

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

+ **RC. REV. No. 213/2014**

% **9th September, 2014**

SHRI SURAJ BHAN

.....Petitioner

Through: Mr. Dinesh Kapoor, Advocate.

VERSUS

SHRI VIJAY PRAKASH BHARDWAJ

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? (Yes)

VALMIKI J. MEHTA, J (ORAL)

C.M. No.10412/2014 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ RC. REV. No.213/2014 and C.M. No.10411/2014 (stay)

2. This petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugns the order of the Rent

Controller dated 2.7.2012 by which the Rent Controller has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act on the ground that the leave to defend application was not filed within the statutory period of 15 days.

3. It is now settled law in view of the judgment of the Supreme Court in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15* that delay of even a single day cannot be condoned with respect to filing of the leave to defend application. The sequitur is that once the delay cannot be condoned, the leave to defend application filed after the period of 15 days cannot be considered and once no leave to defend application is to be considered, contents of the eviction petition are deemed to be admitted as per Section 25(B) of the Delhi Rent Control Act, 1958. Once, contents of the eviction petition are deemed to be admitted, eviction order naturally follows.

4. Learned counsel for the petitioner/tenant argues before this Court two aspects. First aspect which is argued is of merits that even if the contents of the eviction petition are taken as correct, yet, the eviction order should not have been passed in the present case as the partition deed between the two brothers i.e respondent/landlord and his brother is a sham document. Secondly, it is argued that there is no proper service in the
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present case inasmuch as service has been affected on the son of the petitioner/tenant and which is not a proper service in view of the judgment of this Court in the case of ***Jor Singh Vs. Sanjeev Sharma 205 (2013) DLT 117.***

5. So far as the first aspect is concerned, the same is without any merit because what cannot be done directly cannot be done indirectly i.e what should have been argued as a ground to grant leave to defend in a leave to defend application, if not permitted as there is no leave to defend application, the same cannot be allowed to be urged by arguing the same to dismiss the *bonafide* necessity petition because as per Section 25-B(4) of the Act on not filing a leave to defend application, contents of the eviction petition are deemed to be admitted and contents of the eviction petition show that the suit/tenanted shop fell to the share of the respondent/landlord as per the registered partition deed dated 13.08.2010 and which aspect has to be taken to be correct because it is deemed to be admitted on account of non-filing of the leave to defend application. Once that is so, I fail to understand as to how any ground can be urged with respect to the partition deed being a sham document and which ground could only have been urged in the leave to defend application. Even if this ground was urged in the leave to defend application, this ground would have been misconceived and most malafide

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because a tenant does not have locus to challenge an inter se partition deed between the family members, much less a registered one, and which has finally distributed the properties between two brothers.

6. So far as the aspect that the petitioner is not served and therefore time for filing of the leave to defend application has not commenced is concerned, it is conceded on behalf of the petitioner that this ground was available to the petitioner for being raised before the Rent Controller by filing of an application and for which there was sufficient time before the impugned order dated 2.7.2012 was passed because petitioner was served through his son way earlier on 6.3.2012. Once, no such ground is raised before the Rent Controller with respect to the petitioner not being served by relying upon the ratio of the judgment in the case of ***Jor Singh (supra)*** such an argument is deemed to be waived because a provision of law meant for the benefit of a person can always be waived by such a person vide ***Martin & Harris Ltd. Vs. VIth Additional District Judge & Ors (1998) 1 SCC 732***. Also, in my opinion, the plea which is urged of petitioner not being served is a dishonest plea because it is not the case of the petitioner that the son who received the summons did not immediately give the summons of the eviction petition to the petitioner/father. It cannot be argued on the basis of the ratio in the case of ***Jor Singh (supra)*** that although the

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petitioner accepts the service through his son yet subsequently it can suddenly be argued, although such a point is never taken up earlier, that the service is not a proper service for the period of leave to defend having commenced. Also, *Jor Singh*'s case (*supra*) does not lay down a ratio that the summons which are accepted by a family member and then accepted as a summons by the father/tenant, yet, service will not be a valid service although the tenant/father did not dispute this aspect before the Rent Controller below.

7. I have today in RC. REV. No.294/2014 titled as *Shyam Sunder Wadhawan Vs. Vivek Arya* passed a very detailed judgment laying out the guiding factors as regards service of summons in a *bonafide* necessity eviction petition and they read 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.”

8. In view of the above, I do not find any merit in the petition as none of the two aspects raised on behalf of the petitioner have any substance.

9. Dismissed.

SEPTEMBER 09, 2014
Ne

VALMIKI J. MEHTA, J.