

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

+ **RC.REV.No.211/2014**

% **2nd December, 2014**

SH. GULSHAN ARORA Petitioner
Through: Mr. Manuj Aggarwal, Advocate.

VERSUS

M/S POMEY PLASTIC WORKS (A PARTNERSHIP FIRM)
..... Respondent
Through: Mr. Rajat Aneja, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. Though this petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') however it ought to have been filed under Article 227 of the Constitution of India since it is a petition filed against ordering of fresh summons upon the respondent/tenant and a revision can be filed under Section 25B(8) of the Act only against the dismissal of a leave to defend. Therefore, the present petition is treated as a petition filed under Article 227 of the Constitution of India.

2. This petition under Article 227 of the Constitution of India is filed by the petitioner/landlord impugning the judgment of the Rent Controller dated 17.5.2014, by which judgment the Rent Controller has held that summons in the *bonafide* necessity eviction petition were not validly served upon the tenant and therefore since the 15 days statutory period did not start for filing of the leave to defend application, the leave to defend application filed was not barred by time.

3. The admitted facts from the record are that summons in the *bonafide* necessity eviction petition were not served upon the tenant but upon his relative Sh. Prashant Nayyar on 3.2.2014 and this aspect is noted in para 5 of the impugned judgment and which reads as under:-

“5. Summons were served on Prashant Nayyar/received by Prashant Nayyar on 03.02.2014. The process server had penned down the following report:

“Today I had visited the address stated in the summons for service and inquired about Tony Nayyar and Harish Nayyar and at the spot one person who disclosed his name as Prashant Nayyar met me and informed me that Tony Nayyar is his uncle (Chacha) and Harish Nayyar is his father. He accepted the summons.” ”

4. The issue is that whether the statutory period of 15 days begins on 3.2.2014 when the respondent/tenant was served through Sh. Prashant Nayyar or when the respondent/tenant on 13.3.2014 came to know that

actually the summons which were received were not in an ordinary case but was in a special procedure case for *bonafide* necessity eviction petition which requires filing of leave to defend application within 15 days.

5. I have in the judgment in the case of ***Sh. Shyam Sunder Wadhawan Vs. Sh. Vivek Arya*** in RC. REV. No.294/2014 decided on 9.9.2014 laid down the following principles with respect to service in a *bonafide* necessity eviction petition. Para 17 of the judgment in the case of ***Sh. Shyam Sunder Wadhawan (supra)*** reads as under:-

“17. The conclusions are:-

(i) Merely because summons are addressed to the tenant but received by somebody else does not mean that in each and every such case the service is not a valid service whether there is or is not service/refusal depends upon the facts of each case.

(ii) If the summons is addressed to the tenant, and if the same is received by a person other than the tenant, but with consent/or knowledge or direction of the tenant, then the service is as effective as the service on the tenant. To clarify further, if summons are addressed to an agent of a tenant, then surely instead of the agent even the tenant himself can receive the same, then, why not a summons addressed to a tenant cannot be received by a person with consent or knowledge or direction of the tenant. A caveat: when a person other than the tenant receives the summons, the tenant must at that stage be in a place/state when he can file the leave to defend application within the prescribed period.

(iii) If the tenant uses subterfuges, including those cases where he is found to have endeavoured to conceal his personality, a court can,

depending upon facts of a particular case hold that there is service/refusal of the summons.

(iv) Service effected directly by affixation is not a valid service but affixation done following the refusal to receive summons is a valid service.

(v) Summons sent by registered post, when are avoided to be received by the tenant, then in such circumstances where it is clear that the tenant has the knowledge that he must receive the registered post article, but yet he does not, it can as per facts of a case, be held that there is service/refusal by the tenant.”

6. In my opinion, the conclusions given by me in sub paras (i) and (ii) of para 17 in the case of ***Sh. Shyam Sunder Wadhawan (supra)*** squarely apply in the present case because the respondent in the leave to defend application took up a specific case that the sole proprietor of the tenant firm was not in Delhi on 3.2.2014 inasmuch as he was in Haridwar on the said date. It is the contention of the respondent/tenant that Sh. Prashant Nayyar who received the summons for and on behalf of the respondent/tenant noted the next date of hearing as 4.4.2014 and which was informed to the respondent/tenant who was thereafter led to the belief of requirement to appear on the date fixed inasmuch as the respondent/tenant did not know that the leave to defend application was required to be filed within 15 days. The factual aspects with respect to the respondent/tenant not being aware of the 15 days statutory period are stated and discussed in para 7 of the impugned judgment and which para reads as under:-

“7.The respondent in the application u/s 25-B(4) of the DRC Act had taken the objections/explained its stand in this regard. It is stated that the respondent was served with the summons of the instant eviction petition through his nephew Sh. Prashant Nayyar on 03.02.2014 when Yogesh Nayyar, the sole proprietor of the respondent firm was away to Haridwar (Uttarakhand). Sh. Prashant Nayyar saw the summons and noted the next date of hearing inscribed on the summons as 04.04.14 and telephonically intimated the same to Yogesh Nayyar. It is also stated that respondent was not astonished on account of receipt of summons as parties were litigating. Later on Yogesh Nayyar was pre-occupied in his family matters as his mother in law was hospitalized. Once the summons and the documents were sent to the counsel it transpired that summons have been issued u/s 25 B of the DRC Act. It is also stated that the respondent was confused/mislead by the next date of hearing i.e. 04.04.14. This discrepancy of noting the next date of hearing led the nephew of the respondent to believe that they had to appear on the said date.

It is further stated that the eviction petition which has filed by the petitioner does not mentions section ‘25B’ of DRC ACt specifically. Though however, summons were issued under the Third Schedule. Under such circumstance, it is prayed that the delay in filing application seeking leave to defend was unintentional and on account of circumstance delineated in the application, further if counted from 13.03.14 the date when it transpired that leave to defend had to be filed, the same was promptly filed.” (underlining added)

7. At this stage, it is extremely important to note that the petitioner/landlord did not choose to file any reply to leave to defend and thus preferred to straightaway without reply argue the aspect of limitation. Once there was no reply to the leave to defend application therefore the averments as made in the leave to defend application so far as the respondent/tenant being in Haridwar and having not understood about the nature of the case requiring filing of leave to defend application in 15 days and the fact that the case was a normal case and not a special case, will have

to be taken as deemed to be admitted in the absence of any reply on these aspects.

8. A *bonafide* necessity eviction petition which is filed under Section 14(1)(e) of the Act is dealt with as per the special summary procedure of Chapter III A. Section 25B creates a drastic situation against the tenant of decreeing the *bonafide* necessity eviction petition in case the leave to defend application is not filed within the statutory period of 15 days. In fact, the Supreme Court in the judgment in the case of ***Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15*** has held that the statutory period of 15 days cannot be extended even by one day i.e there are drastic consequences upon the tenant in not filing the leave to defend application. Therefore, in the case of ***Sh. Shyam Sunder Wadhawan (supra)*** after considering the facts, situations which will prevail in different cases, I have made observations with respect to when the service is or is not complete and which depends upon the facts of each case. In the present case since even the service report admittedly shows that it was not the tenant who was served but summons were served upon Sh. Prashant Nayyar, service was therefore admittedly not upon the tenant. The issue thus which has to be examined is that whether summons were received on Sh. Prashant Nayyar as

per the consent, knowledge and direction of the respondent as per the ratio in the judgment in the case of *Shyam Sunder Wadhawan (supra)*. There is nothing in the service report when summons were served upon Sh. Parshant Nayyar, and which aspect is stated in para 5 of the impugned judgment reproduced above, that summons were received by Sh. Parshant Nayyar with the knowledge, direction and consent of the tenant. It is only after receiving summons Sh. Parshant Nayyar told the next date of hearing to the respondent/tenant who was accordingly misled. In such state of affairs when there is a possibility of confusion, I refuse to accept that there is a due service upon the respondent/tenant for filing of the leave to defend application and therefore the period did not commence on 3.2.2014 for filing of the leave to defend application.

9. In view of the above, there is no merit in the petition. The service in the present case of the *bonafide* necessity eviction petition on the respondent did not take place on 3.2.2014 for commencing of the limitation period for filing of the leave to defend application within 15 days from 3.2.2014. The impugned order is to be sustained in view of the reasoning given above applying the ratio of the judgment in the case of *Sh. Shyam*

Sunder Wadhawan (supra). Petition is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

DECEMBER 02, 2014
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