

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

% *Order pronounced on: October 28, 2013*

+ RC. Rev. No.396/2013

AFTAB AHMAD AND SIKENDER Petitioner
Through Mr.Manish Sharma, Adv.

versus

KANTI DEVI Respondent
Through None.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J. (ORAL)

CM No.16949/2013

Exemption allowed, subject to all just exceptions.

The application is disposed of.

RC.REV. 396/2013 & CM No.16948/2013

1. The petitioner-tenant filed the present rent revision under Section 25(B) (i) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') against the impugned order dated 6th July 2013 passed by learned Appellate Court of Sh. J.R. Arya, Karkardooma Court dismissing the Rent Appeal No. RCT 30/2012 of the petitioner against the eviction order passed, observing that the appeal is without merit and that the eviction order suffers from no illegality.

2. Brief facts relevant for adjudication are:

- i. The respondent in this case filed an eviction petition under Section 14(1)(a) of the Act against the petitioner for the second time, for suit property bearing No. C-213, Gali No. 6, Chauhan

Banger, Main Road, Bharampuri, Delhi-53 and the petitioner is a tenant with respect to one godown/hall on the ground floor of the property initially induced @ Rs. 500/- per month.

- ii. Uncontrovertedly the landlady the owner of the property and the petitioner is only a tenant of a part thereof, as mentioned above. The petitioner, admittedly was adjudicated as defaulter in earlier eviction petition No. E-27/2009 vide judgment dated 27th August, 2009, however the benefit under Section 14(2) of the Act was given.
- iii. In the second eviction petition, the respondent pleaded that the petitioner has committed default in payment of rent w.e.f 1st March 2013@ Rs. 500/- per month and since the rent was enhanced by 10% through a notice dated 29th May 2010, and a further default in payment of rent @ Rs. 550/- per month w.e.f 1st July, 2010.
- iv. In the light of the above defaults, the respondent issued a demand notice to the petitioner, allegedly sent by registered cover as well as certificate of postage. The registered cover was returned with remarks “intimation delivered” and the certificate of postage was not returned back, and thus deemed to have been delivered. In default of rent for 3 months and even after the demand notice, on this ground the eviction petition was filed.
- v. It is the plea of the petitioner, in his written statement to the eviction petition is that the demand notice was not served upon him as he was suffering from a medical illness namely

“Chickungunya” and other ailments between the period of 27th November, 2010 to 3rd December, 2010, and that the suit premises during that period was locked. Also submitted is that the petitioner has been trying to send rent to the landlady and her son through money order (dated 17th February, 2011, returned on 7th March, 2011), but they refused to accept it with the malafide intention to create a false ground of eviction.

- vi. Parties were directed to lead their evidence to prove and disprove the service of the demand legal notice. The petitioner vehemently argued that the notice had not been delivered and that he had been wrongly adjudicated as a defaulter produced medical reports in support of his plea of suffering from “Chickungunya” and the premises being locked between of 27th November, 2010 to 3rd December, 2010. Also submitted is that the respondent had manipulated the report of the registered cover, and that when the petitioner-tenant had tendered rent by sending money order dated 17th February, 2011, he cannot be held as a defaulter in that respect.
- vii. Petitioner further stated that it is denied that one godown/hall was let out to the petitioner and stated that one big hall was let out for running the shop of tricycle and also disputed the correctness of the site plan. Also contended that the initial rent of Rs.500/- per month is inclusive of electricity and that he is not entitled to enhanced rent at Rs. 550/- per month.
- viii. Respondent denied contentions of the petitioner and reiterated the contents of the eviction petition.

- ix. Vide Order passed by the learned Senior Civil Judge cum Rent Controller dated 15th September 2009 in eviction petition No. E-1/2011 was passed in favor of the respondent in respect of the tenanted premises, i.e one godown/hall as mentioned above.
- x. Aggrieved by this order, the petitioner filed an appeal against this order dated 15th September, 2011, Rent Appeal No. RCT-30/2012. Vide the impugned order dated 6th July 2013, the learned District and Sessions Judge dismissed the appeal upholding that the eviction order suffers from no infirmity and that the appeal is without merits.

3. Observed in this order, with regards to the issue of service of notice, the learned ARC found that that in the view of Section 27 of the General Clauses Act and in view of Section 114(f) of the Indian Evidence Act, 1872 a presumption of due service of demand was to be drawn unless it was specifically rebutted and relying upon the judgment reported in ***Harcharan Singh vs. Shivrani & Ors***, 1981(2) SCR 962, the learned ARC observed that the petitioner has not been able to satisfactorily rebut the presumption. The petitioner's medical reports were also found insufficient to hold his pleas proved as the OPD card was dated 18th November, 2011 whereas his contention stated that he was unwell and the premises was locked from 27th November, 2010 onwards, which makes it impossible for the court to draw conclusive inference in favour of the petitioner. Also relied upon judgment of ***Smt. Prakash Mehra vs. K.L. Malhotra***, AIR 1989 SC 1652, it was observed that the respondent succeeded in proving her case that the demand notice dated 29th November 1972 claiming arrears was duly served. Another case that was relied upon is that of ***Ram Murthy vs. Bhola Nath***, 1982 DLT

426 ratio of which is that where notice was sent by registered post as well as certificate of post and endorsement of refusal on registered post and other notice not returned, addressee would be deemed to have knowledge of the contents and the presumption of due service would arise by reference to Section 27 of General Clauses Act r/w Section 114(f) of the Indian Evidence Act, 1872 thus, in the light of this the learned ARC was right in recording that the presumption of due service arose.

4. Aggrieved by this impugned judgment dated 6th July, 2012, dismissing the appeal of the petitioner, the present revision petitions has been filed along with CM Application No.16948/13 under Section 151 of the CPC for stay of the said impugned order till disposal of the present petition.

5. During the course of arguments, the learned counsel for the petitioner was not able to satisfy the Court that in case the respondent was not accepting the rent then why the respondent has not taken the steps under Section 27 of the Act. No justification whatsoever was given for not depositing the rent in compliance with Section 27 of the Act. Therefore, there is an apparent default by the petitioner. I have also been informed that the respondent has taken the possession of the suit property. In view of the reasons given by the two Courts below, I am not inclined to interfere with the said orders. The petition is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

OCTOBER 28, 2013