

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

% *Judgment reserved on : 29.03.2012*
Judgment delivered on: 30.03.2012.

+ RC.REV. 223/2010 & CM No.16870/2010

A P JAIN Petitioner
Through: Mr.R.K.Jain, Advocate.

versus

RAJESH GUPTA Respondent
Through: Mr.N.K.Khetrapal, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. The petitioner is aggrieved by the fact that on the application filed by the defendant under Section 25-B(7) of the Delhi Rent Control Act (DRCA) read with Order XXXVII Rule 4 and Order 9 Rule 13 of the Code of Civil Procedure (hereinafter referred to as the 'Code'), the prayer made in the application had been allowed and the ex-parte judgment dated 10.11.2009 had been set aside.

2. The facts are in a narrow compass. Record shows that an eviction

petition has been filed by the landlord A.P. Jain against his tenant Rajesh Gupta; demised premises have been described as property bearing shops No. 2 & 3, F-14/17, Model Town, Delhi. Admittedly service was ordered to be effected by two modes i.e. by the ordinary mode and registered A.D. The ARC had noted that the service by the ordinary mode was effected on 03.10.2009; the said service report has been perused. It had been received by one Manoj Kumar. Vehement contention of the tenant in his application (seeking setting aside of the ex-parte judgment dated 10.11.2009) was to the effect that he does not know any person by the name of Manoj; he is neither related to him and nor his employee. The second mode of service deployed was service through registered A.D.; registered A.D. envelope had come back served with an illegible initial on the A.D. card; address of the tenant has been described as shops No. 2 & 3, F-14/17, Model Town, Delhi. There is no dispute that this is the address of the tenanted premises. Vehement contention of the applicant is that this A.D. card was never served upon him; the summons should have been served personally or through some responsible adult member; contention was that this service report has been managed as it does not bear the signatures or initial of any person

of the family of the tenant or any other person who is even known to him.

3. The counsel for the petitioner/landlord has disputed these submissions. His contention is that the service has been effected by both the two modes i.e. by ordinary service as also by registered A.D and even if the ordinary mode of service is ignored on the submission of the landlord that he does not know any person by the name of Manoj, service by registered A.D. shows that the address of the tenant is the correct address; it is on a pre-paid envelope; presumption of service under Section 27 of the General Clause Act has to be drawn. To support his submission, reliance has been placed upon 2000 III AD (Delhi) 645 *Rail India Technical & Economic Services Ltd. Vs. I.M. Puri & Others.* For the same proposition, reliance has also been placed upon AIR 1990 Supreme Court 2156 *M/s Green View Radio Service Vs. Laxmibai Ramji and another.*

4. Arguments have been countered. It is submitted that the proceedings under Section 25-B of the DRCA entail strong repercussions and the service report must be clear and comprehensible; it is reiterated that service has not been effected as the A.D. Card does

not bear the signatures of any family member of the tenant and even presuming that the provisions of Order 5 Rule 15 of the Code are attracted, service has to be effected on an adult member of the family which is clearly not so in the instant case.

5. In AIR 1983 Delhi 288 H.S. Gandhi Vs. Abha Arora in the context of service in an eviction petition under Section 14 (1)(e) of the DRCA a Bench of this Court had inter alia noted as under:-

“The Controller is obliged, as I read the section, to order the issuance of summons in ordinary way as well as by registered post. If the tenant is served by either of the two ways then the service is deemed to be complete which would thereupon enable the tenant to apply for leave to contest the eviction petition. If the service is not affected by registered post then summons which are issued in the ordinary way may be served in the manner provided under Order 5 Rule 15 thereof.”

6. In the instant case service by ordinary mode cannot be treated as a valid service as the tenant has categorically denied that he knows any person by the name of Manoj who is either related to him and or his employee to which there is no counter submission; Order 5 Rule 15 of the DRCA is inapplicable as Manoj is admittedly not an adult member of the family of the tenant or a person authorize to receive the summons

in this behalf. In fact the learned counsel for the petitioner has also conceded that this mode of service be ignored.

7. The second mode of service has been effected by a registered A.D.

8. Section 25-B (2)(3)(4) of the DRCA are relevant on this count and are reproduced herein as under:-

“(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 stating 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 application shall be entitled to an order for eviction on the ground aforesaid.*”

9. In 1985 INDLAW DEL 262 Subhash Anand vs. Krishan Lal & Anr., a Bench of this Court had inter alia noted as under:-

“11. A combined reading of sub-secs. (2) and (3)(a) and (b) postulates (1) that the summons have to be issued in the form specified in the Third Schedule not only by ordinary process, but has also to be directed to be issued by the registered post acknowledgment due; (ii) The summonses which are issued by registered post acknowledgment due have to be addressed to the tenant or his agent empowered to accept service; (iii) It is the discretion of the Controller to direct publication of the summons in a newspaper, if the circumstances of the case so required; (iv) If the summonses are addressed to the tenant, the postal acknowledgment due cannot be signed by anybody except the tenant. The agent empowered to accept service can only accept the notice and sign acknowledgment due if the summons are addressed to such agent.”

10. Thus a reading of the aforementioned provisions of law shows that the

mode of service prescribed is three fold. This Section postulates that the summons can be sent either by ordinary way as provided in sub-Section 2; it is also required that the summons may be sent by registered post as provided in sub Clause 3 (a) as also by publication in a newspaper. When the summons are sent by a registered post the “acknowledgement” should be signed by the tenant or by his agent.

11. The initial which has been put on the A.D. Card is not decipherable; admittedly it is not signed by the tenant; this is also not the contention of the landlord; the question is whether this initial is that of his agent. Vehement submission of learned counsel for the respondent is that initial is not of his agent; moreover it is also relevant to mention that the address of which the service is effected is shops No. 2 & 3, F-14/17, Model Town, Delhi; this is also the address given of the landlord (in the eviction petition); submission of the tenant being that this service report in this scenario has been manipulated.

12. The trial Court has rightly returned a finding that the service has not been effected in the proper mode. This exercise of discretion in favour of the tenant in no manner can be said to be arbitrary. Strict compliance of the procedure contained in Section 25-B of the DRCA

has to be met with; the stringent conditions contained in Section 25-B of the DRCA which is a complete code in itself have to be met with. The repercussions are serious; in the absence of a valid service, the tenant will lose a valuable right i.e. a right to defend his case as a result of which the landlord will automatically get a decree.

13. In this scenario, the impugned order does not suffer from any infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 30, 2012
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