

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

% *Date of Judgment: 16.11.2011*

+ **RC. Rev. No. 32/2010**

PUNJAB BEARING TRADERS Petitioner
Through: Mr. Satinder S. Gulati,
Advocate.
versus

MOHAMMAD JAMEEL KHAN LODHI Respondent
Through: Mr. Rajat Aneja, Advocate with
Ms. Shweta Singh and
Mr. Vibhav Jairaj, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 18.9.2009 wherein the eviction petition filed by the landlord under Section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as 'the DRCA) had been decreed; the application for leave to defend filed by the tenant had been dismissed.

2. Record shows that an eviction petition seeking eviction of

the tenant under Section 14(1)(e) of the DRCA had been filed. Summons in terms of the impugned order had been served upon the defendant on 18.07.2009. Contention of the petitioner before this court is that a perusal of the summons clearly shows that there was a next date of hearing mentioned therein which was noted as 08.09.2009; the tenant was under a bona fide impression that he had to appear in court on 08.09.2009 which he did. This had led to a confusion in his mind which had been deliberately created which in turn amounts to a fraud. Learned counsel for the petitioner has placed reliance upon the judgments of the Apex Court reported in (2003) 8 SCC 319 titled as Ram Chandra Singh vs. Savitri Devi & Ors., (2009) 13 SCC 569 titled as Rani Aloka Dudhoria and Ors. vs. Goutam Dudhoria & Ors. as also another judgment of the Apex Court reported in (2006) 7 SCC 416 titled as Hamza Haji vs. State of Kerala and Anr. to support his submission that the commission of a fraud on the court and suppression of material facts are core issues which vitiate every solemn act; fraud and justice never dwell together; the summons amounting to a fraud, did not amount to a valid service; impugned order in these circumstances not entertaining the application for leave to defend of the tenant holding that it was filed beyond the period of

suffers from a clear infirmity.

3. It is submitted that this summons are even otherwise defective as they were not in prescribed format which has been prescribed in the third Schedule of the DRCA; there is a format which does not mention any next date of hearing; in these summons next date of hearing had been noted as 08.09.2009 which had led to the confusion as the defendant is a lay person. Reliance has also been placed upon the judgment reported in 1996 RLR 71 titled as Abdul Salam vs. Hans Raj to support his submission that summons which are not in prescribed format do not amount to a valid service. Further submission being that even otherwise the bona fide requirement of the petitioner had not been made out and this is clear from the perusal of the eviction petition.

4. Arguments have been rebutted. It is pointed that the application for leave to defend has not been filed within the stipulated period; the averments made in the eviction petition are deemed to be admitted and the landlord is entitled to a decree forthwith; reliance has been placed upon the judgment of the Apex Court reported in 2010 RLR 15(SC) titled as Pritpal Sigh Vs. Satpal Singh to support this submission.

5. Record shows that the impugned order in no manner suffers

from any infirmity. The summons sent to the petitioner are in the format which has been prescribed in the third Schedule of the Delhi Rent Control Act. The name, description, place of residence of the tenant had been mentioned in these summons; these summons clearly state that an eviction petition under section 14(1)(e) of the DRCA has been filed and the respondent/petitioner is directed to appear before the controller within 15 days of service thereof and to obtain leave of the controller to contest the application for eviction on the aforesaid ground; in default the applicant would be entitled at any time after the expiry of the period of 15 days to obtain an order of eviction. It further states that the leave to appear and contest the application may be obtained on an application to the controller which has to be submitted on an affidavit as referred to in Sub-Section 5 of Section 25B; the date of the summons has been mentioned as 18.07.2009.

6. The summons are in the correct format and in strict compliance of the requirements of the summons. Submission of the petitioner that on the top of the summons the date of 08.09.2009 has been mentioned was in fact a fraud which had been played upon him as this had led to confusion in his mind and

he had appeared only on 08.09.2009 is an argument clearly

without any merit; the next date of 08.09.2009 written on the top of the summons states that it is the next date of hearing; that does not take away the text of what is contained in the body of the summons which has clearly noted the contents as (supra) informing the tenant that he must on affidavit within 15 days of the receipt of these summons file an application for leave to contest the eviction petition which has been filed under Section 14(1)(e) of the DRCA failing which the eviction petition shall stand decreed in favour of the applicant/landlord. It is also an undisputed fact that alongwith these summons the eviction petition had also been served upon the petitioner as 11 pages had been served upon the petitioner; this has also been noted by the Trial Court. This summon sent cannot be said to be a fraud which has been committed by the petitioner. The aforementioned judgments relied upon by the petitioner in this context are thus wholly inapplicable; the judgment of Abdul (supra) is also not application. This was a case where the court had noted that in the summons where two dates were required to be mentioned only one date was mentioned; further the summons were incomplete as the number of premises in question was not given; further the eviction petition and site plan were also not delivered to the petitioner alongwith the summons; the seal of the court was not

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clear; facts of the said case are distinct and are not applicable.

7. Petition is without any merit; it is dismissed.

NOVEMBER 16 , 2011
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INDERMEET KAUR, J