to defend application filed by the defendant/petitioner herein, inasmuch as the leave to defend application was filed beyond the period of 15 days.

2. The trial court has relied upon the judgment of the Supreme Court in the case of *Prakash H.Jain Vs. Ms. Marie Fernandes, AIR 2003 SC 4591*, however, now there is in fact a direct judgment of the Supreme Court under the Delhi Rent Control Act in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15* which holds that there cannot be delay of even one day beyond the period of 15 days for filing of the leave to defend application.

3. In the present case, as per the trial court record, the petitioner was served on 08.10.2010 by the process server. Petitioner is a company and it was served through one Mr.R.K.Gupta who is the Director and the authorized signatory of the petitioner/company. I note that as per the Order 29 of the Code of Civil Procedure, 1908 (CPC), service on a company can be effected through a principal officer and a Director of a company is surely a principal officer.

4 (i) As the service was effected on the petitioner/defendant on 08.10.2010 but the leave to defend application was filed only on 25.10.2010, whereas it had to be filed on or before 23.10.2010, the ratio of the judgment of the Supreme Court in the case of *Prithipal Singh (supra)* is squarely applicable.

(ii) A reference to the leave to defend application shows that the petitioner/defendant stated that it was served only on 10.10.2010, however, this was only a self-serving averment without any basis because the trial court record shows that service was in fact duly effected on the petitioner through the process server on 08.10.2010.

5. Counsel for the petitioner very vehemently sought to argue that service should be taken as 10.10.2010 because there was a second service by registered post on 10.10.2010, however, it is noted that this fact is not pleaded, inasmuch as the pleading/leave to defend application of the petitioner talks only of one service on 10.10.2010, and it is to be noted that it is also not stated in the leave to defend application that a second service is effected on 10.10.2010 by registered post. Further, there is nothing which is filed before this Court in this petition which is pending since the year 2011 that the petitioner was served through registered post for the second time on 10.10.2010.

6. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

**C.M.No.17639/2013**

1. This application was filed by one M/s New Airways Travels (Delhi) Pvt. Ltd. claiming that it is a legal sub-tenant, and therefore eviction order cannot be passed. However, the application does not lie as it is noted that as per Sections 17 & 18 of the Delhi Rent Control Act, a sub-tenant only if he is a legal sub-tenant will step into the shoes of the tenant, and which aspect is not in issue and cannot be in issue in a *bonafie* necessity petition. It is only after the tenancy of the petitioner/tenant is terminated pursuant to the eviction order, only thereafter and then if a sub-tenant is a legal sub-tenant, then such legal sub-tenant will step into the shoes of the tenant, and on which basis the so-called legal sub-tenant will have an independent title. An alleged legal sub-tenant is entitled to file objections in the execution petition in terms of Section 25 of the Delhi Rent Control Act, however, a *bonafide* necessity petition cannot be converted into a petition for deciding the validity or otherwise of the sub-tenancy.

2. In view of the above, the application is dismissed with liberty to the applicant, of course in accordance with law, to file objections under Section 25 of the Delhi Rent Control Act, and that this Court states nothing with

respect to any merits of the alleged stand of the alleged sub-tenant/applicant,  
New Airways Travels (Delhi) Pvt. Ltd.

**VALMIKI J. MEHTA, J.**

**AUGUST 08, 2014**  
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