

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

% **RC. REV.No. 148/2011**

+ **Date of Decision: 12th September, 2011**

SONAL MANSINGH **....Petitioner**
! **Through: Mr. Manoj Tyagi & Mr. Dinesh**
Rastogi, Advocates

Versus

\$ **BEENA OM PRAKASH** **....Respondent**
Through: Mr. Ravinder Sethi, Sr. Advocate with
Mr. Arun K. Sharma , Advocate

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. **Whether Reporters of local papers may be allowed to see the judgment?(No)**
2. **To be referred to the Reporter or not? (No)**
3. **Whether the judgment should be reported in the digest? (No)**

ORDER

P.K BHASIN,J:

In this petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 the petitioner-tenant, who claims herself to be a recipient of Padma Bhushan and Padma Vibhushan awards has questioned the legality and

propriety of the order passed by the Additional Rent Controller directing her eviction from the ground floor of a residential property in Defence Colony which she has been occupying as a tenant since the year 1976. The eviction order has been passed in an eviction petition under Section 14(1)(e) filed by her landlady, the respondent herein, on the ground that she required the premises in the occupation of the petitioner-tenant *bona fide* for her own use and which, according to the respondent-landlady, should have been voluntarily vacated by the petitioner-tenant accepting her *bona fide* requirement because of her ailments as also of her 78 years old husband.

2. The eviction order has been impugned by the petitioner-tenant since it has been passed without any opportunity to her to defend the eviction petition. The trial Court record shows that on 06-06-09 when the eviction petition was taken up for the first time after it had been filed the trial Court had ordered issuance of summons of the petition as prescribed under Third Schedule of the Delhi Rent Control Act by ordinary process as well by registered post, acknowledgement due returnable for 26-08-09. On 26-08-09 the trial Court recorded that the summons sent by ordinary process had not been served while that sent by registered post had been received back with the report of the

postman that the respondent(petitioner-tenant herein) had refused to take the summons on 18-08-09. In view of that report of the postman the trial Court recorded that the tenant was deemed to have been served with the summons on 18-08-09 but adjourned the case to 24-09-09 since by that time the prescribed period of fifteen days for filing leave to contest application by the tenant was not over. On 24-09-09 eviction order was passed against the petitioner-tenant because of her failure to apply for leave to defend the eviction petition within the prescribed period of fifteen days from 18th August, 2009.

3. The petitioner-tenant claims that she came to know about the eviction petition filed against her and the eviction order dated 24-09-2009 only on 20-07-10 when the bailiff came to the tenanted premises to get its possession delivered to the landlady which he was persuaded not to do that day. Then she approached the trial Court with an application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure on 21-07-10 for the setting aside the eviction order on the ground that no summons were tendered to her and so there was no question of her refusing to accept the same. That application, however, was rejected by the trial Court vide its order

dated 06.04.11 on the ground that application Order IX Rule 13 CPC was not maintainable for setting aside the eviction order in view of the judgments of the Hon'ble Supreme Court in "*Prithipal Singh vs Satpal Singh*",(2010) 2 SCC 15 and "*Om Parkash vs Ashwani Kumar Bassi*", (2010) 9 SCC 183. The trial Court thus did not go into the merits of the plea of the petitioner-tenant that she was never tendered the summons and thereby the doors of justice were shut for her. Hence, she has knocked the doors of this Court for getting justice, which she claims to have been denied to her by the learned Rent Controller.

4. As far as the two decisions of the Supreme Court relied upon by the learned trial Court while refusing to set aside the eviction order are concerned they are not applicable in the present case since in both those cases the tenant had undisputedly received the summons of the eviction petition of the landlord filed on the ground of *bona fide* requirement of the tenanted premises but the application for leave to defend was filed beyond the prescribed period along with an application for condonation of delay in moving the leave application. In those circumstances the Supreme Court had held that the Rent Controller has no jurisdiction to entertain the leave application after condoning the delay

in filing the same. However, in the case in hand, no condonation of delay was sought by the petitioner-tenant in moving the leave to defend application but setting aside of the eviction order was sought on the ground that she had not been served at all with any summons of the eviction petition and she had come to know about the eviction order only when the bailiff had come to the tenanted premises to execute the same.

5. The trial Court has, however, not gone into this plea of the petitioner-tenant. Whenever, this kind of a plea is taken by the litigants in judicial proceedings the Courts normally hold an enquiry during which opportunity is given to the litigant claiming that he/she had never refused to accept the summons to substantiate that plea. However, no such enquiry was conducted by the learned Additional Rent Controller in the present case. During the course of hearing of this petition it was put to Shri Ravinder Sethi, learned senior counsel for the respondent – landlady, whether a litigant facing an eviction order on the basis of a report of the postman that he had refused to accept the postal article containing the summons cannot plead at all that the report of the postman was not correct, as is the plea taken here by the petitioner – tenant, the counsel very fairly did not claim that a litigant would

be without any remedy and the plea that the summons were never tendered by the postman can be gone into but at the same time he contended that in the facts and circumstances of the present case no fault can be found with the decision of the learned Additional Rent Controller in accepting the postman's report of refusal by the petitioner – tenant to accept the summons sent to her by registered post.

6. I am also of the view that no litigant can be rendered without any remedy in such a situation in which the petitioner in the present case is finding herself. I am also of the view that to go into the question whether or not the petitioner – tenant had refused to accept the summons when tendered to her by the postman should have been gone into by the trial Court itself and this Court need not go into that question in this revision petition as was contended by Mr. Sethi. There is no doubt that when the learned trial Court had before it the report of the postman that the petitioner herein had refused to accept the postal article it could have come to the conclusion that the summons had been duly served upon the petitioner – tenant, as has actually been done in the present case. However, this presumption of due service of summons upon the petitioner – tenant was a rebuttable presumption which could be rebutted by

the petitioner – tenant in the event of her getting an opportunity for that purpose from the trial Court and that opportunity should have been given to her by the trial Court and if thereafter also it had come to the conclusion that there was a valid service of summons upon the petitioner – tenant the eviction order could have been maintained but in case the Court had given the finding that postman's report was false then it would clearly have been a case of a manipulated report, as is being contended by the petitioner here in her revision petition. Such kind of manipulations are covered under the expression 'fraud' and it is now well settled that fraud vitiates even judicial orders which can be re-called on fraud being established even by the Court which had passed the same. Thus, the trial Court's view that it had no jurisdiction to go into the said plea of the petitioner – tenant was, therefore, not the correct view to be taken.

7. At this stage, a useful reference can be made to a decision of the Supreme Court in “**United India Insurance Co. Ltd. v. Rajendra Singh and Ors.**”; (2000)3SCC581, wherein it was held that if a litigant claims before any Court that the opposite side had obtained some order from the Court by playing fraud then no Court or Tribunal can be regarded as powerless to recall

its own order if it is satisfied that fraud had actually been played in the matter.

The relevant observations of the Supreme Court are to be found in paras no. 2 to 4, 12, 13 and 17 which are reproduced below:

"2. If what the appellant-Insurance Company now says is true, then a rank fraud had been played by two claimants and wangled two separate Awards from a Motor Accident Claims Tribunal for a bulk sum. But neither the Tribunal nor the High Court of Allahabad, before which the Insurance Company approached for annulling the awards, opened the door but expressed helplessness even to look into the matter and hence the Insurance Company has filed these appeals by Special leave.

3. Fraud and justice never dwell together." (Franc et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that "no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" (Lazarus Estae Ltd. v. Beasley 1956 (1) QB 702

4. For a High Court in India to say that it has no power even to consider the contention that the awards secured are the byproducts of stark fraud played on a Tribunal, the plenary power conferred on the High Court by the Constitution may become a mirage and people's faith in the efficacy of the High Courts would corrode. We would have appreciated if the Tribunal or at least the High Court had considered the plea and found them unsustainable on merits, if they are meritless. But when the Courts preempted the Insurance Company by slamming the doors against them, this Court has to step in and salvage the situation.

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12. Thus the Tribunal refused to open the door to the appellant Company as the High Court declined to exercise its writ jurisdiction which is almost plenary for which no statutory constrictions could possibly be imposed. If a party complaining of fraud having been practised on him as well as on the Court by another party resulting in a decree, cannot avail himself of the remedy of review or even the writ jurisdiction of the High Court, what else is the alternative remedy for him? Is he to surrender to the product of the fraud and thereby became a conduit to enrich the imposter unjustly? Learned single Judge who indicated some other alternative remedy did not

unfortunately spell out what is the other remedy which the appellant Insurance Company could pursue with.

13. No one can possibly fault the Insurance Company for persistently pursuing the matter up to this Court because they are dealing with public money. If they have discovered that such public fund, in a whopping measure, would be knocked off fraudulently through a fake claim, there is full justification for the Insurance Company in approaching the Tribunal itself first. At any rate the High Court ought not have refused to consider their grievances. What is the legal remedy when a party to a judgment or order of Court later discovered that it was obtained by fraud?

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17. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.”

(emphasis laid)

8. I am, therefore, of the view that this petition deserves to be allowed. The impugned order of the learned Additional Rent Controller refusing to entertain the petitioner’s application for recalling of the eviction order dated 24th September, 2009 is set aside. The matter is remanded back to the trial Court for disposal of the petitioner’s application on merits after giving opportunity to the parties to adduce necessary evidence in support of their respective pleas.

9. The parties shall now appear before the trial Court on 26th September, 2011 at 2 p.m. Till the disposal of the petitioner – tenant’s application for

recalling of the eviction order, which was rejected by the trial Court vide its order dated 06.04.11, the execution proceedings shall remain in abeyance.

P.K. BHASIN,J

September 12, 2011
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