

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

% *Judgment pronounced on: October 04, 2013*

+ **RC.REV. 507/2012 & C.M. No.17579/2012**

DEVENDER NATH Petitioner
Through Mr.K.R.Chawla, Adv.

versus

MOHD. ASIM Respondent
Through Mr.Sanjay Verma, Adv. with
Ms.Savita, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present revision petition is filed by the petitioner under Section 25B (8) of the Delhi Rent Control Act (hereinafter referred to as “the Act”) against the eviction order dated 10th July, 2012 passed by ARC (North), Delhi, in respect of the property bearing No. 1439, Chatta Abdul Razaq, Lambi Gali, Behind Novelty Cinema, Delhi- 110006 (hereinafter referred to as “the tenanted premises”).

2. Brief facts for the purpose of adjudication of the present petition are that the respondent filed the eviction petition stating that he bonafidely requires the tenanted premises mainly, for his son, who is about to finish his education, and also for expansion of his own business of footwear.

3. It is pertinent to mention that in the eviction petition, the summons were issued under the schedule III of the DRC Act by way of registered AD and the ordinary post but the summons were received by some Mr. Ajeet

who was the employee of the petitioner and the said service was accepted by the learned RC as service on the petitioner. The petitioner has stated that due to non service of summons on him, the leave to defend application could not be filed by him within the stipulated period of 15 days and since the summons were not served upon him as per law. As per record, the summons were received by Mr. Ajeet on 18th May 2012, However, as recorded in the impugned order, one Mr. Ajeet Messey filed an application dated 1st June, 2012 stating that he had received the summons as the petitioner was out of station and that he is an employee of the petitioner. It was stated therein that the petitioner had left for USA on 19th May, 2012 and so could not be contacted. It was deposed by him that since the service was effected upon him under pressure, this was no service in the eyes of law and summons should have either been served upon the petitioner personally or his recognised agent.

4. The learned trial court on perusal of the service report found that endorsement therein was made stating that the petitioner is out of town and that he would be leaving for America on 19th May, 2012 and would return after 3 months, therefore, a date after 3 months was requested for. It was also stated in the report by the process server that one Mr. Ajeet stating himself to be the Manager of the company received the summons after reading them and talking on phone with the petitioner.

5. Since neither anyone had appeared on behalf of the petitioner nor there was any mention in the endorsement made by Mr. Ajeet that summons were received without obtaining the instructions from the petitioner, the trial court was of the, the application could not believed to be true. Even otherwise, since no leave to defend application was filed within the stipulated period of 15 days, the learned trial court opined that the contents

of the petition were deemed to have been admitted by the petitioner in view of Section 25 B (4) of the Act.

6. With these observations, the impugned eviction order was passed and aggrieved thereof, the petitioner filed the present petition on the grounds mainly that the same is bad in law as well as on the facts of the case. It is stated that the learned trial court exercised its jurisdiction illegally and with material irregularity.

7. Mr. Chawla appearing on behalf of the petitioner argued that the learned Rent Controller fell in grave error while passing the impugned order as the service of the petitioner was not conducted as per the procedure prescribed under the provisions of Section 25 B of the Act. The said acceptance of the service by an employee of the petitioner was neither the service upon him nor upon the agent empowered to accept the service on his behalf. Thus, the said service was irregular and procedurally incorrect and thus the impugned order warrants interference of this court.

8. The main argument of Mr. O.P. Saxena, learned counsel appearing on behalf of the respondent is that as per report of the process server Mr. Ajeet claimed himself as Manager of the company and he received the summons after talking to Mr. Davender Nath on phone. Mr. Saxena further states that at the time of service, the petitioner was very much in India, thus, he was supposed to make the arrangement of filing the application and leave to defend in time. He further states that it is a valid service as Ajeet is an authorized agent of the petitioner. There is no merit in the petition, the same is liable to be dismissed.

9. It is undisputed fact that Ajeet was employee of the petitioner i.e. Devendra Nath who had actually gone to USA on 19th May, 2012 as per original passport produced in Court. When the process Server visited at the

tenanted shop of the petitioner at 11.55 am. The remarks of the process server was that Mr. Devendra Nath is out of town today and on 19th May, 2012 he is going out of India to America and he will come after three months and requested to give the date after three months.

However, on the subsequent report submitted by him in court, the same is read as under :

“Sir,

Today i.e. 18.05.2012 when I reach at the address given in the summons to serve Shri Devender Nath, the premises was locked. The neighbor orally told that the shop of Shri Devender Nath is at 2163, Tilak Bazar, Khari Baoli Delhi and here is his godown only which is opened for some time only. Thereafter I reach at second address where a person meets whose name was Ajit. Shri Ajit told that he is the Manager of the Company. Thereafter he reads the summons well understand and after talking to Mr. Devender Nath on phone he writes his statement on the summons and received the same at his own responsibility. There was not witness at the time. Hence this report.”

10. In the impugned order the learned Additional Rent Controller held that there was valid service of summons through registered A/D post and accordingly since the application was not filed within 15 days of such service, the application was dismissed as barred by time and a decree was passed by the Controller.

11. Section 25B provides the procedure for disposal of an application filed on the ground of clause (e) to the proviso to Sub-section (1) of Section 14 of the Act. The provisions are read as under :

“25B (1) Every application by a landlord for the recovery of possession of any premises on the ground specified in Clause (e) of the proviso to Sub-section (1) of Section 14, or under Section 14A,

shall be dealt with in accordance with the procedure specified in this section.

(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 acknowledgment 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 applicant shall be entitled to an order turn eviction on the ground aforesaid.”

12. From the provisions of Sub-section (1) of Section 25B of the Act that 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 lire 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.

13. In the present case the learned' Additional Rent Controller directed the summons to be issued in the form prescribed in Schedule Iii both by ordinary process as well as by registered cover. There was no service by ordinary process at all.

14. 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.

15. 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 intendment 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.

16. One of the essential requirements of the special process of service provided under Section 25 B of the DRC 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 addressed 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 RC 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.

17. Upon testing the records of the present case on the provisions of Section 25B, it can be seen that the service in the matter was ordered by the learned Rent Controller to be conducted on the tenant/ petitioner by registered AD and ordinary post. The registered post service was returned on the ground that the petitioner was out of station. On the otherhand, the service which was supposed to be conducted on the petitioner by the ordinary process could not be conducted upon him at the given address rather the process server went to some other address wherein he was introduced to some Mr. Ajeet who was stated to be manager of the company. Although the process server records, Mr. Ajeet did talk to the petitioner at the time of the accepting the summons, still the summons were addressed to the petitioner and the service of the same upon the employee when the said summons were not addressed to him as an agent was irregular. There is also a contradiction in the remarks of the process server report who initially stated that the petitioner is stated to be out of India and later on records that Mr. Ajeet had a talk with the petitioner and thereafter accepted the summons. Thus, the doubts can be expressed on the report of the process server and the same by itself cannot be said to be a valid service.

18. Moreover, the provisions of Section 25B adopt a precautionous approach by providing a simultaneous service by way of registered post acknowledgement due in addition to the ordinary mode of service so that the right of the tenant do not get affected due to doubtful service. This is also apparent from the provisions of Section 25 B(3)(b) of the Act which provides for the receiving back of the acknowledgement due and the

consequences thereon. The courts are always insistent from time to time upon the completion of the service by way of registered post and this is more important when the statute itself provides for the mode of service.

19. If the provisions of Section 25 B(3) are applied to the instant case, it can be seen that the registered post service was never completed as the same came returned on the ground that the petitioner was out of the station. The learned Rent Controller believed upon the doubtful report of the process server who served the employee of the petitioner company at some other address. I find that the service in the instant case was not properly effected in accordance with law. When the law provides additional mode of the service shall mandatorily effected, the learned Rent Controller ought not to have been simply satisfied himself on the ordinary mode of the service especially when the petitioner was stated to be out of station and there exists doubt on the report of the process server who served the employee of the petitioner at some other address. Thus, the said service upon Ajeet, employer of the petitioner cannot be said to be a regular one and was not effected in accordance with the provisions of Section 25B of the Act.

20. 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 and question of relying on Rule 23 of the Code.

21. It is evident from the report of process server that the suit premises was locked and he then went to another premises where he met employee and not the petitioner. Mr. Ajeet never claimed himself as authorized agent of the petitioner. As per settled law that employee of a person cannot be considered as agent of the party concerned in the absence of valid authority. On examination of trial court record, it is found that even registered envelope came back with the report that the addressee is out of India. Thus, the finding of the learned trial court is contrary to the record.

22. In the case of *Subash Anand Vs. Krishan Lal*, 27 (1985) DLT 269, the learned single 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 the manager/employee 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.”

23. Learned counsel for the respondent has relied upon the judgment passed in the case of *Aster Publishing v. Sh Niwas Aggarwal & Others*, 177 (2011) DLT 747 wherein the learned single Judge accepted the statement and report of the process server to be called as a valid service. The said case is distinguishable in facts as in the said case the learned Judge himself recorded that the respondent did not seriously counter the aspect of the service accepted by the agent and the respondent/ tenant did not counter the said aspect by filing the further affidavit and in such circumstances, the court accepted the service as a validly made one.

24. In view of the above 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.

25. The petitioner is granted 15 days 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.

26. The revision petition is disposed of.

(MANMOHAN SINGH)
JUDGE

OCTOBER 04, 2013