

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

% *Order pronounced on: March 04, 2014*

+ **RC. Rev. No.588/2012 & C.M. No.20484/2012**

MAHARAJ SINGH Petitioner

Through Mr.K.P.Mavi, Adv. with
Mr.B.P.Mishra, Adv.

versus

SATBIR SINGH Respondent

Through Mr.S.P. Pandey, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”), the petitioner has assailed the order dated 19th October, 2012 whereby the leave to defend application filed by the petitioner was dismissed for the reason that the same was not filed within the stipulated period prescribed under the Act.
2. The respondent had filed an eviction petition, being E-81/2012, North East Karkarduma Courts, Delhi, against the petitioner under Section 14(1)(e) of the Act with regard to tenanted premises, double shutter shop on ground floor bearing No. 1226-E, Ground Floor, Khasra No.396, 100 Foota Road, Babarpur, Shahadara, Delhi.
3. The learned Trial Court passed the impugned eviction order on the reason that the application for leave to contest was not filed within the

prescribed time i.e. 15 days and after the expiry of such period, the Rent Controller is not empowered to condone the delay.

4. It is the admitted position that the application for leave to defend filed by the respondent on 17th May, 2012. As per petitioner, it was filed within the statutory period of limitation.

5. The counsel for the petitioner had made his submission before the learned Trial Court that the petitioner was served with the summons twice i.e. on 2nd May, 2012 and 3rd May, 2012 through two different process servers, which itself shows the collusion of the respondent with the process serving agency. The signature of the petitioner shown on the summons served on 1st May, 2012 were forged either by the respondent or by the process server with the connivance of the respondent. The second summon was served on 3rd May, 2012 to the petitioner by the other process server stating that earlier summons got spoiled.

6. The petitioner was served on 3rd May, 2012 and filed his application for leave to defend on 17th May, 2012 which was well within time as per law and as such there was no delay.

7. The respondent contended that as per the statement of the first server, the summons by ordinary process were duly served on the petitioner on 1st May, 2012 and the statutory period accordingly expired on 16th May, 2012. The petitioner filed the application for leave to defend only on 17th May, 2012 which was barred by limitation and hence the application filed by the petitioner was liable to be dismissed.

8. The learned trial court vide the impugned eviction order held that contrary to what was stated in the application for leave to defend, the

petitioner had been duly served on 1st May, 2012 at two of his addresses. Accordingly he was required to put in appearance on or before 16th May, 2012 i.e. within 15 days of service. The learned trial court observed that neither the petitioner appeared within the statutory period before Court nor any such application was moved.

9. It was further observed by the learned Trial Court that the submissions put forth in the form of written arguments attempting to explain that the application was within limitation were bald and did not appeal to any reason. In the opinion of the learned Trial Court, the plea of the petitioner is disbelievable, being unsupported and unsubstantiated. The said plea even did not form part of the application for leave to defend or the rejoinder anywhere. The same was an afterthought, thus not sustainable.

10. The learned Trial Court after having a look into the summons opined that service was duly affected on the petitioner on 1st May, 2012 and the plea of fabrication of summons in collusion with the respondent was misconceived, unsupported and deserved outright rejection.

11. With these observations, the learned Trial Court dismissed the leave to defend application of the petitioner and aggrieved thereof the petitioner filed the present petition.

12. As per order dated 8th April, 2013 the trial court record was requisitioned. In subsequent orders, the directions were also passed on the basis of the statement made by the learned counsel for the respondent that the respondent has not filed any execution proceedings till date and he will not file any execution till the next date. The statement made by the learned counsel for the respondent is continuing from time to time.

13. The trial court record has been considered by this Court about the service of the summons upon the petitioner. It appears from the same that the summons were served upon the petitioner through two different process servers namely Sudesh Chand and Jai Kishan respectively. The first summons was served upon the petitioner on 1st May, 2012 by Sudesh Chand. The said summons was issued at the address of 1226-E, Ground Floor, Khasra No.396, 100 Foota Road, Babarpur, Shahadara, Delhi. At the back side of the summons, the report of the process server dated 1st May, 2012 reads as under:

“Today dated 30.04.2012 I visited the given address and enquired about Maharaj Singh. I found one person present at the spot, who did not disclose his identity, introduced himself as his (Maharaj Singh’s) son and verbally informed that his father would be available at home i.e. 217, Gali Ganga Ram, Chotta Bazaar, Bara Thakur Dwara Shahadara. Thereafter, on 01.05.2012 I visited the aforesaid address and enquired about Maharaj Singh whereupon I found one person present there who disclosed his name as Maharaj Singh. He received the copy of the summons. Hence, the report is submitted.”

14. Another process server Jai Kishan also served summons upon the petitioner at the address of 217, Gali Ganga Ram, Chotta Bazar, Bara Thakur Dwara, Shahadara on 3rd May, 2012. The report on the back side of said summons reads as under:

“I visited the spot and found present one person who introduced himself as Maharaj, whom I did not know personally, who received the summons after reading the same. Hence, the report is submitted.”

15. In reply to the leave to defend application filed by the respondent, it was admitted by the respondent that the petitioner was served with summons on 2nd May, 2012. Still the application has not been filed by the petitioner in

the stipulated period as according to the respondent the application for leave to defend was to be filed before 16th May, 2012 but the same was filed on 17th May, 2012. One fails to understand, why the summons were served two times by the different process servers within the gap of two days.

16. After hearing learned counsel for both the parties, I do not agree with the submission of the respondent. In case the respondent in the reply to application for leave to defend has admitted that the respondent was served on 2nd May, 2012, fifteen days were to expire on 17th May, 2012 when the application was filed. But the fact of the matter is that despite of admission made by the respondent as per record, the first summons was served by Sudesh Kumar on 1st May, 2012 and the second summons was served on 3rd May, 2012. In case the last service of summons is accepted, then the application for leave to defend has been filed within the prescribed time. In similar circumstances, this Court in the case of ***Frank Anthony Public School vs. Amar Kaur***, 1984 (6) DRJ 47, in which Avadh Behari Rohatgi, J. has dealt with the said aspect in great detail in paras 13 to 29 which read as under:

“13. Both in the ordinary manner as well as by registered post summons have to be sent in the statutory form. The statutory form of summons is prescribed in the Third Schedule. When the tenant got the first summons on 11-5-1982 by registered post, he got the summons in the prescribed form. Again on the following day, i.e. on 12-5-1982 he got the summons in the prescribed form. In both these summons he was told :

“YOU are hereby summoned to appear before the Controller within fifteen days of the service hereof and to obtain the leave of the Controller to contest the application for eviction on the ground aforesaid; in default whereof, the applicant will be entitled at any time after the expiry of the said period

of fifteen days to obtain an order for your eviction from the said premises”.

14. What will the tenant think on getting the registered summons on 11-5-1982 and the ordinary summons on 12-5-1982 as happened in this case ? He will legitimately think that he will be well within time if he applies for leave to appear and contest the application within fifteen days from 12-5-1982. My reasons for this view are three.

15. Firstly both modes of service, namely, ordinary service and service by registered post are the requirements of the statute. Summons have to be issued to the tenant in both the modes. He may be served in both modes or in one or none. If he is "duly served whether in the ordinary way or by registered post" the Controller can proceed to hear the leave application made to him within fifteen days from the service of summons. But if he is served in both ways the question arises : To which service-the first or the second- do we give primacy ? Remember the second service has also the sanction of the statute. The first service and the second service stand on an equal footing. They are of equal efficacy and equal weight. So why count fifteen days from the first. Why not from the second. The object of the statute is to issue summons in the two modes giving a direction to the tenant to appear before the Controller to answer the suit which has been brought against him. The tenant is notified that an action has been instituted against him, and that he is required to answer it at the time and place mentioned in the summons. He is required to apply for leave to appear and contest the claim by making an application to the Controller supported by an affidavit.

16. The summons are a notice to the tenant that the action against him has been commenced by the landlord and that judgment will be given against him if he fails to apply for leave to contest "within fifteen days of the service hereof". In other words, the tenant is notified that he must apply within fifteen days from the service of summons, the statutory period designated in the summons itself, and make answer to the landlord's claim by applying for leave. So there is absolutely no difference between service in the ordinary manner and service by registered post. Both

have the same message for the tenant. But dates are different. If he gets these summons on different dates will he not be entitled to say, "I have come within fifteen days for leave to appear from the date of the second summons which I got on 12-5-1982"? This is what happened in this case. The object of the second service is the same as the first service. There is no difference, qualitatively at least. So why not count fifteen days from the date of the second service. In Kamal Bhandari the learned Judge said that it cannot be done from the second service because the second service does not "wipe out" the first service. This is true. No one says that the first service is wiped out. At the same time the statute does not say that you disregard the second service. As I have said, both modes of service have been placed on par by the statute.

17. The Controller is required to issue summons by registered post "in addition to and simultaneously with" the ordinary summons. If both modes of service have got equal efficacy there is no reason to disregard the second service on the tenant. We cannot ignore the second summons. We cannot treat second service as of no importance. Summons are after all a call of authority. It is a document issued by the office of a Court of Justice or a Tribunal calling upon the person to whom it is directed to attend before the Judge or the Tribunal for a certain purpose. In view of the statutory sanction to the two modes of service the tenant is perfectly within his rights to say that he counted fifteen days from the second summons which he got on 12-5-1982.

18. It is not a question of wiping out any service, as was the view in Kamal Bhandari's case. The fallacy in that reasoning, if I may say so with great respect, is that it overlooks the effect and the efficacy of the second summons. It just disregards it, even though the statutory sanction is attached to it. The legislature commands the Controller : "you shall issue summons by registered post in addition to and simultaneously with the summons in the ordinary form". The tenant can well say if he gets the two summons on different days : "I will count fifteen days from the later summons which I received on 12-5-1982".

19. We are not wiping out the first service. Nor the second. What Kamal Bhandari has done is that it has wiped out the effect of

the second service. It has given an over riding importance to the first. It belittles the importance of the second. In fact nothing has to be obliterated, nothing to be erased, nothing to effaced. The first service does not blot out the second. Nor the second will have the effect of cancelling the first. The legislature for good reasons commands that service be effected in both the modes. So both modes must be considered as of equal importance. One is not superior to the other. The second summons have the same potency, the same power, the same quality as the first.

20. Secondly, I think there is no reason to hold that the period of of fifteen days will commence from the date on which the tenant is first served. He gets summons twice over in the same statutory form. When he gets the second summons the Controller does not issue any warning : Mr. tenant, disregard the second summons if you ever get it. You must go by the first service of summons". No signal. No signpost. If there is no warning signal to him to disregard the second summons he is perfectly entitled to think that both summons have equal value and equal weight because they are after all issued by the same authority and under the same statute. There is nothing to indicate in the second summons that time will be counted from the first service or that the second service shall be disregarded.

21. THIRDLY-AND it is a corollary of the second-it will be unjust to the tenant if fifteen days' time is counted from the first service. Not only will it be against the law, it will also be against the principles of justice, equity and fair play if the Controller tells the tenant, "I will count fifteen days from the first service. You were misled by my second summons. You ought to have disregarded them altogether". Law then becomes not an instrument of justice but a trap for the unwary. Many will be ensnared. A salutary provision will prove the undoing of many simple 'tenants uninitiated into the complexities of law. This case illustrates it.

22. It is ambiguous, this double service. Judges have to see that it does not degenerate into double-dealing. It should not mean easy walkover for the landlord and a defenseless state for the tenant. Necessitous men, as these tenants are, are not, truly speaking, free men. To answer a present exigency they will submit to any terms that the landlords may impose upon them. Reason, safety, and

justice dictate that we count fifteen days from the service of the second summons. This is what "hereof" means. "Hereof" means the starting point, the critical juncture, from which to count. It is a strong word. It is a word of alert and caution. It is a terminus a quo. Surely it does not mean that second service is of no practical utility as the tenant has already been served once.

23. The legislature has devised a "special procedure for the disposal of the application for eviction on the ground of bonafide requirement". It is modelled on Order xxxvII of the Code of Civil Procedure. The object is to reduce delays in litigation. The object is to introduce a "summary trial" in place of full length trial. But it is not the object of the legislature that you deny to the tenant an opportunity to apply for leave to contest on the mere ground that he ought not to have been misled by the second summons. The delay was of one day in this case. The object is not to throw out tenants in these harsh times on the specious reasoning that first service is never wiped out and that second service is of no consequence.

24. The reasoning in Kamal Bhandari is based on the premise that service is effected once and only once and if there is a second service it is of no value. The statute attaches the same importance to the two modes of service in which summons are to be issued by the Controller. It is his statutory duty. The first service is not wiped out. Nor the second. Nothing is obliterated from the scene. Both services are good and effective services. The statute attaches the same importance to both. Time ought to be counted from the second service which comes later in point of time. . Because summons use the phrase "within fifteen days from the service hereof." This means fifteen days from the second summons which he receives on a later date. How can we disregard the preemptory words of the statute ? It is an abuse of language to say that "hereof" means "thereof", which it must mean if time is counted from the first service and not the second. So we wipe out nothing. We add nothing and subtract nothing. "Hereof" means in plain English "fifteen days from the date of service of this summons", though it be the second summons.

25. Therefore convenience and the language of the section point the same way. Full effect must be given to the words of the statute used in the third schedule. There is no reason to decry the second

service on the ground that it cannot wipe out the first service. M.L. Jain, J. said "Why should the tenant not have the right to have time counted against him from the later date ?" To this question there is no answer. Meaning of "within Fifteen Day's from the Service Hereof"

26. The expression "day" has been understood in different ways by different nations in different times. Lord Coke said :

"THE Jewes, the Chaldeans, and Babylonians, begin the day at the rising of the sun: the Athenians at the fall; the Umbri in Italy beginner at midday: the Egyptians and Romanes from midnight; and so doth the law of England in many cases". The English day begins as soon as the clock begins to strike twelve p.m. of the preceding day. Williams v. Nash 28 L J. Ch. 886".

In Halsbury's Laws of England, third edition. Vol. 37, P 84 it is said :

"THE term "day" is, like the terms "year" and "month", used in more senses than one. A day is strictly the period of time which begins with one midnight and ends with the next. It may also denote any period of twenty-four hours, and again it may denote the period of time between sunrise and sunset."

27. Counsel for the landlady argues that time ought to be counted from 12-5-1982 and the period of fifteen days expired on 26-5-1982. In any event he says the leave application made on 27-5-1982 was barred by time. I have no hesitation in rejecting this argument. The question is what is meant by the phrase "within fifteen days from the service hereof". In my opinion, on a proper reading of the third schedule, the word "day" should be read as meaning a "calendar day". I propose to found my decision R. v. Turner (1910) 1 K.B. 346 and Chambers v. Smith (1843) 152 E.R. 1085 and to decide that the phrase means fifteen clear days exclusive of the day of service. The words ' within fifteen days of the service hereof' in the form of summons prescribed in third

schedule must be construed as meaning fifteen consecutive periods of twenty-four hours after the service of the summons.

28. It is well known maxim that the law disregards fractions. By the Calendar the day commenced at midnight, and most nations reckon in the same manner. The English do it in this manner. We too have adopted the same. In the space of a day all the twenty-four hours are usually reckoned, the law generally rejecting all fractions of a day, in order to avoid disputes. If anything is to be done within a certain time of) from, or after the doing or occurrence of something else, the day on which the first actor occurrence takes place is to be excluded from the computation. (*Williams v. Burgess* (1840) 113 E.R. 955) unless the contrary appears from the context. (*Hare v. Gocher* (1962) 2 Q.B. 641). The ordinary rule is that where a certain number of days are specified they are to be reckoned exclusive of one of the days and inclusive of the other. (*R. v. Turner*, supra p. 359).

29. Fraction of a day has not to be counted. So I would disregard 12-5-1982, the day on which the ordinary summons were delivered to the Principal. Fifteen days will commence from 13-5-1982. Counting in this way the application was made on the last day, i.e. 27-5-1982. The application for leave to appear and contest is within time. I Therefore hold that the tenant was entitled to count fifteen days from the receipt of the second summons on 12-5-1982. Authority of the Principal.”

17. In view of decision referred above, it was held by the Court that the tenant to count 15 days from the receipt of the second summons.

18. By following the decisions passed in the case of ***Frank Anthony Public School*** (Supra) wherein the issue was almost the same, I allow the present petition. The impugned order dated 19th October, 2012 is quashed. It is held that there is no delay in filing the application for leave to contest. The application filed by the petitioner for leave to defend is declared to be filed within the prescribed period.

19. Parties shall appear before the concerned Additional Rent Controller
21st April, 2014.

(MANMOHAN SINGH)
JUDGE

MARCH 04, 2014