

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

% R.C REV. NO. 61/2010

+ Date of Decision: 26th September, 2011

DHARAM PAL & ANR. ...Petitioners
! Through: Mr. Kirti Uppal, Advocate

Versus

\$ MEENA SHARMA Respondent
Through: Mr. N.N Anand, 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)**

JUDGMENT

P.K BHASIN,J:

This revision petition filed under section 25-B(8) of the Delhi Rent Control Act, 1958 ('the Act' in short) is against the order dated 18.12.2009

passed by learned Additional Rent Controller whereby an eviction order has been passed against the petitioners-tenants in respect of one shop under their tenancy on the ground floor of property no. IX-6933, Prem Gali, Gandhi Nagar, Delhi (hereinafter referred to as 'the tenanted shop') because of their failure to seek leave to contest the eviction petition filed against them by their landlady, respondent herein, under Section 14(1)(e) of the 'Act' within the prescribed period of fifteen days from the date of service of summons, which was by way of affixation of summons on 4.12.08 and which was considered to be good service by the learned Additional Rent Controller.

2. The respondent-landlady had filed the eviction petition under Section 14(1)(e) read with Section 25-B of the Act against the petitioners on 31.5.2008. On 02.06.2008 the Additional Rent Controller ordered issuance of summons to the petitioner-tenant under Schedule III of the Act returnable for 25.09.08. The summons were ordered to be sent by ordinary process as well as by registered post but the same were returned back unserved. On 25.09.2008 issuance of fresh summons returnable for

04.12.08 was ordered, but this time the learned counsel while ordering issuance of summons by ordinary process as well as by registered post ordered service by way of affixation also. There is no dispute that this time also the petitioner-tenant was not served personally by the process server and that no summons were issued by registered post. The process server, however, had affixed the summons at the tenanted shop on 04.12.08 when he went there since the shop was found locked at the time of his visit that day.

3. The learned Additional Rent Controller accepted the affixation of summons at the tenanted shop to be good service of summons upon the petitioners-tenants and since no leave to contest was moved by them, as required under Section 25-B(4) of the Act eviction order, as provided under Section 25-B(5), came to be passed against them vide order dated 18.12.09 which is being impugned now before this Court. The petitioners-tenants had before filing this petition approached the trial Court for recalling the eviction order on their coming to know about the same and for

entertaining their leave to contest application but that prayer was declined by observing as under:-

“6. Both these case laws(which were cited before the trial Court on behalf of the respondents herein) are directly applicable in the present context. The first case law is an authority on the aspect that substituted service for the purpose under section 25-b was a valid service and the later case law is an authority on the aspect that in case the leave application is not filed within the stipulated period, the rent controller is bound to pass an order of eviction . Hence relying on both these case laws the condonation application and consequently the leave application are bound to fail as well as dismissed. Ordered accordingly.”

4. Feeling aggrieved, the petitioner-tenant has invoked the revisional jurisdiction of this Court conferred under Section 25-B(8) of the Act.

5. It was contended by the learned counsel for the petitioner-tenant that Section 25-B(3) of the Act, which deals with the modes of service of summons upon a tenant, does not provide for service of summons by way of affixation as was ordered by the learned Additional Rent Controller in the present case and therefore, relying upon service of summons by way of affixation and considering the same to be a good service upon the petitioner-tenant the learned Additional Rent Controller was not justified in passing the eviction order against him.

6. On the other hand, learned counsel for the respondent-landlady submitted that there was no illegality or irregularity committed by the learned Additional Rent Controller in ordering service of summons by way of affixation by relying upon a judgment of this Court reported in **1977 (1) RCR, 314 “S. Mahender Pal Singh Vs. Uttam Kaur Puri”** wherein it was held that substituted service of summons on a tenant is a proper service.

7. After having given my due consideration to the rival submissions by the counsel for the parties and legal position laid down by the Hon’ble Supreme Court in the case of **“Prithipal Singh Vs. Satpal Singh”, JT 2009 (15) 423** regarding the scope of Section 25-B of the Act, which lays down the procedure to be followed in case of eviction petitions of special categories including under section 14(1)(e), I am of the view that the impugned eviction order in the present case cannot be sustained having been passed in complete violation of the provisions of Section 25-B(3) of the Act.

8. The Supreme Court in Prithipal’s case (supra) had examined the provisions of Section 25-B of the Act and had come to the conclusion that

procedure for disposal of eviction petition of eviction petitions in respect of certain special category of cases, including under Section 14(1)(e), has to be as per Section 25-B which is a complete Code in itself and Rule 23 framed under the Delhi Rent Control Act does not apply to such kind of eviction petitions. The relevant portions from this judgment of the Hon'ble Supreme Court are reproduced below:-

25B - Special procedure for the disposal of applications for eviction on the ground of bona fide requirement –

"(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in Clause (e) of the proviso 10 Sub-section (I) of Section 14, or under Section 14A¹ [or under Section 14B or under Section 14C or under Section 14D], shall be dealt with in accordance with the procedure specified in this section.

(2) The Controller shall issue summons, in relation to every application referred to in Sub-section (1), in the form specified in the Third Schedule.

(3)(a) The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been

made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit slating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

10. From a close examination of Section 25B Sub-section (1) of the Rent Act, it would be evident and clear that in an application filed by a landlord for recovery of possession of any premises on the ground specified in Clause (e) of the proviso to Sub-section (1) of Section 14 or under Section 14A or under Section 14B or under Section 14C or under Section 14D, shall be dealt with in accordance with the procedure specified in this Section. (Emphasis supplied)

11. Sub-section (2) of Section 25B of the Rent Act says that the Controller shall issue summons in relation to every application referred to in Sub-section 1 in the form specified in the Third Schedule. Sub-section (3)(a) of Section 25B provides that Controller, in addition to and simultaneously with, the issue of summons for service on the tenant, also directs the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

12. A reading of Sub-section (3)(a) of Section 25B would clearly indicate that in a proceeding under Section 14(1)(e), how the tenant can be served intimating institution of the eviction proceeding and date fixed for hearing of the same. Sub-section (3)(b) of Section 25B says when the

acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

20. Before we take up the question posed before us in detail, we may also refer to one provision of the Rules, namely, Rule 23 of the said Rules which runs as under:

Code of Civil Procedure to be generally followed - In deciding any question, relating to procedure not specifically provided by the Act and these rules the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908.

21. Keeping in view the aforesaid observations of this Court in this case and considering the special provisions made in Section 25B of the Act, we conclude that Section 25B of the Act is a complete code by which the entire procedure to be adopted for eviction of a tenant on the ground of bona fide requirement filed by the landlord in respect of a premises, shall be followed. As noted herein earlier, Section 25B(1) clearly says that any application filed by a landlord for recovery of possession of any premises, *inter alia*, on the ground of Section 14(1)(e) of the Rent Act, shall be dealt with in accordance with the procedure specified in Section 25B of the Rent Act. Therefore, Sub-section (1) of Section 25B makes it clear that if any application for eviction of a tenant is filed by the landlord, the special procedure indicated in Section 25B has to be followed and Section 25B(1) clearly stipulates that the application for eviction shall be strictly dealt with in accordance with the procedure specified in this Section.

22. Apart from that, as we have noted herein earlier, Section 25B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25B of the Act. Therefore, after insertion of Section 25B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25B and question of relying on Rule 23

of the Code, which also does not give full right to apply the provisions of the Code, could be applied.

23. That apart, Rule 23 does not specifically confer any power on the Controller to follow the provisions of the Code in special classes of landlords. It is a general rule, by which the Controller in deciding any question relating to procedure not specifically provided by the Act and these rules shall, as far as possible, be guided by the provisions contained in the Code.

24. In view of our discussions made hereinabove that Section 25B has been inserted by the Legislature for eviction of a tenant of a certain classes of landlords, in which the entire procedure has been given, it is difficult for us to hold that Rule 23 of the Rules can be applied in the present case in view of the specific provisions provided in Section 25B of the Rent Act. Accordingly, we are of the view that Rule 23 has no manner of application.

25. That being the position, if Rule 23 cannot be applied in the present case because of applicability of Section 25B, which is a special code and specific procedure for eviction of a tenant by a landlord on the ground of bona fide requirement, we cannot agree with the courts below that in view of Rule 23 of the Rules, the provisions of the Code can be applied in the present case

9. In view of the afore-said decision of the hon'ble Supreme Court to the effect that Section 25-B of the Act is a complete Code in itself as also that the procedure to be followed for disposal of eviction petitions in respect of special categories of landlords including the petitions under Section 14(1)(e) has strictly to be as provided under Section 25-B and further that the provisions of the Code of Civil Procedure do not get attracted in any manner and Rule 23 of the Rules framed under the Delhi

Rent Control Act also does not come into play in the special categories of eviction petitions the learned trial Court in the present case was not justified in ordering service of summons upon the petitioners – tenants by way of affixation. If at all service of summons was to be ordered by a substituted mode the trial Court could have ordered service of summons by way of publication only, as has been specifically provided under Section 25-B(3)(a) of the Act and not by affixation as it is not prescribed thereunder. Consequently, the service of summons by way of affixation could not be considered to be a valid service of summons upon the petitioners – tenants and no eviction order could be passed against them relying upon that kind of service.

10. This petition accordingly succeeds. The eviction order passed by the learned Additional Rent Controller is set aside. The matter is remanded back to the trial Court for disposal of the petitioners' application for leave to contest, which already stands filed there but was not entertained, on merits. The case shall be taken up by the trial Court on 14th October, 2011 at 2 p.m. In case, the respondent – landlady has not

already filed reply to the leave to contest application of the petitioners she shall be given time to file the same and if already it has been filed the learned trial Court shall then proceed to hear the arguments of the counsel for both the parties on the merits of the leave to contest application and efforts would be made to dispose it off as expeditiously as possible.

P.K. BHASIN,J

September 26, 2011
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