

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

% *Judgment pronounced on: February 26, 2014*

+ **RC. Rev. No.90/2013, C.M. Nos.3679/2013 & 5590/2013**

BISHAN SWAROOP (SINCE DECEASED) THROUGH LR

..... Petitioner

Through Mr.Aly Mirza, Adv.

versus

MANISH SETHI & ORS

..... Respondents

Through Mr.Mohit Chaudhary, Adv. with
Ms.Damini Chawla, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this order, I propose to decide the abovementioned petition filed by the petitioner under Section 25B(8) of Delhi Rent Control Act, 1958 (in short, called the “DRC Act”) against the impugned judgment and order dated 15th February, 2013 passed by Sh.Sanjay Bansal, learned Rent Controller and also against the judgment and order dated 21st December, 2011 passed by Sh.S.K.Malhotra, learned Rent Controller in Eviction Petition No.E-90/2011, titled as *Sh.Manish Sethi & Others vs. Bishan Swaroop*.

2. Brief facts of the matter are that the respondents/landlords filed the eviction petition against the petitioner/tenant who was at that time 90 years of age and has been a tenant for more than 65 years in respect of one commercial shop measuring 8 ft. 6 inches x 19 ft. on the ground floor and tin shed on the first floor measuring 8 ft. 6 inches x 19 ft. forming part of the

property No.5289, Sadar Thana Road, Delhi-110006 as shown in red colour in the site plan attached with the petition (hereinafter referred to as the “Tenanted Premises”).

3. The petition for eviction was filed under Section 14(1)(e) read with Section 25B of the DRC Act. Summons as per Schedule III of the DRC Act were issued against the petitioner (respondent in the eviction petition) through ordinary process as well as the registered post. It was observed in the said order that since the application for leave to contest as per Section 25B(4) of the DRC Act was not filed within the stipulated period of time and there was no appearance on behalf of the petitioner/tenant, the eviction petition would be deemed to be admitted by the tenant and that the respondents/landlords were entitled to the order of eviction on the ground of bonafide requirement. Hence, the petition filed by the respondents was allowed and the eviction order was passed in respect of the tenanted premises detailed above. Six months time was granted under Section 14(7) of the DRC Act to the petitioner to vacate the tenanted premises.

4. The petitioner thereafter filed the review application under Section 25B(9) of the DRC Act against the order dated 21st December, 2011. It was stated in the review application that the petitioner through a legal notice dated 31st January, 2012 called upon the respondents to accept the rent of the tenanted premises. However, despite of service of the notice, there was no response. The petitioner thereafter filed a fresh petition under Section 27 of the DRC Act being DR No.80/2012 for deposit of rent, in which the respondents were duly informed by notice dated 27th April, 2012. There was still no response from the respondents’ side and according to the petitioner, it was only for the first time, the respondents addressed a notice dated 9th

May, 2012 i.e. after filing of the petition under Section 27 of the DRC Act. There was no mention in the said notice about the passing of the eviction order against the petitioner. It was only on 24th May, 2012 when after making certain inquiries the petitioner found out that the eviction order dated 21st December, 2011 in the eviction petition bearing No.E-90/2011 was passed against him. On inspection of the said file, the petitioner came to know that the said order has been passed *ex parte* and in the impugned order dated 21st December, 2011, it was mentioned that the petitioner was served with the process of the Court on 25th November, 2011. The summons were purported to have been received by one Mr.Prem Kumar who wrote the name in block letters instead of any signatures.

5. It was further mentioned in the review application that the factum of receipt of summons is not correct, as his son Ashok Kumar had passed away on 22nd November, 2011. The tenanted premises/shop had remained closed in view of the bereavement till 5th December, 2011, i.e. till the *Tehravin* ceremony was complete. Even on the date of service recorded as 25th November, 2011 on which date most of the family members had gone to Haridwar for emulsion of remains and last rites of late Ashok Kumar. The statement was also made by the petitioner in the review application that under those circumstances, how anyone could have received the summons of the eviction petition on 25th November, 2011. The alleged signatures of Prem Kumar do not match with the signatures of Prem Kumar Aggarwal on the summons, as he usually signs as “PK Aggarwal”. In order to show his signatures, the petitioner had filed copies of driving licence, passport and PAN Card of P.K.Aggarwal.

6. The review application was dismissed by order dated 15th February, 2013. In the order, it was noticed by the learned trial Court that the summons through ordinary process was served upon one Prem Kumar. The version of the petitioner was not accepted, as there was no affidavit from said PK Aggarwal. It was observed that it is presumed that the summons was served upon him on 25th November, 2011. However, by referring the decisions of this Court passed in RC. Rev. No.148/2011 dated 12th September, 2011 and RC. Rev. No.136/11 dated 26th September, 2011, the learned trial Court has come to the conclusion that as the summons was not served personally on the petitioner, the same cannot be said to be duly served. But, the learned trial Court has accepted the service of summons sent through registered post upon the petitioner. The reasons given in the order for accepting the service by registered post were that as per the report obtained by the respondents from internet, it shows that the article has been reported to have been delivered to the addressee on 24th October, 2011.

Though the contention of the petitioner before the learned trial Court was that the said report was forged and fabricated and it was obtained from internet as alleged by the respondents, but on the internet no such report is available. As per the printout filed by the petitioner, it appears that there is no record available regarding service of registered AD letter. The learned trial Court despite of the said position accepted the report filed by the respondents and came to the conclusion that the report filed by the respondents cannot be doubted which has been obtained from internet. The petitioner was duly served by registered post on 24th October, 2011. The review application was dismissed.

7. In the impugned order dated 21st December, 2011, 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 and on account of non-appearance on behalf of the petitioner, a decree was passed by the Controller. As per the said order, summons issued through ordinary process were received back duly served on 25th November, 2011 whereas the summons through registered post were not received back undelivered.

8. 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 for eviction on the ground aforesaid.”

9. 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.

10. 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.

11. One of the essential requirements of the special process of service provided under Section 25B 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 25B(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 be 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 25B(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.

12. 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*** (supra) is equally applicable to the instant case and the service was effected to one Mr.Prem Kumar who is allegedly not an agent or is empowered to receive the summons on behalf of the petitioner (now deceased).

13. 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. By the impugned order dated 21st December, 2011 when the eviction order was passed, the main basis of passing the eviction order was the service through ordinary process. The following observation was made by the learned Rent Controller in his order dated 21st December, 2011:-

“Summons as per Schedule IIIrd of DRC Act 1958 issued against respondent through ordinary process received back duly served on 25.11.2011. Summons issued through registered post have not received back undelivered. No application for leave to contest as per Section 25-B of DRC Act has been within stipulated period or till date.”

14. As far as the ordinary service is concerned, in the order passed on the review application, dated 15th February, 2013 passed by a different Judicial Officer/Rent Controller who came to the conclusion that since the petitioner was not served personally, therefore, the ordinary service of summons upon Prem Kumar cannot be accepted as valid service.

15. It is surprise to note that when the original order for eviction was passed on 21st December, 2011, the specific observation was made by the learned Rent Controller that the summons through registered post were not received back undelivered. However, in the order on the review application,

another Officer has taken the different view and accepted the service of registered post and also confirmed the order of eviction dated 21st December, 2011 who had already not passed the eviction order on the basis of the service of summons sent by registered post.

16. Learned counsel for the petitioner has also argued that the article which was purported to have been delivered had the registration No.RD017696599IN. He referred the internet delivery report filed by the respondents before the learned trial Court which discloses that the sender/applicant of the registered article was Sidharth Sethi who is the landlord. Counsel for the petitioner has rightly pointed out that if the registered article was the summons sent by the Court, the name of the Court of Sh.S.K.Malhotra, Rent Controller, ought to have been mentioned and not of Mr.Sidharth Sethi who is the landlord in the matter. Counsel has also pointed out that the record of that article number was not available and not uploaded on the internet. Therefore, legally also the internet delivery report does not constitute proper service by way of registered post in view of Section 25B(3)(b) of the DRC Act which reads as under:-

“25B(3)(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.”

17. In the present case, admittedly there is no acknowledgement which was received back supports the alleged factum of service by registered post. There is also no report of the postal employee stating that the service was refused. Section 25B of the DRC Act is a complete code for the purpose of

a petition filed under Section 14(1)(e) of the DRC Act. It cannot be said that the petitioner/tenant was served by registered post by producing a internet delivery report unless some cogent supportive documentary evidence is available on record under the Scheme of the Act. Though the review Court did not accept the service by ordinary process as a valid service, still in view of the decisions given by this Court in the cases of ***Devender Nath vs. Mohd. Asim*** (supra) and ***Jor Singh vs. Sanjeev Sharma***, passed on 3rd December, 2013 in RC. Rev. No.134/2013 wherein while discussing the issue of service, this Court held that the same has to be effected strictly in accordance with the provisions of Section 25B and no departure from the same is permitted.

18. It is also a matter of fact that in the order on review application, the learned Rent Controller substituted the reasoning given by the earlier Court who has passed the original eviction order which creates a doubt about the service in the matter because of the reason that the reasoning behind passing of the eviction order on 21st December, 2011 was that the service by ordinary process had been effected, however, upon filing of the review application, another Rent Controller who was hearing the review application, held that no proper service by way of ordinary process had been effected. Thus, it appears to this Court that both the orders are liable to be quashed/ set-aside because of the reason that if the service by ordinary process as well as registered post is doubtful, then the tenant who is in the property for more than 65 years in respect of the commercial shop, is at least entitled to contest the case on merits. The tenant cannot be thrown away if the question of service of summon(s) is doubtful and the same is not clear.

19. In view of the above said facts and circumstances of the case and the reasons above, both the orders dated 21st December, 2011 and 15th February,

2013 are set-aside by allowing the present petition. The petitioner/tenant is granted liberty to file an application for leave to contest the eviction petition filed by the respondents, within 15 days from today. The parties shall appear before the concerned Rent Controller on 3rd April, 2014. The trial Court record be sent back forthwith along with a copy of this order.

20. The present petition is disposed of accordingly. Pending applications also stand disposed of.

21. Copies of this order be given *dasti* to the learned counsel for both the parties, under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 26, 2014