

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

**RC.REV. No. 296/2010**

**Date of Decision:- 15.2.2011**

M/S Aster Publishing

...Petitioner

Through: Mr. Arun K.Varma for  
Petitioner.

Versus

Sh. Niwas Aggarwal & Others

... Respondents

Through: Mr. Shiv C. Garg for  
Respondents.

**CORAM:**

**HON'BLE MR. JUSTICE S.L. BHAYANA**

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

**S. L. BHAYANA, J.**

The present revision petition under section 25-B(8) of Delhi Rent Control Act, 1958 (for short as “the Act”) has been filed by the petitioner against the order dated 02.08.2010 passed by Additional Rent Controller (for short as “the Controller”) Delhi, whereby leave to defend/contest the eviction petition has been dismissed and an eviction order is passed under section 14(1)(e) read with section 25(B) of the Act against the petitioner in respect of suit premises.

2. The facts, necessary to be highlighted in the present petition as alleged by the petitioner/tenant, are that the petitioner/tenant has filed an application under section 25-B of the Act for leave to contest on

27.11.2009 wherein it is also stated that he was not served personally and someone threw summons of the case near his shop on 14.11.2009 and accordingly he filed an application for leave to defend. The respondent raised an objection that the said application is beyond the period of limitation of one day as such the decree for the eviction of the tenant should be passed. The petitioner/tenant has also raised an objection that the alleged service of the summons has not been effected at the correct address of the petitioner and the respondent/landlord has given the wrong address of the petitioner in the petition where the summons were alleged to have been served. The learned Controller, without considering the facts, as stated by the petitioner/tenant, has passed an eviction order in respect of the suit property vide order dated 02.08.2010.

3. Aggrieved, the petitioner has preferred this petition.

4. Learned counsel for the petitioner has submitted that on facts it is very much apparent on the face of the record, that the petitioner was never served with summons in the eviction petition either by the ordinary process or by registered A.D. post, which is a mandatory requirement of section 25-B of the Act.

5. Learned counsel for the petitioner has further submitted that the declaration of the ARC that valid service of summons has been effected on the petitioner is contrary to the mandatory provisions of law laid down by the Supreme Court and this Court.

6. Learned counsel for the petitioner has vehemently argued that in the memo of parties filed in the eviction petition two addresses were provided by the respondent/landlord on which service was to be effected on the petitioner/tenant. These addresses are: (i) 20/4, Shakti Nagar, Delhi-110007 (Tenanted premises) and 11096, Dori Walan, East Part Road, Karol Bagh, New Delhi-110005. The service report in respect of Shakti Nagar premises was that it was found locked by the process server on 10.11.2009 and in respect of Doriwalan address it was found by him to be incorrect. However, the process server was told by someone that the correct address of the petitioner/tenant was 11090 Doriwalan and not 11096 as mentioned above. Thereafter, the process server has visited 11090, Doriwalan, Delhi where he met with a lady Meena who talked with the petitioner on telephone about the summons and the petitioner directed his employee Meena @ Meenu Bhatia to receive the summons from the Process Server. Ms. Meena who was an employee of the petitioner received the notice on his behalf and it bears the signatures of 'Meenu Bhatia'. Thus any service purportedly effected on such an address cannot be treated as valid service in the eyes of law.

7. Learned counsel for the petitioner has further submitted that the service of the summons upon which the learned Controller has relied is not trustworthy and cannot be treated as service in the eyes of law. Therefore, it cannot be deemed that the petitioner was served in accordance with law on 11 November 2009 and therefore his application for leave to defend before the ARC cannot be treated filed beyond the

period of limitation. Learned counsel for the petitioner has relied upon the judgment in the matter of **H.S.Gandhi Vs. Abha Arora, AIR 1983 Delhi 288**, in which it is held that provisions of Order 5 Rule 15 of the CPC can be pressed into service to treat the service of summons on an adult member of the person sought to be served.

8. Further learned counsel for the petitioner has relied upon the judgment delivered by Supreme Court in **Manoj kumar Vs. Bihari Lal, AIR 2001 SC 2176, para 11**, wherein it was held that provision of law as contained in section 25-B of the Act is a drastic measure for the eviction of tenants particularly in a statute intended to provide protection to tenants against arbitrary and whimsical action of unscrupulous landlords for their eviction. Therefore, strict interpretation of the provision is necessary.

9. Per contra learned counsel for the respondent/landlord has submitted that the application for leave to defend has been dismissed by the learned ARC on the ground that the leave to defend application has filed beyond the period of limitation. By relying upon the judgment delivered by the Hon'ble Supreme Court in **Pritpal Singh V/s Satpal Singh through LRs, 2010 RLR 15 SC**, in which it is held that the Act is a specific Act and the provisions of Limitation Act are not applicable. Further learned counsel for the respondent has relied upon the judgment delivered by the Hon'ble Supreme Court in **Om Prakash V/s Ashwani Kumar Bassi, 2010 (2) Rent Control Reporter Pg. No. 244 (SC)**, in

which it was also held that delay of even a single day cannot be condoned by the controllers.

10. Learned counsel for the respondent/landlord has submitted that in the entire leave to defend application, the petitioner has not stated anywhere that he does not have any relation with the property No.11096, Doriwalan, East Park Road, Karol Bagh, New Delhi-5.

11. I have heard learned counsel for both the parties and perused the record carefully. Learned counsel for the petitioner has contended that in the eviction petition two addresses were provided by the respondent/landlord on which service was to be effected on the petitioner and both the addresses were wrong. When the process server reached at 11096, Doriwalan, East Part Road, Karol Bagh, New Delhi-110005 there he was told by someone about the correct address of the petitioner herein was 11090 Doriwalan. Thereafter, the process server reached there and found Ms. Meena who received the notice on behalf of the petitioner/tenant after having telephonic instructions from the petitioner/tenant. The report of the process server bears the signatures of Ms. Meenu Bhatia.

12. Therefore, the contention of the counsel for the petitioner/tenant cannot be believed that someone has thrown the summons near the shop of the petitioner. As per report of the process server the summons were properly handed over by the process server to Ms. Meena @ Meenu Bhatia who received summons only after taking the telephonic instructions from the petitioner/tenant. Address given by the

respondent/landlord in the application filed under Order 37 Rule 4 read with Order 9 Rule 13 read with Section 151 of CPC, is the same address i.e. 11090, Doriwalan, East Park Road, Karol Bagh, New Delhi, on which the summons were served by the process server on 11.11.2009 and that fact is not disputed anywhere in the eviction petition by the petitioner/tenant.

13. The application for leave to defend was filed on 27.11.2009. The record shows that there was a valid service of the summons upon the petitioner/tenant on 11.11.2009. From perusal of the record, it is also evident that the application under section 25-B of DRC Act was not filed before the Trial Court within the stipulated period of 15 days.

14. In *Om Prakash V/s. Ashwani Kumar Bassi, AIR 2010 SC 3791*, the Supreme Court while deciding the question of condonation of delay in filing the leave to defend application has held that the Rent Controller has no power to condone the delay. The Hon'ble Supreme Court has laid down the law as under:-

“Section 13B is a power given to a Non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of any one ordinarily living with the dependent on him or her. The right has been limited to one application only during the life time of the owner. Section 18A (2) of the aforesaid Act provides that after an application under Section 13B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. **There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application.** The Rent

**Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power.**

XXX            XXX            XXX

In such case, neither the Rent Controller nor the High Court had committed any error of law in rejecting the petitioner's application for seeking leave to contest the suit, since the same had been filed beyond the period prescribed in the form in Schedule II of the Act referred to in Section 18A (2) thereof."

15. Keeping in view the law laid down by the Hon'ble Supreme Court, I am of the opinion that Section 25-B of the Act is a complete Code by itself and other provisions could not, therefore, be brought into play in such proceedings. In the instant case, the same principle would apply having regard to the fact that the Rent Controller had not been conferred with power to condone the delay even for one day. The Rent Controller has rightly observed on submissions made on behalf of the respective parties, which is reproduced as under:

"I find that as per the recorded statement of process server Sh. Bijender Singh, summons of this eviction petition were duly served on the 'Agent' of the respondent on 11.11.2009. On enquiry, respondent has failed to explain as to how he got the summons or that who had received the summons of this eviction petition on behalf of the respondent. Respondent also did not make any submission on the said agent named Ms. Meenu Bhatia. He did not counter the service on these aspects. Further, as per sec. 25-B of DRC Act, if the acknowledgement purporting to be signed by the tenant or his tenant is received by the controller, then service may be declared as a valid service of summons by the controller.

XXX    XXX    XXX

In the present case, name of the agent i.e. Ms. Meenu Bhatia has not been disputed by way of filing any application or counter affidavit. Besides that, registered A.D. with signatures also has been received back by this court."

16. For the aforesaid reasons, the Rent Controller has dismissed the leave to defend application being barred by limitation and has held that the service of summons was proper on the petitioner/tenant.

17. Thus, the Trial Court has given a detailed and reasoned order which does not call for any interference nor the same suffers from any infirmity or erroneous exercise of jurisdiction.

18. The present petition is hereby dismissed accordingly. However, there will be no order as to costs.

(S.L. BHAYANA)  
JUDGE

February 15 , 2011