

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

% *Judgment pronounced on: December 03, 2013*

+ **RC.REV. 134/2013, C.M. Nos.7122/2013 & 7123/2013**

JOR SINGH Petitioner
Through Mr.Ajay Kohli, Adv. with
Ms.Sarvodaya Lakshmi, Adv.

versus

SANJEEV SHARMA Respondent
Through Mr.Kirti Uppal, Sr.Adv. with
Mr.C.M.Goyal & Mr.Anshumaan
Sahni, Advs.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 25 B (8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) against the eviction order dated 8th July, 2012 passed by the Rent Controller (South), Saket Courts, Delhi in favour of the respondent.
2. The respondent had filed an eviction petition against the petitioner in respect of one shop situated on the ground floor of the premises bearing no. C-6, Krishna Park, New Delhi (hereinafter referred to as “the tenanted shop”) on the ground of bonafide requirement under Section 14(1)(e) of the Act. It was contended therein that the tenanted shop was bonafidely required for the elder son of the respondent for running his business.
3. Summons in the said petition were served upon the petitioner in accordance with Schedule III of the Act on 16th March, 2012 as per the

report of the process server. However, the petitioner allegedly did not file an application for leave to defend and an affidavit as required under Section 25 B of the Act within the statutory period of 15 days.

4. Consequently, an eviction order was passed in favour of the respondent against the petitioner on 8th June, 2012 in respect of the tenanted shop.

5. Aggrieved thereof the petitioner filed the present petition contending that the eviction order has been obtained by an exercise of fraud and forgery committed by the Respondent, in collusion with the process server and the postman. It is mentioned that a perusal of the said server report would reveal that it is not clear as to whom the said summons were tendered and at which property nor is the identity of the person refusing the same is verified. It is averred that the report so procured is totally false. It is categorically denied that any summons were ever received or that there was any occasion to refuse any such summons, especially when, admittedly, the parties have already been contesting litigations pending since prior and even thereafter to the filing of the said eviction petition under section 14(1)(e) of the Act. The petitioner has provided a list of pending litigations between the parties.

6. It is stated that the respondent and his family members live in the remaining area of the property bearing no. C-6, Krishna Park, New Delhi, of which the tenanted shop forms a part, and so it is apparent that the respondent and his family members had colluded and got the said false reports on the summons. It is also stated that the respondent is aware of the residential address of the Petitioner, but intentionally the said address was not given in the eviction petition.

7. It is mentioned in the present petition that on 19th December, 2012, the respondent acting upon the impugned eviction order which was obtained allegedly by playing a fraud upon the Court, dispossessed the petitioner from the tenanted shop and his goods and articles were forcibly thrown on the road as on ground that the petitioner was aware about the eviction order obtained by the respondent on the basis of non-filing of application for leave to defend.

8. It is stated that aggrieved thereof on ill-advise of some lawyers, the petitioner filed an appeal before the Rent Control Tribunal instead of preferring the present petition. The said appeal was accordingly dismissed as not maintainable and hence, the present petition was filed by the petitioner for seeking permission to file leave to defend application.

9. Before proceeding further, it is necessary to mention the details of litigations pending between the parties prior to filing of the eviction petition by the respondent under Section 14(1)(e) of the Act :

i) Suit No.958/2011 titled “Jor Singh Vs. Jai Prakash Sharma”, the facts stated in the plaint on behalf of the petitioner were:-

Sh. Jai Prakash Sharma, that is, father of the respondent herein and his family members extended threats of forcible dispossession and thus the said suit was filed to seek protection. The said Sh. Jai Prakash, was restrained vide an interim order dated 21.3.2011 from dispossessing the petitioner from the suit premises without following the due process of law. The said Sh. Jai Prakash Sharma, filed his written statement therein and admitted the relationship of landlord and tenant, but later on 08.04.2011 stated that he was neither the owner nor the landlord of the suit premises. The suit was disposed off in terms of the undertaking of the said Sh. Jai Prakash Sharma, to the effect that he would not dispossess the petitioner from the suit premises, without following due process of law.

ii) Petition under Section 27 DRC Act titled :

“Jor Singh Vs.

(1) Jai Prakash Sharma

(2) Murti Devi, wife of Sh. Jai Prakash Sharma

(3) Sanjeev Sharma, son of Sh. Jai Prakash Sharma

(4) Rajiv Sharma, son of Sh. Jai Prakash Sharma”

The petitioner herein sought to deposit the rent of the suit premises in the Court, inasmuch as initially Jai Prakash Sharma, let out the premises being the owner/landlord, later in January 2011 his wife Murthi Devi started claiming to be the owner/landlord, thereafter in March 2011 Sh. Sanjeev Sharma, started claiming rent of the suit premises and lastly Sh. Rajiv Sharma, started claiming the rent of the suit premises to the exclusion of others.

iii) Petition bearing No.E-82/2011 under Section 45 DRC Act titled :

“Jor Singh Vs.

(1) Jai Prakash Sharma

(2) Murti Devi, wife of Sh. Jai Prakash Sharma

(3) Sanjeev Sharma, son of Sh. Jai Prakash Sharma

(4) Rajiv Sharma, son of Sh. Jai Prakash Sharma”

It was alleged by the petitioner in the petition that the respondent herein alongwith his father, brother and mother, who have arrayed as respondent in the said petition, had illegally disconnected the electricity supply to the suit premises and were extending threats which compelled the petitioner herein to file the aforesaid petition, seeking restoration of the electricity supply to the suit premises.

In the said petition, Sh. Jai Prakash Sharma, Sh. Sanjeev Sharma, that is, the respondent herein and Sh. Rajiv Sharma filed their reply and claimed that they had nothing to do with the suit premises and in fact the owner/landlord was Smt. Murthi Devi, wife of Sh. Jai Prakash Sharma. In the said

petition, vide orders dated 23rd December, 2011, the respondents were directed to restore the electricity supply with 2 weeks, failing which the petitioner was entitled to get fresh electricity meter.

The respondents in the said petition did not comply with the directions of the court nor did they allow the employees of BSES to install new connection and accordingly a contempt petition under Section 11 and 12 of the Contempt of Courts Act was filed against the respondents in the said petition. It is relevant to mention here that the petitioner had ultimately to seek fresh electricity connection on payment of Rs.4500/- with BSES but still the respondent did not allow the new connection to be installed. Even the complaints to the local police proved futile. Copy of the application under Section 11 and 12 of the Contempt of Courts Act, Receipt issued by BSES for installing fresh electricity connection, police complaint dated 17th February, 2012 are annexed herewith and marked as Annexure K. It is further relevant that the learned Rent Controller in the said proceedings vide orders dated 12th March, 2012, further observed that having regard to the level of distrust and acrimony between the parties, the SHO Neb Sarai shall ensure that the electricity connection is installed smoothly and peacefully.

Furthermore, vide orders dated 29th May, 2012, the learned Rent Controller, further directed the SHO Neb Sarai to appear in person in view of non compliance of earlier orders, in providing police assistance, as directed.

Thereafter, vide orders dated 4th July, 2012, the learned Rent Controller, further directed that the petitioner to contact the SHO directly, if any situation of non-cooperation from PS Neb Sarai arises.

10. On 14th March, 2012, the respondent issued a legal notice of demand of arrears of rent and on next date i.e. 15th March, 2012, he filed

the eviction petition under Section 14(1)(e) of the Act. In the notice, there is no reference or averment about the bonafide requirement.

11. Another petition No.48/2012 under Section 14(1)(a) of the Act was filed by the respondent on 21st May, 2012. Despite directions of the learned Rent Controller in the said petition, no steps were taken by the respondent for service of summons on the petitioner herein for the date of hearing that is 7th August, 2012. A perusal of the order sheets dated 7th August, 2012, 31st August, 2012 and 12th October, 2012 in the said petition clearly reveals that the respondent herein being the petitioner in the said eviction petition did not even disclose the passing of an order of eviction petition under Section 14(1)(e) of the Act bearing No.EP24 of 2011.

12. As already mentioned in earlier part of my judgment that on 19th December, 2012, the respondent on the basis of the eviction order dispossessed the petitioner from the tenanted shop.

13. The case of the petitioner is that on 19th December, 2012, the respondent herein purportedly acting upon an order of eviction dispossessed the petitioner from the tenanted shop and all his goods and articles were forcibly thrown on the road. The said dispossession came as a rude shock inasmuch as the petitioner had never been served with any summons, nor there was any occasion for meeting any such process server or to refuse any such summons, especially when the petitioner had been running pillar to post and seeking protection from the courts by various proceedings, so as to protect his premises against repeated threats of dispossession, disconnection of electricity supply to the tenanted shop, contradictory claims at different point of time by different members of the

respondent and his family with respect to the ownership and landlordship of the tenanted shop.

14. It is argued by the petitioner that a bare perusal of the eviction petition shows that the claims of being the owner/landlord were in contradiction to the stand of the respondent in petition bearing No.E-82 of 2011 wherein vide his reply the respondent has stated that he has nothing to do with the suit premises and it was his mother, that is, Smt. Murti Devi, who was the owner/landlord of the suit premises.

It is also stated that the respondent and his family members were already residing in substantial residential portions of the property, that is, C-6, Krishna Park, New Delhi on a 200 sq. yds. plot, a portion whereof (100 sq. yds.) is constructed upto three floors, that is, ground, first and second floor and another residential portion thereof (100 sq. yds.) constructed upto first floor. Admittedly, further there are two shops other than the tenanted shop, already available to the respondent, as shown in the site plan filed by the respondent himself. In one of the shops marked “Y”, the respondent was earlier running the Barber Shop and there is another shop “X” which is lying vacant.

15. This Court is conscious about the law and its jurisdiction under the proviso to Section 25B(8) of the Act to the effect that the petition is not to be treated as a first appeal nor it could have jurisdiction to interfere except if it is the opinion of the Revision Court that there has been a gross illegality or material irregularity which has been committed by the Controller who failed to consider the relevant evidence and law which has resulted in gross injustice to the effected party and a judgment leading a miscarriage of justice and lacks valid reason.

16. The Supreme Court in *Prithipal Singh Vs. Satpal Singh*, JT 2009 (15) 423 had examined the provisions of Section 25-B of the Act and had come to the conclusion that procedure for disposal 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 i.e. summary proceedings. 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. It shall be dealt with strictly in compliance with Section 25B.

17. From the provisions of Sub-section (1) of Section 25B of the Act such application are required to be dealt with in accordance with the procedure specified in this Section. Sub-section (2) thereof provides that the summons shall issue in the form specified in the Third Schedule. Sub-Section (3)(a) stipulates that 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. Sub-Section (3)(a) also contemplates that if the circumstances of the case so require, the Controller shall also direct the publication of the summons in 3 newspaper.

18. A conjoint reading of Sub-sections (2) and (3)(a) and (b) provides (1) that the summons have to be issued in the form specified in the Third Schedule not only by ordinary process, but as also to be directed to be

issued by the registered post acknowledgment due; (ii) The summons 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 summons 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.

19. This procedure in detail has been prescribed because a limitation is prescribed for the tenant to obtain leave of the Controller to contest the application for eviction and the period of limitation is prescribed i.e. 15 days. The legislative intent behind such a detailed process is to ensure that the summary procedure must be given effect to so that the proceedings relating to eviction on the ground of bonafide requirement may be expedited but at the same time the legislature has also ensured that the service must be conducted upon the tenant or his agent by prescribed mode so that the tenant must have knowledge and the fair opportunity to contest the proceedings.

20. In the case of *Subash Anand Vs. Krishan Lal*, 27 (1985) DLT 269, the learned Judge of this court had held that the service effected to the wife when husband was out was not held to be a valid service under the law as the wife cannot be said to be an agent of the tenant who is empowered to receive the said summons. I find the ratio of Subash Anand is equally applicable to the instant case and the service on an unknown and

unidentified person cannot be said to be a service upon the tenant or his agent empowered on his behalf. Paras 11, 13 and 14 are read as under :

“11. A combined reading of Sub-sections (2) and (3)(a) and (b) postulate (1) that the summons have to be issued in the form specified in the Third Schedule not only by ordinary process, but as also to be directed to be issued by the registered post acknowledgment due; (ii) The summons 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 summons 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.

12. x x x x x

13. In the present case the summons were not addressed to any agent empowered to accept service on behalf of the tenant. They were certainly not received by any agent empowered to accept service. There was no plea by the landlords in their reply application that Neelam Anand was the agent empowered to accept service.

14. Mr. O.N. Vohra, learned counsel for the landlords submitted that it was something in special knowledge of the tenant and he should have made the averment. It will be noticed that the period of limitation starts after proper service of the tenant. The due service is to be checked by the Controller. In fact, it is his pious duty what the tenant was required to submit, he has submitted in his leave application that he has not been served in accordance with law. As I have noticed earlier, the agent is empowered to accept service only when the summons sent by registered post acknowledgment due are addressed to the agent empowered in this behalf. Summons addressed to the tenant, who is an individual person, cannot be served on his agent empowered unless the summons are addressed to the agent.”

21. In the present case, learned Rent Controller by the impugned order dated 8th June, 2012 passed the eviction orders against the petitioner on the reasons stated in para 2 to 4 of the order which reads as under :

“2. Summons as per schedule III of the Delhi Rent Control Act were issued to respondent on 16.03.12. Summons of process server who visited the address of respondent was recorded. The respondent failed to file any application for leave to defend or an affidavit as required u/s 25 B of the Delhi Rent Control Act within the statutory period of 15 days.

3. Section 25 B(4) of the Delhi Rent Control Act lays down that the tenant on whom the summon is duly served in the form specified in third schedule shall not contest the prayer for eviction and obtains leave from the premises unless he files an affidavit stating the summon of which he seeks to contest the application for eviction and obtains leave, the controller as hereinafter provided. Section 25B of the Delhi Rent Control Act further lays down that in default of his appearance in pursuance of the summons or his obtaining leave, the statement made by the landlord in the eviction petition shall deemed to be admitted by the landlord in the eviction petition shall deemed to be admitted by the tenant and the applicant shall be entitled to an order of eviction on the ground of aforesaid.

4. Since the respondent has failed to file an application and affidavit as required u/s 25 B(4) of the Delhi Rent Control Act the petitioner is entitled to an order of eviction.”

22. After passing the said eviction order, the respondent has taken the possession of the tenanted shop from the petitioner. As per petitioner, till that time, he was not aware about the impugned order. Thereupon the respondent has merged the tenanted shop with his other shops. Two scanned photographs would depict the real picture at the site. Shop marked as Z is the tenanted shop which was let out to the petitioner. Rest of the

two shops X and Y are now with the respondent who has also merged with the shop Z after taking the possession :

Before



After



23. Upon testing the records of the present case on the provisions of Section 25B of the Act, it can be seen that the service in the matter was ordered by the learned Rent Controller to be conducted on the tenant/petitioner.

24. In the present case the statement of Rakesh Kumar Yadav, process server was recorded by the learned Trial Court. The same is reproduced as under :

“I was entrusted with the summons by this Court vide order dated 16.03.2012. I obtained the summons from the Nazarat Branch and reached the property No.M/s. Rajput Bartan Bhandar, C-6, Krishna Park, New Delhi-110062 for service of the summons. There one person who did not disclose his name met me and when I tendered the summons to him, that person refused to accept the same. My report on summons are Ex.C1 and Ex.C2 and it bears my signature at point A.”

25. The learned trial Court failed to notice that the process-server failed to identify the premises where he had visited or failed to mention the name of the person who refused to receive the summons. The malafide of the respondent can also be judged from the fact that after the dispossession of the petitioner from the tenanted premises, the respondent has started the process of demolition gradually as appeared from the photographs shown by the petitioner which are not denied by the respondent. I agree with the submissions of the learned counsel for the petitioner that the intention of the respondent was to demolish the entire property and thereafter, to raise a new premises. It is settled law that nobody can be allowed to take the law in his hands and abused the process of the Court but in the present case, the respondent did it.

26. While on the registered post on 10th April, 2012, the report of the postman is that at the site of the petitioner “*information given*”. But on 11th April, 2012 the report of refusal is mentioned. Thus, doubts can be expressed on the registered post as in case the information was given on 10th April, 2012, there was no occasion to visit again on 11th April, 2012 and give report of refusal.

27. There is a specific denial of the petitioner about any mode of service effected to him.

28. One of the essential requirements of the special process of service provided under Section 25 B of the Act is that the summons must be served must be addressed to tenant or his duly authorized agent empowered to accept service. The said requirement is a precondition for a valid service which is evident from the wordings of the Section 25 B (3) (a) wherein it is stated “addressed to the tenant or his agent empowered to accept the service”. Thus, the service which shall be done to a tenant should address to the tenant or the one which is done to the agent must be addressed to the agent who is empowered to accept the service. The provisions of Section 25 B(3)(a) are to be strictly adhered to as the service of the tenant sets in to motion a limitation period which is itself very short and the expiration of which results in the serious consequences of deprivation of his right to contest the proceedings which may ultimate result in to eviction. Therefore, no departure is permissible under the provisions of Section 25B and the service has to be conducted in accordance with the mode and procedure prescribed therein. The learned Rent Controller has to thus ensure prior to making any order on the expiration of the limitation period that the service is effected upon the

tenant or his agent in the prescribed manner else he has to order the issuance of the fresh summons in the matter. In the present case, the respondent is not able to satisfy this Court about the valid service of summons upon the petitioner/tenant.

29. If the provisions of Section 25B(3) are applied to the instant case, it can be seen that the registered post service was doubtful and not specific. Even if the conduct of the respondent in the present case is examined it is apparent that the respondent was trying to get the possession of tenanted shop by any means and without due process of law which are not permitted by law. The learned Trial Court has totally failed to apply its mind and notice the conduct of the respondent which is of dubious nature. The learned Rent Controller believed the doubtful report of the process server which does not clearly mentions the identity of the person who refused to accept summons. That is not the scheme of the provision of Section 25 of the Act.

30. I find that the service in the instant case was not properly effected in accordance with law. Thus, the said service upon the unidentified person cannot be said to be a regular one and was not effected in accordance with the provisions of Section 25B of the Act.

31. In view of the abovesaid reasons, the impugned order of eviction passed by the learned Rent Controller is not in accordance with law and as such is set aside by allowing the present petition.

32. The petitioner is granted one month's time to file the leave to defend application and if the same is filed within time, the same shall be considered on merits by the learned Rent Controller. The respondent is directed to restore the possession to the petitioner within one month from

today in the same condition as before the date of taking possession on the basis of eviction order.

33. The respondent is also burdened with cost of ₹20,000/- for his mischievous behaviour. The same shall be deposited by him with the Prime Minister's Relief Fund within four weeks from today.

34. The revision petition is accordingly disposed of.

(MANMOHAN SINGH)
JUDGE

DECEMBER 03, 2013