

* **HIGH COURT OF DELHI : NEW DELHI**

+ **R.C. Revision No.41 of 2007**

% **Date of decision: 21.01.2008**

Narender Kumar Jain & Another ...Petitioners
Through: Mr. J.K. Jain, Advocate

versus

Raj Kumar Kapoor & Another Respondent
Through: Mr. Ajay Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?

VIPIN SANGHI, J

1. This petition is directed against the order dated 05.05.2007 passed by the learned ARC, whereby an eviction order was passed against the petitioners, who are two brothers occupying different floors of property bearing No.1275, Ward No.4, Gali Wakilpuram, Dariba Kalan, Delhi.

2. The respondent filed the eviction petition under Section 14(1)(e) of the Delhi Rent Control Act (DRC Act) read with Section 25B of the said Act. The summons were sent to the petitioners under Schedule III. Petitioner No.1 Narender Kumar Jain was personally

served by ordinary process as well as by registered covers on 13.03.2007, whereas petitioner No.2 Surender Kumar Jain was served on 10.01.2007. Both the petitioners failed to file their respective leave to defend applications within the prescribed statutory period of 15 days. On 03.05.2007 when the matter was fixed before the Additional Rent Controller, the petitioners appeared and moved an application under Section 151 CPC. It was contended in the applications that the summons served upon the two petitioners made a reference to Subsection (5) of Section 25(3) of the DRC Act and that there is no such provision in the said Act. It was also submitted that one of the site plan annexed to the petition did not have the colour markings and, therefore, it was not the true copy of the plan as filed in the Court. One of the plans was also stated to have not been supplied along with the copy of the petition. It was also submitted that the summons had not been served personally upon petitioner No.2 Sh. Surender Kumar Jain and had been served on his wife Smt. Rajrani Jain. The same could not be considered as proper service. By the impugned order, the learned ARC had rejected the aforesaid submissions of the petitioner, and in my view rightly so.

3. A perusal of the summons as served upon the petitioners, no doubt shows that it makes a reference to sub-Section (5) of Section 25(3) and that there is no such provision of law. It appears that in place of Section 25B, the same has been wrongly printed as 25(3). However, that to my mind is not very material since the

requirement of the law that the noticee is required to appear before the Additional Rent Controller within 15 days of the service and to obtain the leave of the Controller to contest the application for eviction and in default thereof, the applicant will be entitled at any time after the expiry of the period of 15 days to obtain an order for the noticee's eviction from the premises in question has been clearly set out. Consequently, printing of the relevant provision cannot be considered to be fatal to the summons as issued by the Court. In support of the submission with regard to the service of the summons on the wife of petitioner No.2 is concerned, learned counsel for the petitioners relied on ***Punjab Oil Expillars Co. Vs. M/s Madan Lal Nanda & Sons***, 1967 DLT 56. In the said judgment this Court had held that service in any of the ways enumerated in Order V, Rules 12 to 16 of the Code of Civil Procedure, should be insisted upon and service by affixation as provided in Order V, Rule 17, should not be allowed till after the date fixed for scrutiny. In my view this judgment has no bearing on the facts of the present case. Admittedly, the wife of the petitioner No.2 i.e. an adult family member, was served with the summons and it is not even his case that he did not become aware of the said summons, which were served on his wife. This service was in compliance with Order V Rule 15 CPC.

4. He also relies on Clause 5 in part D, which deals with service of process, in Chapter 1 "Practice for the Trial of civil suits" of the Delhi High Court Rules. The said clause requires that the form of

summons for the final disposal of a suit should be printed in vernacular on coloured page, as this will tend to impress the distinction between the said form and that for settlement of issue both upon the mind of the people and upon the officers of the court. He submits that in the present case the summons were not in coloured form. In my view, the aforesaid guidelines firstly do not apply to proceedings under the Act, which is a Special Code and not a civil suit, and, in any event, they cannot be held to be imperative so as to render the summons issued to the petitioner defective and non-est. No doubt the guidelines issued by this Court ought to be taken seriously and adhered to by the Courts below. However, in the said clause, I cannot read a mandatory provision, the non-compliance whereof will render the summons void.

5. Learned counsel for the petitioner further argued that the respondent/landlord had earlier preferred a similar eviction petition under Section 14(1)(e) of the Act and the same has been dismissed as withdrawn and consequently the present petition was not maintainable. He submits that while withdrawing the said petition though the respondent/landlord had sought the liberty from the Court to file a fresh petition no such liberty was in fact granted by the Court while dismissing the petition. He has filed on record the certified copy of the order dated 04.11.1999 alongwith the statement of the petitioner in that proceedings and the same reads as follows: -

“Cross-examination of AW2 Raj Kr.

4-11-99

Present: Petr. in person alongwith
counsel.
Respondent in person.

Statement of Sh. Raj Kumar Kapur, Petr. on
S.A.

I want to withdraw my case with permission to
file fresh. The same may be dismissed as
withdrawn.

RO&AC

ARC/Delhi
4-11-99

Statement of Sh. Ajay Gupta, Adv. counsel for
petr.

Without oath.

As per instructions of Petrs. suit may be
dismissed as withdrawn as petr is not
interested in continuation of the same.

RO&AC

ARC/Delhi
4-11-99

ORDER

In view of the above petition is dismissed as
withdrawn. Parties to bear their own costs.

File be consigned to RR.

(N.K. Sharma)
ARC/Delhi

Announced
4-11-99"

6. Learned counsel for the respondent/landlord submits that

firstly the aforesaid objections ought to have been taken by filing an application for seeking leave to defend, and that not having been done it is not open to the petitioners to raise any such plea at this stage. Secondly, he submits that a perusal of the order dated 04.11.1999 and the statement made by the landlord cannot be taken to mean that no liberty was granted to him to file a fresh petition. Thirdly, he submits that, in any case, there is no bar to filing of a subsequent petition, even after the dismissal of an earlier petition under Section 14(1)(e) of the Act. To support the maintainability of the second petition under Section 14(1)(e) he relies on AIR 1988 SC 1345 "**Surajmal Vs. Radhey Shyam**". He has also relied on 17(1980) DLT 172 and 87(1) RCJ 556 to submit that it is imperative for the tenant to file the leave to defend within the period of 15 days and upon the tenants failure to do so, the eviction decree is bound to follow.

7. Having considered all the submissions, I am of the view that a perusal of the order dated 04.11.1999 passed by the learned Rent Controller, whereby the earlier petition was dismissed as withdrawn, shows that the liberty as sought by the landlord though expressly not set out, is embedded therein. The opening words by the order "in view of the above" show that the petitioner was permitted to file a fresh petition, since what was referred to as "above", was the statement of the landlord that he wishes to withdraw the petition with liberty to file a fresh one. In any event, a

petition under Section 14(1)(e) could be preferred, even if the petition had been dismissed on merits, as already held by the Supreme Court in ***Surajmal*** (Supra). The respondent is also justified in submitting that this objection ought to have been taken alongwith all others (including about non-supply of the copies of the plans etc.) by filing an application to seek the leave to the Court to defend the eviction petition.

8. In view of the aforesaid, I find no merit in the petition and the same is dismissed.

9. Learned counsel for the petitioner submits that the said defective form with the aforesaid printing error are being used by all the Additional Rent Controllers. Though, i have held that the said printing error is not fatal to the legality of the summons, to obviate such objections and to set right the error that has been brought to the notice of the Court, I direct that henceforth summons in the correctly printed forms in accordance with the Third Schedule to the Act be issued by the courts of Rent Controllers. To utilise the existing stationery, either necessary corrections be made in the summons by hand or an additional stamp be affixed containing the correct section number as '25B' which has been incorrectly printed as 25(3). This direction be circulated to the District Judge and to all the Courts of the Rent Controllers in Delhi by the Registrar (Gazette) of this Court and be implemented forthwith. Copy of the incorrectly printed form of summons (placed on the record at page 36) be also sent along with a

copy of this order for needful action.

10. Parties are left to bear their own costs.

January 21, 2008
RSK

VIPIN SANGHI
JUDGE