

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

**SUBJECT : CODE OF CIVIL PROCEDURE**

Date of Judgment: 18.01.2012

CM(M) No. 341/2007 & CM No. 3534/2007

L.QUETH KHONG DECD. THR.LR'S ..... Petitioner  
Through Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Siddharth  
Bambha, Adv.

versus

PREM C.SONI DECD. THR.LR'S &ORS ..... Respondents  
Through Mr. Sanjeev Mahajan, Adv. for R-1

CORAM:  
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The order impugned before this Court is the order dated 17.01.2007 vide which the application filed by the appellant under Order 22 Rule 3 of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking impleadment of the legal representatives of the deceased appellant had been declined.

2 Record show that an eviction petition had been filed by the landlord against his tenant which had been decreed in favour of the landlord. An appeal had been filed against the said judgment which was pending disposal before the Appellate Tribunal. During the pendency of the appeal, the aforementioned application dated 09.10.2006 had been filed; this was to bring on record the legal representatives of the deceased L. Queth Khong who had expired on 14.05.2000. There was a delay in preferring this application and as such along with this application a second application under Section 5 of the Limitation Act had also been filed. The averments in the application under Order 22 Rule 3 of the Code have been perused. The primary

contention is that the appeal was being defended by the brother of the appellant Lee Man Khong and as attorney he was not aware that after the death of his brother i.e. the appellant his legal representatives were required to be brought on record within a stipulated period; this legal position was not known to the other legal representatives of the deceased either; it was only on 05.10.2006 when the counsel for the appellant gave a call to the attorney of the appellant that this fact about the death of L. Queth Khong had been informed whereupon this application had been filed immediately.

3 The impugned order had dismissed this application. This is the grievance of the petitioner.

4 At the outset, learned counsel for the petitioner has submitted that the provisions of the Limitation Act are not applicable to rent control proceedings and to substantiate his submission, reliance has been placed upon a judgment of this Court reported as ILR (1973) I Delhi Subhash Chander Vs. Rehmat Ullah as also a full Bench judgment of this Court reported as 1973 RLR 701 titled as Kedar Nath Vs. Ram Nath. Further contention being that on merits, although there is a delay in preferring the application yet since a valuable substantive right of the litigant is involved, a justice oriented approach should be followed by the Court; his opportunity of having his lis determining on merits should not be given a go-bye and to support this submission, he has placed reliance upon the judgment of the Apex Court reported as (2003) 10 SCC 691 Mithailal Dalsangar Singh & Others Vs. Annabai Devram Kini & Others.

5 Arguments have been countered. It is submitted that the point of limitation has been answered by the Apex Court in (1987) 4 SCC 84 Kashi Ram Vs. Rakesh Arora. The Apex Court in this case on the question of the applicability of the Limitation Act to proceedings under the DRCA had held herein as under:-

“So far as the first question about the applicability of the Limitation Act, it is necessary to refer to Section 42 of the Delhi Rent Control Act, 1958 (hereinafter called ‘the Act’) which provided that an order of eviction has to be executed like a decree of the civil Court. The provisions of the Code of Civil Procedure executing the decree are made applicable by legal fiction recognized by virtue of Section 42 of the Act. In any case procedure of the Small Cause is adopted by the Controllers under the provisions of the Act wherein also in execution the provisions of the Code of Civil Procedure are applicable and as such law of limitation would be attracted. The question

is when the limitation starts running. Once the limitation starts running then unless the statute comes to the rescue of a person the period would expire after the efflux of time.”

6 The Apex Court in (1995) 5 SCC 5 Mukri Gopalan Vs. Cheppilat Puthanpurayil while dealing with provisions of Kerala Rent Controller Act had noted that the Appellate Authority functioning under the said Act is not a persona designate; it functions as a Court. Provisions of the Limitation Act are applicable to proceedings under the DRCA.

7 The judgments relied upon by learned counsel for the petitioner are distinguishable inasmuch as both the aforementioned judgments i.e. of Subhash Chander (Supra) and Kedar Nath (Supra) related to powers of Rent Controller and the judgment of Subhash Chander in fact was in the context of the powers of the Controller available to him under Section 37 (2) of the Delhi Rent Control Act (DRCA).

8 With this background, the contentions on merits of the learned counsel for the petitioner have to be viewed. The averments made in his application under Order 22 Rule 3 of the Code are negated by certain facts which have been brought to the notice of the Court by the learned counsel for the respondent. It is a matter of record that during the course of the proceedings before the appellate Court, the respondent had also died; an application under Order 22 Rule 4 of the Code had been filed by the appellant through his counsel supported by the affidavit of L. Queth Khong (attorney of the appellant) within the stipulated period of limitation and as such his submission in this application (under Order 22 Rule 3 of the Code) that he was not aware of this legal position is clearly falsified. A legal notice had also been sent by the landlord to the tenant on 18.11.2002 seeking enhancement of rent under Section 6 (A) of the DRCA to which a reply had been remitted on 23.12.2002 wherein again the factum of death of the appellant (who had died on 14.05.2000) had not been informed. In fact it was only when the appellate Court had passed directions on 04.09.2006 for the appearance of the appellant that the present application had been filed. The laxity on the part of the petitioner is clear and apparent. The appellant had died on 14.05.2000 and his submission that he was not aware about the legal position that his legal representatives had to be brought on record within a specified stipulated period has as noted supra negated and in these circumstances, there being no explanation in this application as to why this application has been filed so belatedly it is clear that the appeal stood abated

after a period of 90 days from the date of the death of the appellant. The application filed on 09.10.2006 after a lapse of almost six years without any sufficient explanation was rightly dismissed.

9 Impugned order in this factual scenario calls for no interference. Petition is without any merit. Dismissed.

Sd./-

INDERMEET KAUR, J

JANUARY 18, 2012