

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

+ R.C. REV 498/2012

Date of Decision: 31.10.2012

CHAMAN LAL KEWAL & ORS

.....Petitioners

Through: Mr.Sudhir Nandrajog, Sr.
Advocate with Mr.Ankit Jain,
Advocate

Versus

KANTA DEVI

.....Respondent

Through: Mr.S.S.Jain, Advocate with
Ms.Veena, Advocate

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. The present revision petition has been filed under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") against the Orders dated 02.04.2012 and 07.09.2012 passed by the Court of Shri. Sanjeev Kumar Singh, Administrative Civil Judge-cum-ARC, Central Delhi in Eviction Petition bearing No. 75/2012, wherein the leave to defend application filed by the respondents/tenants (Petitioners herein) and the subsequent review application have been dismissed on the grounds that the leave to defend application was barred by time. An order of eviction was also

passed vide the impugned order dated 02.04.2012 in favour of the petitioner/landlord (Respondent herein).

2. The facts of the case are that, the Respondent is the owner of the commercial property/shop bearing No. 4451, Daiwara, Nai Sarak, Delhi – 06 and the Petitioners are the tenants in respect of the aforesaid property. The Respondents filed an eviction petition against the Petitioners herein under Section 14(1)(e) read with Section 25B, of the Delhi Rent Control Act, 1958 for eviction of the tenant from the aforementioned property on 02.12.2011. The service of summons in the aforementioned eviction petition was served upon the Petitioners by ordinary process on 20.12.2011, and by the registered post on 21.12.2011.

3. The counsel for the Petitioners filed an application seeking leave to defend on 05.01.2012. In the said application, the date of service of summons was mentioned as 20.12.2011, which is the date on which the Petitioners were served by ordinary post. The Ld. ARC dismissed the application of the Petitioners seeking leave to defend on the ground that the same was barred by time. An eviction order was passed against the Petitioners vide the impugned order dated 02.04.2012. Subsequently, the Petitioners filed an application seeking review of the order dated 02.04.2012 on the ground that the limitation period for filing leave to defend was to be calculated from the date of the second service, i.e. through registered post on 21.12.2011; and hence was within the prescribed time limit. The Ld. ARC dismissed the

review application of the Petitioners vide the impugned order dated 07.09.2012.

4. The above mentioned facts of this case are not in dispute. The single point in question for consideration by this court in this case is, whether fifteen days limitation period to file the leave to defend application has to be calculated from 20.12.2011, which is when service was effected by ordinary post, or from 21.12.2011, which is when the service was effected through registered post. The learned senior counsel for the Petitioners/tenants has contended that the limitation period for filing leave to defend was to be calculated from the date of the second service, i.e. through registered post on 21.12.2011. Whereas the counsel for the Respondent/landlord has contended that the limitation period has to be calculated from the date of the first service, i.e. through ordinary post on 20.12.2011.

5. The learned senior counsel appearing for the Petitioners has drawn my attention to the relevant provision of the Act. Section 25B (3)(a) of the Act stipulates 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. The learned senior counsel for the Petitioners has submitted that, when summons are served through ordinary post as well as registered post AD, the aforementioned provision posits that the second summon served has the same potency as the one that was

served first. Hence the limitation period of fifteen days must be calculated from the day of the second summon.

6. In furtherance of this contention, the learned senior counsel for Petitioners has heavily relied upon the decision of this Court in the case of Frank Anthony Public School vs. Amar Kaur cited as 1984(6) DRJ 47, in which it was held that where the services of the summons have been effected by two modes at two different points of time, the time for seeking leave to defend ought to be counted from the second service which comes later in time.

7. Referring to the provisions of Section 25B (4), the learned counsel for the Respondent has submitted that this provision stipulates that limitation period of fifteen days should be calculated upon the service of a duly served summons, whether through ordinary post or registered post, whichever is earlier. The counsel has emphasized on the words “the tenant on whom the summons is duly served (whether ordinarily or through registered post)”.

8. The learned counsel for the Respondents has placed reliance upon the decision of this Court in the case of Kamal Bhandari vs. Brig. Shamsar Singh Malhotra, cited as 20(1981) DLT 380 in which it was held that if the tenant has been duly served by two modes, then the limitation period of fifteen days will commence from the date on which he was first served. It is the submission of the counsel for Respondent that calculating the limitation period from the date of the service of the

second summons would amount to the ‘wiping off’ of the summons which was duly served before.

9. The counsel for the Respondent also pointed out that the Petitioners/tenants had acquiesced to receiving a duly served summons through ordinary post on 20.12.2011 in their leave to defend application filed in response to the eviction petition dated 02.12.2011. In this regard, the counsel for the Respondent submits that the tenants have already elected their summons to be the one that was served on the 20.12.2011. The counsel for the Respondent has also relied upon the decision of the apex court in the case of Precision Steel Engineering & Anr. v. Prem Niranjana Deva Tayal, (1982) 3 SCC 270 and has urged that this court is bound by the limited scope of revisionary jurisdiction under Section 25B (8), whereby the court is precluded from looking into additional facts beyond those which were admitted in before the Id. ARC.

10. In response to the submissions of the counsel for Respondent, the learned senior counsel appearing for the Petitioners has drawn my attention to the following relevant portions of the judgment of this Court in the Frank Anthony Public School Case (supra).

“17. The legislature commands the Controller: “you shall issue summons by registered post in addition to and simultaneously with the summons with the summons in the ordinary form.” The tenant can well say if he gets

the two summons on different days: “I will count fifteen days from the later summons.”

“18. We are not wiping out the first service. Nor the second. What Kamal Bahndari has done is that it has given overriding importance to the first. It belittles the importance of the second. In fact, nothing has to be obliterated, nothing to be erased, nothing to be effaced. The first service does not blot out the second. Nor the second will have the effect of cancelling the first. The legislature for good reasons commands that the service be effected in both the modes. So both modes must be considered as of equal importance. One is not superior to the other. The second summons has the same potency, the same power, the same quality as the first.

30. Secondly, I think there is no reason to hold that the period of fifteen days will commence from the date on which the tenant is first served, He gets summons twice over in the same statutory form. When he gets the second summons, the Controller does not issue any warning: Mr. Tenant, disregard the second summons if you ever get it. You must go by the first service of summons. No signal. No signpost. If there is no warning signal to him to disregard the second summons he is perfectly entitled to think that both summons have equal

value and equal weight because they are after all issued by the same authority and under the same statute.”

11. The learned senior counsel for the Petitioner also produced an unreported judgment of this Court in the case of Shyam Kishore & Anr. v. Ganesh Lal & Ors. CM(M) 1341/2009 in which this court had resolved the conflict between the decisions of Frank Anthony Public School (supra) and Kamal Bhandari (supra). Observing that the judgment of Kamal Bhandari had been distinguished in the case of Frank Anthony Public School. This Court also observed that the reasoning in judgment of Frank Anthony Public School case has been followed thereafter consistently and was reiterated in the case of Durga Devi vs. S. Kumar, 46 (1992) DLT 356 and held that the period of fifteen days for filing an application seeking leave to defend has to be calculated from the date of second service.

12. With regards to the submissions of the learned counsel for the Respondent that the Petitioners/tenants had acquiesced to receiving a duly served summons through ordinary post on 20.12.2011 in their leave to defend application, the learned senior counsel for the petitioner submitted that the said averment in the application was made by mistake and misconception. However, he also pointed out that it is settled proposition of law that there was no estoppel against law. Even if the Petitioners had conceded to receiving a duly served summons on 20.12.2011 and thereby elected it to be the duly served summons, it did not preclude their statutory right to receive a second summons through

registered post and avail the benefit of computing the fifteen days period from the date of the service of the second summons.

13. Thus, it is amply clear that the second summons in no way diminishes its importance, potency or quality and the same holds true for vice-versa. The relevant provision clearly stipulates that the Controller has to mandatorily serve summons both through ordinary post as well as registered post. This entails that tenant is conferred with a statutory right to receive summons through both the means. It has also been pointed out that this Court has been of the consistent view that the limitation period of fifteen days shall be computed from the date of the second summons.

14. In this background, the impugned orders dated 02.04.2012 and 07.09.2012 allowing the eviction petition, while dismissing the application for leave to defend suffers from illegality and cannot be sustained. The impugned orders are accordingly set aside. The Ld. ARC is directed to dispose the eviction petition on merits. This petition is accordingly allowed. The parties to appear before the Ld. ARC on 22.11.2012

M.L. MEHTA, J.

OCTOBER 31, 2012

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