

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

+ R.C. Rev No. 159/2011

Date of Decision: 04.10.2012

PRAVEEN SHARMA

.....Petitioner

Through: Mr.Mukesh Gupta,
Mr.Vivek Sharma, Advs.

Versus

RADHA KISHAN

.....Respondent

Through: Mr.Satya Prakash,
Mr.Sunil Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This is a revision petition u/S 25B (8) of the Delhi Rent Control Act (for short "the Act"), assailing the order dated 24.03.2011 and order dated 26.08.2010 passed by the ARC, Karkardooma Court, New Delhi by which permission to file the leave to defend application, was declined.

2. Brief facts of the case that led to the passing of the said order are as under. The petitioner was inducted as a tenant in property No. 517, Chhatta Hinga Mal, Chhota Bazar, Shahdara, Delhi-110032 (for short "the tenanted premises") in the year 2004 at a monthly rent of Rs. 385/-. On 25.08.2010, the respondent approached the petitioner and told him to vacate the tenanted premises as he has filed an eviction

petition and the order regarding which would be passed the next day. The petitioner rushed to his lawyer, who approached the court on 26.08.2010 and moved an application for permission to file the leave to defend application. This application was rejected and an order of eviction was passed on the same day. The petitioner then filed a review petition u/S 25 B (9) and u/S 114 of the C.P.C along with another application for leave to defend. He based this petition on the ground that the alleged service was not duly affected upon him. Notice was given to the respondent and arguments were heard on 19.03.2011. The Ld. ARC passed an order on 24.03.2011, rejecting the above petition and confirming the eviction order passed vide order dated 26.08.2010. These two orders are under challenge in the present petition.

3. The main ground assailing the impugned order is that the petitioner was not served of the notice prescribed under Section 25B. It was submitted that the notice was never tendered to the petitioner, nor was served upon him on 8.3.2010, as alleged by the respondent.

4. On the other hand, the submission of the learned counsel appearing for the respondent is that the notice was issued by both the processes at the given address viz. 3/205, Bada Thakur Dwara, Gali Ganga Ram, Shahdara, Delhi, and when it was reported that the petitioner has left the given address and shifted to 493, Bajrang Dairy, Chhota Bazar, Shahdara, the process server went there and effected service of the summon upon the petitioner on 8.3.2010.

5. I have heard the counsels for the petitioners and have examined the court records.

6. It is seen that on 02.12.09, the Ld. ARC passed an order for notice of summons to be issued to the respondent (petitioner herein) for 05.02.2010. The process server visited the given address on the 24.12.09 and returned report that the petitioner had left the given address 5-6 months back and the same was now being occupied by the family of one Jawahar Singh Yadav. Subsequently on 05.02.2010, an order was passed for re-compliance of the previous order i.e. the one passed on 02.12.09. In furtherance of this, processes were sent by ordinary and registered cover. The registered cover, sent on 24.02.2010 was returned with the report that there was no person living at the given address. However, the report of the process server sent on 08.03.2010 had the following report:-

“On spot one lady met to whom I do not know, after seeing summons she orally told that he does not reside here and left and will be available at 493, Bajrang Dairy, Chhota Bazar. Hence reached on the told address and enquired about Praveen Sharma. On spot one person met whom I do not know, he told himself as Praveen Sharma, the summons served upon him.”

7. From the report of the process server, it is seen that on being informed by a lady at the given address, he went to the new address viz. 493, Bajrang Dairy, Chhota Bazar, Shahdara, where he met the

petitioner and served the summons upon him. The learned counsel for the petitioner has half-heartedly denied the service of summons upon the petitioner at this address, stating that it was unbelievable that the process server would be informed by lady about the new address on this day, and not on the previous day of his visit. This is an entirely misconceived submission of the learned counsel for the petitioner. The fact that the lady did not inform the process server and the postman on their previous visits about the present address of the petitioner, would not be a ground to say that the process server was not informed on his subsequent visit on 8.3.2010 at the relevant address. On being asked as to whether the signatures appearing in the service process were that of the petitioner or not, the learned counsel for the petitioner replied stating that he has no instructions in this regard. A look on the signatures of petitioner Praveen Sharma appearing on the service process dated 8.3.2010 as also the signatures appearing in the instant petition and the affidavit filed along with the same, anyone can compare those two signatures to be of one and the same person. Being confronted with this comparison by me in the court, the learned counsel for the petitioner has nothing further to say in this regard.

8. In the case of **“Lalit Popli vs. Canara Bank and Ors, AIR2003SC1796”**, the Supreme Court has clearly held that:-

“14.....Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence

Act..... Evidence of Handwriting Expert need not be invariably corroborated. It is for the court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there. Court has power to compare the writings and decide the matter.”

9. The learned ARC has rightly placed reliance in the case of ***Aster Publishing Vs. Niwas Aggarwal & Ors, 177 (2011) DLT 747***, wherein the facts of the case were similar to that of the present case. In that case, process server went to serve the summons at the given address, but the tenant was not there. The process server, when informed of the correct address went to that place, where he met a lady by the name of Meena who accepted the summons on behalf of the tenant. The Court held this to be a valid service of summons. Applying the same principles, the Ld ARC dismissed the review petition.

10. In light of the above discussion, it is clear that summons has been served in the proper manner as prescribed u/S 25B (3) of the Act. I thus do not see any infirmity or illegality in both the orders of the lower court. The petition is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 04, 2012

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