

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ R.C.Rev. No. 294/2014 & CM No. 14886/2014 (stay), CM No.
14887/2014 & Caveat No. 778/2014

% **9th September , 2014**

SH. SHYAM SUNDER WADHAWAN Petitioner
Through: Mrs. Inderjeet Saroop, Advocate.

VERSUS

SHRI VIVEK ARYA Respondent
Through:

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

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

VALMIKI J. MEHTA, J (ORAL)

1. This petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (in short 'the Act') against the impugned order of the Additional Rent Controller dated 3.4.2014 whereby the Additional Rent Controller has decreed the *bonafide* necessity petition filed under Section 14(1)(e) of the Act on account of leave to defend application not being filed within the prescribed statutory period of 15 days and because the prescribed statutory period of 15 days cannot be extended by condoning the delay of even one day 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.

The main case of the petitioner/tenant is that in the present case the registered post article went back 'unclaimed' and which is not a proper service in view of the judgment of a learned Single Judge of this Court in the case of ***Dharampal Vs. Meena Sharma*** RCR 61/2010 decided on 28.2.2012 and that the service done by affixation is also not a mode of service as held in the same judgment of ***Dharampal (supra)***. Reliance is also placed upon the judgment of another learned Single Judge of this Court in the case of ***Jor Singh Vs. Sanjeev Sharma 2014(1) RLR 239: 205(2013) DLT 117*** to argue that in a *bonafide* necessity petition there is no service unless the summons are specifically addressed to the agent who receives the notice and the agent is not competent to receive a notice addressed to the tenant ie no other person other than the tenant himself can receive the summons/notice issued in a *bonafide* necessity petition filed under Section 14(1)(e) of the Act. This argument is urged because of the process server's report that the brother of the petitioner/tenant refused to receive the summons.

2. There are various issues which require consideration. First is that can there be a general ratio that merely because tenant does not receive the summons addressed to him on his own and instead gets the summon

received (or refused of) from someone else, then that is not a due service in view of the language of Section 25(B) of the Act and its sub-sections and the ratio of ***Jor Singh's case (supra)***. Second issue is that if the tenant is found not to receive the summons by a subterfuge, by pretending that he is someone else would not be affixation which is done and which is done effectively pursuant to a refusal (refusal of tenant to receive by pretending he is some other person) be not treated as service of summons in a *bonafide* necessity eviction petition filed under Section 14(1)(e) read with Section 25-B of the Act and the prescribed format of the summons prescribed in the Schedule to the Act. Related aspect is that does ***Dharampal's case (supra)*** lay down a general ratio that affixation in all types of circumstances and in no case can be treated as a service of summons in a petition under Section 14(1)(e) of the Act. Thirdly, it will have to be examined if the registered AD post article if it is not claimed by the tenant/petitioner deliberately, whether the ratio of the judgment of the Supreme Court in the case of ***M/s Madan & Co. Vs. Wazir Jaivir Chand AIR 1989 SC 630*** will not apply to hold that there is proper service. Can it not be held in peculiar facts of cases that where there is a deliberate endeavour by a tenant to delay and drag the *bonafide* necessity eviction petition with respect to which legislature has provided a speedy mechanism for decision service need not be only

personally upon the tenant with respect to summons issued in the name of the tenant.

3. At this stage, let me straightaway turn to the ratio and observations of a learned Single Judge of this Court in the case of *Dharampal (supra)* is paras 3 to 10 and which read as under:-

“3. Record shows that on 02.06.2008 summons were directed to be issued under Schedule III of the Delhi Rent Control Act (DRCA) for 25.09.2008. On 25.09.2008 notice was again ordered upon the respondent under Schedule III of the DRCA; the report of service of the earlier summons sent by ordinary process and registered A.D. had come back with the remark that premises were found locked. On 25.09.2008, notice by way of affixation was also ordered. Record further shows that the Court had noted that the service on the respondent by way of affixation had been validly effected. There is also no dispute that the service was not effected through the other two modes of service i.e. by ordinary process and registered post; report of service on the registered A.D. envelope had come back with the remarks that the premises are lying locked. The trial Court was of the view that this is a valid service and application seeking leave to defend not having been filed within the stipulated period of 15 days from 08.10.2008, the eviction petition had accordingly been decreed in favour of the landlord.

4. Counsel for the petitioner is aggrieved by this order; his RCR submission is rightly bordered on the ratio of the judgment reported in Prithipal Singh Vs. Satpal Singh (Dead) through its LR. (2010) 2 SCC 15 wherein the Apex Court has noted that Section 25-B of the DRCA which is contained in Chapter II-A and which had been inserted by the Act of 18 of 1976 is a complete Code in itself; this special provision had been introduced by the Legislature for summary trial of certain applications filed under the Rent Act.

5. Section 25-B (2)(3)(4) of the DRCA are reproduced herein a under:-

“25-B. Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.- (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 14-A, or under Section 14-B or under Section 14-C or under Section 14-D 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 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.

(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 application shall be entitled to an order for eviction on the ground aforesaid.”

6. A reading of the aforementioned provisions of law shows that the mode of service prescribed is three fold. This Section i.e. Section 25-B postulates that the summons can be sent either by ordinary way as provided in sub-Section 2; it is also required that the summons may be sent by registered post as provided in sub Clause 3 (a) as also by publication in a newspaper. It is only when the summons are sent by a registered post that the “acknowledgement” should be signed by the tenant or by his agent. The word “acknowledgement” as occurring in Section 25-B (3)(b) has reference to the words “acknowledgement due” occurred in the previous sub-clause i.e. sub-clause (3) (a). This “acknowledgement” referred to in sub-clause 3 (b) is an acknowledgement which is sent along with the registered post; the word “acknowledgement” referred in sub-clause 3 (b) is not the acknowledgment of summons issued under sub-Section 2. Sub-section 4 of Section 25-B in fact settles the matter beyond all doubt; use of the words ‘in the ordinary way’ clearly implies the manner in which service is to be effected.

7. It is thus clear that the service can be effected upon the tenant either by ordinary way or by registered post; either of two modes of service would be a

complete service and whereupon the tenant would then be required to file his application for leave to defend within the stipulated period of 15 days.

8. It is not in dispute that in the instant case service has not been effected by either of the two modes as prescribed in IIIrd Schedule of the DRCA; the summons could not be served either by the ordinary process or by registered A.D.; affixation is admittedly not a mode of service which is provided in Section 25-B which is a complete Code in itself. In these circumstances, the ARC holding that the service by affixation was a valid service has clearly committed an illegality; this is liable to be cured. Affixation is admittedly not a mode of service as described by Section 25-B which deals with the special class of landlords including those class of landlords who have filed an eviction petition under Section 14 (1)(e) of the DRCA. The tenant not having been served as per Schedule III of the DRCA, the impugned judgment holding otherwise is accordingly set aside.

9. Reliance by learned counsel for the respondent upon the judgments reported in JT 1996 (1) SC 669 State of Madhya Pradesh Vs. Hira Lal & Others, 2010 (2) RCR 542 Delhi Ajay Ahuja Vs. M/s Subhiksha Trading Services Ltd. and Vol VI 2007 SLT 442 SC C.C. Alavi Haji Vs. Palapetty Muhammed and others is misplaced; these were all under different statutes and not under the Rent Control Legislation. Reliance by learned counsel for the respondent upon the judgment reported in Vol 63 (1996) DLT 845 S. Mohinder Pal Singh Vs. Uttam Kaur Puri is also inapplicable; this was a case where service had been effected by publication which is not so in the instant case. Reliance upon AIR 1989 SC 630 M/s Madan & Com. Vs. Wazir Jaivir Chand is also misplaced; this was on the applicability of Section 27 of the General Clauses Act; in this case also, the question which had arisen for decision was as to whether a presumption of service can be drawn under Section 27 of the General Clauses Act; the argument of learned counsel for the respondent that in this case also a presumption of service should have been drawn against the tenant is an argument bereft of force; as noted supra Prithipal Singh (Supra) has enunciated the legal position qua this special class of landlords; the procedure prescribed under Section 25-B of the DRCA has to be strictly followed and as noted supra these are three modes of service prescribed therein; this intent of the legislature has to be strictly complied as the repercussions are also hard; if a valid service is noted qua the tenant and the application seeking leave to defend is not filed within the stipulated period of 15 days, the landlord will automatically get a decree of eviction. The strict adherence to the procedure as prescribed in Section 25-B of the DRCT thus has to be adhered to. Rule 23 of the Delhi Rent Control Rules which deals with the applicability of the provisions of the Code of Civil Procedure to rent matters has also been excluded by the Apex Court in Prithipal Singh (Supra).

10. The result of the aforementioned discussion is that the impugned judgment is set aside. Since there was no valid service in terms of Schedule III of the DRCA upon the tenant, the decree of eviction could not have followed. The tenant/petitioner is now permitted to file his application seeking leave to defend within 15 days from

today. Advance copy of the same shall be furnished to the learned counsel for the non-application.” (emphasis provided by me)

4. The relevant observations of a learned Single Judge of this Court in the case of *Jor Singh (supra)* are paras 3 to 11, 15 to 19 and 23 to 31 and which read as under:-

“3. Summons in the said petition were served upon the petitioner in accordance with Schedule III of the Act on 16th March, 2012 as per the report of the process server. However, the petitioner allegedly did not file an application for leave to defend and an affidavit as required under Section 25B of the Act within the statutory period of 15 days.

4. Consequently, an eviction order was passed in favour of the respondent against the petitioner on 8th June, 2012 in respect of the tenanted shop.

5. Aggrieved thereof the petitioner filed the present petition contending that the eviction order has been obtained by an exercise of fraud and forgery committed by the Respondent, in collusion with the process server and the postman. It is mentioned that a perusal of the said server report would reveal that it is **not clear as to whom the said summons were tendered and at which property nor is the identity of the person refusing the same is verified.** It is averred that the report so procured is totally false. It is categorically denied that any summons were ever received or that there was any occasion to refuse any such summons, especially when, admittedly, the parties have already been contesting litigations pending since prior and even thereafter to the filing of the said eviction petition under Section 14(1)(e) of the Act. The petitioner has provided a list of pending litigations between the parties.

6. It is stated that the respondent and his family members live in the remaining area of the property bearing No. C-6, Krishna Park, New Delhi, of which the tenanted shop forms a part, and so it is apparent that the respondent and his family members had colluded and got the said false reports on the summons. It is also stated that the respondent is aware of the residential address of the Petitioner, but intentionally the said address was not given in the eviction petition.

7. It is mentioned in the present petition that on 19th December, 2012, the respondent acting upon the impugned eviction order which was obtained allegedly by playing a fraud upon the Court, dispossessed the petitioner from the tenanted shop and his goods and articles were forcibly thrown on the road as on ground that the petitioner was aware about the eviction order obtained by the respondent on the basis of non-filing of application for leave to defend.

8. It is stated that aggrieved thereof on ill-advice of some lawyers, the petitioner filed an appeal before the Rent Control Tribunal instead of preferring the present petition. The said appeal was accordingly dismissed as not maintainable and hence, the present petition was filed by the petitioner for seeking permission to file leave to defend application.

9. Before proceeding further, it is necessary to mention the details of litigations pending between the parties prior to filing of the eviction petition by the respondent under Section 14(1)(e) of the Act:

i) Suit No. 958/2011 titled, Jor Singh v. Jai Prakash Sharma, the facts stated in the plaint on behalf of the petitioner were:

Sh. Jai Prakash Sharma, that is, father of the respondent herein and his family members extended threats of forcible dispossession and thus the said suit was filed to seek protection. The said Sh. Jai Prakash, was restrained vide an interim order dated 21.3.2011 from dispossessing the petitioner from the suit premises without following the due process of law. The said Sh. Jai Prakash Sharma, filed his written statement therein and admitted the relationship of landlord and tenant, but later on 8.4.2011 stated that he was neither the owner nor the landlord of the suit premises. The suit was disposed off in terms of the undertaking of the said Sh. Jai Prakash Sharma, to the effect that he would not dispossess the petitioner from the suit premises, without following due process of law.

(ii) Petition under Section 27, DRC Act titled:

“ Jor Singh Vs.(1) Jai Prakash Sharma (2) Murti Devi, wife of Sh. Jai Prakash Sharma (3) Sanjeev Sharma, son of Sh. Jai Prakash Sharma (4) Rajiv Sharma, son of Sh. Jai Prakash Sharma”

The petitioner herein sought to deposit the rent of the suit premises in the Court, inasmuch as initially Jai Prakash Sharma, let out the premises being the owner/landlord, later in January 2011 his wife Murthi Devi started claiming to be the owner/landlord, thereafter in March 2011 Sh. Sanjeev Sharma, started claiming rent of the suit premises and lastly Sh. Rajiv Sharma, started claiming the rent of the suit premises to the exclusion of others.

(iii) Petition bearing No. E-82/2011 under Section 45 DRC Act titled:

“ Jor Singh Vs. (1) Jai Prakash Sharma(2) Murti Devi, wife of Sh. Jai Prakash Sharma (3) Sanjeev Sharma, son of Sh. Jai Prakash Sharma (4) Rajiv Sharma, son of Sh. Jai Prakash Sharma”

It was alleged by the petitioner in the petition that the respondent herein alongwith his father, brother and mother, who have arrayed as respondent in the said petition, had illegally disconnected the electricity supply to the suit premises and were extending threats which compelled the petitioner herein to file the aforesaid petition, seeking restoration of the electricity supply to the suit premises.

In the said petition, Sh. Jai Prakash Sharma, Sh. Sanjeev Sharma, that is, the respondents herein and Sh. Rajiv Sharma filed their reply and claimed that they had nothing to do with the suit premises and in fact the owner/landlord was Smt. Murthi Devi, wife of Sh. Jai Prakash Sharma. In the said petition, vide orders dated 23rd December, 2011, the respondents were directed to restore the electricity supply with 2 weeks, failing which the petitioner was entitled to get fresh electricity meter.

The respondents in the said petition did not comply with the directions of the Court nor did they allow the employees of BSES to install new connection and accordingly a contempt petition under Sections 11 and 12 of the Contempt of Courts Act was filing against the respondents in the said petition. It is relevant to mention here that the petitioner had ultimately to seek fresh electricity connection on payment of Rs. 4,500/- with BSES but still the respondent did not allow the new connection to be installed. Even the complaints to the local police proved futile. Copy of the application under Sections 11 and 12 of the Contempt of Courts Act, Receipt issued by BSES for installing fresh electricity connection, police complaint dated 17th February, 2012 are annexed herewith and marked as Annexure K.

It is further relevant that the learned Rent Controller in the said proceedings vide orders dated 12th March, 2012, further observed that having regard to the level of distrust and acrimony between the parties, the SHO, Neb Sarai shall ensure that the electricity connection is installed smoothly and peacefully.

Furthermore, vide orders dated 29th May, 2012, the learned Rent Controller, further directed the SHO, Neb Sarai to appear in person in view of non compliance of earlier orders, in providing police assistance, as directed.

Thereafter, vide orders dated 4th July, 2012, the learned Rent Controller, further directed that the petitioner to contact the SHO directly, if any situation of non-cooperation from PS Neb Sarai arises.

10. On 14th March, 2012, the respondent issued a legal notice of demand of arrears of rent and on next date i.e. 15th March, 2012, he filed the eviction petition under Section [14\(1\)\(e\)](#) of the Act. In the notice, there is no reference or averment about the bona fide requirement.

11. Another petition No. 48/2012 under Section [14\(1\)\(a\)](#) of the Act was filed by the respondent on 21st May, 2012. Despite directions of the learned Rent Controller in the said petition, no steps were taken by the respondent for service of summons on the petitioner herein for the date of hearing that is 7th August, 2012. A perusal of the order sheets dated 7th August, 2012, 31st August, 2012 and 12th October, 2012 in the said petition clearly reveals that the respondent herein being the petitioner in the said eviction petition did not even disclose the passing of an order of eviction petition under Section [14\(1\)\(e\)](#) of the Act bearing No. EP24 of 2011.

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15. This Court is conscious about the law and its jurisdiction under the proviso to Section [25B\(8\)](#) of the Act to the effect that the petition is not to be treated as a first appeal nor it could have jurisdiction to interfere except if it is the opinion of the Revision Court that there has been a

gross illegality or material irregularity which has been committed by the Controller who failed to consider the relevant evidence and law which has resulted in gross injustice to the effected party and a judgment leading a miscarriage of justice and lacks valid reason.

16. The Supreme Court in *Prithipal Singh v. Satpal Singh*, JT 2009 (15) 423, had examined the provisions of Section 25B 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 25B 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.

17. From the provisions of Sub-section (1) of Section 25B of the Act 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 the 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.

18. A conjoint reading of Sub-sections (2) and (3)(a) and (b) provides (i) 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 acknowledgement due; (ii) The summons which are issued by registered post acknowledgement 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 acknowledgement due cannot be signed by anybody except the tenant. The agent empowered to accept service can only accept the notice and

sign acknowledgement due if the summons are addressed to such agent.

19. 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.

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23. Upon testing the records of the present case on the provisions of Section 25B of the Act, it can be seen that the service in the matter was ordered by the learned Rent Controller to be conducted on the tenant/petitioner.

24. In the present case the statement of Rakesh Kumar Yadav, process server was recorded by the learned Trial Court. The same is reproduced as under:

“I was entrusted with the summons by this Court vide order dated 16.3.2012. I obtained the summons from the Nazarat Branch and reached the property No. M/s. Rajput Bartan Bhandar, C-6, Krishna Park, New Delhi-110062 for service of the summons. There one person who did not disclose his name met me and when I tendered the summons to him, that person refused to accept the same. My report on summons are Ex. C1 and Ex. C2 and it bears my signature at point A.”

25. The learned trial Court failed to notice that the process-server failed to identify the premises where he had visited or failed to mention the name of the person who refused to receive the summons. The mala fide of the respondent can also be judged from the fact that after the dispossession of the petitioner from the tenanted premises, the

respondent has started the process of demolition gradually as appeared from the photographs shown by the petitioner which are not denied by the respondent. I agree with the submissions of the learned Counsel for the petitioner that the intention of the respondent was to demolish the entire property and thereafter, to raise a new premises. It is settled law that nobody can be allowed to take the law in his hands and abused the process of the Court but in the present case, the respondent did it.

26. While on the registered post on 10th April, 2012, the report of the postman is that at the site of the petitioner "information given". But on 11th April, 2012 the report of refusal is mentioned. Thus, doubts can be expressed on the registered post as in case the information was given on 10th April, 2012, there was no occasion to visit again on 11th April, 2012 and give report of refusal.

27. There is a specific denial of the petitioner about any mode of service effected to him.

28. One of the essential requirements of the special process of service provided under Section 25B of the 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 address 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 Us 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 Rent Controller 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. In the present case, the respondent is not able to satisfy this Court about the valid service of summons upon the petitioner/tenant.

29. If the provisions of Section 25B(3) are applied to the instant case, it can be seen that the registered post service was doubtful and not specific. Even if the conduct of the respondent in the present case is examined it is apparent that the respondent was trying to get the possession of tenanted shop by any means and without due process of law which are not permitted by law. The learned Trial Court has totally failed to apply its mind and notice the conduct of the respondent which is of dubious nature. The learned Rent Controller believed the doubtful report of the process server which does not clearly mentions the identity of the person who refused to accept summons. That is not the scheme of the provision of Section 25 of the Act.

30. I find that the service in the instant case was not properly effected in accordance with law. Thus, the said service upon the unidentified person cannot be said to be a regular one and was not effected in accordance with the provisions of Section 25B of the Act.

31. In view of the abovesaid reasons, 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.”

(emphasis provided by me)

5. Before advertent to the observations made by different learned Single Judges of this Court in the cases of *Dharampal (supra)* and *Jor Singh (supra)*, it would be apposite to refer to the ratio of the judgment of the Constitution Bench of the Supreme Court in the case of *Padma Sundara Rao & Ors. Vs. State of Tamil Nadu & Ors, (2002) 3 SCC 533* wherein the Supreme Court has observed that the ratio of a case is facts specific ie ratio of a case has to be read as per the facts of a particular case and even change of a single fact can make difference to the ratio of a case. The relevant

observations of the Supreme Court in the case of *Padma Sundara Rao (supra)* in para 9 are as under:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

6. Therefore, the Constitution Bench of the Supreme Court lays down the ratio that a ratio of a case is not to be read generally as applying to all facts and situations, but, the ratio of a case is to be read applying to the specific facts which have been decided in a particular case. Emphasis on the observation of the Constitution Bench in the case of *Padma Sundara Rao (supra)* are required because the facts of the present case are considerably different than the facts of the cases before the learned Single Judges of this Court in the cases of *Dharampal (supra)* and *Jor Singh (supra)*, and, it is because of the peculiar facts in the cases of *Dharampal (supra)* and *Jor Singh (supra)* that the learned Single Judges of this Court held that there was no proper service and consequential non-commencement of the statutory period of 15 days for filing of the leave to defend application.

7. Let us firstly turn to the observations made by a learned Single Judge of this Court in the case of *Dharampal (supra)* and the facts of the case in the case of *Dharampal (supra)*. When we read the facts of the case of *Dharampal (supra)*, it is seen that the registered AD post had come back with the remark that the premises were found locked for 25.9.2008 when at the time of issuing of a fresh notice, service by affixation was ordered. It is specifically noted in para 3 of the judgment in the case of *Dharampal (supra)* that service for the next specific date could not be effected again by registered post because the premises were found locked. It is in these circumstances that the tenanted premises repeatedly being found locked and that affixation was done without existence of facts that the tenant was in fact found at the spot but had not taken/refused service, that the order of affixation was held not to be a valid service as per the provisions of Section 25(B) of the Act and its sub-section. I would of course at this stage itself note that the learned Single Judge in para-9 of the judgment in the case of *Dharampal (supra)* has distinguished the judgment of the Supreme Court in the case of *M/s Madan & Co. (supra)* which has held by relying upon Section 27 of the General Clauses Act, 1987 that presumption of service has to be drawn once the summons are repeatedly sent by registered post to the tenant, but these observations have been made by the learned Single Judge in

the context that the tenanted premises were in fact locked i.e summons were not specifically offered in person to the tenant or refused by the tenant.

8. When we see the facts in the case of ***Jor Singh (supra)*** it is seen that there were already various existing litigations pending between the parties when the *bonafide* necessity eviction petition under Section 14(1)(e) of the Act was filed. There were allegations of fraud as to how after obtaining the eviction order, the tenant was dispossessed from the shop and there was no reason for the tenant not to have contested the proceedings when there were already various litigations pending between the parties. In ***Jor Singh's case (supra)***, as stated in para 24 of the judgment which is reproduced above, the report of the process server showed that the person who was to receive the summons, before refusing did not disclose his name i.e there was a doubt as to whether or not the person to whom summons were tendered was or was not the tenant ie a doubt as to the identity of the person to whom the summons were tendered. Para 25 of the judgment also shows that there was a doubt as to the identity of the premises, and which is peculiar to the facts in the case of ***Jor Singh (supra)***, because landlord in the said case was also running a shop from one of the portions in the very same property and living in other portion of the same property ie there was a clear possibility of collusion with the landlord with respect to obtaining of the

refusal report. The malafides of the landlord in the case of *Jor Singh (supra)* became clear because immediately after taking possession of the tenanted premises, the tenanted premises were demolished although as per Section 19 of the Act the landlord must start using the tenanted premises from which the tenant is evicted because of *bonafide* necessity of the landlord. In the registered AD post, report with respect to the summons, it is only mentioned that information was given ie not that the summons were tendered by the postman and consequently, the learned Single Judge expressed doubts with respect to giving of the report of refusal by the postman. It is in the aforesaid facts found in the case of *Jor Singh (supra)* that the court found that actually the summons were never tendered to the tenant and in fact a fraud was played upon him requiring the setting aside of the judgment and decree for eviction.

9. As compared to the facts in the cases of *Dharampal (supra)* and *Jor Singh (supra)*, in the present case, when summons in the eviction petition were issued for an earlier date i.e 19.8.2013, the process server/ a court official, reported that the petitioner impersonated himself as his brother and refused to receive the summons. This is noted in the order of the Additional Rent Controller dated 19.8.2013 and which reads as under:-

“19.08.2013

E.No. 182/13

Present: Counsel for petitioner.

Notice sent to respondent through ordinary process received back with report that one person, who did not disclose his identity, was found at the address furnished and he submit that he is brother of Shyam Sunder Wadhwa and he has gone out of station, however, on enquiry from the neighbourhood, it was disclosed that the person available at the furnished address is respondent only. The summons could not be sent through registered post for want of AD card.

In view of this, issue fresh summons in terms of previous order for 13.11.2013. In case if respondent not found at the available address or refuses to accept the summons, service be effected through affixation. Dasti be given, as prayed for.” (underlining added)

10. In my opinion, the Additional Rent Controller possibly may have been justified even on 19.8.2013 to decree the *bonafide* necessity eviction petition, however, the Additional Rent Controller as a matter of *abundant caution* and in order to ensure that the petitioner/tenant knows with respect to the filing of the *bonafide* necessity eviction petition, ordered fresh service in the ordinary method as also by registered post AD and directed that in case of refusal the summons can be affixed ie affixation was not to be done as a matter of routine by direct affixation as was in the case of *Dharampal (supra)*, but affixation was ordered in case the tenant refuses to accept the summons. This aspect that summons be affixed if there is refusal to accept is specifically noted in the summons issued to the tenant. Also it is

relevant to note that affixation is an act consequent upon refusal to receive

summons and affixation is not taken in itself as a service without there existing a refusal or an avoidance to receive amounting to refusal by the tenant refusing to accept that he is the tenant viz tenant concealing his identity so as to receive the summons. Therefore, unlike the facts in the case of *Dharampal (supra)* for the specific date for which the summons were issued, there was no order in the present case to directly affix the summons and summons were issued to be served both in the ordinary method as well as by registered AD post.

11. Let us now therefore examine the reports with respect to ordinary service and registered post service issued in terms of the order dated 19.8.2013, inasmuch as, it is pursuant to this order that the petitioner/tenant has been deemed to have been served and on account of his not filing the leave to defend application within 15 days, the *bonafide* necessity eviction petition has been decreed.

12. So far as the report of service of registered post is concerned, though the postal article is not on record of this Court counsel for the petitioner/tenant states that postal article sent to the petitioner/tenant containing the summons came back with the report ‘unclaimed’ ie it is not as if the premises were found locked as in the facts of *Dharampal’s case (supra)*. Also, the expression ‘unclaimed’ is used by the postal department if

in spite of the addressee being offered the postal article on various dates the postal article is not received by the addressee ie there is an avoidance which in fact amounts to refusal ie postal article was tendered at the given address but not received by the addressee. Therefore, the ratio of the judgment in the case of *M/s Madan & Co. (supra)* squarely applies because the issue with respect to the service of summons and presumption under Section 27 of the General Clauses Act, will apply even to proceedings for evicting the tenants on the ground of *bonafide* necessity filed under Section 14(1)(e) read with Section 25(B) of the Act. Once the petitioner/tenant was offered the postal article and he did not receive the same as the report is ‘unclaimed’, the postal article is deemed to be served upon the petitioner/tenant in view of the ratio of the judgment in the case of *M/s Madan & Co. (supra)* read with Section 27 of the General Clauses Act. I may note that postal rules provide that a postman cannot give a report of ‘unclaimed’ unless the postal article is offered over various dates to the addressee and this aspect will have to be kept in mind in view of the peculiar facts of the present case wherein the case of the petitioner/tenant is that the tenanted premises were locked, but except a self-serving statement *ipse dixit* there is nothing filed on record with respect to the tenanted premises being locked. Merely filing a medical certificate pertaining to the wife of the petitioner being advised bed rest from

9.9.2013 to 15.9.2013 will not mean that the tenanted premises were locked from 9.9.2013 to 15.9.2013 and in any case the tenanted premises cannot be said to be locked before 9.9.2013. The medical report I may note is curiously/malafidely and specifically made of the date 9.9.2013 and which is obviously done because the process server's report of affixation pursuant to effective 'refusal' by the tenant denying his identity is dated 10.9.2013 for the summons issued vide order dated 19.8.2013. Tenants cannot be allowed to play games of hide and seek with the Court and judicial process.

13. So far as the report by means of the ordinary process is concerned, and which was issued pursuant to the order dated 19.8.2013, it is seen that on 10.9.2013 when the process server went to the tenanted premises a person who was present at the spot did not give his name and mentioned that he was only a client/clerk (the expression is not too clear from the summons because expression can either be client or clerk). It is to be noted that in the facts of the present case, it is not that the respondent/landlord is living near the tenanted premises because the respondent/landlord lives far away at Vasant Kunj, Delhi (about more than 20 Kms away), the tenanted premises being at Chandni Chowk in old Delhi. Therefore, the confusion with respect to the identity of the premises or of collusion with the landlord, as happened in the case of *Jor Singh (supra)*,

was not possible in the facts of the present case. Also, the report of the process server dated 10.9.2013 with respect to a person existing in the shop and stating that he is a clerk/client and the tenant Sh. Shyam Sunder Wadhawan had gone out of Delhi has to be read and understood in the context of the facts of this case where for an earlier dated 19.8.2013 for which summons were issued, the petitioner/tenant actually was present in the shop but falsely got stated that he had gone out of station and which was found to be false by the process server as per enquiry from the neighbourhood. At the cost of repetition one needs to remind oneself of the ratio of the Constitution Bench in the case of *Padma Sundara Rao (supra)* that even the difference of a single fact between two cases can make difference to the ratio of the two cases.

14. A very important and a clinching reason that the petitioner/tenant is being less than honest, and the *cat comes out of the bag*, when we note that the petitioner/tenant claims that he received the summons from the court on 18.9.2013 but the admitted facts which appear on record show that there is no report of receipt of the summons of the eviction petition by the petitioner/tenant on 18.9.2013 and consequently, it is clear that tenants such as the petitioner keep on playing strategies to negate the

intention of the legislature providing speedy remedy for eviction of tenants in the case of *bonafide* necessity, should not be given unnecessary leeway.

15. I would at this stage hasten to observe that it depends on the facts of each case as to whether courts should arrive at a conclusion on the basis of reports of process server and postal articles delivered/offered by the postman or should consider it a disputed question of fact requiring trial, however, considering that the purpose of *bonafide* necessity eviction petition would be defeated if courts are forced to collaterally go into aspects of service by leading evidence with respect to service of summons for filing of a leave to defend application, and therefore, without in any manner making general observations, it is in the facts of the present case where the lack of honesty of the petitioner/tenant is clear on the basis of the reports of the process server and the postman, who are government servants, that this Court is holding that the petitioner/tenant was in fact deliberately avoiding to receive the summons and in fact thus had refused to accept summons, and was setting up a totally false case of service being effected on 18.9.2013 and which is in no way borne out from the record.

16. I would like to state that no doubt the object that the consequence upon a tenant of not filing the leave to defend application within the 15 days statutory period is drastic, and such rights have to be

meticulously ensured to the tenants, however, simultaneously it also needs to be borne in mind that observations made by learned Single Judges of this Court in the cases of *Dharampal (supra)* and *Jor Singh (supra)* should not be generally read otherwise it would be very easy for tenants to keep on delaying and dragging on eviction petitions filed for *bonafide* necessity and thereby defeat the very intention of the legislature in providing a speedy remedy and a summary procedure for eviction of tenants in *bonafide* necessity petitions.

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.

18. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

SEPTEMBER 09, 2014/ib

VALMIKI J. MEHTA, J.